

TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES

Parties

- (1) **Virgin Care Services Limited** incorporated and registered in England and Wales with company number 07557877 whose registered office is at The Heath Business and Technical Park, Runcorn, Cheshire, United Kingdom, WA7 4QX (the “**Company**”); and
- (2) The pharmacy delivering the Services described under this Agreement (the “**Pharmacy**”).

Background

- (A) The Company has entered into a contract with Stockton on Tees Borough Council, Hartlepool Borough Council, Middlesbrough Borough Council, Redcar & Cleveland Borough Council, NHS England and NHS Improvement North East and Yorkshire, and NHS Tees Valley Clinical Commissioning Group (together the “**Commissioners**”) to provide a community-based integrated sexual health service in the Teesside area (the “**Sexual Health Service**”).
- (B) The Company wishes to appoint the Pharmacy to act as its sub-contractor for the provision of services within the Sexual Health Service.
- (C) In addition, the Commissioners have notified the Company of their intention to extend the existing arrangements for the provision of C-Card services as detailed in Schedule 4 (“**C-Card Services**”) and the Company also wishes to appoint the Pharmacy to continue to act as its sub-contractor to provide these C-Card Services until 30 March 2022.
- (D) The Agreement comprises of these terms and conditions (“**Terms and Conditions**”) and shall be binding on both Parties.

Agreed Terms and Conditions

1 Commencement and Duration

- 1.1 The Agreement shall take effect on the date that the Pharmacy agrees to the Terms and Conditions contained herein via the PharmaOutcomes portal (the “**Effective Date**”). The Pharmacy shall commence delivery of the Services on 1 August 2021 or the Effective Date, whichever is later (in either case, the “**Services Commencement Date**”).
- 1.2 The Agreement shall expire on 31 July 2024, unless it is terminated earlier in accordance with **clause 16**, or extended by up to three (3) years from 31 July 2024 in accordance with **clauses 1.3 to 1.8** (“**Expiry Date**”).
- 1.3 The Company may in its discretion propose to the Pharmacy that the Agreement should be extended by three (3) further periods of up to twelve (12) months each commencing on the day after the Expiry Date set out in Clause 1.2.
- 1.4 In the event that the Head Contract is not signed by 1st August 2021, the Company may terminate this contract with immediate effect with no liability.

- 1.5 If the Company wishes to extend the term of this Contract by a period of up to twelve (12) months commencing on the day after the Expiry Date set out in Clause 1.2 (“**First Extension**”) it must issue to the Pharmacy, not later than two (2) months prior to the Expiry Date, an extension request notice (the “**First Extension Request**”).
- 1.6 Within eight (8) Operational Days of the Pharmacy’s receipt of the First Extension Request, the Company and the Pharmacy shall make contact in order to agree whether to proceed with the First Extension, and if the Company and the Pharmacy agree in writing to proceed with the First Extension, the Agreement shall not expire on the Expiry Date but on the expiry date stated in the First Extension Request, unless it is further extended in accordance with **clause 1.7** or **clause 1.3**.
- 1.7 The Company may in its discretion, twenty one (21) days prior to the expiry of any previously agreed First Extension period, propose to the Pharmacy that the Agreement should be extended in whole or in part by a further period of up to twelve (12) months commencing on the day after the final day of the previously agreed extension period (a “**Second Extension**”), by in each case issuing to the Pharmacy, not later than twenty one (21) days prior to the expiry of the previously agreed extension period, an extension request notice (a “**Second Extension Request**”).
- 1.8 Within eight (8) Operational Days of the Pharmacy’s receipt of a Second Extension Request, the Company and the Pharmacy shall make contact in order to discuss and agree whether to proceed with the Second Extension, and if the Company and the Pharmacy agree in writing to proceed with the Second Extension, the Agreement shall not expire on the final day of the previously agreed extension period, but on the expiry date stated in the Second Extension Request, unless it is further extended in accordance with **clause 1.7**.
- 1.9 The Company may in its discretion, twenty one (21) days prior to the expiry of any previously agreed Second Extension period, propose to the Pharmacy that the Agreement should be extended in whole or in part by a further period of up to twelve (12) months commencing on the day after the final day of the previously agreed extension period (a “**Third Extension**”), by in each case issuing to the Pharmacy, not later than twenty one (21) days prior to the expiry of the previously agreed extension period, an extension request notice (a “**Third Extension Request**”).
- 1.10 Within eight (8) Operational Days of the Pharmacy’s receipt of a Third Extension Request, the Company and the Pharmacy shall make contact in order to discuss and agree whether to proceed with the Third Extension, and if the Company and the Pharmacy agree in writing to proceed with the Third Extension, the Agreement shall not expire on the final day of the previously agreed extension period, but on the final day of the Third Extension.

