

Comment [CJ1]: These call-off T&Cs will be inserted in schedule 1 of the framework agreement.

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1. DEFINITIONS

In the Contract, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

Approval: the prior written approval of the Council.

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

Authorised Representative: the persons respectively designated as such by the Council and the Provider in the Order Form.

Confidential Information: means any information of either Party, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Providers of the Parties, including Personal Data, intellectual property rights, together with all information derived from the above, any information developed by the Parties in the course of carrying out this agreement 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: the agreement between the Council and the Provider as defined in the Framework Agreement.

Contract Period: the period from the date of the Order to:

- (a) the date of expiry set out in clause 4; or
- (b) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

Contract Year: a period of 12 months, commencing on the commencement date of the Framework Agreement.

Council: means Cumbria County Council

Data Subject: shall have the same meaning as set out in the Data Protection Legislation.

Framework Agreement: the framework agreement for the provision of Community Pharmacy Services between the Council and the Provider, as amended from time to time.

Good Industry Practice: standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

Losses: means all direct losses, liabilities, damages, costs, expenses (including reasonable legal fees), whether arising in contract, tort (including

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negligence), breach of statutory duty, misrepresentation or otherwise and Loss shall be interpreted accordingly

NICE: the National Institute for Health and Care Excellence, or such other successor or replacement body.

Premises: the location where the Services are to be supplied within Cumbria from time to time.

Provider: means the organisation in receipt of the Order in accordance with the Framework Agreement.

Services: the community pharmacy services to be supplied as specified in the Framework Agreement.

Staff Vetting Procedures: the Council's procedures and departmental policies for the vetting of personnel for:

- (a) eligibility to work in the UK;
- (b) the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure
- (c) the carrying out of regulated activity within the meaning of the Safeguarding Vulnerable Groups Act 2006.

Sub-Contract: any contract between the Provider and a third party under which the Provider agrees to source the provision of any of the Services from that third party.

Sub-Contractor: the contractors or service providers that enter into a Sub-Contract with the Provider.

2. INTERPRETATION

The interpretation and construction of the Contract shall 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) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) 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;
- (e) 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;

- (f) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (h) the Schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract shall include the Schedules;
- (i) references in the Contract 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 the Contract so numbered; and
- (j) references in the Contract 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 the Contract so numbered.

3. FRAMEWORK AGREEMENT TERMS

3.1 The clauses of the Framework Agreement shall be incorporated into this Contract, together with any defined terms referred to therein, excluding:

- (a) Clause 9 (Service pre-requisites)
- (b) Clauses 17 (Termination) and 18 (Suspension of Provider's appointment)
- (c) Clause 23 (Variations to Framework Agreement)

3.2 References to the Framework Agreement in the above clauses shall, where appropriate, be replaced by references to the Contract.

4. CONTRACT PERIOD

The Contract shall take effect on acceptance of the Order and shall continue until the relevant Services are delivered.

5. PROVIDER'S STATUS

At all times during the Contract Period the Provider shall be an independent service provider and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted by the terms of the Contract.

6. COUNCIL'S OBLIGATIONS

Except as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation on, or in any other way fetter or constrain, the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Provider.

7. MISTAKES IN INFORMATION

The Provider shall be responsible for the accuracy of all drawings, documents and information supplied to the Council by the Provider in connection with the supply of the Services and shall pay the Council any reasonable extra costs occasioned by any discrepancies, errors or omissions therein.

8. SERVICES

8.1 The Provider shall supply the Services and associated Goods during the Contract Period in accordance with the Council's requirements as set out in the Contract in consideration for the payment of the Price. The Council may inspect and examine the manner in which the Provider supplies the Services at the Premises during normal business hours on reasonable notice.

8.2 The Provider acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council before submitting its Tender so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

8.3 The Provider shall:

- (a) at all times comply with the Law in delivery of the Services; and
- (b) at all times perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

8.4 The Provider shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

9. GOODS

9.1 The Provider shall ensure that the Goods:

- (a) correspond with their description and the requirements of Schedule 1 Part 1 of the Framework Agreement;
- (b) are of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for the purpose the Provider uses them for;
- (c) comply with all applicable statutory and regulatory requirements and guidance relating to the manufacture, labelling, packaging, storage, handling, use and delivery of the Goods, including all guidance and directions issued by NICE.

Comment [CJ2]: This is the Service Specification which will be inserted into Schedule Part 1 of the Framework Agreement.

9.2 The Provider shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

9.3 The Provider shall take all reasonable steps to ensure that the use of relevant Goods is appropriate for each Service User, including taking steps to ensure that Service Users do not have known allergies to the proposed Goods. The Provider shall ensure that appropriate alternative Goods are available where practicable.

9.4 Goods shall be delivered on use with or passing to the Service User.

10. PROVIDER'S STAFF

10.1 At all times, the Provider shall ensure that:

- (a) each of the Staff is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- (b) there is an adequate number of Staff to provide the Services properly;
- (c) only those Staff who are authorised by the Provider are involved in providing the Services; and
- (d) The Staff comply with the obligations on the Provider set out in this Contract when performing the Services.

10.2 The Provider shall maintain up-to-date personnel records on the Staff engaged in the provision of the Services and shall provide information to the Purchaser as the Purchaser reasonably requests on the Staff. The Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

10.3 The Provider shall use all reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of Staff engaged in the

provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

- 10.4 The Provider warrants that it has complied with the Staff Vetting Procedures in respect of all Staff employed or engaged by the Provider throughout the Contract Period and that it shall not knowingly employ or engage any person in the provision of the Services who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out the Services.

11. HEALTH AND SAFETY

- 11.1 The Provider shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.
- 11.2 The Provider shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.
- 11.3 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

12. CONFLICTS OF INTEREST

- 12.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of the Council), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to the Council or Service User, under the provisions of the Contract.
- 12.2 The Provider shall promptly notify the Council (and provide full particulars to the Council) if any conflict referred to in clause 12.1 above arises or is reasonably foreseeable.
- 12.3 The Council reserves the right to terminate the Contract immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Contract. The actions of the Council under this clause shall

not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

13. RIGHTS AND REMEDIES

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

14. VARIATION

14.1 No variation to this agreement shall be binding unless in writing and signed by both parties.

15. INSURANCES

15.1 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;
- (c) professional indemnity insurance with a limit of indemnity of not less than £2,000,000 in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;

(the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.

15.2 The Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

15.3 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract.

16. LIABILITY

16.1 Neither Party excludes or limits its liability for:

- (i) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- (ii) bribery or Fraud by it or its employees;
- (iii) breach of any obligation as to title implied by section 2 of the Supply of Goods and Services Act 1982; or
- (iv) any liability to the extent it cannot be excluded or limited by Law.

16.2 Subject to clause 16.1 (Unlimited Liability) neither Party shall be liable to the other Party for any:

- (i) indirect, special or consequential Loss; or
- (ii) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

16.3 Subject to clauses 16.1, 16.2 and 17 where liability is unlimited the Provider's total aggregate liability in respect of all Losses shall be limited to the greater of £100,000 or 150% of the Price paid in the preceding 12 months.

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16-17. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Provider shall at all times indemnify the Council and keep the Council indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Council is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

17-18. GOVERNING LAW AND JURISDICTION

~~17-18.1~~ This Contract 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)

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shall be governed by and construed in accordance with the law of England and Wales.

~~17.2~~18.2 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 Contract or its subject matter or formation (including non-contractual disputes or claims).