

SEPTEMBER 2014

CHESHIRE WEST AND CHESTER BOROUGH COUNCIL

and

[INSERT PHARMACY NAME]

CONTRACT FOR PUBLIC HEALTH SERVICES

**FOR THE PROVISION OF
PHARMACY PUBLIC HEALTH SERVICES**

INFLUENZA IMMUNISATION

*Legal Services
Cheshire West and Chester Council
HQ Building
Nicholas Street
Chester
CH1 2NP*

CONTRACT PARTICULARS

Contract Title	Community Pharmacy Influenza Immunisation Programme for Cheshire West and Chester Council and VIVO Care Choices Ltd employees	
Specific Services to be Delivered	Influenza Immunisation	
Council	Cheshire West and Chester Borough Council	
Provider	Pharmacy NAME	
Commencement Date	1st October 2014	
Contract Period	Fixed term: 1st October 2014 to 31st January 2015	
To be called off by Order	Yes	
Services/Goods/Works	Services	
Specification/Description	<p>To provide and administer seasonal influenza vaccinations to eligible staff of Cheshire West and Chester Council and Vivo Care Services Ltd on production of a 'flu voucher' and staff ID card or letter provided by employer.</p> <p>Service Specification is provided as a separate document</p>	
Addresses for Official Notices - Council	Public Health Cheshire West and Chester Borough Council HQ Building, 58 Nicholas Street, Chester, CH1 2NP	
Address(es) and contact(s) for Official Notices - Provider		
Price	<p>£12.50 per voucher redeemed in exchange for administration of vaccination.</p> <p>Price includes cost of vaccine, administration and professional fees as per Service Specification and is inclusive of VAT.</p>	
Delivery Instructions	None	

CONTENTS

Clause	Heading	
	PART A - OPERATIVE PROVISIONS	6
A1	DEFINITIONS	6
A2	HEADINGS	10
A3	NOTICES	10
A4	ENTIRE AGREEMENT	10
	PART B - PROVISION OF SERVICES	10
B1	CONTRACT PERIOD	10
B2	PERFORMANCE	11
B3	CONTRACT MANAGER	11
B4	ORDERING PROCESS	11
B6	WARRANTY	12
B7	CONTRACTOR'S STAFF	12
	PART C - PRICE AND PAYMENT	13
C1	PRICE AND PAYMENT	13
	PART D - TERMINATION AND CONSEQUENCES OF TERMINATION	14
D1	TERMINATION	14
D2	CONSEQUENCES OF TERMINATION	15
D3	DISPUTE RESOLUTION PROCEDURE	15
D4	SURVIVAL	16
	PART E - INSURANCE AND LIABILITIES	16
E1	INSURANCE	16
E2	INDEMNITY AND LIABILITY	16
	PART F - PROTECTION OF INFORMATION	17
F1	INTELLECTUAL PROPERTY	17
F2	CONFIDENTIALITY AND PUBLICITY	18
F3	DATA PROTECTION	18
F4	FREEDOM OF INFORMATION	18
F5	RECORD KEEPING AND MONITORING	19
	PART G - STATUTORY OBLIGATIONS	19
G1	HEALTH AND SAFETY	19
G2	CORPORATE REQUIREMENTS	20
G3	COMPLAINTS	21
G4	LAW AND CHANGE IN LAW	21
	PART H - GENERAL PROVISIONS	21
H1	CONTRACT VARIATION	21
H2	THIRD PARTY RIGHTS	21
H3	NO WAIVER	22
H4	SEVERANCE	22
H5	ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY	22

H6	FORCE MAJEURE	22
H7	INDUCEMENTS.....	23
H8	COSTS AND EXPENSES.....	23
H9	NO AGENCY OR PARTNERSHIP.....	23
H10	NON SOLICITATION AND OFFERS OF EMPLOYMENT	24
H11	INSPECTION OF CONTRACTOR'S PREMISES	24
H12	LAW AND JURISDICTION	24

SCHEDULE 1 – AUTHORISED OFFICE AND PROVIDER MANAGER

**Cheshire West and Chester Borough Council
Contract for Public Health Services**

**Community Pharmacy Influenza Immunisation Programme for eligible Cheshire West
and Chester Council and VIVO Care Choices Ltd employees**

SIGNATURE PAGE

PHARMACY

by way of PHARMACY stamp/address (below)