2 The Services

- 2.1 The Pharmacy shall (and shall procure that the Staff shall) deliver the Services in accordance with:
- 2.1.1 those services which, in accordance with the Confirmation Notice, the Pharmacy opts in to provide as listed at Schedule 1 ;
- 2.1.2 Good Clinical Practice;

2.1.3 these Terms and Conditions; and

2.1.4 all applicable Law.

2.2 Where the Pharmacy believes that a Service User or a group or class of service users, other than those to whom the Pharmacy is providing the Service, may have an unmet sexual health and/or reproductive need, then the Pharmacy shall notify the Company who shall be responsible for making an assessment to determine what remedial steps are required to be taken.

3 Safeguarding Children and Adults in Vulnerable Circumstances

In delivering the Services, the Pharmacy shall comply with the Company's safeguarding policy as amended from time to time and may be appended at Schedule 5 (Safeguarding Policies) and reflect the Tees-wide Adult and Child Protection protocols for recognising, responding to, reporting and recording suspected or actual abuse and will comply fully with Local Safeguarding Children Boards.

4 Payment

4.1 Each month the Pharmacy will be responsible for utilising PharmOutcomes to enter activity data in order to produce and submit invoices.

4.2 Within four (4) Operational Days of the end of each month, the Pharmacy shall submit an invoice via the PharmOutcomes portal in accordance with Schedule 3, or any address as the Company may notify to the Pharmacy from time to time.

4.3 If the Company disputes any invoice, notice of such dispute shall be given to the Pharmacy within five (5) Operational Days of receipt, any undisputed part of the invoice shall be paid as usual pending resolution of the dispute, and the Parties shall attempt to resolve the dispute in accordance with **clause 23**.

4.4 All invoices delivered in accordance with **clause 4.2** shall be paid within thirty (30) days of the date of receipt via the PharmOutcomes portal indicated on the invoice.

4.5 Where the Commissioner has made payment to the Company in respect of the Services and the Pharmacy's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Company is not exercising a right of retention or set-off in respect of a breach of contract by the Pharmacy or in respect of a sum otherwise due by the Pharmacy to the Company, payment must be made to the Pharmacy without deduction.

4.6 This Contract forms part of a larger contract for the benefit of the Commissioners and should the Pharmacy have any difficulty in securing the timely payment of an invoice, that matter may be referred by the Pharmacy to the Commissioners.

5 Performance Management

5.1 Each Party shall appoint a representative to be the key point of contact between the Parties.

5.2 During the Term, the nominated representatives shall meet at such intervals as the Company may reasonably request to discuss the provision of the Services and the Agreement.

6 Service Locations

- 6.1 The Pharmacy shall deliver the Services from its own Pharmacy premises (the “**Service Location**”).
- 6.2 The Pharmacy shall ensure that the Service Location is clean, safe, suitable, sufficient, adequate, functional, accessible and effective (making reasonable adjustments where required) and fit for the purpose of providing the Services.
- 6.3 The Pharmacy shall comply with all reasonable written requests made by the Commissioners, General Pharmaceutical Council, the Care Quality Commission, the National Audit Office, the Audit Commission or its appointed auditors, any Authorised Person or the authorised representatives of HealthWatch for entry into a Service Location for the purposes of auditing, viewing, observing or inspecting such locations and/or the provision of the Services. In addition, subject to Good Clinical Practice, if deemed necessary in the Company’s reasonable opinion taking into account the effect on Service Users and the nature of the Services (or, if required by the Commissioners pursuant to clause B24.1 of the Head Contract), the Pharmacy shall, where reasonably practicable grant any Authorised Person access to the Premises without notice from the Company for the purposes of auditing, viewing, observing or inspecting the Premises and/or the provision of the Services and for information relating to the provision of the Services. The Pharmacy shall give all reasonable assistance and provide all reasonable facilities for such visits.
- 6.4 Clause B24.1 of the Head Contract states: The Provider must comply with all reasonable written requests made by, CQC, the National Audit Office, the General Pharmaceutical Council, any Authorised Person and the authorised representative of the Local HealthWatch for entry to the Provider’s Premises and/or the premises of any Sub-contractor for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. The Provider may refuse such request to enter the Provider’s Premises and/or the premises of any Sub-contractor where it would adversely affect the provision of the Services or, the privacy or dignity of a Service User.

7 Equipment

- 7.1 The Pharmacy shall at all times and at its own cost:
- 7.1.1 provide all Equipment necessary to provide the Services in accordance with all applicable Law and these Terms and Conditions; (this includes any IT equipment and associated software involved in reporting on the service provided); and
 - 7.1.2 store, use and maintain all Equipment strictly in accordance with the manufacturer’s instructions and with Good Clinical Practice in relation to infection control;

8 Staff

- 8.1 The Pharmacy shall have sufficient appropriately qualified and experienced Pharmacists and non-clinical Staff to ensure that the Services are provided in all respects and at all times in accordance with these Terms and Conditions. If requested by the Company, the Pharmacy shall as soon as reasonably practicable and by no later than ten (10) Operational Days of

receipt of such written request, provided the Company with evidence of the Pharmacy's compliance with this **clause** 8.1. The Pharmacy shall ensure that the Staff:

