



Kirklees Council

Public Health

Service Contract

Particulars

THE COUNCIL OF THE BOROUGH OF KIRKLEES (1)

AS “AUTHORITY”

AND

[INSERT NAME] (2)

AS “PROVIDER”

**CONTRACT FOR THE
PROVISION OF COMMUNITY SMOKING
CESSATION SERVICES**

(REF: KMCPH-004)

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SECTION A – THE PARTICULARS

This Contract is made on _____ 20____

PARTIES

- (1) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of the Town Hall, Ramsden Street, Huddersfield, West Yorkshire, HD1 2TA (the **Authority**); and
- (2) [**INSERT NAME OF PROVIDER**] of [**Insert Address**] (the **Provider**).

BACKGROUND

- (A) The Authority must exercise a number of health service functions set out in section 2B of the NHS Act 2006 (as amended) and the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013 (S.I. 2013/351).
- (B) In order to satisfy these obligations the Authority wishes to secure the provision of the Services and the Provider wishes to provide the Services.
- (C) The Parties have agreed for the Provider to provide the Services in accordance with the terms and conditions of this Contract.

IT IS AGREED

A1. CONTRACT

A1.1. This Contract comprises of:

- a) these Particulars (Section A);
- b) the Special Terms and Conditions (the **Special Terms and Conditions**) (Section B), where any such terms have been agreed
- c) the Appendices (the **Appendices**) (Section C); and
- d) the General Terms and Conditions (the **General Conditions**) (which are available to view online and/or download from <http://kirklees.gov.uk/beta/business-with-the-council/policies-rules-and-regulations.aspx>, or can be made available upon request to the Authority's Representative); and

as completed and agreed by the Parties and as varied from time to time in accordance with Clause GC.30 (**Variations**) of the General Conditions (this **Contract**).

A2. INTERPRETATION

A2.1. This Contract shall be interpreted in accordance with Clause GC.30 (**Variations**) of the General Conditions (**Definitions and Interpretation**), unless the context requires otherwise.

A2.2. If there is any conflict or inconsistency between the provisions of this Contract, such conflict or inconsistency must be resolved according to the following order of priority:

- a) the Special Terms and Conditions;
- b) the General Conditions;
- c) the Appendices; and
- d) the Particulars,

unless this Contract expressly states otherwise.

A2.3. If there is any conflict or inconsistency between the provisions of this Contract and any of the documents listed or referred to in any of the Appendices, the provisions of this Contract will prevail.

A2.4. Unless expressly agreed by the Parties, any document purporting to vary any part of this Contract in accordance with Clause GC.30 (**Variations**) shall not take higher precedence than specified here.

A3. COMMENCEMENT AND DURATION OF THE CONTRACT PERIOD

A3.1. This Contract shall take effect on the date it is executed by or on behalf of the Parties (the **Commencement Date**).

A3.2. The Provider shall, subject to having satisfied the Conditions Precedent where applicable, provide the Services from [**Insert Date**] (the **Service Commencement Date**).

A3.3. This Contract shall expire automatically on 31st March 2018 (the **Expiry Date**), unless it is extended or terminated earlier in accordance with the provisions of this Contract, after which the provisions of Clause GC40 (**Consequences of Termination**) of the General Conditions shall apply.

- A3.4. Subject to the satisfactory performance by the Provider of its obligations under this Contract, the Authority may at its sole option extend this Contract beyond the Expiry Date by a further period of up to [Insert] years (the **Extension Period**).
- A3.5. If the Authority wishes to extend this Contract, it shall give the Provider at least three (3) months' written notice of such intention before the Expiry Date.
- A3.6. If the Authority gives such notice then the duration of the Contract shall be extended by the period set out in the notice.
- A3.7. For the avoidance of any doubt, during any Extension Period, the obligations under this Contract shall continue, subject to any agreed variations in accordance with Clause GC30 of the General Conditions (**Variations**) or any price adjustment in relation to the Charges in accordance with Clause GC12 of the General Conditions (**Annual Adjustment to Charges**), until the expiry of the Extension Period.

A4. REPRESENTATIVES

- A4.1. Subject to Clause A5 (**Formal Notices**) below, the person set out below is authorised from the Commencement Date to act on behalf of the Authority on all matters relating to the day-to-day management of this Contract (the **Authority Representative**).

Name: Vicki Stadnicki
Title: Health Improvement Practitioner Specialist
Contact Details: Public Health, Kirklees Council, Civic Centre 1, High Street,
Huddersfield, HD1 2NF

Tel: 01484 221000
Email: vicki.stadnicki@kirklees.gov.uk

- A4.2. The person set out below is authorised from the Commencement Date to act on behalf of the Provider on all matters relating to this Contract (the **Provider Representative**).

Name: [Insert Name]
Title: [Insert Title]
Contact Details: [Insert Address]

Tel: [Insert Tel]
Email: [Insert Email]

A4.3. The Provider may replace the Provider Representative and the Authority may replace the Authority Representative at any time by giving written notice to the other Party.

A5. FORMAL NOTICES

A5.1. Except as otherwise provided within this Contract, all formal notices given under this Contract shall be in writing and shall be served by hand or post by sending the same to the address for the relevant Party set out in Clause A5.3.

A5.2. Formal notices shall be deemed to have been served as follows:

- a) if sent by post and correctly addressed shall be effective upon the earlier of actual receipt, or two (2) Business Days after mailing; or
- b) if sent by hand shall be effective upon delivery.

A5.3. For the purposes of Clause A5.2, the address for service of formal notices on each Party shall be as follows:

a) For the Authority:

Address:	Public Health, Kirklees Council, Civic Centre 1, High Street, Huddersfield, HD1 2NF
For the attention of:	Vicki Stadnicki
Tel:	01484 221000

b) For the Provider:

Address:	[To Be Completed]
For the attention of:	[To Be Completed]
Tel:	[To Be Completed]

A5.4. Either Party may change its address for service by serving a formal notice in accordance with this Clause A5.

A6. ENTIRE CONTRACT

- A6.1. This Contract, together with any schedules, appendices and/or documents attached hereto or referred to herein, constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement between the Parties relating to the subject matter of this Contract, except for any contract entered into between the Authority and the Provider which relates to the same or similar Services and is designed to remain effective until the Services are provided under this Contract.
- A6.2. Noting in Clause A6.1 above, or any other provision within this Contract, shall operate to exclude any liability in respect of fraud or fraudulent misrepresentation.

A7. COUNTERPARTS

This Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument. No counterpart shall be effective until each Party has executed at least one counterpart.

A8. COSTS AND EXPENSES

Each Party is responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Contract.

A8. GOVERNING LAW AND JURISDICTION

- A8.1. This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- A8.2. Subject to the provisions of Clause GC38 of the General Conditions (***Dispute Resolution***), each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

SIGNED for and on behalf of **THE COUNCIL**)
OF THE BOROUGH OF KIRKLEES)

Authorised Signatory

Authorised Signatory

Print Name

Print Name

Designation

Designation

SIGNED for and on behalf of)
[Insert full legal name of the Provider])

Authorised Signatory

Authorised Signatory

Print Name

Print Name

Designation

Designation

SECTION B – SPECIAL TERMS AND CONDITIONS

B1 [AUTHORITY PREMISES AND PROPERTY CLAUSES

DRAFTING NOTE – DELETE FROM FINAL DOCUMENT – Clause B1 of the Special Terms and Conditions will only apply if the Authority is supplying the Provider with equipment/real property or office premises to enable the Provider to deliver the Services. If this is not applicable to your particular Contract, Clause B1 can be switched to 'NOT USED'.

B1.1 Licence To Occupy Authority's Premises

- (a) Any land or premises (including temporary buildings) made available to the Provider by the Authority in connection with this Contract (the **Premises** or **Authority's Premises**), shall be made available to the Provider free of charge and shall be used by the Provider solely for the purpose of performing its obligations under this Contract. The Provider shall have the use of such Premises as licensee and shall vacate the same on completion, termination or abandonment of this Contract.
- (b) The Provider shall not use the Authority's Premises for any purpose or activity other than the provision of the Services.
- (c) The Provider shall (and shall ensure that its Staff) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Authority, and the Provider shall pay for the cost of making good any damage caused by the Provider, his Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- (d) The Parties agree that there is no intention on the part of the Authority to create a tenancy of whatsoever nature in favour of the Provider or its employees, servants, agents, suppliers or sub-contractors and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Authority retains the right at any time to use in any manner the Authority sees fit any Premises owned or occupied by it.

B1.2 Non-exclusive Access to Authority's Premises

- (a) Access to the Authority's Premises shall not be exclusive to the Provider, but shall be limited to such Staff and the Provider's suppliers as are necessary to perform the Services concurrently, with the execution of work by others. The Provider shall co-operate free of charge with such others on the Authority's Premises as the Authority may reasonably require.

B1.3 Inspection Of Premises

- (a) Save as the Authority may otherwise direct, the Provider is deemed to have inspected the Authority Premises before tendering so as to have understood the nature and extent of this Contract to be carried out and be satisfied in relation to all matters connected with the performance of this Contract.

B1.4 Security Of the Authority's Premises

- (a) The Authority shall be responsible for maintaining the security of the Authority's Premises in accordance with its standard security requirements. The Provider shall comply with all reasonable security requirements of the Authority while on the Authority's Premises, and shall procure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements.
- (b) The Authority shall provide the Provider upon request copies of any written security procedures and shall afford the Provider upon request with an opportunity to inspect its physical security arrangements.

B1.5 Authority Property and/or Equipment

- (a) Where the Authority for the purpose of this Contract issues any property, other than real property, issued or made available to the Service Provider by the Council in connection with this Contract (**Authority Property**) free of charge to the Provider such property shall be and remain the property of the Authority. The Provider shall not in any circumstances have a lien on the Authority's Property and the Provider shall take all reasonable steps to ensure that the title of the Authority to such Authority Property and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with this Contract.
- (b) Any Authority Property made available or otherwise received by the Provider shall be deemed to be in good condition when received by or on behalf of the Provider unless the Provider notifies the Authority otherwise within [five (5) Business Days] of receipt.
- (c) The Provider shall maintain all Authority Property in good order and condition, excluding fair wear and tear, and shall use Authority Property solely in connection with this Contract and for no other purpose without prior Approval.

(d) The Provider shall ensure the security of all Authority Property, whilst in the Provider's possession, either on its premises or elsewhere during the performance of this Contract, in accordance with the Authority's reasonable security requirements as required from time to time.

(e) The Provider shall be liable for any and all loss of or damage (excluding fair wear and tear) to any Authority Property, unless the Provider is able to demonstrate that such loss or damage was caused by the negligence or default of the Authority. The Provider's liability set out in this Clause shall be reduced to the extent that such loss or damage was contributed to by the negligence or default of the Authority. The Provider shall inform the Contract Manager within [two (2) Business Days] of becoming aware of any defects appearing in or losses or damage occurring to Authority Property made available for the purposes of the Contract.

B1.6 Environmental Requirements

(a) The Provider shall, when working on the Authority's premises, perform this Contract in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.]

