

Dated: _____ 2016

Between:

DERBYSHIRE COUNTY COUNCIL

and

[XXX]

**AGREEMENT FOR THE SUPPLY OF GOODS
AND SERVICES FOR THE DERBYSHIRE
PHARMACY NEEDLE AND SYRINGE
PROGRAMME**

CTP796 / SOLCASE 68790

CONTENTS

1. DEFINITIONS AND INTERPRETATION.....	1
2. TERM.....	6
3. ENGAGEMENT.....	7
4. CONTRACT PERFORMANCE.....	8
5. PROCEDURE FOR ORDERING.....	10
6. QUALITY AND PACKAGING.....	13
7. ACCEPTANCE AND DEFECTIVE GOODS.....	13
8. TITLE AND RISK.....	15
9. THE CHARGES.....	15
10. CONFIDENTIALITY.....	19
11. TRANSPARENCY.....	21
12. FREEDOM OF INFORMATION.....	21
13. WARRANTIES AND REPRESENTATIONS.....	22
14. COMPLAINTS.....	23
15. LIMITATION OF LIABILITY.....	24
16. INSURANCE.....	25
17. INDEMNITIES.....	26
18. TERMINATION.....	26
19. CONSEQUENCES OF TERMINATION.....	28
20. DATA PROTECTION.....	29
21. AUDIT.....	31
22. ASSIGNMENT AND SUBCONTRACTING.....	32
23. PERFORMANCE LEVELS AND CORRECTION PLAN.....	32
24. NOTICES.....	33
25. WAIVER.....	34
26. SEVERANCE.....	34
27. THIRD PARTY RIGHTS.....	36
28. ENTIRE AGREEMENT.....	36
29. VARIATION.....	36
30. BRIBERY AND FRAUD.....	36

31. STATUTORY REQUIREMENTS.....	36
32. FORCE MAJEURE.....	37
33. REVIEW MEETINGS	38
34. HEALTH AND SAFETY.....	38
35. SECURITY	39
36. DISPUTE RESOLUTION	39
37. PUBLICITY.....	40
38. GOVERNING LAW.....	41

SCHEDULES

SCHEDULE 1 – THE SPECIFICATION

SCHEDULE 2 – PRICE SCHEDULE

SCHEDULE 3 – REVIEW MEETINGS

SCHEDULE 4 - THE PHARMACIES

	payable in accordance with clause 9;
Commencement Date	[XXX];
Confidential Information	all information designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential and shall, for the avoidance of doubt, include but not be limited to Personal Data and any information relating to the business, affairs, finance, developments, trade secrets, know-how, personnel and suppliers of either Party, including IPR, together with all information derived from the above;
Correction Plan	the Provider’s plan for the remediation of any performance failures to be provided in accordance with clause 23 (Performance Levels and Correction Plan);
Data Protection Legislation	the Data Protection Act 1998 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;
Default	any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or its staff in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;
Delivery Address	the location specified by the Pharmacy on the Order Form for delivery of Goods;

Delivery Deadline	the end of Normal Working Hours on the fifth (5th) Working Day from the placement of an Order by a Pharmacy to the Provider. By way of example, if an Order is placed under the procedure set out in clause 5 during Normal Working Hours on a Monday then the Delivery Deadline shall be the end of Normal Working Hours on the Monday of the next week;
Delivery Note	the document given by the Provider to the Pharmacy immediately upon completion of delivery of an Order, the requirements of which are set out in clause 5;
Force Majeure	<p>any event or occurrence which is outside the reasonable control of the Council, Provider or a Pharmacy concerned and which is not attributable to any act or failure to take preventative action by that party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:-</p> <ul style="list-style-type: none">(a) any industrial action occurring within the Provider or any sub-contractor; or(b) (subject to clause 32.2) the failure by any sub-contractor to perform its obligations under any sub-contract;
Good Industry Practice	the use of standards, practices, methods and procedures conforming to applicable law and the exercise of that degree of care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced

	person engaged in a similar type of undertaking to the Goods and Services under the same or similar circumstances;
Goods	the needle & syringe programme consumables as listed in Schedule 2 that can be ordered by a Pharmacy under this Agreement;
Intellectual Property Rights (or IPR)	all patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or not), and all applications for the same which may now, or in the future, subsist anywhere in the world, including the right to sue for and recover damages for past infringements;
KPI (or Key Performance Indicator)	the key performance indicators and output measures set out in the Specification;
Mobilisation Date	means xxxxxx
Mobilisation Period	means the period from the Mobilisation Date to the Commencement Date
Normal Working Hours	the hours 9am to 5pm on any Working Day;
Order	the Pharmacy's order for Goods and Services made in accordance with clause 5 of this Agreement. "Emergency Order" requiring delivery within (1) Working Day is included within this definition;
Order Form	an order form in a format agreed by the Parties, which must include the information required under clause 5.2;
Parties	the Council and the Provider, and the term "Party" shall be construed accordingly;

Pharmacies	the pharmacies listed in Schedule 4 (as amended from time to time by the Council); a “Pharmacy” shall mean any one of the Pharmacies;
Personal Data	as defined by section 1(1) of the Data Protection Act 1998 and includes any sensitive personal data as defined by section 2 of the Data Protection Act 1998;
Reputable Insurer	an insurer who has a credit rating as determined by Standard & Poor’s rating services of at least BBB+;
Request for Information	a request for information or an apparent request under the Freedom of Information Act 2000, the Code of Practice on Access to Government Information, or the Environmental Information Regulations;
Services	the services associated with the Goods as detailed in the Specification;
Specification	The Council’s requirements as detailed in Schedule 1 and includes the Provider’s responses contained therein;
Staff	all persons employed by the Provider together with the Provider’s agents, suppliers and sub-contractors used in the performance of its obligations under this Agreement;
Tender Response	the Provider’s response to the Invitation to Tender including the Provider’s responses in the Specification attached at Schedule 1;
Term	the duration of this Agreement (including any extensions) as described in clause 2 (Term); and

Working Day Monday to Friday except for public holidays.

- 1.2 Except where a contrary intention appears, a reference to a clause or schedule is a reference to a clause of, or schedule to, this Agreement.
- 1.3 The Schedules to this Agreement, together with any documents referred to in them, form an integral part of this Agreement and any reference to this Agreement means this Agreement together with the Schedules and all documents referred to in them, and such amendments in writing as may subsequently be agreed between the Parties.
- 1.4 The headings contained in this Agreement are for convenience only and shall not affect its interpretation or construction.
- 1.5 Unless the context otherwise requires words denoting the singular shall include the plural and vice versa, references to any gender shall include all other genders and references to persons shall include natural persons, bodies corporate, unincorporated associations, governments, states, trusts and partnerships, in each case whether or not having a separate legal personality.
- 1.6 The words and phrases “including”, “for example” and “in particular” shall be construed as illustrative and without limitation to the generality of the related general words.
- 1.7 Any reference to “writing” or “written” includes faxes but does not include writing on the screen of a visual display unit, or email, or any other form of electronic communication, except where expressly provided to the contrary..
- 1.8 References to any statute, statutory instrument, regulation, order or quality standard shall be construed as a reference to that statute, statutory instrument, regulation, order or quality standard as amended or re-enacted or updated or superseded from time to time.