NHS NUMBER _____

SIGNED BY _____

NAME _____

DATE _____

SIGNED BY CHESHIRE WEST AND CHESTER BOROUGH COUNCIL

AUTHORISED SIGNATORY _____

NAME _____

AUTHORISED SIGNATORY _____

NAME _____

PART A - OPERATIVE PROVISIONS

A1. DEFINITIONS

The terms and expressions used in these Standard Terms and Conditions shall have the meanings set out below:

“Authorised Officer”	the person duly appointed by the Council and notified in writing to the Provider to act as the representative of the Council for the purpose of the Contract in the Contract Particulars or as amended from time to time and in default of such notification the Council’s head of procurement or similar responsible officer.
“Business Day”	any day other than a Saturday or Sunday or a public or bank holiday in England.
“Change in Law”	the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Contract.
“Commencement Date”	the commencement date stated in the Contract Particulars.
“Confidential Information”	any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the Services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data (within the meaning of the DPA).

“Contract”

the agreement in respect of the provision of the Services consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority:

1. the Contract Particulars;
2. the Special Terms and Conditions;
3. the Standard Terms and Conditions;
4. the Tender except to the extent that any element of the Tender has been included in the Contract Particulars.

“Provider”

the Provider and where applicable this shall include the Provider's Employees, sub-Providers, agents, representatives, and permitted assigns and, if the Provider is a consortium or consortium leader, the consortium members.

“Contract Manager”

the person named in the Contract Particulars as the contract manager and any replacement from time to time in accordance with Clause B3.1 and B3.2.

“Contract Particulars”

the document detailing the specific core terms agreed between the Parties with regard to the Services which shall include but not be limited to the Pricing Schedule, Delivery Instructions, Commencement Date, Authorised Officer, Contract Manager, Key Personnel, Contract Period, and the Specification and relevant contract specific details of the Tender included in the document.

“Contract Period”

the period of the contract as stated in the Contract Particulars (and any extension in accordance with Clause B1).

“Control”

control as defined by section 416 of the Income and Corporation Taxes Act 1988.

“Council”

the Council named in the Contract Particulars and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression “control” shall mean the

power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists).

“DPA”

The Data Protection Act 1998.

“Delivery Instructions”

the instructions provided in the Contract Particulars and any other information that the Council considers appropriate to the provision of the Services.

“Employee”

any person employed by the Provider to perform the Contract which will also include the Provider's servants, agents, voluntary and unpaid workers and sub Providers and representatives.

“EIR”

The Environmental Information Regulations 2004.

“FOIA”

The Freedom of Information Act 2000.

“Force Majeure”

any cause materially affecting the performance by a Party of its obligations under this Contract arising from any act beyond its reasonable control and affecting either Party, including without limitation: acts of God, war, industrial action (subject to Clause H6.4), protests, fire, flood, storm, tempest, explosion, acts of terrorism and national emergencies but not including acts which are reasonably foreseeable for which the Parties must plan to mitigate.

“Good Industry Practice”

the exercise of such degree of reasonable skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced Provider engaged in the supply of services similar to the Services under the same or similar circumstances as those applicable to the Contract.

“Intellectual Property Rights”

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

“Invitation to Tender”	the Council’s invitation to tender for the Contract.
“Key Personnel”	those persons named in the Contract Particulars as being key personnel and any replacement from time to time under Clause B6.1.5.
“Law”	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Provider is bound to comply.
“Liabilities”	all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.
“Order”	an order for Services to be provided where the Contract is identified in the Contract Particulars to be delivered by call off.
“Price”	the price of the Services as set out in the Contract Particulars. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for.
“Pricing Schedule”	the schedule from the Tender detailing the pricing as detailed in the Contract Particulars.
“Replacement Provider”	any company, organisation or person who replaces the Provider following termination or expiry of all or part of this Contract
“Services”	the services described in the Specification to be supplied by the Provider in accordance with the Contract together with all equipment required and any associated goods provided by the Provider in relation to those services.
“Special Terms and Conditions”	the additional terms and conditions attached which were set out in the Invitation to Tender.
“Specification”	the specification included in the Contract Particulars setting out the Council's detailed

requirements in relation to the Services.

“Standard Terms and Conditions”

the terms and conditions set out in this document.

“Tender”

the Provider’s tender for the Services in response to the Council’s Invitation to Tender.

A1.1 Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.

A1.2 A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

A2. HEADINGS

The index and headings to the Clauses and appendices to and schedules of this Contract are for convenience only and will not affect its construction or interpretation.

