

DATED

**FLEXIBLE FRAMEWORK AGREEMENT FOR THE PROVISION OF
COMMUNITY PHARMACY PUBLIC HEALTH SERVICES**

between

CUMBRIA COUNTY COUNCIL

and

[PROVIDER]

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| THIS **FRAMEWORK AGREEMENT DEED** is dated

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PARTIES

- (1) Cumbria County Council whose principal place of business is at Cumbria House, 117 Botchergate, Carlisle, Cumbria CA1 1RD (**Council**).
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Provider**).

BACKGROUND

- (A) The Council placed a contract notice [REFERENCE] on [DATE] in the Official Journal of the European Union seeking the submission of tenders for the provision of Services to itself.
- (B) The contract notice permits the receipt of tenders, and acceptance by the Council until the Termination Date.
- (C) On the basis of the Provider's Tender, the Council selected the Provider to enter a framework agreement to provide services to the Council in accordance with this Framework Agreement.
- (D) This Framework Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of the Services and the obligations of the Provider under this Framework Agreement.
- (E) It is the Parties' intention that Councils have no obligation to place Orders with the Provider under this Framework Agreement or at all.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this Framework Agreement.

Approval: means the prior written approval of the Council.

Audit: means an audit carried out pursuant to clause 12.

Auditor: means the National Audit Office or an auditor appointed by the Council as the context requires.

Authorised Representative: means the persons respectively designated as such by the Council and the Provider, the first such persons being set out in clause 30.

Call-off Terms and Conditions: means the terms and conditions in Schedule 2 as updated by the Council from time to time.

Change of Control: means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010.

Commencement Date: means the [01 October 2018 for the round 1 contracts, thereafter the date of the contract award]

Confidential Information: means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Providers of either party, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.

Contract: means a legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between the Council and the Provider comprising of the Call-off Terms and Conditions, the relevant parts of this Framework Agreement and Schedule 1.

Default: means any breach of the obligations of the relevant Party under a Contract (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

Data Protection Legislation: means the Data Protection Act 2018 (DPA), ~~the~~ General Data Protection Regulation [\(EU\) 2016/679](#), ~~the~~ and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Environmental Information Regulations: mean the Environmental Information Regulations 2004 (*SI 2004/3391*) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA: means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Framework Agreement: means this agreement and all Schedules to this agreement.

Framework Providers: means the Provider and other providers appointed as framework providers under this Framework Agreement.

Framework Year: means a period of 12 months, commencing on the Commencement Date.

Goods: means the medicines, prescriptions, equipment, and other items used in delivery of the Services, including those items set out at Schedule 1 Part 1.

Guidance: means any guidance issued or updated by the UK government from time to time in relation to the Regulations.

Information: has the meaning given under section 84 of the FOIA.

Intellectual Property Rights: means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off.

Law: means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body.

Lot(s): the Services divided into lots as referred to in the OJEU Notice and set out in Schedule 1 Part 1.

Management Information: means the data requirements~~management information~~ specified in Schedule 1 Part 1 as amended by the Council from ~~time~~ to time.

Month: means a calendar month.

OJEU Notice: means the contract notice [REFERENCE AND DATE] published in the Official Journal of the European Union.

Order: means an order for Services from the Council to the Provider which incorporates the Call-Off Terms and Conditions.

Parent Company: means any company which is the ultimate Holding Company of the Provider and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged in the same or similar business to the Provider. **Holding Company** shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.

Party: means the Council and/or the Provider.

Price: means the price for the relevant Services set out at Schedule 1 Part 1 or such other figure as determined in accordance with clause 6.2.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:

Comment [CJ1]: This information is outlined in the Services Specification which will be inserted in Schedule 1 Part 1

- (i) induce that person to perform improperly a relevant function or activity; or
- (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Framework Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Framework Agreement or any other contract with the Council;
 or
- (d) defrauding, attempting to defraud or conspiring to defraud the Council.

Regulations: means the Public Contracts Regulations 2015 (*SI 2015/102*).

Regulatory Bodies: means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies, which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Council or Provider.

Requests for Information: means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

Service User: means any individual eligible for and requiring Services

Services: means, subject to clause 3.3, the community pharmacy public health services detailed [in the Service Specification](#) in Schedule 1 Part 1 together with any specific requirements identified in a Contract.

Staff: means all persons employed by the Provider together with the Provider's servants, agents, volunteers, suppliers and subcontractors used in the performance of its obligations under this Framework Agreement or Contracts.

