S

SURREY COUNTY COUNCIL

and

[ ]

CONTRACT FOR THE PROVISION OF SERVICES BY PHARMACIES

Legal and Democratic Services

County Hall

Penrhyn Road

Kingston upon Thames KT1 2DN

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LMC/Pharmacies Version 1 10.02.2014

THIS AGREEMENT is made the day of 2014
Or if not dated the date the last signature is inserted on the signatory pages and dated
BETWEEN

(1) SURREY COUNTY COUNCIL of County Hall, Penrhyn Road, Kingston-upon-Thames, Surrey, KT1 2DN ("the Council"); and

(2) [ ] (Registered Company Number [ ]) whose registered office is at [ ] ("the Provider")

together known as "the Parties"

BACKGROUND

(A) The Council is required to exercise a number of health service functions set out in section 2B of the National Health Service Act 2006 and the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations.

In order to satisfy these obligations the Council wishes to secure the provision of the Services and the Provider wishes to provide the Services on behalf of the Council.

(B) The Parties have agreed the Provider shall provide the Services in accordance with the terms and conditions of this Contract.

IT IS HEREBY AGREED AS FOLLOWS

1. DEFINITIONS AND INTERPRETATION

The definitions and rules of interpretation in this clause apply in these conditions:

"Clients"	Means the service users to whom the Services are to be provided in accordance with the Specification;
"Commencement" "Date"	Means the date on which the Contract commences and shall mean the 1st April 2014 unless a Contract is entered into during the Term in which case the actual Commencement Date shall mean the date that the Contract is entered into;
"Contract"	means the contract between the Provider and the Council consisting of these conditions, the Purchase Order and the Specification;
"Contract Extension Notice"	A written notice which the Council may serve on the Provider not less than one month prior to the expiry date;
"Council"	means Surrey County Council of County Hall, Penrhyn Road, Kingston-upon-Thames, Surrey KT1 2DN;
"Premises"	means the location where the Services are to be performed, which

	shall be a safe and suitable environment for Clients and staff and comply with the relevant statutory requirements, legislation and guidance;
"Fees"	means the fees to be paid under the Contract to the Provider;
"Services"	means the services to be provided as specified in the Specification and shall, include any materials, articles and goods to be provided;
"Specification"	means the document provided by the Council detailing the required specifications of the Services;
"Term"	means the period of twelve calendar months from the 1st April 2014 until the 31st March 2015 unless terminated earlier in accordance with clause 13 or extended by serving a Contract Extension Notice. For the avoidance of doubt, where a Contract is entered into at any time after the 1st April 2014, the Term shall be the remaining period from the actual Commencement Date until the 31st March 2015 (or such period remaining if a Contract Extension Notice has been served).

2. APPLICATION OF TERMS

2.1 These conditions are the Council's terms and conditions which will govern the Contract between the Council and the Provider to the entire exclusion of all other terms and conditions unless any other contract terms have been agreed between the Parties in writing.

2.2 The Contract shall continue throughout the Term and the Term may be extended by the Council serving a Contract Extension Notice on the Provider not less than one month prior to the expiry date. The Parties shall annex the Contract Extension Notice to the Contract for clarity on the Term. For the avoidance of doubt, the Council may serve more than one Contract Extension Notice thus extending the Term of the Contract if so required.

3. PROVISION OF SERVICES

3.1. The Provider confirms that they have understood the nature and extent of the services to be carried out and have satisfied themselves that they can provide the Services at the Premises to the Clients for the Term at all times in accordance with the Specification.

3.2. The Provider must carry out the Services in accordance with the Law and Good Clinical Practice and must, unless otherwise agreed (subject to the Law) with the Council in writing:

3.2.1. comply with the registration and regulatory compliance guidance of General Pharmaceutical Council (GPhC) and any other regulatory body;
3.2.2. respond, where applicable, to all requirements and enforcement actions issued from time to time by GPhC or any other regulatory body;
3.2.3. consider and respond to the recommendations arising from any audit, death, serious incident report or patient safety incident report;
3.2.4. comply with the recommendations issued from time to time by any competent body with authority to issue recommendations in relation to pharmacies (Competent Body);
3.2.5. respond to any reports and recommendations made by Local HealthWatch following consultation with the Local Pharmaceutical Committee(LPC).