B.1 REQUIRED INSURANCE

DRAFTING NOTE – DELETE FROM FINAL DOCUMENT – You should seek further advice from the Council's Insurance & Risk Team when completing this Clause.

B1.1 The following types of insurance at the stated levels of cover are required for this Contract:

- (a) **Public liability insurance** with a limit of indemnity of not less than [ten million Pounds Sterling (£10,000,000) in relation to any one claim or series of claims.
- (b) **Employer's liability insurance** with a limit of indemnity of not less than [ten million Pounds Sterling (£10,000,000) in relation to any one claim or series of claims.

B.2 TRANSFER OF AND DISCHARGE FROM CARE

B2.1 The Provider must comply with any provisions and Transfer of and Discharge from Care Protocols set out in Appendix J (*Transfer of and Discharge from Care Protocols*).

B.3 AMENDMENTS TO THE GENERAL CONDITIONS

B3.1 The following provisions from the General Conditions will be deleted and replaced in their entirety with the modified wording below:

Clause Number in the General Conditions	Original Wording of the Clause	Modified Wording for the Clause under this Contract
GC40.2	The Authority may terminate this Contract or any part of the Service by giving the Provider not less than six (6) months written notice at any time, no earlier than twelve (12) months after the Service Commencement Date.	The Authority may terminate this Contract or any part of the Service by giving the Provider not less than three (3) months written notice at any time.
GC40.3	The Provider may terminate this Contract or any part of the Service by giving the Authority not less than twelve (12) months written notice at any time, no earlier than twelve (12) months after the Service Commencement Date.	The Provider may terminate this Contract or any part of the Service by giving the Authority not less than six(6) months written notice at any time.

B3.2 For the avoidance of any doubt, all remaining provisions of the General Conditions which have not been deleted and/or modified by this Clause B6 shall remain in full force for the duration of the Contract Period, subject to any subsequent deletions or amendments made pursuant to Clause GC30 (*Variations*) of the General Conditions.

SECTION C – APPENDICES

APPENDIX A

SERVICE SPECIFICATIONS

Service Specification No.	KMCPH-004
Service	Smoking Cessation – General Practice and Pharmacy provision
Authority	The Council of the Borough of Kirklees
Provider	
Period	1 st April 2017
Date of Review	31 st March 2018

1. Population Needs

1.1. National/local context and evidence base

Smoking is associated with a wide range of health problems, including various cancers, respiratory diseases and heart disease. For smokers who do give up, the chances of getting a serious or fatal disease are greatly reduced (Department of Health, 2011).

Smoking remains the leading cause of preventable death and disease in England, and is one of the most significant factors that impacts upon health inequalities and ill health, particularly cancer, coronary heart disease and respiratory disease. Treating smoking-related illness is estimated to cost the NHS £2.7bn a year, with the wider economic costs reaching over £13bn once factors such as lost productivity, tobacco and smoking-related house fires are taken into account. Reducing smoking prevalence, therefore; remains a key local public health priority and a national focus (Local Stop Smoking Services Service and delivery guidance, 2014).

In 2008/09, some 463,000 hospital admissions in England among adults aged 35 and over were attributable to smoking, or some 5 per cent of all hospital admissions for this age group. Illnesses among children caused by exposure to second hand smoke lead to an estimated 300,000 general practice consultations and about 9,500 hospital admissions in the UK each year (Department of Health, 2011).

Locally, just over 1 in 10 (12%) Kirklees residents aged 18 years and over smoked, rising to just over 1 in 4 (26%) in Dewsbury West and 1 in 5 (20%) in Dewsbury East, respectively (CLiK Survey, 2016).

In 2016 13% (1 in 8) of all pregnant women in Kirklees smoked at time of delivery. At a locality

level rates are highest in Birstall and Birkenshaw (22%), Spen (16%), Dewsbury (15%) (CLiK Survey, 2016).

Just under 1 in 10 people with COPD (8%) and asthma (15%) (CLiK, Survey, 2016)

Second hand smoke is a major risk to the health of non-smokers, especially children. In 2009, more than 2 in 5 (42%) 14-year olds lived with an adult who smoked. In 2012 37% of smokers in Kirklees reported smoking most of the time when other people were in the house (Kirklees Joint Strategic Assessment, 2013).

Seven out of ten adult smokers say they would like to give up, but due to the addictive nature of nicotine, most find it hard to quit. Nicotine dependence can be assessed using the Fagerstrom test (Lancaster, T. et al, 2004).

Amongst adults aged 16 and over in Great Britain in 2008/09 two thirds (67%) of current smokers reported wanting to give up smoking with 3 in 4 (75%) reporting having tried to give up smoking at some point in the past (Statistics on smoking England, 2012)

Simple advice from a physician can have a small but significant effect on smoking cessation (Lancaster, T. et al, 2004). Advice and/or counselling given by nurses also significantly increase the likelihood of quitting (Hill Rice, V. et al, 2008).

One to one intensive behavioral support (with or without pharmacotherapy) from a trained specialist leads to a 22%-52% quit rate (NHS Information Centre, 2009). A combination of NRT products has been shown to have an advantage over using just one product (Silagy, C. et al, 2004 & Stead, L. et al, 2008) and is considered cost effective (West, R. et al 2000) (NICE, 2008).

2. Key Service Outcomes

2.1. Locally agreed outcomes and quality requirements which are NOT Quality Outcomes Indicators which should be set out in Appendix C (*Quality Outcomes Indicators*)

An Intermediate Service will contribute towards the following outcomes:

- A reduction of people (aged 18 years and over) reporting that they smoke at all from 16% in 2016 (CLiK Survey) to 13% by 2020.
- Reducing the number of women smoking during pregnancy to 11% or less (measured at time of giving birth) by 2018;
- Reducing the inequalities in smoking prevalence between different population groups;
 - Improving access to smoking cessation services, specifically for identified population groups listed in section 3.1

3. Scope

3.1. Aims and objectives of service

To provide an improved service to clients who smoke and want to stop smoking in primary care and other settings and increase choice and flexibility of access to smoking cessation support. This can include any person who meets criteria and wishes to stop smoking, with a particular focus on supporting the following:

- Smokers in areas of high smoking prevalence;
- Women of childbearing age and pregnant women;
- Smokers with long term conditions including mental ill health;
- Smokers in secondary care;
- Routine and manual workers.
- Smokers with Mental Health problems

Kirklees Council will support this by:

- Providing training and supporting GPs, health care professionals and other front line staff working with smokers to provide appropriate support and advice to clients who want to stop smoking. For more information about training please contact publichealthcommissioning@kirklees.gov.uk.
- Providing accredited Intermediate Advisors with a CO monitor for use in their practice. The CO monitor remains the property of Kirklees Council. CO monitors must be maintained and recalibrated 6 monthly as per the attached Standard Operating Procedure. Disposable mouthpieces for the CO monitors are not provided and must be sourced by the provider. The CO monitor must be returned to Kirklees Council if the Intermediate Advisor is no longer practicing.

Provide ongoing peer support and advice via the Wellbeing Tobacco coordinator.

3.2. Service description/pathway

All clients who smoke should be given brief advice to quit and where possible have their smoking status recorded.

This public health contract will fund:

- Services who support clients who have abstained from smoking after setting a quit

date, using either a 4 week quit or the cutting down to quit method. Payment will be made on a quarterly basis, see **Appendix B** for further payment details. The results will be an accumulation of those patients who stop smoking as a result of in-house interventions by a Stop Smoking Service registered advisor.

- Services that offer an intermediate advisor service in line with the minimum standards for stop smoking services set out by the DH in Local Stop Smoking Services: Service and delivery guidance 2014 “(NCSCT) and return correctly completed monitoring forms to Kirklees Council as required by the DH, in time for inclusion in the quarterly report.

Minimum standards:

It is expected the following guidelines will be fulfilled by all service-based intermediate advisors. In order to meet the terms of this public health contract, the service must ensure that;

- The Stop Smoking Intermediate Advisor has available to them a private work area within the setting in which to counsel patients. It is essential that the client and community stop smoking advisor can sit down together, they can talk at normal speaking volumes without being overheard by staff, customers or the public and that the area is clearly signed as a private consultation area, distinct from other public areas.
- An advisor offering stop smoking support should have received appropriate training for their role and be registered with Kirklees Council as an accredited advisor. In addition, it is mandatory to attend at least one of the twice-yearly peer support and networking/update sessions held by Kirklees Council to ensure skills and knowledge are kept up to date. Intermediate advisors can also support their continual professional development by undertaking free online training provided by the (NCSCT) certification accessible at www.ncsct.co.uk
- To offer and implement a public health contract around smoking cessation, personnel need to train to Intermediate Advisor status. This entails completing the e-learning online NCST Training and Assessment Programme in order to achieve NCSCT Certified Stop Smoking Practitioner status (www.ncsct.co.uk). This should then be coupled with a one day face to face training session provided by Kirklees Council. There is scope to take a flexible/bespoke approach to providing this training based on the needs of GP Practices i.e. achieved over two half days and/or the training facilitator providing the training at a specific practice or pharmacy dependant on demand.
- The training programme is built around evidence-based behaviour change techniques

that provide an understanding of the factors involved in smoking and smoking cessation, and include practical interventions that will make a significant difference to the chances of your clients/patients becoming permanent ex-smokers.

- Upon completion of the above training practitioners can then deliver level 2 smoking cessation provision either on a one-one or group basis. In addition, practitioners will be offered the opportunity to undertake a period of shadowing as part of their training. Ongoing peer support will be available to all practitioners.
- For those candidates without the necessary training for Motivating Lifestyle Changes, additional courses around Brief Interventions e-learning via the NCST website www.ncsct.co.uk will be necessary. There is an expectation once personnel are trained as an Intermediate Advisor they will utilise their skills in the setting.
- There should be provision of sufficient Intermediate Advisor time that they are able to offer clients an appointment within 2 weeks of contacting the service.
- Intermediate Advisors can be flexible in their approach to supporting smokers to stop smoking, depending on the needs of the client. This can include either one-one or group based approaches. Advisors can either use the following approaches:
 - Traditional 'stopping in one step' which involves a client quitting smoking within 6 weeks of setting a quit date.
 - Cutting down prior to stopping smoking approach. Clients should be advised that the best approach for their health is to stop smoking completely, but it is recognised this is not possible or realistic for every person. Therefore, a service can support a client using the reducing smoking to quit approach **This should only be used for clients whose CO monitor readings are on or above 30ppm and do not wish to follow the 4 week quit approach once this has been thoroughly discussed. Clients can be supported for a maximum of 2 weeks to reduce their smoking, prior to setting a quit date. This option is not available for pregnant women or under 18 year olds.**
- All smoking cessation interventions should be in accordance with the Local Stop Smoking Services Service and delivery guidance, NCST, 2014 (www.ncsct.co.uk).
- If following the 'stopping in one step' approach, an advisor should offer weekly support for at least the first four weeks of a client's quit attempt. The support could be offered by telephone where appropriate. First appointments should last around 20 minutes and subsequent appointments around 10 minutes.