Subcontract: any contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Services from that third party.

Subcontractor: the contractors or service providers that enter into a Subcontract with the Provider.

Tender: means the tender submitted by the Provider to the Council to provide some or all of the Services.

Term: means the period commencing on the Commencement Date and ending on the 31 March 2023, or on earlier termination of this Framework Agreement in accordance with its terms.

Termination Date: means the date of expiry or termination of this Framework Agreement howsoever arising.

Working Days: means any day other than a Saturday, Sunday or public holiday in England and Wales.

Year: means a calendar year.

1.2 The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (d) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- (g) the Schedules form part of this Framework Agreement and shall have effect as if set out in full in the body of this Framework Agreement and any reference to this Framework Agreement shall include the Schedules;
- (h) references in this Framework Agreement to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to this Framework Agreement so numbered;
- (i) references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered; and

- (j) reference to a clause is a reference to the whole of that clause unless stated otherwise.
- 1.3 Nothing in this Framework Agreement shall limit or exclude either Party's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
 - (b) fraud or fraudulent misrepresentation; ~~or~~
 - ~~(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).~~

2. TERM OF FRAMEWORK AGREEMENT

- 2.1 The Framework Agreement shall take effect on the Commencement Date and unless it is terminated in accordance with the terms of this Framework Agreement or is otherwise lawfully terminated, shall terminate at the end of the Term.

3. SCOPE OF FRAMEWORK AGREEMENT

- 3.1 This Framework Agreement governs the relationship between the Council and the Provider in respect of the provision of the Services and associated Goods by the Provider to the Council.
- 3.2 The Council appoints the Provider as a Framework Provider of the Services and the Provider shall be eligible to provide Services from time to time during the Term.
- 3.3 Where the Provider has not been awarded a place on a Lot(s) for certain Services and Goods, the Provider shall not provide these Services and associated Goods under this Framework Agreement. The Provider may, during the Term, apply to join other Lot(s) and provide the Services and Goods for that Lot. The application process shall be the same for the Provider as for any other potential supplier of the Services which does not have a place on this framework, save that if the Provider successfully joins an additional Lot(s) the Council may by notice to the Provider expand the Providers Lots, as set out in Schedule 1 Part 1 accordingly.
- 3.4 If and to the extent that any Services under this Framework Agreement are required the Council shall:
- (a) comply with the ordering procedure in clause 4; and

- (b) enter into a contract with the Provider for these Services materially in accordance with the terms of the Contract.
- 3.5 The Provider acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Council for the Services and that the Council is at all times entitled to enter into other contracts and arrangements with other Providers for the provision of any or all services which are the same as or similar to the Services.

4. ORDER PROCEDURE

- 4.1 During the Term the Provider shall offer to such Services Users as present themselves at the Providers premises the Services for the relevant Lots and associated Goods, subject to any limitations set out in Schedule 1 Part 1, clause 18 or as notified by the Council to the Provider from time to time.
- 4.2 Prior to offering Services to an individual the Provider shall ensure that the individual is eligible to receive the Services in accordance with Schedule 1, Part 1.
- 4.3 Where the Provider delivers Services to a Service User in accordance with clause 4.1 the request for Services by the Service User shall be deemed to be an Order which the Provider has accepted immediately prior to delivering the Services. On acceptance of the Order, in accordance with this clause 4.3 the Council and Provider shall be deemed to have entered into a Contract.
- 4.4 Where the Council elects to advertise the Services to Service Users it shall do so in a way that treats all Framework Providers equally, save that the Council may advise Service Users of all Framework Providers in a specific geographic area only and/or Framework Providers offering a specific Service.

5. CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS

- 5.1 The Provider shall perform all Contracts entered into with the Council in accordance with:
 - (a) the requirements of this Framework Agreement; and
 - (b) the terms and conditions of the respective Contracts.
- 5.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Framework Agreement and the terms and conditions of a Contract, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) the clauses of the Contract;
- (b) the terms of the Framework Agreement, the Schedules to the Framework Agreement, except Schedule 1, part 2 (the Provider's Tender);
- (c) any other document referred to in the clauses of the Contract; and
- (d) Schedule 1, part 2 of the Framework Agreement (the Provider's Tender).