A3. NOTICES

Any notice required by this Contract to be given by either Party to the other shall be in writing and shall be served personally, or by sending it by first class Royal Mail Special Delivery (or any successor service thereto) to the appropriate address, notified to each other as set out in the Contract Particulars (or to any substitute address as may be notified by such means), save where an advanced copy has been provided by e-mail and the recipient has both acknowledged safe receipt and has also confirmed acceptance of the notice by that method as satisfying the requirements of this Clause in that instance.

A4. ENTIRE AGREEMENT

The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause shall not exclude liability in respect of any fraudulent misrepresentation, fraud, personal injury or death.

PART B - PROVISION OF SERVICES

B1. CONTRACT PERIOD

B1.1 The Contract shall commence on the Commencement Date and subject to Clause B1.2 shall continue for the Contract Period.

B1.2 If the Contract Period includes an option to extend and the Council intends to take up the option, the Provider shall be notified in writing within the period stated in the Contract Particulars prior to the commencement of the extension. If no such

notification is issued the Contract shall automatically expire after the initial Contract Period.

B2. PERFORMANCE

- B2.1 The Services shall be provided in accordance with any Delivery Instructions.
- B2.2 The time of the delivery of the Services is of essence to the Contract.
- B2.3 The Council will have the right to observe the Provider's performance of the Services if the Services are not being performed on the Council's premises and the Provider hereby grants to the Council, or undertakes to procure from any relevant third Party, access to the same for the Council's employees or representatives.
- B2.4 If the Provider at any time becomes aware of any act or omission, or proposed act or omission by the Council which prevents or hinders, or may prevent or hinder the Provider from performing the Services in accordance with the Contract, the Provider shall inform the Council and the Council may, at its absolute discretion, extend the period of the Contract accordingly.
- B2.5 If the Provider at any time becomes aware of any material matter that could affect the performance of the Services in accordance with the Contract, the Provider shall inform the Council immediately.
- B2.6 If the Provider has a change in Control, the Provider shall inform the Council as soon as reasonably practicable.
- B2.7 The Council retains the Provider for the performance of the Services on a non exclusive basis.
- B2.8 The Provider must provide the Council with the information specified in the service specification to measure the quality, quantity or otherwise of the Services.
- B2.9 The Provider must deliver the information required under Clause B2.8 in the format manner frequency and timescales specified in service specification

B3. CONTRACT MANAGER

- B3.1 The Provider shall employ a competent and authorised Contract Manager empowered to act on behalf of the Provider for all purposes connected with the Contract.
- B3.2 The Provider shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Provider shall give maximum possible notice to the Council before changing its Contract Manager and in any case within seven days at the latest.

B4. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- B4.1 The Provider shall adopt Safeguarding Policies and such policies shall comply with West Cheshire Local Safeguarding Board policies and procedure.
- B4.2 At reasonable written request of the Council by no later than 5 Business Days following receipt of such request the Provider must provide evidence to the Council that it is addressing safeguarding concerns.

B5. INCIDENTS REQUIRING REPORTING

- B5.1 If the Provider is CQC registered it shall comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations and if the Provider is not CQC registered it shall notify serious incidents to any regulatory body as applicable, in accordance with the Law.
- B5.2 If the Provider gives a notification to the CQC or any other regulatory body regarding serious untoward incidents and patient safety incidents which directly or indirectly concerns any service user, the Provider shall send the Council a copy of any notification within one month of the original submission of the notification.
- B5.3 The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from serious incidents, patient safety incidents and non-service user safety.
- B5.4 Subject to the Law, the Council shall have complete discretion to use the information provided by the Provider under this Clause B.5.

B6. WARRANTY

- B6.1 The Provider warrants to the Council that the Services will be provided:
- i) in a proper, skilful and workmanlike manner;
 - ii) by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice;
 - iii) in accordance with the Contract and any descriptions provided by the Provider;
 - iv) to the reasonable satisfaction of the Authorised Officer; and
 - v) (where applicable) in such a way that the Provider takes every reasonable precaution to safeguard the Council's property entrusted to the care of the Provider.
- B6.2 Without prejudice to the Council's rights to terminate under Clause D1 (Termination), if any of the Services supplied are not in accordance with the Contract, the Council shall be entitled to:
- i) require the Provider to provide replacement Services in accordance with the Contract as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so; or
 - ii) subject to Clause E2 (Indemnity and Liability) require repayment of the proportion of the Price which has been paid in respect of such Services together with payment of any additional expenditure over and above the Price reasonably incurred by the Council in obtaining replacement Services.