- If following the ‘cutting down prior to stopping smoking’ approach, an advisor can work flexibly with their client as they reduce their smoking prior to setting a quit date, over a maximum period of 2 weeks. This can include telephone and text support. During the 2 week cutting down period, the client can only be issued with one NRT product. Once a quit date has been set, an advisor should offer weekly support for at least the first four weeks of a client’s quit attempt. First appointments should last around 20 minutes and subsequent appointments around 10 minutes.
- Follow up following the quit day should be attempted for all clients. It is important that the follow up should be carried out promptly.
- Clients should either be seen in person or contacted by telephone for follow up. Up to 3 attempts should be made to reach a client by telephone or letter and recorded on the monitoring form. Any client setting a Quit Date and not contactable on those 3 occasions should be classed as ‘lost to follow-up’ on the monitoring form with evidence of dates when contact was attempted.
- When using a 4 week quit approach, a client should be counted as having successfully stopped smoking if he/she has been completely abstinent from smoking for a period of 2 weeks since 2 weeks after the quit date (i.e. weeks 3 and 4 following the quit day). The rationale behind this definition is to allow a period of ‘grace’ in recognition of the fact that some smokers initially struggle but then are successful in their quit attempt.
- When using a cutting down prior to stopping smoking approach, a client should be counted as having successfully stopped smoking if he/she has reduced their smoking intake over a maximum of 2 weeks prior to quitting, followed by a period of total abstinence for a period of 2 weeks since 2 weeks after the quit date (i.e. weeks 3 and 4 following the quit day). The rationale behind this definition is to allow a period of ‘grace’ in recognition of the fact that some smokers initially struggle but then are successful in their quit attempt.
- In line with what is considered good practice, all advisors should attempt, wherever possible to confirm the smoking status of all clients self-reporting as having quit smoking by the use of a carbon monoxide monitor. A record should be made of whether validation was attempted, and, if successful, the result should be recorded.
- Services should be e-cigarette friendly. Services can provide behavioural support to clients wishing to use unlicensed nicotine containing products (such as e-cigarettes), and where this activity conforms to the Russell Standard it can be reported as part of the national data set.

- The advisor should complete the Public Health monitoring form (Appendix D) fully and accurately and return to the stop smoking service following completion of the 4-week follow-up. This form will, in turn, be used by the commissioner to complete the required DH monitoring. All monitoring forms sent to the stop smoking service should be accompanied by an invoice form for the correct quarterly return at the end of the quarter.
- An in house advisor should not favor one medication over another and pharmacotherapy should be chosen in line with training (past quit attempts and smoking dependency). Clients should be informed of all available (evidence-based) behavioral and treatment options both locally and nationally prior to treatment.
- Interventions should have a clear structure and content which is communicated to clients in advance and to which clients must commit.
- All interventions should be multi-session (total potential client contact time being 1.5 hours in duration) to ensure continued monitoring, client concordance and ongoing access to medication.
- All stop smoking pharmacotherapies should be offered on prescription or voucher to any smoker who is motivated to quit. (Note - A prescription is required for non NRT pharmacotherapy i.e. Zyban or Champix). When a client has not managed to stop smoking there is no definitive period of time required between the end of a treatment episode and the start of another. The Intermediate Advisor should use discretion and professional judgement when considering whether a client is ready to receive support to immediately stop smoking again. However, if they do decide to do this, the client must start a new treatment episode. The existing monitoring form is completed and sent and a new form is started.
- Any professional working within a General Practice, Pharmacy or Dental Practice can be trained as an Intermediate advisor to deliver level 2 smoking cessation provision within primary care. This offer is also open to professionals from other services to help increase capacity in the community setting.
- All pharmacy settings MUST be signed up to the Voucher Scheme service level agreement with Kirklees Council.
- All Nicotine Replacement Therapy supplied to patients to help with their quit attempt should be supplied under the terms and conditions of the Voucher Scheme Service Level Agreement held between Kirklees Council and the participating pharmacy/setting.

- Advisers should adopt an empathic approach to their clients.
- Interventions are to be efficiently managed with sufficient administrative support for general organisation, client contact processes and data handling
- Methods not recommended by NICE will not be funded by Kirklees Council (e.g. hypnotherapy, acupuncture or laser therapy)
- Client records must be kept in accordance with Kirklees Council policy, Caldicott and Data protection Act and must be available for audit purposes as required.
- A provider will need to support at least 12 people in total to quit per year in order to maintain their Intermediate Advisor status. If this number is not achieved then practitioners will be required to undertake a skills refresher provided by Kirklees Council. A period of shadowing is also available to practitioners as part of undertaking the refresher training.
- Providers must ensure that the Public Health Wellbeing Tobacco Coordinator is promptly informed of any change in the providers personnel/circumstances that mean that either more staff need training or the provider is unable to participate in the service.
- The provider must maintain appropriate records to ensure effective ongoing service delivery and audit.
- The provider should prominently display a service poster in the setting to advertise the providers' participation.
- The providers contact details should be widely disseminated to clients and appropriate health professionals.

3.3. Population covered

An intermediate service can be provided by any Practices/Pharmacies/organisation within Kirklees. The eligible population is those who are residents and registered patients within either North Kirklees Clinical Commissioning Group or Greater Huddersfield Clinical Commissioning Group.

While all smokers can be provided with smoking cessation, there are specific population

groups which require specific targeting and applications are welcome from providers who work with these specific groups. These include:

- Smokers in areas or population groups of high smoking prevalence;
- Women of childbearing age and pregnant women;
- Smokers with long term conditions including mental ill health;
- Smokers in secondary care;
- Routine and manual workers.

3.4. Any acceptance and exclusion criteria and thresholds

The intermediate service will be open to all members of the community irrespective of age, disability, ethnicity, faith, gender, sexuality, marital status or civil partnership, status of residence or language spoken (speakers of other languages).

The service will be expected to observe the following principles:

- Clients are treated as individuals and have the right to dignity, privacy and independence;
- Clients are encouraged and enabled to exercise control over the services they receive;
- Services are supportive of clients, their families and carers;
- Services respond appropriately to the changing needs of clients;
- Services ensure that the client is at the centre of their care, using a holistic person centred approach;
- Services support clients to take control of their own health.

3.5. Interdependencies with other services

The intermediate service has interdependencies with the following other services, but not limited to:

- Healthy Child Programme
- Drug and Alcohol Service
- Sexual Health Service.
- Wellness Model (as of April, 2018)
- Maternity Services
- Health Trainers
- Secondary Care

3.6. Any activity planning assumptions

While all smokers can be provided with smoking cessation, there are specific population groups which require specific targeting (section 3.1) and applications are welcome from providers who work with these specific groups.

4. Applicable Service Standards

Applicable national standards e.g. NICE

The service is expected to be compliant with the following NICE guidance and quality standards, as appropriate:

- NICE, Smoking: Harm Reduction, 2015
- NICE, Smoking: reducing and preventing tobacco use, 2015
- NCST, Local Stop Smoking Services: Service and delivery guidance, 2014
- NICE, Smoking: supporting people to stop , 2013
- NICE, Smoking: harm reduction, 2013
- NICE, Smoking: acute, maternity and mental health services, 2013
- NICE, Smokeless Tobacco : South Asian Communities, 2012
- Healthy Lives, Healthy People: A Tobacco Control Plan for England – Summary, March 2011
- NICE, Smoking: stopping in pregnancy and after childbirth, 2010
- Code of Practice for Infections and related guidance, 2010
- NICE Guidance, Stop smoking services, 2008
- NICE, Stop smoking services, 2008
- Health and Social care Act, 2008
- NICE Smoking cessation services in primary care, pharmacies, local authorities and workplaces, particularly for manual working groups, pregnant women and hard to reach communities, 2008
- NICE, Smoking: workplace interventions , 2007
- NICE, Varenicline for smoking cessation, 2007 (reviewed, 2011)
- NICE, Smoking, brief interventions and referrals, 2006
- NICE Guidance on the use of nicotine replacement therapy (NRT) and Bupropion for smoking cessation, 2005

Applicable local standards

- Voucher scheme service level agreement

APPENDIX B

CHARGES

For the purpose of clarity an indicative guide to how the Service Budget is broken down is provided below:

1. Service Value

- a) For the sake of clarity, the table below outlines a full breakdown of the maximum payable value based on activity for [each element of the Service/those Services for which the Authority controls the Service Budget:

Activity	Charge
CO verified quit at 4 weeks	£35
Non-CO verified Quit at 4 weeks	£30
Non-Quit / lost to service	£10
Uplift for targeted quit (from priority group)	£5

The targeted priority groups are;

- Pregnant women
- Routine and manual workers
- Smokers with mental health problems

2. Services Payment

- a) The Service will be paid for on evidence of completion of the Services listed in the Table in Paragraph 1 of this Appendix B above.
- b) Payment for the Service will be made as follows:

i. Activity

One Hundred per cent (100%) of the quarterly Service cost will be made in (4) quarterly instalments on receipt by the Authority's Representative of what is in their reasonable opinion satisfactory evidence outlining the Provider's achievement of the specified activity. This value will be calculated in line with the table in Paragraph 1 of this Appendix B above.

- c) The Provider shall supply the Authority with invoices as follows:

i. **Activity**

The Provider shall supply the Authority with a completed Monitoring Form no later than **ten (10) working days** following the final day of the first quarter (i.e. 30th June 2017), and for every quarter thereafter. This Monitoring form (**Appendix D**) will evidence the activity undertaken within the first quarter, alongside all required monitoring information.

- d) All invoices raised must comply with the requirements set out within Paragraphs 4(a) – (b) of this Appendix B.
- e) Further to the provisions of **Clause GC11** of the General Conditions (**Charges and Payment**), the Authority shall verify all invoices received in a timely fashion, and shall then pay the Provider within thirty (30) calendar days of receipt of a valid invoice to which no genuine dispute exists.

3. **Budget Amendments**

- a) Subject to this paragraph 4 of this Appendix B, the maximum budgets highlighted in paragraph 1 of this Appendix B above are fixed.
- b) If at any time during the life of this Contract the maximum budgets highlighted in paragraph 1 of this Appendix B above need to be reduced as a result of a change of Law which affects the Authority and/or the Service, or due to any financial constraints placed upon the Authority which are outside its reasonable control, then the Authority reserves the right to amend any of the maximum budgets above at any time throughout the lifetime of the Contract.
- c) If at any time during the life of this Contract the Authority reaches the reasonable conclusion that the Provider's annual service costs need to be reduced as a result of a change of Law which affects the Authority and/or the Service, or due to any financial constraints placed upon the Authority which are outside its reasonable control, then the Authority reserves the right, to request in writing that the Provider amends their annual Service cost at any time throughout the lifetime of the Contract.
- d) Should the Authority wish to enforce sub-paragraphs 4(b) or 4(c) above, then the Provider will be informed in writing by the Authorised Representative and the Variation process, as outlined Clause GC30 of the General Conditions (**Variations**) and in Appendix K (**Agreed Variations**), will be adhered to.