6. PRICES FOR SERVICES AND GOODS

- 6.1 The prices offered by the Provider for Contracts for the Services and associated Goods shall be the Price and such prices may be adjusted annually in accordance with the provisions of 6.2.
- 6.2 The Council may review the Price each Framework Year and may, notwithstanding the provisions of clause 23.1, **acting reasonably** unilaterally alter the Price in line with proposals approved by the Council from time to time. Such alterations of the Price shall take effect from the date that the Council notifies the Provider of the change.

Comment [CJ2]: Please note that the Supplier will now have a right at clause 17.5 to terminate the contract at any time by giving not less than a month's notice. Thus if the Council were to decrease the price and act in an unfair way the supplier could simply serve notice.

7. PAYMENT

- 7.1 The Provider shall upload details of the Services and Goods provided each month onto the electronic system nominated by the Council from time to time (the System). As soon as reasonably practicable after the end of each month the Council shall review the new entries onto the System and shall, within 30 days of review, pay to the Provider the Price for the Services and Goods provided.
- 7.2 Where the Council disputes any sum to be paid by it, or disputes the Services and Goods delivered, then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined between the Parties. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until 30 days after resolution of the dispute between the Parties.
- 7.3 Subject to clause 7.2 above, interest not exceeding 2% over the Bank of England base rate on the date of the notification shall be payable on the late payment of any undisputed sums due under the Contract.
- 7.4 The Provider shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Council at any time in respect of the Provider's

failure to account for or to pay any VAT relating to payments made to the Provider under any Contract. Any amounts due under this *clause 7.4* shall be paid by the Provider to the Council not less than five Working Days before the date on which the tax or other liability is payable by the Council.

~~7.4~~ 7.5 Wherever under this Framework Agreement or any Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Council in respect of any breach of the Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under any Contract or under any other agreement or contract with the Council.

~~7.2~~ 7.6 The Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Provider.

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8. WARRANTIES AND REPRESENTATIONS

The Provider warrants and represents to the Council that:

- (a) it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Framework Agreement;
- (b) this Framework Agreement is executed by a duly authorised representative of the Provider;
- (c) in entering into this Framework Agreement or any Contract it has not committed any Prohibited Act;
- (d) as at the Commencement Date, all information, statements and representations contained in the Tender are true, accurate and not misleading save as may have been specifically disclosed in writing to the Council before the execution of this Framework Agreement and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under this Framework Agreement and any Contract which may be entered into with the Council;

- (f) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Contract; and
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue.

9. SERVICE PRE-REQUISITES

The Provider shall be responsible for obtaining and maintaining all licences, authorisations, consents, Regulatory Body approvals or permits required in relation to the performance of this Framework Agreement and any Contract.

10. REPORTING AND MEETINGS

- 10.1 The Provider (~~if so requested~~) and no more than once every year shall attend performance review meetings with the Council. ~~as and when requested by the Council.~~
- 10.2 The Provider shall submit the Management Information to the Council in the form set out in Schedule 1 Part 1 quarterly throughout the Term and thereafter in respect of any Contract entered into with the Council. Failure to supply the Management Information shall constitute a Material Breach under clause 17.1(a)
- 10.3 The Council may share the Management Information supplied by the Provider with any Regulatory Body or other public body.
- 10.4 The Council may make changes to the nature of the Management Information that the Provider is required to supply and shall give the Provider at least thirty (30) days written notice of any changes.
- 10.5 At no cost to the Council the Provider shall attend meetings in relation to the Services with the Council and/or with other providers engaged by the Council as the Council shall reasonably request.
- 10.6 The Provider shall provide to the Council written reports in such form as approved by the Council from time to time to capture performance details as prescribed in Schedule 1 Part 1, or such other performance details as the Council may specify.

11. SAFEGUARDING

- 11.1 Insofar as they contain obligations relating to the Services, the Provider must comply with such pan Lancashire -Cumbria multi-agency policy guidance and procedures for the safeguarding of children and vulnerable adults, details of which are available at www.cumbria.gov.uk/safe, and which will be updated from time to time as are adopted during the currency of the Framework Agreement.
- 11.2 The Provider shall ensure that all relevant Services are registered with any relevant Regulatory Body (as appropriate) and comply in all respects with the Law.
- 11.3 The Provider shall comply at all times with the requirements of any relevant Regulatory Body and shall provide to the Council details of any notice issued to them by a Regulatory Body which specifically relates to the provision of the Services. The Provider shall make available to the Council copies of any regulatory reports or reviews including but not limited to those that have not been released to the public.
- 11.4 The parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006
- 11.5 The Provider shall:
- (a) ensure that Staff specifically engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS);
 - (b) monitor the level and validity of the checks under this clause 11.5 for each member of Staff;
 - (c) repeat the checks set out at 11.5 (a) throughout the Term at such frequency as required by law and guidance from any Regulatory Body; and
 - (c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to the Service User.