3.3. The Provider warrants and undertakes to the Council that they:
3.3.1. will exercise in the performance of the Services a level of skill, care and diligence reasonably to be expected of an appropriately qualified and competent Provider experienced in performing like services;
3.3.2. shall devote such time as is required in order to fulfil their duties under the Contract;
3.3.3. shall comply with all reasonable and lawful directions given to them under the Council's authority; and
3.3.4. shall complete the Services in accordance with this Contract.

3.4. The Provider shall not (and shall procure that the Provider's agents and employees do not) say or do anything that might lead any other person to believe that the Provider is acting as the Council's agent; and nothing in this Contract shall impose any liability on the Council in respect of any liability incurred by the Provider to any other person. This condition shall not be taken to exclude or limit any of the Council's liability to the Provider that may arise by virtue of either a breach of this Contract or any negligence on the Council's part or the Council's staff or agents.

3.5. The Provider shall ensure that the Services are at all times performed at the Premises in accordance with the legislation and guidelines persisting at the time and that best practice is followed in the manner in which the Services are delivered, and the Provider shall ensure that there is at all times appropriate procedures in place to ensure that there is no deviation from best practice.

3.6. The Provider shall have in place at all times appropriate procedures to protect clients and other Clients in the provision of the Services, and in particular where appropriate in the case of **Serious Incidents (SIs),** the Provider shall in the provision of the Service, follow a formal SI procedure in the event of a notifiable incident related to the service. Each Provider shall have its own SI protocol and ensure that all personnel are aware of their responsibilities and what to do in such an event.

3.7. If the Provider gives a notification to its Regulatory Body that directly or indirectly concerns any Service User, the Provider must provide a copy of the Notification to the Council at the same time.

3.8. Representatives of the Council shall have the right to visit the Premises at any reasonable time to inspect records in accordance with the Specification, having regard for the provision of services and patient's right to privacy and dignity.

3.9. The Provider shall at all times maintain the Premises in a suitable condition for the provision of the Services in accordance with the Specification, for patients and personnel.

4. THE PROVIDER'S PERSONNEL

4.1. The Provider shall engage sufficient suitably qualified personnel to ensure that the Services are provided in accordance with the Specification including (without limitation) during periods of absence of some members of its personnel due to sickness, maternity leave, holidays, training or otherwise.

4.2. The provider shall ensure that only accredited personnel are engaged to deliver the service in accordance with the specification.

4.3. The Provider shall ensure that all of their personnel engaged in and about the provision of the Services are qualified, skilled, competent, diligent, trained and experienced in the work which they are to perform in accordance with the Specification.

4.4. The Provider shall adhere to and comply with all relevant legislation and any guidelines and/or codes of practice issued by the Department of Health and the Council in the provision of the Services.

4.5. The Provider's accredited personnel shall at all times be appropriately insured to carry out the duties set out in the Specification,

4.6. With regard to the Provider's accredited personnel, including but not limited to full time, part time, temporary, permanent and voluntary personnel and sub-contractors and agents ("the Provider's Accredited Personnel") the Provider undertakes as follows:

4.6.1. to ensure that all of the Provider's Accredited Personnel are fully registered and accredited by the GPhC details of which are set out at **http://www.pharmacyregulation.org/**

4.6.2. to ensure that all of the Provider's Accredited Personnel to deliver Pharmacy services who have lived or worked abroad for more than 3 months in the last 5 years obtain a Certificate of Good Conduct acceptable to the Council, or similar appropriate document, showing that the individual has not been convicted of any act which would render them inappropriate to work with children and/or vulnerable adults.