B7. PROVIDER'S EMPLOYEES

- B7.1 The Council reserves the right under the Contract to refuse to admit, or to withdraw permission to remain on, any premises occupied by or on behalf of the Council:

- i) any member of the Provider's Employees; and/or
- ii) any person employed or engaged by a sub-Provider, agent or servant of the Provider

whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.

- B7.2 The Provider will ensure that any practitioner performing services under the contract participates in an appropriate appraisal system.
- B7.3 The Provider will take reasonable care to satisfy itself that any person engaged in delivery of this contract is both suitably qualified and competent to discharge the duties for which they are employed including updating skills and knowledge.
- B7.4 The Provider will ensure that no health care professional shall perform clinical services under this contract unless registered with relevant professional body and registration is not currently suspended.

PART C - PRICE AND PAYMENT

C1. PRICE AND PAYMENT

- C1.1 The Council shall pay the Price for the Services to the Provider.
- C1.2 The Council shall make all payments to the Provider via the Bankers' Automated Clearing Service ("**BACS**").
- C1.3 Unless otherwise agreed, the Council shall pay the undisputed sums due to the Provider in cleared funds within thirty [30] days of receipt of invoices, (to be submitted monthly in arrears), for work completed to the satisfaction of the Council, such payment shall be made by the Council to the Provider via bank transfer.

Invoices must be sent as a pdf document to the following addresses:-

If by Post:

**Cosocius
PO Box 3657
Cheshire West and Chester Council
Purchasing and Exchequer Department
HQ Nicholas Street
Chester, CH1 2NP**

If by Email:

supplier@cosocius.co.uk

Quoting the Purchase Order Number

- C1.4 The Council shall pay to the Provider such VAT that may be chargeable by the Provider in connection with the provision of the Service on submission of a bonafide VAT invoice.
- C1.5 The Council reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Provider has either failed to provide the

Services at all or has provided the Services inadequately and any invoice relating to such Services will not be paid unless or until the Services have been performed to the Council's satisfaction.

- C1.6 Any overdue sums will bear interest from the due date until payment is made at 4% per annum over the Co-operative Bank plc base rate from time to time. The Provider is not entitled to suspend provision of the Services as a result of any overdue sums.
- C1.7 The Council will be entitled but not obliged at any time or times without notice to the Provider to set off any liability of the Council to the Provider against any liability of the Provider to the Council (in either case howsoever arising and whether any such liability is present or future, liquidated or un-liquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Provider into any other currency or currencies in which the obligations of the Council are payable under this Contract. The Council's rights under this Clause will be without prejudice to any other rights or remedies available to the Council under this Contract or otherwise.

PART D - TERMINATION AND CONSEQUENCES OF TERMINATION

D1. TERMINATION

- D1.1 Subject to the provisions of Clause H6 (Force Majeure) the Council may terminate the Contract with immediate effect by notice in writing to the Provider on or at any time if:
- i) the Provider becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies; or
 - ii) the Provider is convicted of a criminal offence; or
 - iii) the Provider ceases or threatens to cease to carry on its business; or
 - iv) the Provider has a change in Control which the Council believes will have a substantial impact on the performance of the Contract; or
 - v) there is a risk or a genuine belief that reputational damage to the Council will occur as a result of the Contract continuing; or
 - vi) the Provider is in breach of any of its obligations under this Contract that is capable of remedy and which has not been remedied to the satisfaction of the Council within fourteen (14) days, or such other reasonable period as may be specified by the Council after issue of a written notice specifying the breach and requesting it to be remedied; or
 - vii) there is a material or substantial breach by the Provider of any of its obligations under this Contract which is incapable of remedy; or
 - viii) the Provider commits persistent minor breaches of this Contract whether remedied or not; or
 - ix) the Provider fails to implement, maintain and enforce clear, practical, accessible and effective procedures to prevent bribery by persons associated with the Consultant which are proportionate to the bribery risks

the Consultant faces and to the nature, scale and complexity of the Consultant's activities; or

- x) the Provider engages in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010; or
- xi) the Provider fails to comply with the Council's anti bribery and anti corruption policies as notified to the Provider from time to time.

D1.2 The Council reserves the right to terminate the Contract, in whole or in part, at any time upon three [3] months written notice.