- 11.6 The Provider warrants that at all times for the purposes of this Framework Agreement and any Contracts awarded under it has no reason to believe that any of its Staff are barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 11.7 The Provider shall immediately notify the Council of any information that it requests to enable it to be satisfied that the obligations of this clause 11 have been met.
- 11.8 The Provider shall if legally required to do so refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the Service User.

12. RECORDS AND AUDIT ACCESS

- 12.1 The Provider shall keep and maintain until six years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Services provided under it, the Contracts entered into with the Council and the amounts paid to it by the Council.
- 12.2 The Provider shall keep the records and accounts referred to in clause 12.1 above in accordance with good accountancy practice.
- 12.3 The Provider shall afford the Council or the Auditor (or both) such access to such records and accounts as may be required from time to time.
- 12.4 The Provider shall provide such records and accounts (together with copies of the Provider's published accounts) during the Term and for a period of six years after expiry of the Term to the Council and the Auditor.
- 12.5 The Council shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Provider or delay the provision of the Services pursuant to the Contracts, save insofar as the Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Council.

- 12.6 Subject to the Council's rights of confidentiality, the Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
- (a) all information requested by the Auditor within the scope of the Audit;
 - (b) reasonable access (after first giving a minimum of 48 hours' notice) to sites controlled by the Provider and to equipment used in the provision of the Services; and
 - (c) access to the Staff.
- 12.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 12, unless the Audit reveals a ~~Material~~ Default by the Provider in which case the Provider shall reimburse the Council for the Council's reasonable costs incurred in relation to the Audit.

13. CONFIDENTIALITY

- 13.1 Subject to clause 13.2, the Parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 13.2 Clause 13.1 shall not apply to any disclosure of information:
- (a) required by any applicable law, provided that clause 15 shall apply to any disclosures required under the FOIA or the Environmental Information Regulations;
 - (b) that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Framework Agreement;
 - (c) where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 13.1;
 - (d) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information; and
 - (e) by the Council to any other department, office or agency of the government, provided that the Council informs the recipient of any duty of confidence owed in respect of the information.

14. DATA PROTECTION

- 14.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 14.1 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 14.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the data controller and the Provider is the data processor. Schedule 3 sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 14.3 Without prejudice to the generality of clause 14.1, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of this agreement.
- 14.4 Without prejudice to the generality of clause 14.1, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this agreement:
- (a) process that Personal Data only on the written instructions of the Council (as set out in Schedule 3), unless the Provider is required by the laws of any member of the European Union or by the laws of the European Union (**Applicable Laws**) applicable to the Provider to otherwise process the Personal Data. Where the Provider is so required, it shall promptly notify the Council before processing the Personal Data, unless prohibited by the Applicable Laws;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Council or the Provider has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Provider complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (d) notify the Council immediately if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (e) assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Council immediately and in any event within 24 hours on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
- (g) at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination or expiry of the agreement unless required by the Applicable Laws ([including for the avoidance of doubt GPhC Guidance](#)) to store the Personal Data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 14 and allow for audits by the Council or the Council's designated auditor;

- 14.5 The Provider shall indemnify the Council against any losses, damages, cost or expenses incurred by the Council arising from, or in connection with, any breach of the Provider's obligations under this clause 14.
- 14.6 Where the Provider intends to engage a Sub-Contractor pursuant to clause 22 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:
- (a) notify the Council in writing of the intended processing by the Sub-Contractor;
 - (b) obtain prior written consent to the processing;
 - (c) ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause 14.
- 14.7 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 14 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this agreement).
- 14.8 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.
- 14.9 Where Data Protection Legislation imposes an obligation on either party to include provisions in this agreement relating to Personal Data, those provisions shall be deemed to be included within this Framework Agreement

15. FREEDOM OF INFORMATION

- 15.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Provider shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Council all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Council with a copy of all Information belonging to the Council requested in the Request For Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and

- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Council.