- 8.1.1 if applicable, are registered with the appropriate professional regulatory body;
 - 8.1.2 there is an adequate number of Staff to provide the Services properly in accordance with the provisions of the Service Specification
 - 8.1.3 where they are not partners in the Pharmacy, are engaged by the Pharmacy under a contract of employment, unless otherwise agreed in writing by the Company;
 - 8.1.4 each possess the appropriate qualifications, experience, skills and competencies to perform the duties required of them and are appropriately supervised, managerially and professionally and adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - 8.1.5 are covered by the Pharmacy's indemnity arrangements (as identified and to the extent set out in **clause** 18) for the provision of the Services;
 - 8.1.6 carry, and where appropriate display, valid and appropriate identification in accordance with Good Clinical Practice;
 - 8.1.7 can provide a clear DBS Certificate (Standard, Enhanced or Enhanced and DBS Barred List at the Provider's discretion) for each of the Staff engaged in the Services; and
 - 8.1.8 are aware of and respect equality and human rights of colleagues, Service Users, Carers and the public.
- 8.2 The Pharmacy shall have in place systems for seeking and recording specialist professional advice and shall ensure that every member of Staff involved in the provision of the Services receives:
- 8.2.1 proper and sufficient continuous professional and personal development, training and instruction;
 - 8.2.2 full and detailed appraisal (in terms of performance and on-going education and training); and
 - 8.2.3 professional leadership commensurate with the Services,
- each in accordance with Good Clinical Practice and the standards of their relevant professional body, if any.
- 8.3 The Pharmacy shall promptly notify the Company in writing where:
- 8.3.1 any member of Staff's Professional Registration is, or will be, revoked, suspended or varied;
 - 8.3.2 any conditions or restrictions are, or will be, imposed on a member of Staff's Professional Registration;

8.3.3 a member of Staff is the subject of disciplinary proceedings, or any other investigation or action initiated by a Regulatory Body or the Pharmacy in relation to the performance of the Services under the Agreement; or

8.3.4 the Pharmacy, or a member of Staff, is notified by a Regulatory Body that one or more complaint(s) have been received by it in respect of a member of Staff in relation to the performance of the Services under the Agreement,

in each case, whether or not the member of Staff's ability to carry out his/her duties under the Agreement is, or will be, affected.

8.4 The Pharmacy must keep and must procure that the Company is kept advised at all times of any Staff who, subsequent to their commencement of employment, receives a relevant conviction, caution, reprimand or warning or whose previous relevant convictions, cautions, reprimands or warnings become known to the Pharmacy (or any employee of a Sub-Contractor involved in the provision of the Services).

8.5 Where the Pharmacy serves a notice in accordance with **clause 8.3**, or in any other circumstances where the Company or the Commissioner is not reasonably satisfied with the performance of an individual member of Staff, then the Company shall be entitled in its absolute discretion to require the Pharmacy to remove the affected member of Staff from the performance of the Services with immediate effect (and for the avoidance of doubt, in such circumstances, the Company shall not be liable for any costs, including without limitation redundancy costs, incurred by the Pharmacy as a result of removing the affected member of Staff from the Services and/or engaging a replacement).

8.6 Before the Pharmacy engages or employs any person (as appropriate) in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Pharmacy, at its own cost, shall without limitation comply with NHS Employment Check Standards as amended from time to time, including Disclosure and Barring Service (DBS) checks.

Accredited Pharmacists

8.7 The Pharmacy shall ensure that all pharmacists engaged in the performance of the Services have:

8.7.1 current membership of the General Pharmaceutical Council;

8.7.2 completed a relevant CPPE distance learning training package, as evidenced by possession of a certificate of satisfactory completion from CPPE (which shall be made available to the Company on request);

Designated Pharmacist.

8.8 The Service Provider shall appoint an Accredited Pharmacist to act as the lead pharmacist for the Services (the "**Designated Pharmacist**").

8.9 The Designated Pharmacist shall have clinical responsibility to provide the services supplied to Service Users aged 13 years of age and over who meet the inclusion criteria set out in **Schedule 1**.

- 8.10 The Designated Pharmacist must ensure that appropriate arrangements are in place to minimise risk to Service Users, Staff and other patients (either by putting a Standard Operating Procedure in place, or by some other appropriate method).

9 Co-operation

- 9.1 The Pharmacy shall co-operate fully and liaise appropriately with:

9.1.1 the Company; and

9.1.2 the Commissioners;

in order to:

- (a) enable the Company to fulfil its obligations under the Head Contract; and
- (b) ensure that a consistently high standard of care for the Service User is at all times maintained.

- 9.2 The Pharmacy must co-operate with the Company and (where the Company requests) directly with the Commissioner in order to ensure effective delivery of the sub-contracted services..