D2. CONSEQUENCES OF TERMINATION

D2.1 If this Contract is terminated in whole or in part the Council shall:

- i) be liable to pay to the Provider only such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination; and/or
- ii) be entitled to deduct from any sum or sums which would have been due from the Council to the Provider under this Contract or any other contract and to recover the same from the Provider as a debt any sum in respect of any loss or damage to the Council resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the supply of the Services or any parts of them; and/or
- iii) in the event that any sum of money owed by the Provider to the Council (the Provider's debt) exceeds any sum of money owed by the Council to the Provider (the Council's debt) under this Contract then the Council shall, at its sole discretion, be entitled to deduct the Provider's debt from any future Council's debt or to recover the Provider's debt as a civil debt.

D2.2 Upon the termination of the Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to termination, neither Party shall have any further obligation to the other under the Contract.

D2.3 Clause H7.4 shall also apply.

D3. DISPUTE RESOLUTION PROCEDURE

D3.1 If a dispute arises between the Council and the Provider in connection with the Contract, the Parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.

D3.2 If a dispute is not resolved within fourteen (14) days of referral under Clause D3.1 then either Party may refer it to the Chief Executive or appropriate nominated officer of each Party for resolution who shall meet for discussion within fourteen (14) days or longer period as the Parties may agree.

D3.3 Provided that both Parties consent, a dispute not resolved in accordance with Clauses D3.1 and D3.2, shall next be referred at the request of either Party to a mediator appointed by agreement between the Parties within fourteen (14) days of one Party requesting mediation with the costs of mediation determined by the mediator.

- D3.4 Nothing in this Clause shall preclude either Party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

D4. SURVIVAL

The following Clauses will survive termination or expiry of the Contract: Clause D2 (**Consequences of Termination**), Clause F1 (**Intellectual Property**), Clause F2 (**Confidentiality and Publicity**), Clause F3 (**Data Protection**), Clause F4 (**Freedom of Information**), Clause F5 (**Record Keeping and Monitoring**), Clause H4 (**Severance**), Clause H10 (**Non Solicitation and Offers of Employment**) and Clause H12 (**Law and Jurisdiction**).

PART E - INSURANCE AND LIABILITIES

E1. INSURANCE

- E1.1 The Provider shall maintain insurance necessary to cover any liability arising under the Contract as set out in the Contract Particulars. The limits referred to shall be in respect of any one occurrence of employer's liability, any one claim for public liability and any one period of insurance for products liability. The Provider shall similarly cause any sub-Provider to take out and maintain such insurance and shall remain responsible for ensuring that any sub-provider is fully insured in accordance with these insurance provisions for the duration of the Agreement.
- E1.2 The Provider shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon reasonable request provide evidence of current policies for the required insurances.
- E1.3 The Required Insurances referred to above are:
- i) public liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one [1] claim arising from the Service;
 - ii) employer's liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one [1] claim arising from the Service;
 - iii) professional indemnity insurance from the individual pharmacy, pharmacist or pharmacy contractor (as applicable) providing clinical services, with a limit of indemnity of not less than one million pounds (£1,000,000) in relation to any one [1] claim arising from the Service. Professional indemnity insurance should be retained for six (6) years after the Service expires.
- E1.4 The Required Insurances must remain in place for the Contract Period and be effective in each case not later than the date on which the relevant risk commences and for so long as any liability may continue after the expiration or earlier termination of the Agreement.
- E1.5 If the Provider is found to be in breach of this Clause, the Council may decide to terminate the Contract with immediate effect, or pay any premiums necessary to keep the Required Insurances in force and may recover such payments made from the Provider in addition to levying a charge to cover the Council's administrative costs of arranging the same (to a maximum of £100 per incident) by way of deductions from amounts payable by the Council to the Provider under the Contract or by recovering the same as a debt due to the Council from the Provider.