15.2 The Provider acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Provider. The Council may take reasonable steps to notify the Provider of a Request For Information to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Council shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

16. PUBLICITY

16.1 Unless otherwise directed by the Council, the Provider shall not make any press announcements or publicise this Framework Agreement in any way without the Council's prior written consent.

16.2 The Council shall be entitled to publicise this Framework Agreement in accordance with any legal obligation on the Council, including any examination of this Framework Agreement by the Auditor or otherwise.

16.3 The Provider shall not do anything that may damage the reputation of the Council or bring the Council into disrepute.

17. TERMINATION

Termination on Default

17.1 The Council may terminate the Framework Agreement in whole or part by serving written notice on the Provider with effect from the date specified in such notice:

- (a) where the Provider commits a material breach of this Framework Agreement or any Contract and:
 - (i) the Provider has not remedied the material breach to the satisfaction of the Council within 10 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the material breach and requesting it to be remedied; or
 - (ii) the material breach is not, in the reasonable opinion of the Council, capable of remedy;

- (b) where the Council terminates a Contract awarded to the Provider under this Framework Agreement as a consequence of a material breach by the Provider;
- (c) where any warranty given by the Provider in clause 8 of this agreement is found to be untrue or misleading;
- (d) where in the opinion of the Council the Provider or its Staff are responsible for subjecting a Service User or any person to, or putting a Service User or any person at risk of, injury and or abuse whether physical, sexual, psychological, financial, or combination of the same;
- (e) where the Provider sub-contracts the Framework Agreement in whole or in part without the Council's prior written consent;
- (f) where the Framework Agreement is novated or any part is assigned to a third party without the Council's prior written consent;
- (g) where the Provider or Staff are subject to action, a direction, notice or adverse or unsatisfactory finding following or in connection with an inspection by any Regulatory Body;
- (h) where the Provider loses, fails to renew or is not granted any relevant licence or registration from all relevant Regulatory Bodies; or
- (i) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply or if any event listed in Regulations 57(1) or 57(2) of the Public Contracts Regulations 2015 occurs during the Term.

17.2 For the purposes of clause 17.1(a), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Council would otherwise derive from:

- (a) a substantial portion of this agreement; or
- (b) any of the obligations set out in clauses 5, 8, 13, 21 and 22, over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

Termination on insolvency and Change of Control

17.3 Without affecting any other right or remedy available to it, the Council may terminate this agreement with immediate effect by giving written notice to the Provider if:

- (a) the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is

deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- (b) the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company);
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
- (g) the Provider (being an individual) is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 days; or
- (i) the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

17.4 The Provider shall notify the Council immediately if the Provider undergoes a Change of Control. The Council may terminate the Framework Agreement by giving notice in writing to the Provider with immediate effect within six Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Council becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval was granted before the Change of Control.

Termination by ~~the Council for~~Parties for convenience

- 17.5 ~~Either Party The Council~~ shall have the right to terminate this Framework Agreement in whole or part at any time by giving not less than one months' written notice to the ~~other Party.Provider.~~

18. SUSPENSION OF PROVIDER'S APPOINTMENT

18.1 Without prejudice to the Council's rights to terminate the Framework Agreement in clause 17 above, the Council may suspend in whole or part the Provider's right to receive Orders by giving notice in writing to the Provider where:

- (a) a right to terminate this Framework Agreement arises in accordance with clause 17;
- (b) an investigation into the Provider, the Staff or the Services is being undertaken by the Council, a Regulatory Body or a third party which the Council deems is relevant to the Services;
- (c) an investigation being commenced by the police or coroner into the Provider or the Staff;
- (d) a suspected or actual breach of the Providers obligations under this Agreement coming to the attention of the Council;
- (e) a breach of clause 14; or
- (f) concerns are raised in relation to safeguarding by any relevant person or body.

18.2 If the Council provides notice to the Provider in accordance with this clause 18, the Provider's appointment shall be suspended for the period set out in the notice or such other period notified to the Provider by the Council in writing from time to time.

19. CONSEQUENCES OF TERMINATION AND EXPIRY

19.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Provider shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this clause 19.