4.7. If owing to the nature of the Services the Provider's Accredited Personnel are exempt from the application of Section 4 (2) of the Rehabilitation of Offenders Act 1974 by virtue of the Rehabilitation of Offenders Exception (Amendment) Order 1986, the Provider undertakes it will ensure that all the Provider's Accredited Personnel engaged in the provision of the Services shall provide information in accordance with the said Act and Order in relation to convictions which would otherwise be spent under the provisions of the said Act.

4.8. The Provider shall indemnify the Council against all claims, proceedings, liabilities, losses, costs, damages and expenses howsoever incurred by the Council as a result of any breach of this Clause 4 by the Provider and the Provider's Personnel.

4.9. Throughout the Term the Provider will ensure that:-

4.9.1. it understands the SSAB and SSCB (the Surrey Safeguarding Adults Board and the Surrey Safeguarding Children's Board) Procedures from time to time in place as set out in the following links:

Safeguarding Adults in Surrey

http://www.surreycc.gov.uk/social-care-and-health/childrens-social-care/protecting-children-from-harm/surrey-safeguarding-children-board

4.9.2. has in place its own safeguarding procedures acceptable to the Council which will be made available to the Council and Clients on demand;

4.9.3. ensure the Provider's Accredited Personnel are trained and work in accordance with the Provider's safeguarding procedures at all times including, where required, attendance at SSAB and SSCB training sessions.

5. FEES

5.1. The Fees to be paid for the Services shall be as stated in the Specification and, unless otherwise so stated, shall be exclusive of any applicable Value Added Tax but inclusive of all other charges.

5.2. No variation in the Fees shall be made throughout the Term of the Contract.

5.3. The Provider hereby agrees that they shall be solely responsible for payment of all income tax liabilities whatsoever and national insurance or similar contributions in relation to their employee.

6. PAYMENT

6.1. The Provider shall provide quarterly reports to the Council in the form agreed containing details including the numbers of Clients dealt with and the Fees payable ('the Quarterly Reports') and each report shall include the amount payable stated in pounds sterling (£). All Quarterly Reports and claims for payment must be signed by the Provider and submitted no later than 6 weeks following the end of the quarter for which payment is being claimed e.g. for the quarter 1st April – 30th June, the Quarterly Report must be submitted no later than the 15th August.

6.2. The Provider shall submit all Quarterly Reports electronically via the Public Health Claims email address: **publichealthclaims@surreycc.gcsx.gov.uk** In the event electronic submission is not possible the Provider may, with prior approval of the Council, submit Quarterly Reports to: the Public Health Team, Surrey County Council, County Hall, Penrhyn Road, Kingston-upon-Thames, KT1 2DN (or to such other address as is notified to the Provider from time to time).

6.3. Unless otherwise stated in the Contract or the Specification, the Council shall pay the Fees for the Service by BACS (unless otherwise agreed in writing) within 30 days of receipt by the Council of a proper signed Quarterly Report in the form agreed following successful performance of the Service in accordance with the Contract and the Specification.

6.4. Regardless of any other right or remedy available to the Council, the Council reserves its right to set-off against any Fees owed to the Provider any monies or debt owed to it by the Provider and any liabilities, damages, losses, costs, charges and expenses which it has incurred as a consequence of any breach by the Provider of this Contract or any other contract with the Council.

7. TIME OF PERFORMANCE

7.1 The Provider shall perform the Services for the Term in accordance with this Contract and the Specification, in a timely fashion.

8. VARIATION

8.1. The Council may in consultation and agreement with the Provider vary the Services or provide services additional to the Services listed in the Contract or the Specification and all such varied and/or additional Services shall be performed in accordance with this Contract.

8.2. The Parties shall attempt to agree a fair and reasonable adjustment to the Fees and in the absence of any such agreement any change to the Fees shall

be calculated by reference to any increase or decrease in the time reasonably and properly spent in the provision of the Services.

8.3. The Provider shall not be entitled to any additional remuneration where and to the extent such variation and/or additional services were necessitated, in whole or in part, by any negligence, omission or default by or on the Provider's behalf.

8.4. Notwithstanding any other provisions of clause 8, the Provider shall not vary the Services or provide any additional services without prior written instructions from the Council. In the event the Provider does vary the Services or provides additional services, The Council shall not incur any liability for payment of such variation.