4. Invoicing

- a) The Provider should submit an invoice to the Authority at the beginning of each specified time frame in order for the payments to be processed. Clause GC11.3 of the General Conditions (***Charges and Payment***) shall therefore not apply to this Service.
- b) The contents and format of the Provider's invoice must adhere to the Authority's standard requirements for invoices, which are set out in full on the Authority's website at <http://www.kirklees.gov.uk/business/businessWithCouncil/index.aspx>.
- c) The Authority reserves the right to request any breakdown of spending on Staffing, prescription / treatment costs, rent, laboratory services and online testing in addition to the Provider's invoice.
- d) The Provider shall submit, within the deadlines stipulated, to the Authority's Representative, a Financial Report as requested by the Authority's Representative from time to time, prepared on an accruals basis. The statement shall be submitted as prescribed by the Authority's Representative.
- e) The Provider shall be under a general obligation to provide value for money on the expenditure of all funds which derive from the Authority and to work with the Authority to demonstrate value for money.
- f) The Provider shall co-operate with the Authority with the introduction and implementation of any requirements imposed upon the Authority in connection with best value and shall comply with the reasonable instructions and request for information of the Authority's Representative in respect thereof.

APPENDIX C

CONDITIONS PRECEDENT

The Provider must comply with **ALL** of the following

Condition Precedent	Longstop Date
Evidence of completion of Brief interventions training in Smoking Cessation (including 'Very Brief Advice on Smoking' and the 'Practitioner Training: Core Competencies in Helping People Stop Smoking')	[TBC]
Evidence of completion of Intermediate Smoking Cessation Advisor training	[TBC]
Evidence of Insurance as requested in Clause B.2 (Required Insurance) of these Particulars	[TBC]
Evidence of an Organisation Safeguarding Policy in line with the Safeguarding Adults West and North Yorkshire and York Multi-Agency Policy and Procedures	[TBC]
Evidence that Staff who are in direct contact with Children and/or Vulnerable Adults have Enhanced DBS clearance.	[TBC]

APPENDIX D

MONITORING FORM

Please Note; upon successful application an electronic version of the monitoring form will be supplied

LEVEL 2 SMOKING CESSATION SERVICE 2017-2018

INVOICE FROM

Provider Name: _____

Address _____

HOW TO PAY		REFERENCE	
Account Number:		Invoice Number:	
Sort Code:		Invoice Date:	
Account Name:		Internal Use:	PO Number:
Bank Name:			
Bank Address:			

Quarter _____

PAYMENT TARIFF and CLAIM

Activity	Payment	Total Amount
CO verified quit at 4 weeks	£35	
Non-CO verified Quit at 4 weeks	£30	
Non-Quit / lost to service	£10	
Uplift for targeted quit (from priority group)	£5	
Total Amount to Claim:		£

Completed By: _____

Date: _____

Completed monitoring forms and a copy of the invoice can be returned electronically via:

Email: publichealthcommissioning@kirklees.gov.uk

Invoices and monitoring forms should be received no later than 10 working days following the final day c

PLEASE NOTE: Invoices without relevant monitoring forms or incomplete forms will cause delay in payment. Please ensure ALL forms are sent together

Gender
Male
Female

Ethnicity
British
Irish
Any other White background
White and Black Caribbean
White and Black African
White and Asian
Any other Mixed background
Indian
Pakistani
Bangladeshi
Any other Asian background
Caribbean
African
Any other Black background
Chinese
Any other Black background

Socio-economic Groups
Manual/Routine Workers
Pregnant Women
Mental Health
Other

Pharmacotherapy Treatment
Champix
NRT
Zyban
Other

Intervention Type	Intervention Settings
1 to 1 Session	Community Setting
Group Session	GP
	Pharmacy
	Other

APPENDIX E

INFORMATION PROVISION

On a quarterly basis, the Provider will be required to submit a Monitoring form as outlined in ***Appendix D (Monitoring Form)*** above.

The Provider will also meet with the Authority when requested to review performance (see ***Appendix F (Details of Review Meetings)*** below).

Any subsequent changes to the standard approved Monitoring form will only be valid if agreed in accordance with **clause GC30** of the **General Conditions (Variations)** and ***Appendix K (Agreed Variations)*** below.

All Monitoring Forms reports are to be provided in the format of a **Microsoft Excel Spreadsheet**.

Reports must be submitted **electronically** to the Authority's Representative within 10 working days of the end of each relevant quarter at the latest.

APPENDIX F

DETAILS OF REVIEW MEETINGS

The following sets out the Terms of Reference for the Quarterly Review Meetings to be held for the Provision of Community Smoking Cessation.

Purpose and Objectives:

- The meeting will occur on a yearly basis, or as requested by the commissioner, on or around the time of the anniversary of the Service Commencement Date, unless otherwise agreed in writing by both the Authority and the Provider.
- The meeting will consist of officers who are responsible for operational matters of both the Authority and the Provider
- The meeting is to provide a regular and structured environment to discuss the provision.
 - At minimum, the meeting is expected to cover:
 - Success or Failure in achieving the required standards as outlined within the service specification, including proposals of how the Provider intends to remedy and mitigate against and future failures going forward.
 - Discussions relating to any Incidents or Complaints during the previous annual period, including full details of all such Complaints and/or Incidents were resolved.
 - Where required, discussions relating to the results of any Service User, Carer and/or Staff Surveys carried out during the previous annual period, and any proposed action as a result of such Surveys.
 - Discussions around any proposed Budget Amendments in accordance with **clause GC30** of the **General Conditions (Variations)** and **Appendix K (Agreed Variations)** below.
 - Discussions around any proposed Service Amendments in accordance with **clause GC30** of the **General Conditions (Variations)** and **Appendix K (Agreed Variations)** below.

- Discussions around any new and/or on-going disputes, subject to **Appendix L (Dispute Resolution)** below

Chair of the meeting:

Unless otherwise agreed by both parties at the start of the relevant meeting, the Chair of the meeting will normally be the Authority's Representative (or their duly appointed proxy and/or representative attending the meeting in their stead) and will be responsible for the smooth running of the meeting and provide secretariat responsibilities.

Attendance:

The meetings will be arranged by the Authority's Representative and will only take place should at least one (1) representative from the operational areas of both the Authority and the Provider are in attendance.

Should this not be possible, the meeting will be re-arranged to occur no later than **two (2) weeks** after the original date and it is both parties responsibility to ensure adequate representation is made available.

Location of the Meeting:

The meetings will be hosted by the Provider and should occur at the venue predominantly used for the delivery of the contract.

Documentation of the meeting:

The Provider shall maintain and make available at the meeting all relevant information pertaining to the Activity Performance of the service.

Should this not be possible the Authority's Representative should be informed no later than one (1) week prior to the planned meeting. In this event, the Authority reserves the right to amend the review meeting date and requires the Provider's acceptance of this change.

The Authority's Representative (in their capacity as Chair) will be responsible for minuting each and every meeting. All minutes taken of the meeting will be forwarded to all parties within two (2) weeks of the meeting taken place.

Any queries of accuracy of these minutes should be raised within one (1) week of this circulation; otherwise the shared minutes will be accepted as a true and accurate record of the meeting.

Decision making at the meetings:

All decisions made at the review meeting will be made by consensus between the Provider's and the Authority's representatives in attendance at the meeting.

Should any decision brought to the review meeting need escalating due to inability for the Authority and Provider to agree, this will be resolved in line with **clause GC 37 (Contract Management)**, and if necessary **clause GC 38 (Dispute Resolution)** of the **General Conditions** and **Appendix L (Dispute Resolution)** below.

APPENDIX G

SERVICE USER, CARER AND STAFF SURVEYS

TBA

APPENDIX H

SAFEGUARDING POLICIES

The Provider should ensure that they have a valid and up-to-date children and vulnerable adults' policy in place, which they must send to Authority prior to the commencement of the Contract.

The Provider shall ensure all members of their Staff are aware of, trained to a level appropriate to their role and abide by guidance and legislation on safeguarding (children and adults).

In addition to its own safeguarding policy appended to this Appendix H, the Provider shall comply with each of the Authority's local policies and procedures for safeguarding children and adults, including the local multi-agency policy, as amended from time to time:

- West Yorkshire Safeguarding Children's Board procedures:
<http://westyorkscb.proceduresonline.com/index.htm>;
- West Yorkshire Multi-Agency Safeguarding Adults policy and procedures:
<http://www.kirklees.gov.uk/community/yourneighbourhood/crimeSafety/pdf/safeguardingAdultPolicyProcedures.pdf>

The Provider is also advised to review safeguarding pages of the Authority's website on a regular basis:

- <http://www.kirklees.gov.uk/community/yourneighbourhood/crimeSafety/safeguardingAdults.aspx>
- <http://www.kirkleessafeguardingchildren.co.uk/>

At the reasonable written request of the Authority and by no later than ten (10) Business Days following receipt of such request, the Provider shall provide evidence to the Authority that it is addressing any safeguarding concerns raised through the relevant multi-agency reporting systems.

If requested by the Authority, the Provider shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.

The Provider is required to comply with the safeguarding standards set out below:

- The Service will adhere to established safeguarding assessment procedures to identify vulnerable children and adults.

- The Service will adhere to established safeguarding referral pathways, management and joint working practices identified within agreed multi-agency procedures as identified within the agreed West Yorkshire Multi-agency Policies for Safeguarding Adults.
- Ensure that all policies and procedures are consistent with legislation / guidance in relation to Mental Capacity Act 2005 and consent, and that Staff practice in accordance with these policies.

**Annex to Appendix H
Provider's Safeguarding Policy**

[Please append Safeguarding Children and Vulnerable Adults' Policy of Provider, which you should request as part of your Tender/Quotation/Application process]

APPENDIX I

INCIDENTS REQUIRING REPORTING PROCEDURE

The Provider will be required to produce a quarterly summary report from the Service Commencement Date providing full details of all complaints and how they were resolved.

The Provider will have awareness of and will respond to infectious diseases, outbreaks and other threats to health. A clinical governance report will be submitted to the Authority on an annual basis and full details of any ***Serious Untoward Incidents (SUIs)*** will be communicated without delay to the Authority.

Any critical SUIs which relate to this Contract should be reported to the Authority immediately.

The Provider must comply with the arrangements for notification of deaths and other incidents to CQC in accordance with CQC regulations and Guidance (where applicable) and to any other Regulatory Body, and NHS Body, any office or agency of the Crown or to any other appropriate regulatory or official body in connection with Serious Incidents, or in relation to the prevention of SUIs (as appropriate), in accordance with Good Practice and Law

The Parties must comply with their respective obligations (if any) in relation to deaths and other incidents under Clause GC18 of the General Conditions (***Incidents Requiring Reporting***).

If a notification the Provider gives to any Regulatory Body directly or indirectly concerns any Service User, the Provider must send a copy of it to the Authority.

The Authority will have complete discretion (subject only to the provisions of the Data Protection Act 1998) to use the information provided by the Provider under this Section in any report which they make to any Regulatory Body, and NHS Body, any office or agency of the Crown, or to any other appropriate regulatory or official body in connection with Serious Incidents, or in relation to the prevention of Serious Incidents, provided that in each case they notify the Provider of the information disclosure and the body to which they have disclosed it.