- 9.3 The Pharmacy must deliver the Services and perform its obligations under this Contract in such a manner as to ensure the Company is able to comply with its obligations under the Head Contract insofar as those obligations relate to, depend on or may be affected by the Services, including compliance by the Pharmacy with any positive or negative obligation.

10 Policies

- 10.1 The Pharmacy acknowledges and agrees that under the terms of the Head Contract, the Company is required to operate certain policies (including, without limitation, the Service User Consent Policy and a policy in respect of the death of any Service User) (the “**Service Policies**”). The Pharmacy shall use its reasonable endeavours to perform the Services in accordance with the Service Policies as notified and provided to it from time to time by the Company
- 10.2 The Pharmacy shall at all times comply with the Company’s complaints policy, as may be amended from time to time. Any changes to the policy will be notified to The Pharmacy.

11 Serious Untoward Incident and Patient Safety Incident Reporting

- 11.1 The Pharmacy shall, in accordance with the timescales set out the Incident Reporting Policy, send the Company a copy of any notification it gives to the Regulator or NHS Improvement where that notification directly or indirectly concerns any Service User and the performance of the Services under the Agreement.
- 11.2 The Parties shall comply with:
- 11.2.1 the arrangements for notification and investigation of Serious Untoward Incidents; and
 - 11.2.2 the procedures for implementing and sharing Lessons Learned in relation to Serious Untoward Incidents,

that are set out in the Incident Reporting Policy.

11.3 The Company shall have complete discretion to use the information provided by the Pharmacy under this **clause** 11 in any report which they make to the Commissioner, NHS Improvement, the Regulator, any NHS Body, any Strategic Health Body, any office or agency of the Crown, or any other appropriate regulatory or official body in connection with such Serious Untoward Incident or in relation to the prevention of Serious Untoward Incidents, provided that they shall in each case give at least three (3) Operational Days' prior notice to the Pharmacy of the information to be disclosed, and the body to which they intend to disclose it.

11.4 The Pharmacy shall comply in all respects with:

11.4.1 the procedures relating to Patient Safety Incidents; and

11.4.2 the procedures for implementing and sharing Lessons Learned in relation to such Patient Safety Incidents,

that are set out in the Incident Reporting Policy.

12 Quality

12.1 The Pharmacy shall carry out the Services in accordance with all applicable Law, Good Clinical Practice and Good Health and Social Care Practice, and shall unless otherwise agreed with the Company in writing:

12.1.1 Comply with the Quality Standard and Outcomes as set out at Schedule 2;

12.1.2 consider and respond to the recommendations arising from any audit, Serious Untoward Incident report or Patient Safety Incident report;

12.1.3 comply with the recommendations from time to time issued by a relevant Competent Body;

12.1.4 comply with the standards and recommendations from time to time issued by any relevant professional body and agreed in writing between the Company and the Pharmacy; and

12.1.5 comply with the recommendations from time to time contained in technology appraisals issued by the National Institute for Health and Clinical Excellence (or any successor body).

13 Pastoral, Spiritual and Cultural Care

The Pharmacy shall take account of the spiritual, religious, pastoral and cultural needs of Service Users.

14 Equity of Access, Equality and No Discrimination

14.1 The Pharmacy shall not discriminate between or against Service Users or Carers on the grounds of gender, age, ethnicity, disability, religion or belief, sexual orientation or any other non-medical characteristics..

14.2 The Pharmacy shall provide to the Company such information as the Company may reasonably require to:

14.2.1 monitor the equity of access to the Services; and

14.2.2 fulfil their obligations under the Law,

provided that the Company shall not be permitted to share such information with any organisation outside of the NHS without first obtaining the prior written consent of the Pharmacy(not to be unreasonably withheld or delayed).

15 Warranties

15.1 In relation to the Services the Pharmacy gives the following warranties:

15.1.1 it has full power and authority to enter into the Agreement and all relevant governmental or other official approvals and consents and all necessary Consents have been obtained and are in full force and effect;

15.1.2 its execution of the Agreement does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a Party or which is binding on it or any of its assets;

15.1.3 it has the right to permit the disclosure and use of Confidential Information for the purpose of the Agreement; and

15.1.4 to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under the Agreement.

16 Termination

Voluntary Termination

16.1 Either Party shall be entitled to terminate the Agreement or any part of the Services at any time by giving not less than six (6) months' written notice to the other.