E2. INDEMNITY AND LIABILITY

- E2.1 The Provider shall be solely liable for and shall indemnify the Council against any expense, liability, loss, claim or proceedings whatsoever or howsoever arising under any statute or at common law in respect of personal injury to or the death of any person arising out of or in the course of, carrying out the Services unless due to any act or neglect of the Council for which it is legally liable for or of any person for whom the Council is responsible.
- E2.2 The Provider shall be liable for and shall indemnify the Council against any expense, liability, loss, claim or proceedings in respect of any injury or damage or loss whatsoever to or of any property real or personal in so far as such injury or damage or loss arises out of or in the course of providing the Services and to the extent that the same is due to any negligence, omission or default of the Provider, or of any person for whom the Provider is responsible.
- E2.3 The Provider shall be liable for and shall indemnify the Council against any expense, liability, loss, claim or proceedings whatsoever arising in respect of fraud or fraudulent misrepresentation and or any other liability which cannot be excluded or limited by law.
- E2.4 The Provider shall be liable for and shall indemnify the Council against any expense, liability, loss, claim or proceedings whatsoever arising in respect of any negligent act, error, breach of contract or omission howsoever arising out of providing the Services.
- E2.5 Without prejudice to his obligations to indemnify the Council, the Provider shall take out and maintain insurance with a reputable insurance company in respect of claims arising out of his liability referred to in this Clause as set out in E1.

PART F - PROTECTION OF INFORMATION

F1. INTELLECTUAL PROPERTY

- F1.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- i) provided to the Provider by the Council shall remain the property of the Council;
 - ii) prepared by or for the Provider specifically for the use, or intended use, in relation to the performance of the Contract shall belong to the Council subject to any exceptions set out in the Contract Particulars.
- F1.2 The Provider shall obtain necessary approval before using any material, in relation to the performance of the Contract which is or may be subject to any third Party Intellectual Property Rights. The Provider shall procure that the owner of the Intellectual Property Rights grant to the Council a non-exclusive licence, or if the Provider is itself a licensee of those rights, the Provider shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Councils, the replacement Provider or to any other third Party providing services to the Council, and shall be granted at no cost to the Council.

- F1.3 It is a condition of the Contract that the Services will not infringe any Intellectual Property Rights of any third Party and the Provider shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Council against all Liabilities which the Council may suffer or incur as a result of or in connection with any breach of this Clause, except where any such claim relates to the act or omission of the Council.
- F1.4 At the termination of the Contract the Provider shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Services, including any back-up media.

F2. CONFIDENTIALITY AND PUBLICITY

- F2.1 Any documents provided by the Council and information which the Provider may acquire as a result of the Contract shall to the extent that they are not in the public domain or required to be disclosed by operation of Law remain confidential to the Council and shall not be disclosed disposed of or used for any purpose without prior written consent from the Council.
- F2.2 All Confidential Information provided by the Council to the Provider shall be returned to the Council at the end of the Contract.
- F2.3 Without prejudice to the Council's obligations under the FOIA or EIR, neither Party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other Party (such consent not to be unreasonably withheld or delayed).
- F2.4 Both Parties shall take all reasonable steps to ensure the observance of the provisions of this Clause by all of their servants, Employees, sub-Providers, agents, professional advisors and consultants.
- F2.5 The Provider shall nominate a person with responsibility for information governance and confidentiality.

F3. DATA PROTECTION

The Provider shall (and shall procure that any of its Employees involved in the provision of the Services) comply with any requirements under the DPA.

F4. FREEDOM OF INFORMATION

- F4.1 The Provider acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 ("**FOIA**") and the Environmental Information Regulations 2004 ("**EIR**"). The Provider must assist and cooperate with the Council (at the Provider's expense) to enable the Council to comply with these information disclosure requirements.
- F4.2 If the Provider receives an FOIA request regarding this Service, the Provider must:
- i) transfer any such request for information to the Council as soon as practicable after receipt and in any event within 5 working days;
 - ii) if a request is made for information to enable the Council to respond to the FOIA request the Provider shall provide the Council with said information within 5 working days (or such other period as the Council may specify); and

- iii) provide such assistance as the Council reasonably request to enable the Council to respond to a request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- F4.3 The Council will be responsible for determining at its absolute discretion whether any information:
 - i) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;
 - ii) is to be disclosed in response to a request for Information.
- F4.4 The Provider will not respond directly to a request for Information unless expressly authorised to do so by the Council.
- F4.5 The Provider acknowledges that the Council may be obliged under the FOIA or EIR to disclose Information:
 - i) without consulting the Provider, or
 - ii) following consultation with the Provider and having taken the Provider's views into account.
- F4.6 The Provider acknowledges that any lists or schedules provided by the Provider outlining information the Provider considers to be confidential are of indicative value only and that the Council may nevertheless be obliged to disclose confidential information in accordance with this Clause.