2. TERM

- 2.1 This Agreement shall be effective from the Mobilisation Date. The supply of the Goods and Services shall begin on the Commencement Date and shall continue in force for three (3) years until xxxxxx (the “**Fixed Term**”) unless it is extended or terminated in accordance with the provisions below.

2.2 The Council may extend this Agreement for a further two (2) years by serving no less than twenty (20) Working Days' written notice to the Provider before the expiry of the Fixed Term of its wish to extend.

3. ENGAGEMENT

3.1 The Goods and Services are currently provided by a third party ("Existing Provider") up to xxxxxx. The Provider will engage with the Existing Provider during the Mobilisation Period in order to ensure a smooth and efficient transition of the supply of Goods and Services from the Existing Provider to the Provider.

3.2 Where a Pharmacy submits an Order, the contractual relationship shall be between the Pharmacy and the Provider in accordance with the provisions of clause 5.5. Where that Pharmacy suffers any loss or damage by reason of any act or omission of the Provider with regard to an Order, the Provider shall be responsible for such loss and damage to that Pharmacy (and the Council, as appropriate) in accordance with the terms of this Agreement.

3.3 Subject to clauses 3.4 to 3.6 (inclusive), a Pharmacy may from time to time during the Term place an Order with the Provider in accordance with clause 5 (Procedure for Ordering Goods and Services).

3.4 The Provider acknowledges:

- (a) that there is no obligation on the Pharmacies to place any Order with the Provider during or after the Term; and
- (b) that, in entering into this Agreement, no form of volume guarantee has been granted by the Council or any Pharmacy for Goods and Services.

3.5 The Provider acknowledges that the funding made available by the Council to pay for the provision of the Goods and Services is subject to internal budgets (which may change from time to time) and cannot be guaranteed. The Council therefore reserves the right via immediate written notice to place limits on the volume of Orders, restrictions on the Goods which can be ordered, and/or the overall cost of Charges on a temporary or permanent basis at any time during the Term. In such circumstances, the Provider must not accept Orders for a period, or not accept Orders over a

period which when taken in combination exceed a certain amount, in accordance with the instructions of the Council.

- 3.6 In accordance with clause 3.5, if the Council notifies the Provider of restrictions on the placing of Orders, and the Provider invoices the Council for payment of amounts exceeding or otherwise breaching those restrictions those Charges shall not be met under any circumstances by the Council and the Provider acknowledges that the Council is under no obligation to do so. The Provider shall be solely and fully liable for any sums or payments which exceed or otherwise breach the terms of such restrictions imposed by the Council in accordance with clause 3.5.
- 3.7 Subject to clauses 3.4 and 3.5, each Order shall be deemed to be an offer to the Provider to supply Goods and Services on the terms of this Agreement, for which the Council shall be responsible for payment under this Agreement.

4. CONTRACT PERFORMANCE

- 4.1 The Provider shall, in consideration of the payment of the relevant Charges, deliver all Goods and perform all Services in accordance with this Agreement and any Order and all applicable laws.
- 4.2 In the event and to the extent only of any conflict or inconsistency between the clauses of this Agreement, the Schedules and/or an Order, the order of precedence (in descending order) shall be as follows:
- 4.2.1 the clauses of this Agreement;
 - 4.2.2 Schedule 1 (save for the Tender Response contained);
 - 4.2.3 Schedule 2;
 - 4.2.4 the Order;
 - 4.2.5 the remaining Schedules; and
 - 4.2.6 the Tender Response.
- 4.3 If any Services do not in all material respects comply with the requirements of the relevant Order, and such non-compliance does not result from a Default on the part of the Council or a Pharmacy, the Provider shall at its

own expense re-perform those Services so as to comply with the Order immediately (or within such reasonable time as may be specified by the Council or the Pharmacy).

- 4.4 In the event that an Order is placed by a Pharmacy (in accordance with clause 5.2.3) specifying that the Goods and/or Services are an Emergency Order, the Provider shall deliver the Emergency Order within one (1) Working Day.
 - 4.5 The Provider shall supply the Goods and Services with reasonable skill and care in accordance with the best practices prevailing in the industry of which the Goods and Services form part and comply with any service standards set out in the Specification.
 - 4.6 The Provider shall comply with Schedule 3 relating to review meetings and also any monitoring arrangements reasonably required by the Council, including but not limited to providing such data and information as the Council may reasonably require it to produce (which shall include dealings between the Provider and Pharmacies, including data and information in respect of Orders).
 - 4.7 If the Council is of the reasonable opinion that there has been a material breach of the Agreement by the Provider (including a failure by the Provider to supply any of the Goods and/or Services in accordance with the provisions of an Order), the Council may, without prejudice to its other rights under this Agreement or the Order (and without prejudice to the rights of the Pharmacy under the Order):
 - 4.7.1 charge the Provider for, and the Provider shall pay, any costs reasonably incurred by the Council and/or Pharmacy (including any reasonable administration costs) in respect of the supply of any part of the Goods and/or Services by the Council, Pharmacy and/or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Goods and/or Services and provided that the Council and/or Pharmacy uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods and/or Services; or
 - 4.7.2 instruct the Provider to remedy the failure and the Provider shall immediately at its own cost and expense remedy such failure (and
-

any damage resulting from such failure).

4.8 If the Provider:-

4.8.1 fails to comply with clause 4.7 and the failure is materially adverse to the interests of the Council and/or the Pharmacies or prevents the Council from discharging a statutory duty; or

4.8.2 persistently fails to comply with clause 4.7,

the Council may terminate the Agreement with immediate effect on written notice to the Provider.

5. PROCEDURE FOR ORDERING

5.1 Where the Pharmacy decides (in its absolute discretion) to order Goods and/or Services, an Order Form shall be submitted to the Provider in accordance with the provisions of this clause 5.

5.2 Each Order Form submitted by a Pharmacy shall specify:

5.2.1 the required Goods and Services;

5.2.2 the particulars and quantity of Goods and Services to be supplied;

5.2.3 whether the Goods and/or Services are an Emergency Order requiring delivery within on (1) Working Day;

5.2.4 the Delivery Address including any specific requirements; and

5.2.5 that the Order has been placed pursuant and subject to this Agreement.

5.3 Subject to clause 5.2, the Pharmacy may place Orders with the Provider via email, fax or (with the prior approval of the Council) the Provider's web-based system.

5.4 Following receipt of an Order, the Provider shall (save for Emergency Orders) acknowledge receipt of the Order within one (1) Working Day.

5.5 The Provider in accepting an Order pursuant to clause 5.4 above shall supply the relevant Pharmacy with the Goods and Services in accordance with that Order and this Agreement.