Termination by the Company

16.2 The Company may terminate the Agreement or any part of the Services by written notice to the Pharmacy to take effect immediately if:

16.2.1 the Pharmacy ceases to carry on its business or substantially the whole of its business;

16.2.2 an order is made or a resolution is passed for the winding-up of the Pharmacy, or an administrator or receiver is appointed to manage the Pharmacy's affairs, or the Pharmacy makes any arrangement with its creditors, or any similar event occurs to the Pharmacy;

16.2.3 the Pharmacy serves a notification in accordance with **clause 8.3** and, notwithstanding its other rights under the Agreement, the Company considers in its absolute discretion that (i) the Pharmacy's ability or capacity to deliver the Services is, or will be, adversely affected or (ii) termination of the Agreement is necessary in order to protect the reputation of the Company and/or the Sexual Health Service;

- 16.2.4 without prejudice to the Company's other rights and remedies under the Agreement, the Pharmacy has breached any one or more of its obligations under the Agreement and such breach(es) materially and adversely affects the performance of the Pharmacy's obligations and, only if such breach(es) is/are capable of remedy, the Pharmacy has failed to remedy such breach(es) within fifteen (15) Operational Days of receipt of a notice from the Company identifying the breach(es); or
- 16.2.5 the Head Contract terminates (whether in whole or in part);
- 16.2.6 the Commissioners require the Company to remove or replace the Pharmacy or any Staff or Sub-Contractor.

Termination by the Pharmacy

- 16.3 Provided that the Pharmacy has complied with **clause 4**, if at any time the aggregate undisputed amount due to the Pharmacy from the Company exceeds the equivalent to the Pharmacy of four (4) months' average income under the Agreement and full payment is not made by the Company within thirty (30) Operational Days of receipt of written notice from the Pharmacy requiring payment to be made, the Pharmacy may terminate the Agreement (in respect of the whole but not part only of the Services) by serving written notice to take effect immediately.

17 Effects of Termination or Expiry

- 17.1 On the expiry or termination of this Contract or termination of any Service for any reason:
- i. the Customer, the Pharmacy, and if appropriate any successor provider, will agree a Succession Plan and the Parties will comply with the provisions of the Succession Plan;
 - ii. the Pharmacy must co-operate fully with the Customer, Commissioner and any successor provider of the terminated Services in order to ensure continuity and a smooth transfer of the expired or terminated Services, and to avoid any inconvenience or any risk to the health and safety of Service Users or employees of the Customer or members of the public;
 - iii. promptly provide all reasonable assistance and information to the extent necessary to effect an orderly assumption of the terminated Services by a successor provider;
 - iv. deliver to the Customer all materials, papers, documents, and operating manuals owned by the Customer and used by the Pharmacy in the provision of any terminated Services; and
 - v. use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to the Customer, Service Users or prospective service users as a result of the expiry or termination of this Contract or any Service
- 17.2 Termination of the Agreement, however it arises, shall not affect or prejudice the accrued rights of the Parties at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.
- 17.3 On the expiry or termination of this Contract or termination of any Service, the Pharmacy must co-operate fully with any reasonable request from the Company or Commissioners to

migrate the Services in an orderly manner to the successor provider. Such cooperation shall include (and is not limited to) continued provision of the Services rate payable under Schedule 3 until handover to the successor provider is completed.

18 Liability and Indemnity

18.1 Without prejudice to its liability for breach of any of its obligations under the Agreement, the Pharmacy shall indemnify and keep indemnified the Company against all Losses whatsoever incurred by the Company, whether arising out of or in connection with:

18.1.1 the Pharmacy's or any Sub-contractor's tort (including negligence), default or breach of this Contract, breach of the Law or breach of its statutory duty or breach of an obligation under the DPA;

18.1.2 any claim made against the Company arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Contract by the Pharmacy's or any Sub-contractor;

18.1.3 the enforcement of this Contract,

save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Contract or breach of statutory duty or breach of an obligation under the DPA by the Company.

18.2 Each Party must at all times take all reasonable steps to minimise and mitigate any Losses for which it is entitled to be indemnified by or bring a claim against the other Party pursuant to this Contract.

18.3 The Pharmacy assumes responsibility for and acknowledges that the Company may, amongst other things, recover:

18.3.1 sums paid by the Company to the Pharmacy pursuant to this Contract, in respect of any services not provided in accordance with the Contract;

18.3.2 wasted expenditure;

18.3.3 additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;

18.3.4 losses incurred by the Company or Commissioner arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any Sub-contractor, Staff, regulator or customer of the Company) against the Company caused by the act or omission of the Pharmacy or Sub-contractor;

18.3.5 any anticipated savings.

18.4 The Pharmacy shall maintain in force (or procure that its sub-contractors shall maintain in

force) at its own cost appropriate insurance policies including but not limited to:

18.4.1 employers' liability insurance;

18.4.2 clinical negligence where the provision or non-provision of the Services (or any other services under the Agreement) may result in a clinical negligence claim;

18.4.3 public liability insurance; and

18.4.4 professional negligence.

18.5 For the purpose of this **clause** 18, an indemnity arrangement may comprise of either:

18.5.1 a policy of insurance;

18.5.2 an arrangement made for the purposes of indemnifying a person or organisation; or

18.5.3 a combination of a policy of insurance and an arrangement made for the purposes of indemnifying a person or organisation.

18.6 The Pharmacy shall, from time to time and in any event within five (5) Operational Days of a written demand, provide documentary evidence to the Company that any indemnity arrangements taken out by the Pharmacy pursuant to this **clause** 18 are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.