As per Clause GC18 of the General Conditions (***Incidents Requiring Reporting***), the Provider must consider and respond to the recommendations arising from any audit, Serious Incident or Patient Safety Incident Report.

APPENDIX J

TRANSFER OF AND DISCHARGE FROM CARE

1. For the purposes of this Appendix J, the following definitions and rules of interpretation shall apply:

1983 Act means the Mental Health Act 1983.

1983 Act Code means the 'code of practice' published by the Department of Health under section 118 of the 1983 Act.

2014 Act means the Care Act 2014

Carer means a family member or friend of the Service User who provides day-to-day support to the Service User without which the Service User could not manage.

Discharge Summary means a summary of information relevant to the Service User to be produced by the Provider in accordance with the relevant Transfer of and Discharge from Care Protocol.

GP means a general medical practitioner or general dental practitioner registered on the performers list prepared, maintained and published in accordance with regulations made under sections 91 and 106 of the National Health Service Act 2006.

LD Guidance means the model of care set out in the Department of Health publication Transforming care: a national response to Winterbourne View hospital (December 2012), and guidance issued by NHS England from time to time in relation to or pursuant to it available via: <http://www.england.nhs.uk/ourwork/qual-clin-lead/ld/transform-care/>.

Legal Guardian means an individual who, by legal appointment or by the effect of a written law, is given custody of both the property and the person of one who is unable to manage their own affairs.

Transfer and Discharge Guidance and Standards means:

- Care and support statutory guidance (<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>); and

Transfer of and Discharge from Care Protocols means the protocols (to include all locally-agreed requirements in respect of information to be provided to the Service User and/or Referrer relating to updates on progress through the care episode, transfer and discharge) set out at in Annex A of this Appendix J.

2. The Provider must comply with the Transfer of and Discharge from Care Protocols and all relevant Law and guidance including Act 1983, the 1983 Act Code, the 2014 Act and LD Guidance and Transfer and Discharge Guidance) relating to transfer of and discharge from care.
3. The Provider and the Authority must each use their best efforts to support safe, prompt discharge from support and to avoid circumstances and transfers and/or discharges likely to lead to recommencement of support or emergency admissions to NHS care.
4. Before the transfer of a Service User to another Service under this Contract and/or before a Transfer of Care or discharge of a Service User, the Provider must liaise, as appropriate, with any relevant third party health or social care provider, and with the Service User and any Legal Guardian and/or Carer, to prepare and agree a Care Transfer Plan. The Provider must implement the Care Transfer Plan when delivering the further Service, or transferring and/or discharging the Service User, unless (in exceptional circumstances) to do so would not be in accordance with Good Practice.
5. Where, in the course of delivering Support to a Service User, the Provider becomes aware of any matter or requirement pertinent to that Service User's ongoing care and treatment which would necessitate the Service User's GP taking prompt action, the Provider must communicate this by issue of a Letter to the Service User's GP. The Provider must send the Letter as soon as reasonably practicable and in any event within ten (10) days (with effect from 1 April 2018, within seven (7) days) following the Service User's attendance.
6. Where a Service User has a clinical need for medication to be supplied on discharge from support, the Provider must ensure that the Service User will have on discharge an adequate quantity of that medication to last:
 - a) for the period required by local practice, in accordance with any requirements set out in the Transfer of and Discharge from Care Protocols (but at least seven (7) days); or
 - b) (if shorter) for a period which is clinically appropriate.

8. The Provider must supply that quantity of medication to the Service User itself, except to the extent that the Service User already has an adequate quantity and/or will receive an adequate supply via an existing repeat prescription from the Service User's GP or other primary care provider.

APPENDIX K

AGREED VARIATIONS

*NB - No Variation to this Contract during the Contract Period will be valid or of any effect unless agreed in writing by the Authority Representative (or his nominee) and the Provider Representative (or his nominee) using the form of Variation Notice below in accordance with Clause A5 of the Particulars (**Notices**) and Clause GC30 of the General Conditions (**Variations**).*

Each and every Variation agreed by the Parties during the Contract Period shall form a separate addendum to this Contract and shall be inserted/recorded here in this Appendix K.

FORM OF VARIATION NOTICE

NO. [Insert sequential number for each Variation Notice]

This notice is a Variation Notice under Appendix K of the Agreement for **PROVISION OF COMMUNITY SMOKING CESSATION SERVICES** (KMCPH-004) between [Insert Provider Name] and **THE COUNCIL OF THE BOROUGH OF KIRKLEES** dated [Insert Date of Contract].

Title

Originator

Date

Variation

Details

Reason

Price Adjustments

Outstanding Discussions

Timetable

Impact

Period of Validity

Signed on behalf of THE COUNCIL OF THE BOROUGH OF KIRKLEES

Signature _____

Date _____

Signature _____

Date _____

Signed on behalf of [insert provider name]

Signature

Date

APPENDIX L

DISPUTE RESOLUTION

Part 1 of Appendix L – Dispute Resolution Process

1. **ESCALATED NEGOTIATION**

1.1 Except to the extent that any injunction is sought relating to a matter arising out of Clause GC47 of the General Conditions (***Confidentiality***), if any Dispute arises out of or in connection with this Contract, the Parties must first attempt to settle it by either of them making a written negotiation offer to the other, and during the five (5) Business Days following receipt of the first such offer (the “**Negotiation Period**”) each of the Parties shall negotiate in good faith and be represented:

1.1.1 for the first five (5) Business Days, by a senior person who where practicable has not had any direct day-to-day involvement in the matter that led to the Dispute and has authority to settle the Dispute; and

1.1.2 for the last five (5) Business Days, by its chief executive, director, or board member who has authority to settle the Dispute,

provided that no Party in Dispute where practicable shall be represented by the same individual under paragraphs 1.1.1 and 1.1.2.

2. **MEDIATION**

2.1 If the Parties are unable to settle the Dispute by negotiation, they must within five (5) Business Days after the end of the Negotiation Period submit the Dispute to mediation by CEDR or other independent body or organisation agreed between the Parties and set out in Part 2 of this Appendix L.

2.2 The Parties will keep confidential and not use for any collateral or ulterior purpose all information, whether given orally, in writing or otherwise, arising out of or in connection with any mediation, including the fact of any settlement and its terms, save for the fact that the mediation is to take place or has taken place.

2.3 All information, whether oral, in writing or otherwise, arising out of or in connection with any mediation will be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever.

3. **EXPERT DETERMINATION**

- 3.1 If the Parties are unable to settle the Dispute through mediation, then either Party may give written notice to the other Party within ten (10) Business Days of closure of the failed mediation of its intention to refer the Dispute to expert determination. The Expert Determination Notice must include a brief statement of the issue or issues which it is desired to refer, the expertise required in the expert, and the solution sought.
- 3.2 If the Parties have agreed upon the identity of an expert and the expert has confirmed in writing his readiness and willingness to embark upon the expert determination, then that person shall be appointed as the Expert.
- 3.3 Where the Parties have not agreed upon an expert, or where that person has not confirmed his willingness to act, then either Party may apply to CEDR for the appointment of an expert. The request must be in writing, accompanied by a copy of the Expert Determination Notice and the appropriate fee and must be copied simultaneously to the other Party. The other Party may make representations to CEDR regarding the expertise required in the expert. The person nominated by CEDR will be appointed as the Expert.
- 3.4 The Party serving the Expert Determination Notice must send to the Expert and to the other Party within five (5) Business Days of the appointment of the Expert a statement of its case including a copy of the Expert Determination Notice, the Contract, details of the circumstances giving rise to the Dispute, the reasons why it is entitled to the solution sought, and the evidence upon which it relies. The statement of case must be confined to the issues raised in the Expert Determination Notice.
- 3.5 The Party not serving the Expert Determination Notice must reply to the Expert and the other Party within five (5) Business Days of receiving the statement of case, giving details of what is agreed and what is disputed in the statement of case and the reasons why.
- 3.6 The Expert must produce a written decision with reasons within thirty (30) Business Days of receipt of the statement of case referred to in paragraph 1.9, or any longer period as is agreed by the Parties after the Dispute has been referred.
- 3.7 The Expert will have complete discretion as to how to conduct the expert determination, and will establish the procedure and timetable.
- 3.8 The Parties must comply with any request or direction of the Expert in relation to the expert determination.

- 3.9 The Expert must decide the matters set out in the Expert Determination Notice, together with any other matters which the Parties and the Expert agree are within the scope of the expert determination. The Expert must send his decision in writing simultaneously to the Parties. Within five (5) Business Days following the date of the decision the Parties must provide the Expert and each other with any requests to correct minor clerical errors or ambiguities in the decision. The Expert must correct any minor clerical errors or ambiguities at his discretion within a further five (5) Business Days and send any revised decision simultaneously to the Parties.
- 3.10 The Parties must bear their own costs and expenses incurred in the expert determination and are jointly liable for the costs of the Expert.
- 3.11 The decision of the Expert is final and binding, except in the case of fraud, collusion, bias, or material breach of instructions on the part of the Expert at which point a Party will be permitted to apply to Court for an Order that:
- 3.11.1 the Expert reconsider his decision (either all of it or part of it); or
- 3.11.2 the Expert's decision be set aside (either all of it or part of it).
- 3.12 If a Party does not abide by the Expert's decision the other Party may apply to Court to enforce it.
- 3.13 All information, whether oral, in writing or otherwise, arising out of or in connection with the expert determination will be inadmissible as evidence in any current or subsequent litigation or other proceedings whatsoever, with the exception of any information which would in any event have been admissible or disclosable in any such proceedings.
- 3.14 The Expert is not liable for anything done or omitted in the discharge or purported discharge of his functions, except in the case of fraud or bad faith, collusion, bias, or material breach of instructions on the part of the Expert.
- 3.15 The Expert is appointed to determine the Dispute or Disputes between the Parties and his decision may not be relied upon by third parties, to whom he shall have no duty of care.

Part 2 of Appendix L - Nominated Mediation Body

*[If other mediation body is agreed under paragraph 2.1 of Part 1 of Appendix L, insert details of body here **before** you issue the final Contract to the Provider]*

Part 3 of Appendix L - Recorded Dispute Resolutions

[Insert]

APPENDIX M

SUCCESSION PLAN

*NB – Any Succession Plan agreed between the parties in accordance with Clause GC41 of the General Conditions (**Consequences of Termination**) must be inserted here.*

[Insert agreed Succession Plan]

APPENDIX N

DATA PROTECTION SCHEDULE

Part A - General Information Governance Requirements

1. Notwithstanding any of their respective obligations under the Contract (including the Appendices), the Parties acknowledge their respective obligations arising under:

- (a) the DPA;
- (b) the CQC Regulations;
- (c) the common law duty of confidentiality;
- (d) the Confidentiality NHS Code of Practice;
- (e) the NHS Care Record Guarantee for England;
- (f) the Social Care Record Guarantee for England;
- (g) the international information security standard: ISO/IEC 27002: 2005;
- (h) the Information Security NHS Code of Practice;
- (i) the Records Management NHS Code of Practice;
- (j) the FOIA;
- (k) the EIR
- (l) the Human Rights Act 1998 article 8; and
- (m) the Code of Practice for the Management of Confidential Information (to be published in 2013),

and must assist each other as necessary to enable each other to comply with these obligations.