- 5.6 The Pharmacy may within one (1) day of placing an Order amend or cancel an Order by written notice (including email) to the Provider. If the Pharmacy amends or cancels an Order within this period, the Pharmacy shall not have any liability to the Provider in respect of it. If the Pharmacy amends or cancels an Order outside this period, its liability to the Provider shall be limited to payment to the Provider of all costs reasonably incurred by the Provider in fulfilling the Order up until the date of receipt of the notice of amendment or cancellation, except that where the amendment or cancellation results from the Provider's failure to comply with its obligations under this Agreement the Pharmacy shall have no liability to the Provider in respect of it. The Council and/or the Pharmacy, may request evidence of any costs which the Provider is claiming it has reasonably incurred and shall be entitled to such evidence in respect of such reasonably incurred costs.
- 5.7 Except for Emergency Orders, the Provider shall deliver each Order to the Delivery Address by the Delivery Deadline. Emergency orders (notified to the Provider in accordance with clause 5.2.3) shall be delivered by the Provider within one (1) Working Day.
- 5.8 Delivery of an Order shall be complete on:
- 5.8.1 the completion of unloading of the Order at the Delivery Address;
 - 5.8.2 a staff member of the Pharmacy signing a properly completed Delivery Note to confirm receipt of the delivery; and
 - 5.8.3 the receipt of a completed Delivery Note.
- 5.9 Delivery of an Order cannot take place without a staff member of the Pharmacy signing the properly completed Delivery Note.
- 5.10 Each Delivery Note provided by the Provider to a Pharmacy shall specify:
- 5.10.1 details of the Provider;
 - 5.10.2 Delivery Address;
 - 5.10.3 date;
 - 5.10.4 Order reference (pharmacy code and date of Order);
 - 5.10.5 Provider's Order (& delivery) number;
 - 5.10.6 name of Order handler;
-

- 5.10.7 product code;
 - 5.10.8 product description;
 - 5.10.9 product brand;
 - 5.10.10 manufacturer product code number;
 - 5.10.11 quantity ordered;
 - 5.10.12 quantity delivered; and
 - 5.10.13 quantity outstanding (if relevant).
- 5.11 Notwithstanding a staff member of the Pharmacy taking receipt of a delivery under clause 5.9, the Pharmacy reserves the right to reject the Goods and does not waive or impede or prevent any right or cause of action to do so.
- 5.12 The Provider shall not deliver Orders by instalments except with the prior written consent of the Pharmacy. Where Orders are to be delivered by instalments, they may be invoiced and paid for separately.
- 5.13 If an Order is not delivered by the Delivery Deadline then, without limiting any other right or remedy the Pharmacy may have, the Pharmacy may:
- 5.13.1 refuse to take any subsequent attempted delivery of the Order;
 - 5.13.2 terminate the Order with immediate effect on written notice to the Provider; and/or
 - 5.13.3 (or the Council on its behalf) may obtain substitute Goods and/or Services from another supplier and recover from the Provider any costs and expenses reasonably incurred by the Pharmacy or the Council in obtaining such substitute Goods and/or Services, provided that the Provider shall have no liability for any failure or delay in delivering an Order to the extent that such failure or delay is caused by the Pharmacy's failure to comply with its obligations under the Order.
- 5.14 If the Provider requires the Pharmacy to return any packaging materials to the Provider, that fact must be clearly stated on the Delivery Note
-

accompanying the relevant Order, and any such returns shall be at the Provider's expense.

6. QUALITY AND PACKING

6.1 The Provider shall ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition.

6.2 The Goods supplied to the Pharmacy by the Provider under an Order shall:

6.2.1 conform to the Specification;

6.2.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Provider or made known to the Provider by the Pharmacy;

6.2.3 be free from defects in design, material and workmanship and remain so for twelve (12) months after the date of delivery; and

6.2.4 comply with all applicable statutory and regulatory requirements.

6.3 The Provider shall obtain and maintain in force for the Term, all licences, permissions, authorisations, consents and permits needed to supply and dispose of the Goods and to supply the Services in accordance with the terms of this Agreement.

6.4 The Provider shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the packing, packaging, marking, storage, handling, delivery and disposal of the Goods.

7. ACCEPTANCE AND DEFECTIVE GOODS

7.1 The Pharmacy shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following delivery or in the case of a latent defect in the Goods, until a reasonable time after the latent defect has

become apparent.

7.2 If any Goods delivered to the Pharmacy do not comply with clause 6.2, or are otherwise not in conformity with the terms of this Agreement or any Order, then, without limiting any other right or remedy that the Pharmacy may have, the Pharmacy may reject those Goods and:

7.2.1 require the Provider to replace the rejected Goods at the Provider's risk and expense within one (1) Working Day of being requested to do so; or

7.2.2 require the Provider to repay the price of the rejected Goods in full to the Council (whether or not the Pharmacy has previously required the Provider to replace the rejected Goods); and

7.2.3 claim damages for any other costs, expenses or losses incurred by the Pharmacy and/or the Council resulting from the Provider's delivery of Goods that are not in conformity with the terms of this Agreement and any Order.

7.3 The Pharmacy's rights and remedies under this clause 7 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this Agreement by the Sale of Goods Act 1979.

7.4 The terms of this Agreement shall apply to any replacement Goods supplied by the Provider.

7.5 If the Provider fails to promptly replace rejected Goods in accordance with clause 7.2.1, the Council or the Pharmacy may, without affecting either's rights under clause 7.2.3, obtain substitute goods from a third party supplier and the Provider shall reimburse the Pharmacy and the Council for the costs incurred in doing so.

8. TITLE AND RISK

8.1 The risk in Goods delivered to the Pharmacy shall pass to the Pharmacy on completion of delivery in accordance with clause 5.8.

8.2 Title to Goods delivered to the Pharmacy shall pass to the Pharmacy on completion of delivery in accordance with clause 5.8.

9. THE CHARGES

9.1 In consideration of the supply of Goods and Services by the Provider and the Provider's performance of its obligations in respect of an Order, the Council shall pay the Charges (on behalf of the Pharmacies) in accordance with this Agreement.

9.2 Without prejudice to clause 9.15, the Charges shall be fixed for the Term and shall be charged as follows:

(a) For the Goods – the price for items listed in Schedule 2 that has been ordered by a Pharmacy in the previous month;

(b) For the Services – the annual amount specified in Schedule 2 divided into 12 equal monthly payments.

9.3 The Provider shall submit a single invoice to the Council on a monthly basis for the Charges in respect of all Orders delivered to Pharmacies in the previous month.

9.4 The Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods and Services supplied and is supported by any other documentation reasonably required by the Council to substantiate the invoice.