18.7 The Pharmacy shall maintain (and/or procure that its sub-contractors shall maintain) a clinical negligence indemnity arrangement for the duration of the Agreement, in accordance with the following minimum criteria:

18.7.1 such indemnity arrangement shall be maintained in the name of the Pharmacy (and/or sub-contractor as appropriate);

18.7.2 such indemnity arrangement shall be obtained from a reputable indemnifier who has not been identified by the Company as being unacceptable to the Company;

18.7.3 the Pharmacy shall be liable to make good any deficiency in the event that the proceeds of any indemnity arrangement are insufficient to cover the settlement of any claim; and

18.7.4 the Pharmacy warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which the indemnity arrangement may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part or which may otherwise render any sum paid out under such indemnity arrangement repayable in whole or in part.

18.8 Upon the expiry or termination of the Agreement the Pharmacy shall (and shall use its reasonable endeavours to procure that each of its sub-contractors shall) procure that any ongoing liability it has or may have in negligence arising out of the performance of the Services under the Agreement shall continue to be the subject of appropriate indemnity

arrangements for the period of twenty one (21) years from termination or expiry of the Agreement or until such earlier date as that liability may reasonably be considered to have ceased to exist.

- 18.9 This **clause** 18 shall survive in all respects the expiry of the Agreement or its termination for any reason.
- 18.10 Nothing in these Terms and Conditions shall exclude or limit the liability of either Party for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation or losses caused by either Party's deliberate or wilful breach of the Agreement.

19 Data protection and freedom of information

- 19.1 The Parties acknowledge their respective duties under the DPA and the FOIA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.
- 19.2 To the extent that the Pharmacy is acting as a Data Processor on behalf of the Company or the Commissioners, the Pharmacy shall, in particular, but without limitation:
- 19.2.1 only process such Personal Data as is necessary to perform its obligations under the Agreement, and only in accordance with any instruction given by the Company under the Agreement;
 - 19.2.2 ensure that appropriate technical and organisational measures are in place against any unauthorised or unlawful processing of such Personal Data, and against the accidental loss or destruction of or damage to such Personal Data having regard to the specific requirements in **clause** 19.3.3 below, the state of technical development and the level of damages that may be suffered by a Data Subject whose Personal Data is affected by such unauthorised or unlawful processing or by its loss, damage or destruction;
 - 19.2.3 take reasonable steps to ensure the reliability of employees who will have access to such Personal Data, and ensure that such employees are aware of and trained in the policies and procedures identified in **clauses** 19.3.4, 19.3.5 and 19.3.6 below; and
 - 19.2.4 not cause or allow such Personal Data to be transferred outside the European Economic Area without the prior written consent of the Company.
- 19.3 The Pharmacy and the Company shall ensure that Personal Data is safeguarded at all times in accordance with the Law, which shall include without limitation obligations to:
- 19.3.1 perform an annual information governance self-assessment;
 - 19.3.2 have a Caldicott guardian able to communicate with the Pharmacy's board, who will take the lead for information governance and from whom the Pharmacy's board shall receive regular reports on information governance matters, including but not limited to details of all incidents of data loss and breach of confidence;
 - 19.3.3 (where transferred electronically) only transfer essential data that is:
 - (a) necessary for direct patient care; and

- (b) encrypted to the higher of the international data encryption standards for healthcare and the Law (this includes, but is not limited to, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes);
 - 19.3.4 have policies which are rigorously applied that describe individual personal responsibilities for handling Personal Data;
 - 19.3.5 have a policy that allows it to perform its obligations under the NHS Care Records Guarantee;
 - 19.3.6 have agreed protocols for sharing Personal Data with other NHS organisations and (where appropriate) with non-NHS organisations; and
 - 19.3.7 where agreed between the parties have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of such recordings.
- 19.4 The Pharmacy acknowledges that the Company and the Commissioner are subject to the requirements of the FOIA and shall use its reasonable endeavours to assist and co-operate with the Company to enable the Company to comply with its disclosure obligations under the FOIA. Accordingly the Pharmacy agrees:
- 19.4.1 that the Agreement is subject to the obligations and commitments of the Company under the FOIA;
 - 19.4.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Company;
 - 19.4.3 that where the Pharmacy receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Company) and will promptly transfer the request to the Company;
 - 19.4.4 that the Company, acting in accordance with the codes of Pharmacy issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Pharmacy and the Agreement either without consulting with the Pharmacy, or following consultation with the Pharmacy and having taken its views into account; and
 - 19.4.5 to assist the Company in responding to a request for information, by processing 'information' or 'environmental information' (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and where reasonably practicable, provide copies of all information requested by the Company within 5 Operational Days of such request.