2. The Provider will, at no cost to the Authority, adopt and use the NHS Information Governance Toolkit (or equivalent) and it shall be fully effective and operational for the duration of the Contract Period. Where the Provider is not set up to use the NHS Information Governance Toolkit (or any equivalent) prior to or on the Service Commencement Date, the Provider will use its reasonable endeavours to achieve any certification for the NHS Information Governance Toolkit (or equivalent) as early into the Contract as possible, and in any event by the date agreed with the Authority's Representative. The Provider shall keep the Authority informed at all times as to the progress it has made in achieving necessary certification, and shall supply such documentary evidence as the Authority's Representative may reasonably require as evidence of the Provider's obligations under this section of this Appendix N.
3. The Provider must then complete and publish an annual information governance assessment using the NHS Information Governance Toolkit every year during the Contract Period.
4. The Provider must also nominate:
 - (a) an Information Governance Lead, to be responsible for information governance and for providing the Provider's board of directors, governing body, executive team or any other body having overall responsibility for the actions of the Provider with regular reports on information governance matters, including details of all incidents of data loss and breach of confidence;
 - (b) nominate a Caldicott Guardian in accordance with the provisions of Clause GC20 of the General Conditions (***Service User Health Records***); and
 - (c) a Senior Information Risk Owner, each of whom must be a member of the Provider's board of directors, governing body, executive team or any other body having overall responsibility for the actions of the Provider,and ensure that the Authority is kept informed at all times of the identities of the Information Governance Lead, Caldicott Guardian and the Senior Information Risk Owner. The Provider must adopt and implement the recommendations of the Caldicott Information Governance Review and the Response to Caldicott.
5. The Provider must, at least once in each Contract Year, audit its practices against quality statements regarding data sharing set out in NICE Clinical Guideline 138.
6. The Provider must achieve a minimum level 2 performance against all requirements in the relevant NHS Information Governance Toolkit.

7. The Provider must report and publish any Data Breach and any Information Governance Breach in accordance with IG Guidance for Serious Incidents.

Part B - Provider's Data Protection Obligations and Warranties where the Provider is the Data Controller

8. The Parties acknowledge that:
 - (a) in relation to Personal Data processed by the Provider for the purpose of delivering the Services under the Contract, the Provider will be sole Data Controller; and
 - (b) in relation to Personal Data required by the Authority for the purposes of quality assurance, performance management and contract management, both the Authority and the Provider will be joint Data Controllers.
9. Where both Parties are Joint Data Controller:
 - (a) both Parties must, as soon as reasonably practicable after the Commencement Date of the Contract, determine in a transparent manner their respective roles, responsibilities and/or obligations with regards to the processing said Personal Data, including (but not strictly limited to):-
 - i. their respective relationships with Data Subjects;
 - ii. a point of contact for Data Subjects; and
 - iii. how the nature of the arrangement between the Parties will be communicated to Data Subjects; and
 - (b) both Parties must ensure that all Personal Data processed by them under this Agreement is processed in accordance with the relevant the Party's or Parties' responsibilities and/or obligations agreed under paragraph 9(a) above, the Data Protection Legislation, or otherwise
10. Notwithstanding and without prejudice to the general obligations under paragraph 9 above, both Parties acknowledge and agree that irrespective of whatever roles, responsibilities and/or obligations are agreed between them in accordance with paragraph 9(a) above, any Data Subject may exercise their rights under Data Protection Legislation in respect of and against each of the Parties.

11. Notwithstanding and without prejudice to the general obligations under paragraph 9 above, Provider's obligations in relation to Personal Data processed by the Provider in the course of delivering the Services include:
 - (a) publishing, maintaining and operating policies relating to confidentiality, data protection and information disclosures that comply with the Law, the Caldicott Principles and Good Industry Practice;
 - (b) publishing, maintaining and operating policies that describe the personal responsibilities of Staff for handling Personal Data and applying those policies conscientiously;
 - (c) publishing, maintaining and operating a policy that supports the Provider's obligations under the NHS Care Records Guarantee;
 - (d) publishing, maintaining and operating agreed protocols to govern the disclosure of Personal Data;
 - (e) where appropriate having a system in place and a policy in relation to the recording of any telephone calls or other telehealth consultations in relation to the Services, including the retention and disposal of those recordings.
12. Notwithstanding and without prejudice to the general obligations under paragraph 9 above, the Provider must have in place a communications strategy and implementation plan to ensure that Service Users are provided with, or have made readily available to them, the information specified in paragraph 2(3) of Part II of Schedule 1 DPA.
13. Where the Authority requires information for the purposes of quality management of care processes, the Provider must provide anonymised, pseudonymised or aggregated data, and must not disclose that Personal Data to the Authority for those purposes without written consent or some other lawful basis for disclosure.
14. Where the Parties disclose Data to one another, it must either be anonymised, pseudo-anonymised or aggregated data, or, otherwise must not be disclosed without the written consent of the relevant Data Subject or some other lawful basis for disclosure and must comply with this Schedule.
15. The Provider must (unless it can lawfully justify non-disclosure) disclose defined or specified confidential patient information to or at the request of the Authority where support has been provided under the Health Service (Control of Patient Information) Regulations 2002, respecting any individual Service User's objections and complying with other conditions of the relevant approval.

Part C - Provider's Data Protection Obligations and Warranties where the Provider is the Data Processor

16. Where the Provider, in the course of delivering the Services, acts as a Data Processor on behalf of the Authority, the Provider warrants that:
- (a) it will only Process the Personal Data on instruction from the Authority and in particular (without limitation) will:
 - i. not allow the Personal Data to be seen by any third party other than in accordance with paragraph 29 of this Schedule below (if no entity is specified as a Third Party within **Tables A and B** the '**Appendix to Data Protection Schedule**' below then the Provider shall not pass the Personal Data to any third party); and
 - ii. delete or amend the Personal Data pursuant to this Contract or otherwise (only) on the documented instructions of the Authority. The Provider shall ask the Authority whether it should destroy Personal Data where the Provider has reason to believe that it may be storing the Personal Data for longer than a Data Controller would be able to keep it in compliance with the fifth principle of the DPA; and
 - iii. perform its obligations in accordance with the Data Protection Legislation and related guidance from the Office of the Information Commissioner; and
 - iv. comply with any systems or procedures which the Authority may introduce from time to time in respect of the Processing of the Personal Data;
 - (b) taking into account the nature of the processing, it will implement all such technical and organisational measures as may be appropriate to enable it to securely Process the Personal Data in compliance with obligations equivalent to those imposed on the Authority by the Seventh Principle of the DPA, and to ensure the rights of Data Subjects;
 - (c) taking into account the nature of the processing, it will as soon as reasonably practicable after a written request from the Authority:
 - i. provide such information as is reasonably necessary to enable the Authority to satisfy itself of the Provider's compliance with this Data Protection Schedule or a Third Party's compliance with its Third Party Agreement;

- ii. allow (or arrange permission for) the Authority, its employees or authorised agents or advisers, reasonable access to any relevant premises (including those of a Third Party), during normal business hours, to inspect the procedures and measures that are in place to comply with this Data Protection Schedule provided that the Authority agrees to carry out such inspection with minimum disruption to the Provider's (or Third Party's) day to day business;
- (d) it will not Process Personal Data outside of the European Economic Area (or any country deemed adequate by the Commission pursuant to Article 25(6) of Directive 95/46/EC) without the prior written consent of the Authority, unless required to do so under Law;
- (e) taking into account the nature of the processing, it will fully co-operate with the Authority in complying with any Data Subject access request and/or responding to any enquiry made, or investigation or assessment of Data Processing initiated by the Information Commissioner in respect of the Personal Data. The Provider will be entitled to recover its reasonable costs of providing such assistance from the Authority;
- (f) taking into account the nature of the processing, it will:
 - i. verify the identity of its employees and their eligibility to work in the UK and in relation to those of its employees who may handle Personal Data;
 - ii. verify their competency to handle personal data securely;
 - iii. obtain suitable references regarding their ability and trustworthiness;
 - iv. ensure that they are appropriately trained and are fully aware of the obligations imposed on the Provider by this Schedule; and
 - v. ensure that they have committed themselves to confidentiality or are under appropriate statutory obligation of confidentiality;
- (g) it will bring an end to any Information Loss and shall use its Best Endeavours to, as appropriate, recover and/or destroy Personal Data that has escaped from its control. The Provider shall notify the Authority forthwith if there has been any actual or suspected Information Loss;

- (h) (without prejudice to the generality of sub-paragraph 16(b) of this Schedule above) it will store Personal Data securely (for example, without limitation, encrypting the Personal Data appropriately, maintaining anti-Malware technology, taking measures against digital eavesdropping and operating reasonable data back-up processes all in accordance with Good Industry Practice);
 - (i) pass all or any Personal Data held on behalf of the Authority to the Authority as soon as reasonably practicable after a request from the Authority to do so;
 - (j) immediately notify the Authority after becoming aware of a Personal Data breach.
17. The Provider will at all times comply with any agreement between the Authority and any Data Subject who is the subject of Personal Data in relation to any Processing which causes or is likely to cause substantial and unwarranted damage or distress to the Data Subject; or any requirement of the Information Commissioner relating directly or indirectly to the Personal Data; or any Court order requiring the rectification, blocking, erasure or destruction of any Personal Data notified to the Provider by the Authority in writing from time to time. For the avoidance of doubt Part C of this Schedule does not affect the Parties' agreement that the Provider will follow the Authority's instructions in relation to general compliance with the fifth data principle (such as, without limitation, to update Personal Data).

Part D - Records

18. The Provider shall keep the records specified in **Table C** in the '**Appendix to this Schedule**' safely and securely for the period of time specified in the related the retention periods set out in that **Table C**.
19. Subject to any special requirements set out in **Table C** in the '**Appendix to this Schedule**', the records specified in paragraph 18 above must contain the following minimum information:
- (a) the name(s) and contact details of:
 - i. the Data Controller;
 - ii. any joint Controller;
 - iii. the Data Controller's representative and data protection officer (if any);
 - iv. the Data Processor;

- v. the Data Processor's representative and data protection officer (if any);
- (b) the purpose and categories of processing being carried out by the Data Processor on behalf of the Data Controller;
- (c) the categories of Data Subjects and Personal Data;
- (d) the categories of recipients to whom the Personal Data has been and/or will be disclosed to, including any recipients in third countries or international organisations (including the identification of that third country or international organisation and details of any appropriate safeguards in place);
- (e) the envisaged retention periods for each category of Personal Data;
- (f) a general description of the technical and organisational security measures taken in respect of the Personal Data being stored,

PROVIDED THAT the requirements set out in this Paragraph 19 above will not apply if the Provider's organisation employs less than two hundred and fifty (250) persons, **UNLESS** any processing being carried out by such an organisation on behalf of the Authority:

- (g) is likely to result in a risk for the rights and freedoms of a Data Subject;
- (h) is not occasional; or
- (i) includes Sensitive Personal Data.

20. Subject to any special requirements set out in **Table C** in the '**Appendix to this Schedule**', the records specified in Paragraph 19 above must be in writing (including in electronic format).