9.5 Subject to clauses 9.11, 9.12 and 9.13, invoices submitted to the Council shall show details of the following:

9.5.1 vendor number;

9.5.2 the official purchase order number;

9.5.3 Delivery Address and dates;

9.5.4 commodity / product code;

9.5.5 unit of issue;

9.5.6 number of units supplied;

- 9.5.7 product description;
 - 9.5.8 unit price;
 - 9.5.9 total invoice price;
 - 9.5.10 clearly identified VAT as applicable; and
 - 9.5.11 Delivery Note number.
- 9.6 Subject to clauses 3.4 and 3.5, the Council (on behalf of the Pharmacies) shall pay all sums due to the Provider within thirty (30) days of receipt of a valid invoice (the “**Due Date**”), submitted in accordance with this clause 9. For the avoidance of doubt, the Provider shall not be eligible for any payments in respect of the Mobilisation Period.
- 9.7 All Charges are exclusive of any VAT, and any other similar taxes, duties or levies or other deductions or withholdings in countries or jurisdictions outside the United Kingdom, which taxes shall be payable at the rate and in the manner prescribed by law.
- 9.8 Subject to clause 9.7, the Charges shall cover all of the Provider’s costs in providing the Goods and performing the Services in accordance with the relevant Order, including the supply of all Goods and Services.
- 9.9 Where the Provider enters into a sub-contract with a Provider or contractor for the purpose of performing its obligations in respect of this Agreement, it shall ensure that a provision is included in that sub-contract which requires payment to be made of all sums due from the Provider to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
- 9.10 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 the Order. Any amounts due to the Council under this clause 9.10 shall be paid by the Provider not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Pharmacy.

- 9.11 Where 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 this Agreement), the Council may deduct that sum from any sum then due, or which at any later time may become due to the Provider under this Agreement or under any Order or other agreement or contract with the Council.
- 9.12 Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 9.13 Without prejudice to any other right of remedy it may have, the Council reserves the right to set off any amount owing at any time to it by the Provider against any amount payable by the Council to the Provider under this Agreement and/or other contract between the Parties.
- 9.14 The Provider shall use all reasonable endeavours during the Term to reduce its manufacturing, supply and other costs for the Goods and Services, including implementing cost savings initiatives and seeking more competitive supplies of raw materials and products.
- 9.15 The Provider agrees that if at any time during the Term it sells any Goods to a comparable customer for less than the price then in force for those Goods, it shall reduce the relevant Charges to match the lower price for as long as the lower price is available (but for no longer). Where applicable, the Provider shall refund the Council the difference between the Charges and the lower price in respect of its purchases of the Goods after the Provider began charging the lower price. For the purposes of this clause, “comparable” means a customer that purchases products in substantially similar volumes as are ordered by all Pharmacies (in aggregate) under this Agreement on broadly similar terms and conditions.
- 9.16 The Provider shall provide such evidence as the Council may reasonably
-

request in order to verify:

- 9.16.1 invoices submitted by the Provider; and
 - 9.16.2 cost reductions achieved by the Provider (including the dates on which cost reductions were achieved).
- 9.17 If a Party fails to make any payment due to the other under an Order by the Due Date then, without limiting the other Party's rights and remedies, the defaulting Party shall pay interest on the overdue amount at the annual rate of three per cent (3 %) above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting Party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting Party disputes in good faith or, in the case of any sums due to the Provider, in which the relevant invoice is not an appropriate or properly issued invoice.
- 9.18 If the Council disputes any invoice or other statement of monies due, the Council shall immediately notify the Provider in writing. The Parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Provider shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment.
- 9.19 The Council shall not be obliged to pay any charges or fees to the Provider for any Goods delivered or Services performed unless the applicable charges and fees are either specified in this Agreement or the Order or have been approved in writing in advance by the Council.
- 9.20 The Provider's obligations to supply the Goods shall not be affected by any payment dispute.
- 9.21 Changing market conditions are such that the Provider shall be required to remain competitive throughout the period of this Agreement.

9.22 If the Council can demonstrate, to its own satisfaction, that the Charges no longer represent the lowest overall market price commensurate with the requirements of this Agreement, the Council and the Pharmacies reserve the right to purchase from an alternative source and, at its sole discretion, the Council may terminate this Agreement. Each Pharmacy reserves the same right to purchase from an alternative source in such circumstances. Prior to any such action, the Provider shall be given an opportunity to improve on the Charges (having been provided with details of why the Council has concluded that the Charges no longer represent the lowest overall market price).

10. CONFIDENTIALITY

10.1 Subject to clause 10.4 below, clause 11 (Transparency) and clause 12 (Freedom of Information), each Party shall, in respect of the Confidential Information of the other for which it is the recipient:

10.1.1 keep the Confidential Information confidential using no less degree of skill and care than it uses for its own similarly sensitive information and in no event less than a reasonable standard of care and not disclose any part of such Confidential Information to any person except as permitted by or as required for the performance of the recipient's obligations under this Agreement;

10.1.2 take all reasonable steps to prevent unauthorised access to the Confidential Information; and

10.1.3 not use the Confidential Information other than for the purposes set out in this Agreement.

10.2 The Parties may disclose the Confidential Information to, and allow its use in accordance with this Agreement by, the following (as long as the conditions in clause 10.3 below are met):

10.2.1 employees and officers of the recipient who necessarily require it as a consequence of the performance of the recipient's obligations under this Agreement;

10.2.2 the recipient's auditors and professional advisors solely for the purposes of providing professional advice and any other persons or bodies having a legal right or duty to have access to, or knowledge

of, the Confidential Information in connection with the business of the recipient; and

10.2.3 the recipient's agents and sub-contractors who necessarily require it as a consequence of the performance of their obligations under this Agreement.

10.3 As a condition of the rights set out in clause 10.2 above the Party wishing to exercise those rights must:

10.3.1 ensure that any person to whom it discloses Confidential Information is under an obligation of confidentiality in relation to such Confidential Information; and

10.3.2 take all necessary steps to make sure that such persons observe and comply with the restrictions in this clause 10.

10.4 The restrictions in clause 10.1 above do not apply to any information to the extent that it:

10.4.1 is or comes within the public domain other than through a breach of this clause 10; or

10.4.2 is in the recipient's possession (with full right to disclose) before receiving it from the other Party; or

10.4.3 is lawfully received from a third party (with full right to disclose); or

10.4.4 is independently developed by the recipient without access to or use of the Confidential Information; or

10.4.5 is required to be disclosed by any court of competent jurisdiction or by a governmental or regulatory authority or where there is a legal right, duty or requirement to disclose. In such event, the recipient will (and without breaching any legal or regulatory requirement), where reasonably practicable, give the discloser prompt notice in writing of the requirement to disclose and an opportunity to make representations regarding any proposed disclosure.

10.5 Each Party to this Agreement shall promptly notify the other Party if it becomes aware of any breach of confidence by any person to whom it divulges any part of the Confidential Information and shall:

10.5.1 give the other Party all reasonable assistance in connection with any proceedings which the other Party may institute against such person for breach of confidence; and

10.5.2 take all such reasonable steps as are necessary to prevent further disclosure.

10.6 The obligations in this clause 10 as to confidentiality shall remain in full force and effect notwithstanding any termination of this Agreement.

11. TRANSPARENCY

11.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with clause 12 (Freedom of Information), the content of this Agreement is not confidential information.