19.2 Unless expressly stated to the contrary, the service of a notice to terminate the Framework Agreement shall not operate as a notice to terminate any

Contract made under the Framework Agreement. Termination or expiry of the Framework Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

- 19.3 Within 30 Working Days of the date of termination or expiry of the Framework Agreement, the Provider shall return or destroy (unless precluded by Law) at the request of the Council any data, personal information relating to the Council, its personnel, Service Users or Confidential Information belonging to the Council in the Provider's possession, power or control, either in its then current format or in a format nominated by the Council and any other information and all copies thereof owned by the Council, save that it may keep one copy of any such data or information for a period of up to 12 Months to comply with its obligations under the Framework Agreement, or such period as is necessary for compliance with the Law or any regulatory requirements imposed by the Regulator.
- 19.4 Subject to clause 1.3, in the event of termination of the Framework Agreement by the Council the Council shall not have liability to the Provider for any Direct Loss or Indirect Loss suffered by the Provider caused by such termination.
- 19.5 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of the Council accrued under this Framework Agreement before termination or expiry.
- 19.6 Where this Framework Agreement is terminated in accordance with clauses 17.1, 17.3 or 21 or the Provider is subject to a suspension in accordance with Clause 18 when this Framework Agreement terminates, the Provider agrees that unless it receives the Council's prior written consent, which may be withheld in the Council's absolute discretion, it shall not be eligible for admission onto this framework, and shall not apply to re-join the framework, for a period of not less than 12 months from the Termination Date. The Provider shall indemnify the Council against all costs, claims, damages, expenses, demands and losses incurred as a result of an actual or alleged breach, or anticipatorily breach, of this clause 19.6
- 19.7 The provisions of clause 8, clause 10.2, clause 12, clause 13, clause 14, clause 15, clause 16, clause 19, clause 21, and clause 31 shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

20. DISPUTE RESOLUTION

20.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then the Parties shall follow the procedure set out in this clause:

- (a) either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
- (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the relevant senior officer of the Council and a director or officer of similar authority of the Provider who shall attempt in good faith to resolve it.

20.2 In the event the senior officers identified above are unable to resolve the Dispute within 20 days of it being referred to them this dispute resolution process shall be deemed exhausted.

21. PREVENTION OF BRIBERY

21.1 The Provider:

- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Framework Agreement and any Contract made under it commit a Prohibited Act; and
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council or any Other Contracting Body, or that an agreement has been reached to that effect, in connection with the execution of this Framework Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Framework Agreement.

21.2 The Provider shall:

- (a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
- (b) within 5 Working Days of the Commencement Date, and **if requested** annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Provider) compliance with this

clause 21 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Framework Agreement. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

- 21.3 The Provider shall have an anti-bribery policy (which shall if requested be disclosed to the Council) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.
- 21.4 If any breach of clause 21.1 is suspected or known, the Provider must notify the Council immediately.
- 21.5 If the Provider notifies the Council that it suspects or knows that there may be a breach of clause 21, the Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documents. This obligation shall continue for 6 years following the expiry or termination of this Framework Agreement.
- 21.6 The Council may terminate this Framework Agreement and/or any Contract and any Other Contracting Body may terminate any Contract with the Provider by written notice with immediate effect if the Provider, its Staff or Sub-Contractors (in all cases whether or not acting with the Provider's knowledge) breaches clause 21.1.
- 21.7 Despite clause 20, any dispute relating to:
- (a) the interpretation of this clause 21; or
 - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.
- 21.8 Any termination under this clause 21 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

22. SUBCONTRACTING AND ASSIGNMENT

- 22.1 Subject to clause 22.2, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Framework Agreement without the prior written consent of the other party, neither may the Provider subcontract the whole or any part of its obligations under this Framework Agreement except with the express prior written consent of the Council.

- 22.2 The Council shall be entitled to novate the Framework Agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.
- 22.3 In the event the Council permits the Provider under clause 22.1 to subcontract the Framework Agreement or any part of it the Provider shall:
- (a) remain responsible to the Council for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
 - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Framework Agreement and shall procure that the Sub-Contractor complies with such terms; and
 - (c) provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative.

23. VARIATIONS TO FRAMEWORK AGREEMENT

- 23.1 Subject to clause 23.2, no amendment or variation of the terms of this Framework Agreement shall be effective unless made in writing and signed by both Parties.
- 23.2 The Council may unilaterally vary the content of Part 1 of Schedule 1 (in accordance with clause 6.2 where the change relates to the Price) Schedule 2 and Schedule 3 of this Framework Agreement by notice to all Framework Providers from time to time, provided that no variation made under this clause 23.2 may be made which would, in the Council's reasonable opinion, materially alter the overall nature of the Framework Agreements.