21. Upon request, the Provider shall make the records available to the Authority.

22. For the avoidance of doubt, the parties acknowledge that all the Personal Data processed in accordance with Part C of this Schedule is the property of the Authority. Subject to paragraph 18 above, following termination of the Services, howsoever arising, the Provider shall in relation to that data:

- (a) at the request of the Authority pass the Personal Data to the Authority within a reasonable time and at no charge; and

- (b) may continue keep copies of the data and to Process the Personal Data only for so long as may be necessary for the purpose of defending any legal proceedings that may be brought against the Provider by any person or body in relation to the Services or as is required by law or any regulatory body or recommended by any relevant UK governmental code of practice;
- (c) the Provider will not otherwise retain any copy, abstract, précis or summary of any Personal Data and will Destroy its data acquired as part of the performing the Services accordingly on the expiry of the later of:
 - i. for so long as may be necessary for the purpose of defending any legal proceedings that may be brought against the Provider by any person or body in relation to the Services or as is required by law or any regulatory body or recommended by any relevant UK governmental code of practice; or
 - ii. the expiry of the relevant Services; or
 - iii. the period referred to in paragraph 18 above.

Part E – Sharing Data (i.e. Where both Parties are Data Controllers)

23. The Parties acknowledge that the act of sharing data is processing of that data, both for the action of giving the data and the action of receiving of it. The Parties shall share data in accordance with the Data Protection Legislation. Once data has been shared the Parties will retain the data as data controllers in accordance with the Data Protection Legislation and their own information governance policies and any agreement between the Parties.
24. The Authority may pass Sensitive Personal Data to the Provider in order to facilitate the operation of this Contract without any further agreement with the Provider where:
- (a) it has the explicit consent of the Data Subject to do so; or
 - (b) in order to protect the vital interests of the Data Subject or another person, in a case where:
 - i. consent cannot be given by or on behalf of the Data Subject, or
 - ii. the data controller cannot reasonably be expected to obtain the consent of the Data Subject; or

- (c) in order to protect the vital interests of another person, in a case where consent by or on behalf of the Data Subject has been unreasonably withheld;
- (d) data processing is necessary for medical purposes and is undertaken by:
 - i. a health professional; or
 - ii. a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if that person were a health professional.

In this paragraph 24, “**medical purposes**” includes the purposes of preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of healthcare services.

25. The Authority may pass personal data other than Sensitive Personal Data to the Provider in order to facilitate the operation of this Contract without any further agreement with the Provider where:
- (a) The Data Subject has given his or her consent to the processing.
 - (b) The processing is necessary:
 - i. for the performance of a contract to which the Data Subject is a party, or
 - ii. for the taking of steps at the request of the Data Subject with a view to entering into a contract.
 - (c) The processing is necessary in order to protect the vital interests of the Data Subject.
 - (d) The processing is necessary for compliance with any legal obligation to which the Authority is subject, other than an obligation imposed by the Contract.

26. The Provider must pass information in accordance with the following. The Provider shall:

- (a) provide the information specified in this Part E of this Schedule and (where applicable) in Clauses GC6 (***Service and Quality Outcomes Indicators***), GC7.3 (***Service User Involvement***), GC17 (***Safeguarding Children and Vulnerable Adults***), GC18 (***Incidents Requiring Reporting***), GC20 (***Service User Health Records***), GC21 (***Information***), GC24 (***Complaints***), GC25 (***Service Review***) GC37 (***Contract Management***), GC49 (***Freedom of Information and Transparency***), GC61 (***Health and Safety***), and GC62 (***Emergency Preparedness, Resilience and Response***) of the General Conditions, Clauses B2 (***TUPE and Pensions***) and B5 (***Transfer of and Discharge From Care***) of the Special Conditions, and Appendices D (***Service Performance Indicators***), E (***Information Provision***), F (***Details of Review Meetings***), G (***Staff, Carer and Service User Surveys***), H (***Safeguarding Policies***) I (***Incidents Requiring Reporting Procedure***), J (***Transfer of and Discharge from Care***), and L (***Dispute Resolution***) attached the Particulars to the Authority:
- i. with the frequency, in the format, by the method (incorporating appropriate safeguards), and within the time period set out or referred to Part E of this Schedule and (where applicable) in Clauses GC6 (***Service and Quality Outcomes Indicators***), GC7.3 (***Service User Involvement***), GC17 (***Safeguarding Children and Vulnerable Adults***), GC18 (***Incidents Requiring Reporting***), GC20 (***Service User Health Records***), GC21 (***Information***), GC24 (***Complaints***), GC25 (***Service Review***) GC37 (***Contract Management***), GC49 (***Freedom of Information and Transparency***), GC61 (***Health and Safety***), and GC62 (***Emergency Preparedness, Resilience and Response***) of the General Conditions, Clauses B2 (***TUPE and Pensions***) and B5 (***Transfer of and Discharge From Care***) of the Special Conditions, and Appendices D (***Service Performance Indicators***), E (***Information Provision***), F (***Details of Review Meetings***), G (***Staff, Carer and Service User Surveys***), H (***Safeguarding Policies***) I (***Incidents Requiring Reporting Procedure***), J (***Transfer of and Discharge from Care***), and L (***Dispute Resolution***) attached the Particulars which shall also set out the legal basis for sharing and the condition in Schedule 2 of the DPA which applies (and the condition in Schedule 3 which applies, where the data is sensitive personal data); and
 - ii. if there is no applicable time period identified, in a timely manner; and
 - iii. implement any other datasets and information requirements agreed from time to time between it and the Authority; and
 - iv. also comply with the Law, in relation to protection of Sensitive Personal Data and Personal Data (as applicable); and

- v. comply with the Law and Guidance on the use and disclosure of personal confidential data for other than direct care purposes.
27. Either Party may request from the other Party any information in addition to that to be provided under this Part E which the Party reasonably and lawfully requires in relation to this Contract. However, the parties will negotiate the terms of a data sharing agreement in relation to such data sharing in good faith and execute that agreement before such data is shared.
28. The Parties must ensure that any information provided to any other Party in relation to this Contract is accurate and complete.
29. The exception to the restriction contained in paragraph 16(a)(i) above of this Schedule is (only) on the following bases:
- (a) The Authority authorises the Provider to pass any type of Personal Data specified in the **Table A** of the '**Appendix to Data Protection Schedule**' below to the relevant Third Party, provided always that:
 - i. such Personal Data is passed to the Third Party pursuant to a Third Party Agreement; and
 - ii. in a manner that will enable the Third Party to comply with its obligations under the Third Party Agreement; and
 - iii. the Provider monitors (and where appropriate enforces) the Third Party's compliance with the Third Party Agreement's Personal Data protection provisions.
 - (b) The Provider shall inform the Authority if the Third Party appears to be Processing Personal Data while taking unreasonable data security risks.
 - (c) The Authority shall be entitled to revoke the authorisation provided for by this paragraph 29 in whole or in part forthwith by notice in writing where the Authority has reasonable cause to believe that the Personal Data is or has been placed at risk by a Third Party or the Third Party is in breach of the Third Party Agreement.
 - (d) Where notice has been served pursuant to paragraph 29(c) above of this Schedule, or the Third Party Agreement has come to an end the Provider shall use its Best Endeavours to ensure that the Third Party does not retain any Personal Data longer than is strictly permitted by the Third Party Agreement.

Part F – Transmission of Data

30. Transportation of Personal Data shall:

- (a) in electronic format only be made in one of the following ways:
 - i. through an Encrypted VPN Connection, or
 - ii. through a secure file transfer facility provided by the Authority (at the date of this Contract such a facility is the Authority server hosted AVCO AnyComms),
or
 - iii. through such other method as may be expressly approved by the Authority/Council in writing,
- (b) in a physical form only be delivered (including transportation) by hand by the Provider or a courier approved by the Authority;

and in any case be protected in accordance with Good Industry Practice.

Part G - Provider/Service Provider/Supplier/Contractor's Data Protection Indemnity

31. The Provider agrees to indemnify and keep indemnified and defend at its own expense the Authority against all costs, claims, fines, damages or expenses incurred by the Authority or for which the Authority may become liable due to any failure by the Provider or its Staff to comply with any of its data protection and information governance obligations under this Schedule.
32. In addition to its obligations under Clause GC35 of the General Terms and Conditions (***Insurance***), the Provider shall use its Best Endeavours to take out insurance sufficient to cover any payment that may be required under this Schedule, and produce the policy and receipt for premium paid, to the Authority on request.

Part G - Responsibilities when engaging Sub-contractors

33. Subject always to Clause GC31 of the General Conditions (***Assignment, Sub-Contracting and Novation***), if the Provider is to require any Sub-contractor to process Personal Data on its behalf or on the behalf of the Authority, the Provider:

- (a) must not enlist the services of any Sub-contractor to process Personal Data on its behalf or on the behalf of the Authority without the prior specific or general written consent of the Authority (such consent not to be unreasonably withheld and/or delayed). In the latter case, the Provider must inform the Authority of any intended changes concerning the addition and/or replacement of any Sub-contractor(s) processing any Personal Data on its behalf or on the behalf of the Authority, thereby giving the Authority the opportunity to object to such changes;
- (b) require that Sub-contractor to provide sufficient guarantees in respect of its technical and organisational security measures governing the data processing to be carried out, and take reasonable steps to ensure compliance with those measures;
- (c) ensure that the Sub-contractor is engaged under the terms of a written agreement, binding the Sub-contractor to the Provider, setting out:
 - i. the subject-matter and duration of the processing;
 - ii. the nature and purpose of the processing;
 - iii. the type of Personal Data being processed;
 - iv. the categories of Data Subjects; and
 - v. the rights of the Provider and the Authority under the relevant Sub-contract,and requiring the Sub-contractor to:
 - vi. process such Personal Data only in accordance with the documented instructions of the Provider's;
 - vii. ensure that any persons authorised to process any Personal Data by the Sub-contractor have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - viii. taking into account the nature of the processing, comply at all times with obligations equivalent to those imposed on the Provider by virtue of the Seventh Data Protection Principle;

- ix. taking into account the nature of the processing, assist the Provider by appropriate technical and organisational measures, insofar as possible, for the fulfilment of the Provider's obligations to respond to requests for exercising Data Subject rights under Data Protection Legislation;
 - x. make available to the Provider all information necessary to demonstrate compliance with the obligations set down in this paragraph 33 and allow for and contribute to audits, including inspections, in respect of relevant data handling systems to the Provider and/or to the Authority or to any person authorised by the Provider and/or by the Authority to act on its behalf. The Sub-contractor shall immediately inform the Provider if, in their opinion, such an instruction for an audit and/or inspection breaches any provision of Data Protection Legislation;
 - xi. at the choice of the Provider (acting on the instructions of the Authority), and at no charge, delete or return all Personal Data to the Provider upon the expiry and/or earlier termination of the relevant Sub-contract, and delete all existing copies of the Personal Data, unless storage of the Personal Data is required under Law; and
 - xii. impose on its own Sub-contractors (in the event the Sub-contractor further sub-contracts any of its obligations under the Sub-Contract) obligations that are substantially equivalent to the obligations imposed on the Provider by this Schedule.
34. For the avoidance of any doubt, subject always to GC31 of the General Conditions (***Assignment, Sub-Contracting and Novation***), where the Provider enlists the processing services of a Sub-contractor to fulfil its data processing responsibilities under the Provider's main Contract with the Authority, and the Sub-contractor fails to fulfil said data protection obligations under the relevant Sub-contract, the Provider shall remain fully liable to the Authority for the performance of the Sub-contractor.