9. AUDIT AND CORRUPT GIFTS OR PAYMENTS

9.1. The Provider shall keep and maintain records of the previous 2 years expenditure paid by the Council.

9.2. The Provider shall not offer or give, or agree to give, to any officers or representative of the Council any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Council or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract. The Provider's attention is drawn to the criminal offences created by the Bribery Act 2010.

10. INDEMNITY AND INSURANCE

10.1. Neither Party limits its liability for death or personal injury caused by its negligence or that of its employees, agents or subcontractors as applicable.

10.2. Subject to clause 10.1 and 10.3, neither Party will be liable to the other for any indirect or consequential loss or damage including without limitation any loss of business or profits in each case whether arising from negligence, breach of contract or otherwise.

10.3. The Provider shall keep the Council indemnified in full against all direct liabilities arising in relation to the Services being provided including:

10.3.1. any claim made against the Council in respect of any clinical negligence, liability, loss, damage, injury, cost or expense sustained by Council employees or agents or any third party including Clients, to the extent that such liability, loss, damage, injury, cost or expense was

caused by, relates to or arises from the Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the Services under the terms of the Contract by the Provider.

10.4. The Provider hereby warrants to the Council that the Provider shall have in force all necessary insurance cover for all claims which may arise from any one occurrence or series of occurrences arising out of the provision of the Service including but not limited to public liability insurance with a minimum limit of liability of not less than £5,000,000 and professional indemnity insurance with a minimum limit of liability of not less than £2,000,000. The Provider undertakes to the Council to maintain all necessary insurance cover during the term of the Contract.

10.5. As and when reasonably required to do so, the Provider shall provide the Council with documentary evidence that the insurance required under this condition is in force and is being maintained.

11. CONFIDENTIALITY

11.1. The Provider shall keep in strict confidence all documents, information technical and/or commercial know-how, specifications, inventions, processes and initiatives which are of a confidential nature and have been disclosed to the Provider by the Council or the Council's agents and any other confidential information concerning the Council's business or services which the Provider may obtain or be made aware of, and the Provider shall restrict disclosure of such confidential material to such of the Providers employees or agents as need to know the same for the purpose of discharging the Provider's obligations to the Council and shall ensure that such employees or agents are subject to like obligations of confidentiality as bind the Provider.

12. COUNCIL PROPERTY

12.1. All property, materials, equipment, tools, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Council to the Provider or not so supplied but used by the Provider specifically in the development of the Services shall at all times be and remain the Council's exclusive property but shall be held by the Provider in safe custody at the Provider's risk and maintained and kept in good condition by the Provider until returned to the Council and shall not be disposed of other than in accordance with the Council's written instructions,

nor shall such items be used otherwise than as authorised by the Council in writing.

13. TERMINATION

13.1. The Parties shall be entitled to terminate this Contract in respect of the Services without cause by giving three months written notice to the other to terminate the Contract on expiry of the notice period, in which event the Council shall not be liable for payment for Services performed from the expiry of the notice period, nor be responsible for loss of anticipated profits or any consequential loss.

13.2. The Council shall be entitled to terminate the Contract immediately without liability if:

13.2.1. the Provider commits a material breach of any of the terms and conditions of the Contract;

13.2.2. the Provider has a bankruptcy order made against it or has made an arrangement with its creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or (being a body corporate) has convened a meeting of creditors or enters into liquidation or has a receiver or an administrative receiver appointed or is the subject of similar procedures under the law of any other state or a resolution is passed or a petition presented to any court for the Providers winding up, or for the granting of an administration order, or any proceedings are commenced relating to the Provider's insolvency or possible insolvency;

13.2.3. the Provider ceases or threatens to cease to carry on business;

13.2.4. the Council reasonably apprehends that any of the events mentioned above are about to occur, or

13.2.5. in the Council's opinion the Provider has abandoned the Contract.