24. DISCRIMINATION

- 24.1 The Provider shall not unlawfully discriminate within the meaning and scope of any law enactment order or regulations relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
- 24.2 The Provider shall take all reasonable steps to ensure Staff and suppliers of the Provider do not unlawfully discriminate within the meaning and scope of any law enactment order or regulations relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

25. THIRD PARTY RIGHTS

25.1 No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any terms under this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, save that Service Users may enforce the provisions of this Agreement against the Provider and bring claims for damages only, for losses suffered by them as a result of the Providers breach of this Agreement.

25.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any third party.

26. SEVERANCE

26.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

27. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

28. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

29. ENTIRE AGREEMENT

29.1 This Framework Agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter, provided that nothing in this clause 29 shall operate to exclude any liability for fraud.

29.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Framework Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Framework Agreement.

30. NOTICES

30.1 Except as otherwise expressly provided within this Framework Agreement, no notice from one Party to the other shall have any validity under the Framework Agreement unless made in writing by or on behalf of the Party sending the notice.

30.2 Any notice which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by fax (confirmed by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 30.3. Provided the relevant notice is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours, in the case of fax or sooner where the other Party acknowledges receipt of such letters, or fax.

30.3 For the purposes of clause 30.2, the address of each Party shall be the address stated at the start of this Agreement.

30.4 Either Party may change its address for service by serving a notice in accordance with this clause.

31. GOVERNING LAW AND JURISDICTION

31.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

31.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Framework Agreement or its subject matter or formation (including non-contractual disputes or claims).

EXECUTED AS A DEED by the parties on the date which first appears in this Agreement

Comment [CJ3]: A number of providers have queries about the framework agreement being executed as a deed. This is standard practice with all local authorities and CCS framework agreements. The call-off T&Cs do not need to be executed as a deed as they simply need signing.

EXECUTED (but not delivered until the date hereof) AS A DEED by affixing the COMMON SEAL of CUMBRIA COUNTY COUNCIL in the presence of:-)

)
)
)

Authorised Signatory

EXECUTED (but not delivered until the date hereof) AS A DEED by [Provider] acting by:-)

.....

Director

.....

In the presence of:
Witness Signature

.....

Witness Name

.....

Witness Address

.....

.....

Witness Occupation

EXECUTED (but not delivered until the date hereof) AS A DEED by [Provider full name] :-

.....

In the presence of:
Witness Signature

.....

Witness Name

.....

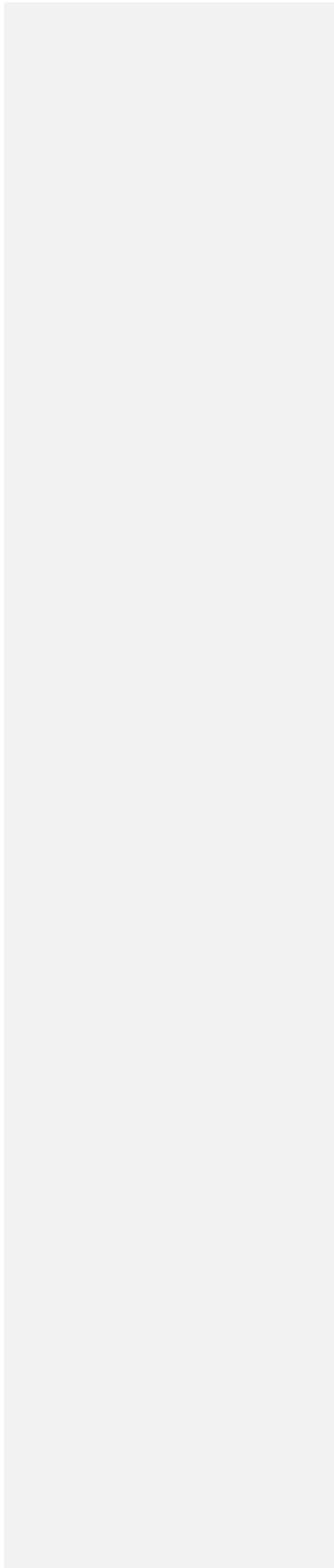
Witness Address

.....

.....

Witness Occupation

.....



Schedule 1 Services

Part 1. Services

Lots

Lot	Provider eligible to provide Services
Lot 1: i	Y/N
Lot 2: i	
Lot 3: i	

Specification

Part 2. Provider's Tender

Schedule 2 Call-off Terms and Conditions

Schedule 3 Data Processing

[insert data processing table]