11.2 Subject to clause 12 (Freedom of Information), the Provider hereby gives its consent for the Council to publish this Agreement (excluding any Confidential Information in all instances) in their entirety, including any changes to this Agreement from time to time, to the general public.

12. FREEDOM OF INFORMATION

12.1 The Provider acknowledges that the Council is subject to the requirements of the Code of Practice on Government Information, Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and shall assist and cooperate with the Council to enable it to comply with its information disclosure obligations.

12.2 The Provider shall and shall procure that its sub-contractors shall:

12.2.1 pass to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving it;

12.2.2 provide the Council with a copy of all required information in its possession or power (being information held by the Provider on behalf of the Council or Pharmacies) in the form that the Council requires within five (5) Working Days of the Council's request (or such other period as the Council may specify); and

12.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in Section 10 of the Freedom of Information Act 2000 or Regulation 5 of the Environmental Information Regulations.

12.3 The Council shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with any relevant legislation.

12.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.

12.5 The Provider acknowledges that the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged to disclose information without consulting or obtaining consent from the Provider, or despite having taken the Provider's views into account.

13. WARRANTIES AND REPRESENTATIONS

13.1 The Provider warrants and represents that:

13.1.1 it has made and shall make 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;

13.1.2 it has raised all relevant due diligence questions with the Council before the date of this Agreement; and

13.1.3 it has been supplied with sufficient information about the Council's and the Pharmacy's requirements to enable it to provide the Goods and Services in accordance with this Agreement.

13.2 If the Provider has failed to make sufficient enquiries referred to in clause 13.1.1 above or raise the relevant due diligence questions referred to in clause 13.1.2 above then the Provider shall not be excused from any liability under this Agreement as a consequence of such failure.

13.3 The Provider warrants and represents that:

- 13.3.1 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 this Agreement and that this Agreement is executed by a duly authorised representative of the Provider;
- 13.3.2 this Agreement shall be performed in compliance with all applicable laws, enactments, orders, regulations and other similar instruments as amended from time to time;
- 13.3.3 the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence and in accordance with Good Industry Practice and (without limiting the generality of this clause 13.3.3) in accordance with the Provider's own established internal procedures; and
- 13.3.4 it owns, has obtained or shall obtain all valid licences or permissions, including all licences for all Intellectual Property Rights necessary for the performance of its obligations under this Agreement and the use of the Goods and Services by the Pharmacy.
- 13.4 The Provider acknowledges that any breach of the warranties in clause 13.1 or clause 13.3 shall be remedied as a matter of urgency at no cost to either the relevant Pharmacy or the Council. Failure to remedy (if capable of remedy) such to comply with clause 13.3 above within five (5) Working Days of notification (by the Pharmacy or the Council) shall constitute a breach of this Agreement entitling the Council to terminate in accordance with clause 18.2 (Termination).

14. COMPLAINTS

- 14.1 The Provider shall operate a complaints procedure acceptable to the Council. The Provider shall ensure that all Pharmacies and their representatives are made aware that they can use the Provider's complaints procedure and are provided with details of how they can access the procedure. The procedure shall allow for advocacy on behalf of Pharmacies and its customers and shall provide for independent participants in any appeals stage. The Provider shall co-operate with any investigation under the Council's complaints procedure.

- 14.2 If a complaint is received about the standard of the provision of the Goods or Services or about the manner in which any of the Goods or Services have been supplied or about any other matter connected with the performance of the Provider's obligations under this Agreement, then the Provider must notify the Council of such complaint within five (5) Working Days of such complaint being raised with the Provider. The Council may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Provider and/or any appropriate regulatory body.
- 14.3 The Provider shall record the volume and nature of complaints received, how complaints were investigated and outcomes of investigations. The Provider shall provide copies of these to the Council within 10 Working Days of such request.

15 LIMITATION OF LIABILITY

- 15.1 This Clause 15 prevails over all other clauses in this Agreement.
- 15.2 Neither the Provider nor the Council excludes or limits its liability to the other Party under this Agreement for:
- 15.2.1 death or personal injury caused by its negligence;
 - 15.2.2 fraud or fraudulent misrepresentation;
 - 15.2.3 breach of third party Intellectual Property Rights;
 - 15.2.4 breach of its obligations in respect of the other Party's Confidential Information or the Data Protection Act 1998;
 - 15.2.5 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - 15.2.6 breach of section 2 of the Consumer Protection Act 1987; or
 - 15.2.7 the indemnities contained in this Agreement.
- 15.3 Subject to clause 15.2, no Party to this Agreement shall be liable to the other Party, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
- 15.3.1 loss of profit; or

- 15.3.2 loss of goodwill; or
- 15.3.3 loss of business; or
- 15.3.4 loss of business opportunity; or
- 15.3.5 loss of anticipated saving; or
- 15.3.6 loss or corruption of data or information; or
- 15.3.7 special, indirect or consequential damage or loss

suffered by the other Party that arises under or in connection with this Agreement.

- 15.4 Subject to clauses 15.2 and 15.3, the Provider's total liability arising under or in connection with this Agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to ten million pounds (£10,000,000) per contract year.
- 15.5 Subject to clauses 15.2 and 15.3, the Council's total aggregate liability arising under or in connection with this Agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to fifty thousand pounds (£50,000).

16 INSURANCE

- 16.1 The Provider undertakes to effect and maintain at its own cost with Reputable Insurers the following insurances at all times throughout the Term:
 - 16.1.1 public and products liability (third party) insurance of a minimum of ten million pounds (£10,000,000) for each and every claim; and
 - 16.1.2 employer's liability insurance of a minimum of ten million pounds (£10,000,000) for each and every claim or such greater sum as

required by statute;

- 16.2 The Provider undertakes to re-instate up to a minimum of ten million pounds (£10,000,000) its public and products liability (third party) insurance if a claim is made or claims exceeding £500,000 (five hundred thousand pounds) are made in any one period of insurance.
- 16.3 The Provider undertakes to supply the Council on request evidence of insurance to establish compliance with the requirements of this Agreement with regard to the provision and adequacy of relevant insurance policies.
- 16.4 Any excess or deductibles under the insurance policies referred to in this clause 16 shall be the sole and exclusive responsibility of the Provider.
- 16.5 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under this Agreement.

17. INDEMNITIES

- 17.1 The Provider shall indemnify and keep indemnified the Council and Pharmacies against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever, whether arising in tort (including negligence), Default or breach of this Agreement, or breach of its statutory duty or breach of an obligation under the Data Protection Legislation, save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Agreement or breach of statutory duty or breach of an obligation under the Data Protection Legislation by either the Council or a Pharmacy.