F5. RECORD KEEPING AND MONITORING

- F5.1 The Provider must create maintain store and retain service user health records in accordance with the NHS Code of Practice for records management.
- F5.2 In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Provider shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Contract has been completed, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Provider shall on request allow the Council or the Council's representatives such access to (and copies of) those records as may be required by the Council in connection with the Contract.
- F5.3 The Provider will at its own cost, provide any information that may be required by the Council to comply with the Council's procedures for monitoring of the Contract.

PART G - STATUTORY OBLIGATIONS

G1. HEALTH AND SAFETY

- G1.1 The Provider shall comply with all health and safety legislation in force.
- G1.2 The Provider will ensure that it complies with the Health and Social Care Act 2008: Code of Practice on the prevention and control of infections and related guidance.

G2. CORPORATE REQUIREMENTS

- G2.1 The Provider must maintain a business continuity plan and must notify the commissioner of activation of that plan no later than 5 business days later than the implementation of that plan.
- G2.2 The Provider shall comply with all obligations under the Human Rights Act 1998.
- G2.3 The Provider will have a nominated person with responsibility for ensuring effective operation of a system of clinical governance which shall include standard operating procedures in relation to the management of the service.
- G2.4 The Provider shall comply with all national legislation and rules, such as, but not limited to:
- i) equality and diversity policies;
 - ii) sustainability;
 - iii) information security rules; and
 - iv) whistle blowing and/or confidential reporting policies.
- G2.5 The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- G2.6 The Provider shall comply with all relevant legislation relating to its Employees however employed including (but not limited to) the compliance in law of the ability of the Employees to work in the United Kingdom.
- G2.7 If the Provider has a finding against it relating to its obligations under Clause G2.4 it will provide the Council with:
- i) details of the finding; and
 - ii) the steps the Provider has taken to remedy the situation.
- G2.8 The Provider shall:
- i) prevent bribery by person's associated with the Provider which are proportionate to the bribery risks the Provider faces and to the nature, scale and complexity of the Provider's activities and implement, maintain and enforce clear, practical, accessible and effective procedures to prevent bribery by person's associated with the Provider; and
 - ii) promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Provider in connection with the performance of this Agreement.
- G2.9 The Provider shall comply with all site rules applicable to the performance of the Services and whether being the rules of the Council or those of any relevant third Party.

G3. COMPLAINTS

- G3.1 The Provider must at all times comply with the relevant regulations for complaints relating to the provision of services.
- G3.2 If a complaint is received about the standard of the provision of the Services or about the manner in which any of the Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under this Contract, then 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, CQC or/and any Regulatory Body. Without prejudice to any other rights the Council may have under this Contract, the Council may uphold the complaint and take action to ensure the matter relating to the complaint does not arise again.

G4. LAW AND CHANGE IN LAW

- G4.1 The Provider shall comply at all times with the Law in its performance of the Contract.
- G4.2 On the occurrence of a Change in Law which has a direct effect upon the Price the Parties shall meet within fourteen (14) days of the Provider notifying the Council of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result on the basis that this Clause shall not operate so as to protect the Provider from market forces. If the Parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either Party may refer the matter to dispute resolution in accordance with Clause D3.
- G4.3 Any agreed additional sums payable as a result of the operation of Clause G4.2 shall be included in the Price. For the avoidance of doubt nothing in this Contract is intended to allow the Provider double recovery of any increase in costs.

PART H - GENERAL PROVISIONS

H1. CONTRACT VARIATION

- H1.1 Subject to Clause H1.2, no variation or modification to the Contract is valid unless it is in writing and signed by the Council and the Provider.
- H1.2 The Council shall be entitled to issue to the Provider in writing or, in case of urgency orally (provided the Council confirms oral instructions in writing within 10 working days), variation orders requiring the addition, suspension, reduction or cessation of provision of any Services and/or the provision of emergency Services in accordance with revised Delivery Instructions. The Provider shall charge for the impact of the variation order in accordance with the rates and prices used to calculate the Price in the Tender.

H2. THIRD PARTY RIGHTS

This Contract is enforceable by the original Parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

H3. NO WAIVER

- H3.1 Failure by either Party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other Party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of the Contract or any part of it or the right of the Parties to enforce any provision in accordance with its terms.
- H3.2 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with Clause A3 (Notices).

H4. SEVERANCE

If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

H5. ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY

- H5.1 Subject to any express provision of this Contract, the Provider shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract or sub-contract the provision of the Services.
- H5.2 The Council shall be entitled to:
- i) assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in the Public Contracts Regulations 2006); or
 - ii) transfer, assign or novate its rights and obligations where required by Law.
- H5.3 The Provider shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-Providers, servants, agents and their respective Employees as though they were its own.