13.3. Following termination under clause 13, without prejudice to any other rights, the Council shall not be liable to make any further payment to the Provider until the Services have been completed in accordance with the requirements of the Contract, and a final report submitted to the Council in the form agreed. The Council shall be entitled to deduct from any amount due to the Provider any reasonable and proportionate costs incurred by the Council pursuant to any claims under the Contract (including the Council's costs). If the total cost to the Council exceeds the amount (if any) due to the Provider, the difference shall be recoverable by the Council from the Provider.

14. SUSTAINABLE PROCUREMENT

14.1. The Council is committed to purchasing sustainable products, works and services wherever possible. The Council will give appropriate weighting to sustainable products, works and services in the purchasing process.

14.2. The Provider shall, when working on the Premises, perform its obligations under the Contract in accordance with the Council'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.

14.3. The Provider will perform the services in a manner that gives appropriate regard to the protection of the natural environment. The Provider will comply with all environmentally related legislation and codes of practices relating to the products and services being offered.

14.4. The Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re enactment thereof.

15. DATA SECURITY

15.1. The Provider and the Council shall each comply with their respective obligations under the Data Protection Act 1998, and other applicable statutory provisions or provision of any European directive in respect of data and records containing personal information and confidential patient information.

15.2. The Provider shall ensure that all data in relation to the Services is securely stored and managed through effective policies, procedures and training. This will include but will not be limited to ensuring all data is password protected, challenging unknown individuals on your premises and ensuring all paper files are securely stored in a locked location out of hours.

15.3. The Provider shall not transmit, or exchange data by any other means, unless previously agreed with the Council and ensure that Council data is not held longer than required and disposed of properly and securely.

16. GENERAL

16.1. The Provider acknowledges that the Council is subject to the Best Value duty imposed on the Council by Part 1 of the Local Government Act 1999 and the Provider shall throughout the Term assist the Council in discharging the Best

Value duty by actively promoting, supporting and assisting the Council in meeting its Best Value duty in respect of the Service.

16.2. The Provider recognises that the Council is subject to legal duties which may require the release of information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 or any other applicable legislation or codes governing access to information and that the Council may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under this Contract. The Provider will assist the Council to enable the Council to comply with its obligations under the Freedom of Information Act 2000 or other applicable legislation governing access to information. The Provider will respond to any such request for assistance from the Council at its own cost and promptly and in any event within 10 days of receiving the Council's request.

16.3. If the Provider comprises two or more parties working together in partnership then each of those parties shall be jointly and severally liable to the Council pursuant to this Contract for any claim arising hereunder.

16.4. The Provider shall allow persons nominated by the Council access to all management records and documents in the possession of the Provider in connection with the performance of this Contract, including all accounting records and financial information in the possession, custody or control of the Provider or the Provider's auditors.

16.5. The Provider shall not be entitled to assign the Contract or any part of it or sub-contract any of its obligations without the Council's prior written consent.

16.6. The Council reserve the right to defer the date of delivery or payment or to cancel the Contract or reduce the Service ordered if the Council are prevented from or delayed in the carrying on the project or business for which the Service is required due to circumstances beyond the Council's reasonable control.

16.7. Any waiver by the Council of any breach of, or default under, the Contract by the Provider shall not be considered as a waiver of any subsequent breach of the Contract.

16.8. Failure or delay by the Council in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of the Council's rights under the Contract.

16.9. If any provision of the Contract is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall continue in full force and effect.

16.10. The Contract shall be subject to English Law in all respects (including formation) and shall be construed and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England.

16.11. This document supersedes all prior agreements of whatever nature and prevails over any other terms and conditions including but not limited to any standard conditions printed and/or contained on any invoice or quotation submitted by the Provider.

This Contract has been entered into on the date stated below

Signed on behalf of Surrey County Council

Signed (1).....

.....

Name of Authorised Signatory (1)

.....

Designation of Authorised Signatory (1)

Signed by [Name of Authorised Signatory]..... for

and on behalf of [Name of Provider]

.....

Director/Authorised Signatory

SPECIFICATION

Services to be Provided

Pharmacy Name :

_____