18. TERMINATION

- 18.1 The Council may at any time by written notice immediately terminate this Agreement as from the date of service of such notice without liability for compensation or damages:

18.1.1 upon the Provider passing a resolution for winding-up or having a petition to wind up presented against it or going into liquidation, whether voluntary or compulsory (save for the purposes of amalgamation or reconstruction where the amalgamated or

reconstructed company agrees to adhere to this Agreement) or suffering a winding-up order being made against it or going into administration;

18.1.2 if the Provider proposes a voluntary arrangement within the meaning of Section 1 or Section 253 of the Insolvency Act 1986, or an interim order is made in relation to the Provider under Section 252 of the Insolvency Act 1986, or any other steps are taken or negotiations commenced by that Party or any of its creditors with a view to proposing any kind of composition, compromise or arrangement involving the Provider and any of its creditors;

18.1.3 if a receiver or administrative receiver or administrator is appointed or an encumbrancer takes possession of the undertaking or assets (or any part thereof) of the Provider;

18.1.4 if the Provider is unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986 or any statutory re-enactment or modification thereof) or ceases to or threatens to cease to carry on its business or enters into a composition with its creditors;

18.1.5 being a "small company" within the meaning of Section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

18.1.6 if the Provider suffers an event in a country or jurisdiction other than the United Kingdom which has a similar effect to the events described in clauses 18.1.1 to 18.1.5 (inclusive) in the United Kingdom;

18.1.7 if the Provider undergoes a substantial change of control or ownership within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("Change of Control") which the Council considers in its absolute discretion to be detrimental to the Pharmacy's commercial interests provided such notice is served within sixty (60) days of the Council becoming aware of the change of control or ownership (except where the Council had notified the Provider of its consent prior to the Change of Control. The Provider shall notify the Council as soon as reasonably practicable if the Provider undergoes a Change of Control; or

- 18.1.8 any warranty given in this Agreement is found to be untrue or misleading.
- 18.2 Without prejudice to clause 23 (Performance Levels and Correction Plan), the Council may at any time by written notice immediately terminate this Agreement as from the date of service of such notice without liability for compensation or damages if the Provider is in breach of any material obligation under this Agreement provided that if the breach is capable of remedy, the Council may only terminate this Agreement under this clause 18.2 if the Provider has failed to remedy such breach within twenty eight (28) days or such other timescale agreed between the Parties on receipt of notice from the Council.
- 18.3 In accordance with clause 23 (Performance Levels and Correction Plan), the Council may terminate this Agreement in the event of the Provider's failure to implement and comply with an agreed Correction Plan in accordance with its terms.
- 18.4 Any termination of this Agreement (however caused) shall not affect any accrued rights or liabilities of any Party, nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly, or by implication, intended to come into or continue in force on or after such termination, except that neither the Council nor the Pharmacies shall be liable to the Provider for any loss, claims, damage, fees, liabilities, costs or expenses, whether direct, indirect, financial, economic, consequential (including without limitation loss of profit, loss of goodwill, loss of sale revenue, loss of contract and loss of opportunity) or otherwise, suffered by Provider as a direct or indirect result of such termination.
- 18.5 For the avoidance of doubt, should this Agreement expire or terminate (howsoever arising) any Orders shall also terminate.

19. CONSEQUENCES OF TERMINATION

- 19.1 Neither the Council nor any Pharmacy shall have any liability in respect of any costs incurred by the Provider in relation to any Order after the date of expiry or termination of the Agreement.
- 19.2 Termination or expiry of the Agreement shall be without prejudice to any rights, remedies or obligations accrued under the Agreement prior to
-

termination or expiration and nothing in the Agreement shall prejudice the right of a Party to recover any amount outstanding at such termination or expiry.

- 19.3 Where the Council terminates this Agreement or the Council or a Pharmacy cancels an Order due to the Default of the Provider and then either the Council or Pharmacy makes other arrangements for the supply of Goods and/or Services, the Council may recover from the Provider the cost reasonably incurred in making those other arrangements and any additional expenditure incurred by the Council and/or the Pharmacy. The Pharmacy and Council shall take all reasonable steps to mitigate such additional expenditure. Where an Order is cancelled, no further payments shall be payable by the Council (or the Pharmacy) to the Provider until the Council and the Pharmacy have established the final cost of making those other arrangements.
- 19.4 Within ten (10) Working Days of the termination or expiry (howsoever arising) of the Agreement, the Provider shall return all Confidential Information and data received in connection with this Agreement to the Council.
- 19.5 The Provider shall on termination of this Agreement provide the Council with all assistance (at no cost) reasonably required for the smooth and timely transfer of the supply of the Goods and Services to another Provider.
- 19.6 The termination of the Agreement (howsoever arising) shall not affect the coming into force or the continuance in force of any provision hereof of that Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- 19.7 The Council shall not in any circumstances be liable to the Provider for redundancy payments and/or any Staff termination costs arising from termination or expiry of this Agreement.

20. DATA PROTECTION

- 20.1 In this Agreement the terms “Personal Data”, “Sensitive Personal Data”, “Data Processor”, “Data Controller”, and “Data Subject” will have the meanings given them by the Data Protection Act 1998 (the “**DPA**”).

20.2 The Provider warrants that in respect of any and all Personal Data and/or Sensitive Personal Data (together “**Data**”) processed by the Provider on behalf of the Council or a Pharmacy:

20.2.1 it will only process the Data for the purpose of performing its obligations under this Agreement in accordance with instructions from the Council and/or the Pharmacy (as appropriate) and in particular will:

- (a) not pass the Data to any third party except as expressly provided for under this Agreement or the relevant Order;
- (b) not modify, amend or delete the Data;
- (c) keep the Data confidential and not disclose or permit the disclosure of any Data to any third party unless specifically authorised in writing by the Council/ Pharmacy (as appropriate);
- (d) perform its obligations in compliance with the Data Protection Legislation;
- (e) comply with any systems or procedures which the Council or Pharmacy may introduce from time to time in respect of the processing of such Data; and
- (f) not do anything, nor permit anything to be done, which might jeopardise or contravene the terms of any data protection registration of the Council or the Pharmacy;

20.2.2 it will take such security measures as required to enable it to process the Data in compliance with obligations equivalent to those imposed on the Council by the Seventh Principle of the DPA;

20.2.3 it will, on request, provide such information as is reasonably necessary to enable the Council to satisfy itself of the Provider’s compliance with clause 20.2.2 above;

20.2.4 it will allow the Council and its employees or authorised agents or advisers upon reasonable prior written notice to the Provider, reasonable access to any relevant premises, during normal business hours, to inspect the procedures and measures referred to in clause 20.2.2 above provided that the Council agrees to carry out such

inspection with minimum disruption to the Provider's day to day business; and

20.2.5 it will not without the prior written approval of the Council transfer any Data outside the European Economic Area.

20.3 Without prejudice to the provisions of clause 20.2 above, the Parties warrant to each other that, in relation to this Agreement, they shall not knowingly do anything, or permit anything to be done, which might lead to a breach by the other of the Data Protection Legislation.

20.4 The Provider shall indemnify and hold harmless the Council and the Pharmacies from and against all liability (including any imposition of any monetary penalty under Section 55A of the DPA), and loss suffered and any costs and expenses reasonably and properly incurred by the Council and Pharmacies which arise directly or in connection with the Provider's data processing activities under this Agreement, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Legislation by the Provider or its Staff.