20 Confidentiality

- 20.1 The Parties shall not use, divulge or communicate to any person (except to their professional representatives or advisers as may be required by Law), any Confidential Information which may have or may in future come to their knowledge and they shall use reasonable endeavours to prevent the publication or disclosure of any Confidential Information concerning such matters. The obligation in this clause shall be without limitation in time and shall survive termination of the Agreement.
- 20.2 The Pharmacy will seek the Company's consent before publishing press releases relating to the Agreement or to the Services, and shall not publish such information without having obtained such consent (although the Company may not withhold or delay consent unreasonably).
- 20.3 The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of this clause.
- 20.4 The Company will be entitled to disclose information in its possession that relates to this Contract (including the price) or its subject matter, or any negotiations relating to it or the Pharmacy, to the Commissioners or other third party as may be required under the Head Contract, to NHS England and/or NHS Improvement. The Pharmacy acknowledges the further rights of disclosure that the Commissioner or other third party has in relation to such information under the Head Contract.

21 Variations

- 21.1 The parties agree that any changes to the Company's obligations which are agreed between the Company and the Commissioner under the relevant provisions of the Head Contract shall, to the extent that they impact the provision of the Services under this Agreement, be incorporated into this Agreement without the consent of the Pharmacy provided that as soon as reasonably practicable such amendments are notified by the Company to the Pharmacy in writing. The Pharmacy will implement the changes as soon as practicable but in any event no later than ten (10) Operational Days from receiving the written notification from the Company.
- 21.2 Same as provided for in Clause 21.1, where either Party (for the purposes of this **clause 21**, the "**Proposer**") wishes to propose any variation to the Services and/or the terms of the Agreement (a "**Variation**"), it shall serve written notice on the other Party setting out the Variation proposed and the date upon which the Proposer requires it to take effect (a "**Variation Proposal**").
- 21.3 Upon receipt of a Variation Proposal, the receiving Party (the "**Recipient**") shall respond to it in writing within ten (10) Operational Days from the date of the Variation Proposal, or if it is marked "urgent" within five (5) Operational Days of the date of the Variation Proposal.
- 21.4 The Parties shall then meet within ten (10) Operational Days of the date of the Recipient's response to discuss the Variation Proposal and shall (acting reasonably and in good faith) use reasonable endeavours to agree the Variation.

21.5 If, notwithstanding **clause** 21.4, the Recipient does not agree the Variation, the Recipient shall give notice in writing to the Proposer that the Variation is refused and shall set out reasonable grounds for such refusal. The Proposer may then:

21.5.1 withdraw the Variation Proposal; or

21.5.2 refer the Recipient's refusal to the dispute resolution procedure under **clause** 23.

21.6 In proposing a Variation or responding to a Variation Notice, the Pharmacy must have regard to the Company's position under the Head Contract.

22 Third party rights

22.1 Subject to **clause** 22.2, it is not intended that any other third party be entitled to enforce the Agreement, and the right of the Parties to amend the Agreement is not subject to the consent of any third party.

22.2 The Pharmacy acknowledges and agrees that under the terms of the Head Contract the Company is required to give the Commissioners the right to directly enforce the terms of this Contract and hereby grants the Commissioners such rights. The Commissioners will be entitled to enforce or enjoy the benefit of this Sub-Contract to the extent applicable to the Commissioner and, for the avoidance of doubt, any third party rights of the Commissioner will include all rights granted under the Head Contract to the Commissioner to the extent they are relevant to the Sub-Contract Services.

22.3 Should the Head Contract be suspended for any reason and the Commissioner determines, at its absolute discretion, that the Pharmacy should continue to provide the Sub-Contract Services, the Commissioner will be entitled to step into the role of the Company under this Sub-Contract until such time as the suspension of the Head Contract ceases, the Head Contract is terminated, or the Commissioner requests the suspension of the Sub-Contract Services.

23 Disputes

23.1 Either Party wishing to enter into the dispute resolution process should register that this is the case by notifying the other in writing.

23.2 The Parties will attempt in good faith to resolve any dispute promptly through negotiation between their authorised representatives.

23.3 All negotiations and proceedings connected with any dispute, claim or settlement arising out of or relating to the Agreement ("**dispute**") shall be conducted in confidence.

23.4 If the negotiation referred to in **clause** 23.2 does not resolve the matter in question within fourteen (14) Operational Days of the notification required in **clause** 23.1, then the Company and the Pharmacy will escalate the process by referring the matter to the lead from the Pharmacy and if applicable their authorised representative, who shall use their reasonable endeavours to settle disputes between them internally in good faith.

23.5 If any Dispute arises under this Contract and the same or a similar Dispute arises under the Head Contract, and/or if a Dispute arises under the Head Contract and that Dispute relates in any way to this Sub-Contract, the Pharmacy or the sub-contracted services:

- a) the Pharmacy must, if requested by the Company, negotiate with both the Commissioner and Company and enter into mediation and/or expert determination with both the Commissioner and Company;
- b) the Pharmacy must provide any assistance requested by the Company in pursuance of a resolution of that Dispute or those Disputes; and
- c) the Pharmacy agrees to be bound by the resolution agreed or determined under the Head Contract to the extent that it relates in any way to this Sub-Contract, the Pharmacy or the sub-contracted services.