H6. FORCE MAJEURE

- H6.1 The Provider will have in place contingency plans to ensure that obligations under this Contract can be performed if at all possible even during events of Force Majeure. The Provider will provide copies of these plans and all emergency planning policies to the Council upon request.
- H6.2 Neither Party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure.
- H6.3 If the Council or the delivery location is affected by circumstance of Force Majeure, the Council shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Provider against the Council nor entitle the Provider to terminate the Contract.
- H6.4 Industrial action by, or illness or shortage of the Provider's Employees, agents or sub Providers, failure or delay by any of the Provider's suppliers to supply goods,

components, services or materials and breach of the Provider's warranties under Clause B6 shall not be regarded as an event of Force Majeure.

H6.5 If the event of Force Majeure continues for more than thirty (30) days either Party may give written notice to the other to terminate the Contract immediately or on a set termination date.

H6.6 If the Contract is terminated in accordance with Clause H6.5 neither Party will thereby have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.

H7. INDUCEMENTS

H7.1 The Provider shall not offer or give, or agree to give, or promise to give to any employee, agent, servant, subsidiary or representative of the Council or promise to give any gift or consideration or financial or other advantage of any kind as an inducement or reward or bribe for doing any act in relation to the obtaining or execution of the Contract or bringing about the improper performance by another person of the Contract or any other contract or any activity related to the Contract or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such other contract.

H7.2 The Provider warrants that it has not paid commission nor agreed to pay any commission to any employee or representative of the Council by the Provider or on the Provider's behalf.

H7.3 The Provider warrants that it has not either itself or through an employee, agent, sub Provider or subsidiary or otherwise engaged in any activity either directly or indirectly or otherwise that would constitute an offence under the Bribery Act 2010.

H7.4 Where the Provider engages in conduct prohibited by Clauses H7.1, or H7.2 or breaches the warranty in Clause H7.3 in relation to this or any other contract with the Council, the Council has the right to:

- i) terminate the Contract and recover from the Provider the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or
- ii) recovers in full from the Provider any other loss sustained by the Council in consequence of any breach of this Clause whether or not the Contract has been terminated.

H8. COSTS AND EXPENSES

Each of the Parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.

H9. NO AGENCY OR PARTNERSHIP

Nothing contained in this Contract, and no action taken by the Parties pursuant to this Contract, will be deemed to constitute a relationship between the Parties of partnership, joint venture, principal and agent or employer and employee. Neither

Party has, nor may it represent that it has, any authority to act or make any commitments on the other Party's behalf.

H10. NON SOLICITATION AND OFFERS OF EMPLOYMENT

H10.1 The Provider agrees that it will not, without the prior written consent of the Council, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, employee, agent, Provider, partner or otherwise during the Contract Period or for a period of twelve (12) months following termination of this Contract:

- i) solicit or entice, or endeavour to solicit or entice, away from the Council, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Council at the date of the termination of this Contract or at any time during the period of one (1) month immediately preceding the date of termination; or
- ii) itself attempt, or knowingly assist or procure any other person to do the above.

H11. INSPECTION OF PROVIDER'S PREMISES

H11.1 The Provider shall permit the Council to make any inspections or tests which may reasonably be required in respect of the Provider's premises in relation to the Contract.

H11.2 The Provider will allow entry and inspection by persons authorised by the Care Quality Commission in accordance with the Health and Social Care Act 2003.

H11.3 Comply with the entry and viewing by Local Health Watch under section 225 of Local Government and Public Involvement Act 2007

H12. LAW AND JURISDICTION

This Contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.

SCHEDULE 1

Authorised Officer and Contract Manager

Authorised Officer COUNCIL	Contract Manager PROVIDER
Name: Caryn Cox Title: Director of Public Health Telephone: 01244 976764 Email: Caryn.Cox@cheshirewestandchester.gov.uk	Name: Title: Telephone: Email:
Deputy Authorised Officer	Deputy Contract Manager PROVIDER
Name: Fiona Reynolds Title: Consultant in Public Health Telephone: 01244 976780 Email: Fiona.Reynolds@cheshirewestandchester.gov.uk	Name: Title: Telephone: Email:

Commissioning Contract Manager
Name: Helen Stott Title: Health Protection Specialist Telephone: 01244 973758 Email: Helen.Stott@cheshirewestandchester.gov.uk