21. AUDIT

21.1 The Council shall be entitled to carry out audits to determine whether the Provider has performed its obligations under this Agreement. For this purpose the Provider grants to the Council, its statutory auditors or any authorised agents of the Council or its statutory auditors, a right of reasonable access to any premises of the Provider which are used in connection with the performance of the Provider's responsibilities and obligations under this Agreement together with a right to reasonable access to all computer systems, personnel and financial records, minute books and any other relevant evidence (including obtaining relevant copies).

21.2 The Provider shall (at no cost) afford the Council, its auditors or agents all co-operation and assistance reasonably required for the purposes of carrying out an audit of the Provider's compliance with this Agreement.

21.3 The Council shall use all reasonable endeavours to ensure that its auditors cause the minimum amount of disruption to the business of the Provider,

and shall comply with the procedures and security requirements of the Provider while on the Provider's premises.

22. ASSIGNMENT AND SUBCONTRACTING

- 22.1 The Provider shall not assign, novate, sub-contract, grant any security interest over or otherwise transfer any rights or obligations under this Agreement or any document referred to in either this Agreement without the prior written consent of the Council. Such consent shall be at the absolute discretion of the Council.
- 22.2 The Provider shall be responsible for the acts, omissions, defaults and neglect of its sub-contractors, whether or not approval has been given to their appointment under this clause 22, as if they were its own and no consent given under this clause shall relieve the Provider of any of its obligations under this Agreement.
- 22.3 Where the Council has consented to the placing of sub-contracts by the Provider, the Council will be entitled on request to be provided with copies of each sub-contract as soon as reasonably practicable.

23. PERFORMANCE LEVELS AND CORRECTION PLAN

- 23.1 Notwithstanding other standards which the Provider is to meet in accordance with the Agreement, the Provider must at all times meet or exceed the KPIs applying to this Agreement.
- 23.2 Without prejudice to any other right or remedy it may have, any failure to meet the KPIs shall entitle the Council to the remedies as set out in the Specification.
- 23.3 Immediately upon the Provider becoming aware that it is has failed or is likely to fail a KPI (or more than one KPI), the Provider shall notify the Council within five (5) Working Days to explain the reasons for the failure (or anticipated failure). The Council reserves the right to request a meeting with the Provider and if necessary to require a Correction Plan. The Council would expect representation from the Provider at a senior level to ensure ownership of resolution of the problem.

- 23.4 The Correction Plan shall identify the reasons for the Provider's failure to achieve the performance measures and the steps that the Provider proposes to take (with timescales) to improve performance so as to ensure that there is no future repetition of the failures.
- 23.5 A draft Correction Plan setting out the information required by clause 23.4 shall be provided by the Provider to the Council at least five (5) Working Days in advance of the meeting to agree a final Correction Plan.
- 23.6 If the Council does not approve the Correction Plan at the meeting, the Council shall notify the Provider of its reasons and the Provider shall take those reasons into account in the preparation of a further Correction Plan, which shall be re-submitted to the Council within five (5) Working Days of the rejection of the first draft.
- 23.7 The Provider shall comply with the agreed Correction Plan following its approval by the Council.
- 23.8 If the Council does not approve the re-submitted Correction Plan, the Council may revert to the dispute resolution provisions in clause 36 of the Agreement.
- 23.9 The Parties acknowledge and agree that the Provider's failure to implement and comply with an agreed Correction Plan in accordance with its terms will be deemed by the Parties as a material breach and the Council shall be entitled to terminate the Agreement in accordance with clause 18.2.

24. NOTICES

- 24.1 Any notice or other communication which is to be given by one Party to another under this Agreement shall be given by letter (sent by hand, post, registered post or by recorded delivery) or by email. Such communications shall be addressed to the relevant Party to the addresses set out in clause 24.2 below or such other address notified to the other Party in writing.
- 24.2 Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been served and received three (3) Working Days after the day on which the letter was posted, or two (2) Working Days after the email was sent, or sooner where the other Party acknowledges receipt of such letter or email.
-

24.2.1 For the Council:

Director of Public Health
Derbyshire County Council
County Hall
Matlock
DE4 3AG

24.2.2 For the Provider:

[XXX]

24.2.3 For a Pharmacy:

The address for the Pharmacy specified in the relevant Order.

24.3 Any notice or other communication to be given by a Party to the other Party shall be given in accordance with this clause 24.

25. WAIVER

The failure of either Party to insist upon the strict performance of any provision of the Agreement or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of their obligations established by the Agreement.

26. SEVERANCE

26.1 If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

26.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

26.3 In the event of a holding of invalidity so fundamental as to prevent the

accomplishment of the purpose of this Agreement, the Council and the Provider (and the Pharmacy, if appropriate) shall immediately commence good faith negotiations to remedy such defect.

27. THIRD PARTY RIGHTS

Save for the Pharmacies, a person who is not a Party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

28. ENTIRE AGREEMENT

- 28.1 This Agreement and any document referred to in it constitute the whole and only agreement and understanding between the Parties relating to its subject matter and supersedes and extinguishes any drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, between the Parties in connection with the subject matter of this Agreement whether existing prior to or at the same time as this Agreement.

28.2 The Council and the Provider acknowledge and agree that in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.

28.3 Nothing in this clause 28 shall operate to exclude or limit any liability for fraud or fraudulent misrepresentation.

29. VARIATION

29.1 No amendment or variation of this Agreement shall be effective unless it is set out in writing and signed by an authorised signatory of both Parties. For the avoidance of doubt, the Council and the Provider may vary this Agreement or vary any term of it without the consent of the Pharmacies.

29.2 Until a change is agreed between the Parties in accordance with this clause 29, the Parties shall continue to honour their respective obligations in accordance with the terms of this Agreement.

30. BRIBERY AND FRAUD

30.1 The Council may terminate this Agreement by written notice with immediate effect, and recover from the Provider all losses resulting from such termination, if the Provider, or any of its Staff (in all cases whether or not acting with the Provider's knowledge):

30.1.1 directly or indirectly offers, promises or gives any person working for or engaged by the Council or any Pharmacy a financial or other advantage to:

- (a) induce that person to perform improperly a relevant function or activity; or
- (b) reward that person for improper performance of a relevant function or activity;

30.1.2 directly or indirectly requests, agrees 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 Agreement;

30.1.3 commits any offence:

- (a) under Section 117(2) of the Local Government Act 1972;
- (b) under the Bribery Act 2010;
- (c) under legislation creating offences concerning fraudulent acts;
- (d) at common law concerning fraudulent acts relating to this Agreement, an Order or any other contract with the Council or any Pharmacy; or
- (e) defrauds, attempts to defraud or conspires to defraud the Council or any Pharmacy.

31. STATUTORY REQUIREMENTS

31.1 The Provider shall comply with all statutes, laws, orders, regulations and bye-laws having the force of law and being applicable to the performance of this Agreement, and the Provider shall be responsible for obtaining all licences, consents or permits required for such performance.

31.2 The Provider shall not act in contravention of the Equal Pay Act 1970 nor unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010, or any statutory modification or re-enactment thereof or any other law relating to discrimination in employment or in the provision of services.