Part H – Survival

35. This Data Protection Schedule shall survive termination of the Contract and continue until the earlier of:
- 35.1. the date it is expressly terminated pursuant to written agreement; or
 - 35.2. at the point the Provider has Destroyed all Personal Data relevant to the Services.

Part G - Definitions and Interpretation

16. the terms 'Data', 'Data Controller', 'Data Processor', 'Data Subject', 'Personal Data', 'Process', 'Processing', and 'Sensitive Personal Data' are as defined in the Data Protection Act 1998 ('DPA'). References to Personal Data and Sensitive Personal Data within this Schedule are in connection with data relating to the Services.
17. In addition, the following terms shall have the following meanings:

'AES' means the standard of encryption that the FIPS* (or any successor standard) for the time being approve as suitable for use by US federal departments when such departments determine that sensitive (unclassified) information requires cryptographic protection. At the date of this Contract it is a symmetric key block encryption standard called 'Rijndael' more commonly known as the '**Advanced Encryption Standard.**'

'**Best Endeavours**' means taking all the steps which a diligent, prudent, determined and tenacious person acting in own interests and anxious to achieve the desired objective would take;

'**Caldicott Information Governance Review**' means *the Information Governance Review (March 2013)* also known as *Caldicott 2*, available at: <https://www.gov.uk/government/publications/the-information-governance-review>;

'**Caldicott Principles**' means the principles applying to the handling of patient-identifiable information set out in the report of the Caldicott Committee (1 December 1997);

'**Data Breach**' has the meaning given to it in the Information Governance Review 2013;

'**Data Protection Legislation**' means the DPA, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 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;

'**Destroy**' means in relation to electronically held data, to delete such data by a secure method conforming at a minimum to HMG Infosec Standard 5 (Enhanced Level) such that the data is irrecoverable. In relation to data held in hard copy format to 'Destroy' means to destroy such information by shredding the records to a minimum standard of DIN 32757 level 3 cross cut and then mixing the remnants in what the Provider may reasonably regard as a secure environment so that the particles containing parts of information are likely to have been dispersed away from the particles that they were originally adjacent to;

‘Encrypted VPN Connection’ means a secure encrypted ‘tunnel’ between two known points that are IPsec or SSLvs3 portal VPNs or in the case of web applications SSLvs3 tunnel VPNs;

‘FIPS’ means the Federal Information Processing Standards, which are standards that are developed and published by means the US government’s National Institute of Standards and Technology for use by all non-military government agencies and by government contractors;

‘IG Guidance for Serious Incidents’ means HSCIC’s *Checklist Guidance for Information Governance Serious Incidents Requiring Investigation June 2013*, available at: <https://www.igt.hscic.gov.uk/KnowledgeBaseNew/HSCIC%20IG%20SIRI%20%20Checklist%20Guidance%20V2%200%201st%20June%202013.pdf>;

‘Information Loss’ means where Personal Data held or accessed by the Provider exits from the security of the arrangements provided for directly or indirectly by this Appendix P;

‘Good Industry Practice’ means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced contractor engaged in the same type of undertaking as that of the Provider endeavouring to protect information under the same or similar circumstances (currently for example, without limitation, this means in relation to encryption to use 256 bit AES encryption, to use out of bands password exchange, to use products that have a good reputation within the data security industry and to incorporate Strong Password Protection). To use Good Industry Practice is to include meaning to at least follow all relevant guidance issued by the UK Information Commissioner’s Office (or any successor body);

‘Information Loss’ means where Personal Data held or accessed by the Provider exits from the security of the arrangements provided for directly or indirectly by this Schedule;

‘Malware’ includes computer viruses, worms, trojan horses, spyware, dishonest adware, crimeware, most rootkits, and other malicious and unwanted software;

‘NHS Care Records Guarantee’ the document setting out the rules that govern information held in the NHS Care Records Service, which is reviewed at least annually by the National Information Governance Board for Health and Social Care;

‘NHS Information Governance Toolkit’ means an online system which allows NHS organisations and partners to assess themselves against Department of Health information governance policies and standards www.igt.hscic.gov.uk;

‘Response to Caldicott’ means the Department of Health publication *Information: To share or not to share? A Government response to the Caldicott Review September 2013*, available at: <https://www.gov.uk/government/publications/caldicott-information-governance-review-department-of-health-response>;

‘Senior Information Risk Owner’ means the Provider’s nominated person, being an executive or senior manager on the board of directors, governing body, executive team or other body having overall responsibility for the actions of the Provider, whose role it is to take ownership of the organisation’s information risk policy, act as champion for information risk on the Governing Body of the Provider and provide written advice to the accounting officer on the content of the organisation’s statement of internal control in regard to information risk

‘Services’ has the same meaning as the definition in GC 1 (***Definitions and Interpretation***) of the General Conditions;

‘Strong Password Protection’ means password protection where the password:

- is at least eight characters long
- is not valid for more than forty (40) days and a password is not reused until after five (5) other passwords have been used
- incorporates numbers and (case sensitively) uppercase and lowercase letters
- does not incorporate:
 - dictionary words in any language
 - words spelled backwards, common misspellings, and common abbreviations
 - sequences or repeated characters (e.g. 12345678, abcdefg) or adjacent letters on the keyboard (e.g. qwerty)
 - more than three (3) letters from the user’s account name
 - Personal information

‘Third Party’ means the third party (or parties) other than employees, if any, who the Provider is authorised to pass the Personal Data to in accordance with the terms of Paragraph (16) above who is (or are) described in the **‘Appendix to Data Protection Schedule’** below (if the table in that appendix is empty there is no Third Party);

‘Third Party Agreement’ means a legally binding agreement between the Provider and the Third Party which shall provide the Authority with protection regarding Personal Data as between the Authority and the Third Party to a similar extent as this Contract provides for the Authority as between the Authority and the Provider. The provisions of the Third Party Agreement relating to such protection shall be in force at all times when the Third Party is Processing Personal Data which has been passed to it pursuant to Paragraph (16) of this Appendix N;

AND the user’s account/target application is locked for thirty (30) minutes after five consecutive invalid password entries.

Appendix to the Data Protection Schedule

Table A

Name of Third Party	Company No. <i>(if Applicable)</i>	Charity No. <i>(if Applicable)</i>	Registered Office or Principal Office of Business	Type of Data that May be Passed to the Third Party
NOT APPLICABLE				

Table B

Name of Third Party	Company No. <i>(if Applicable)</i>	Charity No. <i>(if Applicable)</i>	Registered Office or Principal Office of Business	Type of Data that May be Passed to the Third Party
[BLANK TABLE TO BE COMPLETED BY THE PROVIDER AS PART OF THEIR TENDER/APPLICATION]	[BLANK TABLE TO BE COMPLETED BY THE PROVIDER AS PART OF THEIR TENDER/APPLICATION]	[BLANK TABLE TO BE COMPLETED BY THE PROVIDER AS PART OF THEIR TENDER/APPLICATION]	[BLANK TABLE TO BE COMPLETED BY THE PROVIDER AS PART OF THEIR TENDER/APPLICATION]	[BLANK TABLE TO BE COMPLETED BY THE PROVIDER AS PART OF THEIR TENDER/APPLICATION]

Table C

Type of Record	Retention Period
Quarterly Service Monitoring Form	6 Years
Original NRT Voucher record	6 Years

APPENDIX O

FREEDOM OF INFORMATION SCHEDULE

IMPORTANT NOTICE TO ALL PROVIDERS TO THE COMMISSIONER

1. The Commissioner is a public authority within the meaning of the [Freedom of Information Act 2000](#)¹ and/or any other legislation requiring disclosure of information such as without limitation the [Environmental Information Regulations 2004](#)² and associated codes of practice (for the purposes of this document the “FOI Legislation”) and therefore any requests for information held by the Commissioner or another person on the Commissioner’s behalf (for example a Provider) must be dealt with in accordance with the FOI Legislation.
2. As part of its duties and responsibilities under the FOI Legislation the Commissioner may be required to disclose information relating to any contract with any supplier or partner, to any person making a request. It may also publish some of that information in its Publication Scheme under the FOI Legislation.
3. If any information provided to the Commissioner contains trade secrets or is considered by the Provider genuinely to be commercially sensitive it should be stated explicitly (see the **Freedom of Information Schedule** below). In such cases any request for disclosure of the relevant material will be examined in the light of the exemptions contained in the FOI Legislation and public interest test and genuinely confidential information that is explicitly stated to be so that is exempt from disclosure will not be disclosed. The Tenderer will be consulted before disclosure of any information expressly stated by the Tenderer to be confidential is made, unless the Commissioner has made it clear in advance that this type of information would be disclosed.
4. The Commissioner will **NOT** accept information on terms that purport to prevent any possible future disclosure of information in compliance with the law. For instance the Commissioner cannot accept restriction of disclosure where the information supplied is not genuinely commercially sensitive or confidential in nature.
5. The Commissioner reserves the right to disclose details of the Contract or procurement process (for example, name of successful Tenderer and overall Contract price) and will **NOT** be liable for loss or damage Providers may suffer from the Commissioner’s disclosure of information in accordance with FOI Legislation.

¹ <http://www.legislation.gov.uk/ukpga/2000/36/section/8>

² http://www.legislation.gov.uk/uksi/2004/3391/pdfs/uksi_20043391_en.pdf

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		INFORMATION SUBMITTED AND CONSIDERED BY THE TENDERER AS CONFIDENTIAL/COMMERCIALY SENSITIVE UNDER THE FREEDOM OF INFORMATION ACT 2000, etc.
1	Document Submitted	[BLANK TABLE TO BE COMPLETED BY THE PROVIDER AS PART OF THEIR TENDER/APPLICATION]
2	Section/Paragraph of document	[BLANK TABLE TO BE COMPLETED BY THE PROVIDER AS PART OF THEIR TENDER/APPLICATION]
3	Specify the information/wording considered to be confidential/commercially sensitive	[BLANK TABLE TO BE COMPLETED BY THE PROVIDER AS PART OF THEIR TENDER/APPLICATION]
4	Reasons/justifications for information being confidential/commercially sensitive	[BLANK TABLE TO BE COMPLETED BY THE PROVIDER AS PART OF THEIR TENDER/APPLICATION]
5	Timescale which information under (3) shall be confidential	[BLANK TABLE TO BE COMPLETED BY THE PROVIDER AS PART OF THEIR TENDER/APPLICATION]
6	Specify Exemption Confidential or Commercially Sensitive	[BLANK TABLE TO BE COMPLETED BY THE PROVIDER AS PART OF THEIR TENDER/APPLICATION]