31.3 The Provider shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to the Goods and Services. Without prejudice to the generality of the foregoing, the Provider shall promptly provide all such information regarding the environmental impact of the Services as may reasonably be requested by the Council or any Pharmacy.

31.4 The Provider shall indemnify and hold harmless the Council and all Pharmacies from and against all losses, claims, liabilities, costs, expenses, proceedings or otherwise as a result of the Provider's non-compliance with

its obligations set out in clauses 31.1 to 31.3 (inclusive) above.

32. FORCE MAJEURE

- 32.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Agreement to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, the Provider shall use all reasonable endeavours to continue to perform its obligations under this Agreement for the duration of such Force Majeure. However, if such Force Majeure prevents any Party from performing its material obligations under an Order for a period in excess of ten (10) Working Days, the other Party may cancel the Order with immediate effect by notice in writing. If such Force Majeure prevents the Provider from performing its material obligations under this Agreement for a period of three (3) months, the Council may terminate this Agreement with immediate effect by notice in writing without liability for compensation or damages.
- 32.2 Any failure or delay by the Provider in performing its obligations under this Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only to the extent that that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with its relevant obligations to the Provider.
- 32.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to, or is likely to give rise to, any failure or delay on its part, it shall immediately notify the other Party by the most expeditious method then available and shall inform the other Party of the period during which it is estimated that such failure or delay shall continue.

33. REVIEW MEETINGS

- 33.1 The Council and the Provider shall meet to review and discuss the KPIs and any other matters reasonably required by the Parties at review meetings as detailed in Schedule 3.
- 33.2 Unless expressly stated elsewhere to the contrary, any reports and required information are to be submitted by the Provider to the Council monthly throughout the Term. In order to maximise the benefit of review meetings,

the Provider shall make available to the Council any such reports and information requested, wherever possible, in advance of the date on which the review meeting takes place. For the avoidance of doubt, the timescale for the submission of any reports or information in this clause 33 shall not apply to any report or information which the Provider is under a contractual obligation to submit to the Council elsewhere under this Agreement within a different time period.

34. HEALTH AND SAFETY

- 34.1 The Provider shall promptly notify the Council and any relevant Pharmacies of any health and safety hazards which may arise in connection with the performance of its obligations under this Agreement. The Pharmacy shall be requested to promptly notify the Provider (sending a copy to the Council) of any health and safety hazards which may exist or arise and which may affect the Provider in the performance of its obligations under an Order.
- 34.2 While on the Pharmacy's premises, the Provider shall comply with any health and safety measures implemented by the Pharmacy in respect of staff and other persons working there.
- 34.3 The Provider shall notify the Pharmacy immediately (sending a copy to the Council) in the event of any incident occurring in the performance of its obligations under an Order on the Pharmacy's premises where that incident causes any personal injury, or damage to property which could give rise to personal injury.
- 34.4 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 on the Pharmacy's premises) in the performance of its obligations under the Order.
- 34.5 The Provider shall make its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) available to the Council on request.
- 34.6 The Provider shall inform the Council immediately (e.g. by telephone) if there is an accident that is connected with the performance of the Agreement and/or accident or incident reported under the Reporting of

Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR).

35. SECURITY

35.1 The Pharmacy shall be responsible for maintaining the security of their premises in accordance with its standard security requirements. The Provider shall comply with all reasonable security requirements of the Pharmacy while on the Pharmacy's premises and shall ensure that all Staff comply with such requirements.

35.2 The Provider may request from the Pharmacy copies of its written security procedures to afford the Provider an opportunity to inspect its security arrangements.

36. DISPUTE RESOLUTION

36.1 Any dispute arising out of or relating to this Agreement shall, in the first instance, be referred to representatives of the Council and the Provider for resolution as soon as reasonably possible. For the purpose of this clause 36, a dispute shall be deemed to have arisen when one Party serves on the other a notice in writing stating the nature of the dispute.

36.2 If the dispute cannot be resolved pursuant to clause 36.1 above, the dispute shall be escalated for resolution to a higher level of management in each Party as soon as reasonably possible and in any event within ten (10) Working Days.

36.3 If the dispute cannot be resolved pursuant to clause 36.2 above, the dispute shall be escalated for resolution to either a director or strategic director of the Council and a director of the Provider as soon as reasonably possible and in any event within ten (10) Working Days.

36.4 If the dispute remains unresolved after discussions between the representatives in accordance with clause 36.3 then it shall be referred to mediation in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure. Any mediation shall take place within Derbyshire unless otherwise agreed by the Parties.

36.5 Neither Party may initiate any legal action until the process set out in

clauses 36.1 to 36.4 (inclusive) above has been completed unless such Party has reasonable cause to do so to avoid damage to its business or to protect any right of action it may have.

- 36.6 Unless any Order has already been cancelled by the date of the notice of dispute, the Provider shall, in every case, continue with the performance of the Agreement and all Orders (if any) with all due diligence regardless of the nature of the dispute and the Council shall continue to make payment (excluding any disputed sums) of the Charges.
- 36.7 Nothing in this clause 36 shall prevent the Provider from directly resolving any disputes with a Pharmacy. Such disputes can be escalated to the Council for resolution under this clause 36 if such dispute remains unresolved.

37. PUBLICITY

No media releases, public announcements or public disclosures by the Provider relating to this Agreement, or the subject matter, including but not limited to promotional or marketing material, (but excluding any announcement intended solely for internal distribution by the Parties or any disclosure required by legal, accounting or regulatory requirements) may be made without the prior written approval of the Council (such approval not to be unreasonably withheld or delayed).

38. GOVERNING LAW

This Agreement and any disputes or claims arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of England, and the Parties irrevocably submit to the exclusive jurisdiction of the English courts over any action, claim or matter arising pursuant to or in connection therewith.

Signed :

Authorised Signatory

Name :

Title:

Date :

SCHEDULE 1
THE SPECIFICATION

SCHEDULE 2
PRICE SCHEDULE

SCHEDULE 3

REVIEW MEETINGS

1. Review meetings shall take place biannually in the months of June and December throughout the Term. The exact date, location and time of review meetings shall be agreed by the Parties.
2. The review meetings shall be attended by a representative of the Council and the Provider and any other persons considered by the Council necessary for the review.
3. Although either Party may add further items to the agenda for each review meeting, the standing agenda for the review meetings shall include:
 - (a) review of the Goods and Services being delivered;
 - (b) review of the performance of the Provider;
 - (c) review of any breaches of the KPIs, including a review of the resulting actions, including performance against Correction Plans and any further action to be taken;
 - (d) review of the Charges, including any reductions under clause 9.15 or any deductions made or being considered by the Council in accordance with clause 23;
 - (e) the timely provision of information;
 - (f) review of any requests relating to any disputed invoices;
 - (g) review of any complaints;
 - (h) review of any disputes.

SCHEDULE 4

THE PHARMACIES

[Note: to be populated by the Council; the list shall be amended from time to time during the Term as required by the Council]