23.6 This **clause** 23 shall survive the expiry or termination of the Agreement.

24 Assignment, Sub-Contracting and Change in Control

24.1 The Pharmacy must not assign, delegate, transfer, sub-contract, charge or otherwise dispose of all or any of its rights or obligations under this Contract without the Company's prior written consent. The Pharmacy acknowledges that the Company may require the approval of the Commissioner under the Head Contract

24.2 The Company's consent to sub-contracting under **clause** 24.1 will not relieve the Pharmacy of its liability to the Company for the proper performance of any of its obligations under this Contract and the Pharmacy shall be responsible for the acts, defaults or neglect of any Sub-contractor, or its employees or agents in all respects as if they were the acts, defaults or neglect of the Pharmacy.

24.3 The Pharmacy must inform the Company in writing on, and in any event within five (5) Operational Days following, a change in control.

25 Audit and Inspection

25.1 The Pharmacy must comply with all reasonable written requests made by any Regulator or Authorised Person for entry to the Pharmacy's Premises and/or the premises of any Sub-contractor for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. The Pharmacy may refuse such request to enter the Pharmacy's Premises and/or the premises of any Sub-contractor where it would adversely affect the provision of the Services or, the privacy or dignity of a Service User.

25.2 Subject to Law and notwithstanding clause 25.1, an Authorised Person may enter the Provider's Premises and/or the premises of any Sub-contractor without notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services. During such visits, subject to Law and Good Clinical Practice (also taking into consideration the nature of the Services and the effect of the visit on Service Users), the Pharmacy must not restrict access and must give all reasonable assistance and provide all reasonable facilities to the Authorised Person or Regulator.

- 25.3 Within five (5) Business Days of the Company's reasonable request, the Pharmacy must send the Company a verified copy of the results of any audit, evaluation, inspection, investigation or research in relation to the Services, or services of a similar nature to the Services delivered by the Pharmacy, to which the Pharmacy has access and which it can disclose in accordance with the Law.
- 25.4 The Company shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Pharmacy or delay the provision of the Services.
- 25.5 During any audit undertaken under clauses 25.1 or 25.2, the Pharmacy must provide the Company with all reasonable co-operation and assistance in relation to that audit, including:
- 25.5.1 all reasonable information requested within the scope of the audit;
- 25.5.2 reasonable access to the Pharmacy's Premises and/or the premises of any Sub-contractor; and
- 25.5.3 access to the Staff.

26 **Coronavirus**

26.1 For the purposes of this clause 26:

- d) **Coronavirus** means disease known as coronavirus disease (COVID-19) and the virus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
- e) **Coronavirus Event** means an event or delay caused by, or arising from or in relation to, a Coronavirus epidemic or pandemic that changes, prevents or delays delivery of the Services under this agreement or the performance of any obligations under this agreement, including (but not limited to):
- (i) absences or unavailability of Staff;
 - (ii) any illness, quarantining, shielding or self-isolation (including, but not limited to, precautionary self-isolation) of the Staff or Representatives;
 - (iii) any recommended or mandatory measures introduced by the Government intended to prevent or delay the spread of Coronavirus;
 - (iv) any disruption of, or interruption to, any services such as electronic transmission of monies, the Document Exchange or the postal service or to services provided by utilities providers, including (but not limited to) electricity, gas, water, sewage, telecommunications and data services;
 - (v) any unavailability of waste removal services or facilities, packers, movers, or storage facilities;

(vi) any inability to procure signatories or witnesses for the signature or execution of any certificates, notices, letters, deeds, documents or forms (including (but not limited to) Variations) required under this agreement;

f) **Government** means local, regional or central government.

26.2 The Pharmacy shall not be excused from performance of its obligations under this Contract due to a Coronavirus Event which occurs or is reasonably foreseeable on or before the Service Commencement Date.

26.3 If due to a Coronavirus Event which occurs after the Service Commencement Date (or which was not reasonably foreseeable at the Service Commencement Date), a party is prevented from, or delayed in carrying out any of its obligations under this Contract, the Coronavirus Event shall constitute an event of Force Majeure and the terms of clause 27 shall apply.

27 Force Majeure

27.1 Where a Party is (or claims to be) affected by an event of Force Majeure, it must take all reasonable steps to mitigate the consequences of it, resume performance of its obligations under this Contract as soon as practicable and use its reasonable efforts to remedy its failure to perform its obligations under this Contract.

27.2 Subject to clause 27.1, the Party claiming relief as a result of an event of Force Majeure will be relieved from liability under this Contract to the extent that because of the event of Force Majeure it is not able to perform its obligations under this Contract.

27.3 The Party claiming relief as a result of an event of Force Majeure must serve an initial written notice on the other Party immediately it becomes aware of the event of Force Majeure. This initial notice shall give sufficient details to identify the particular event. The Party claiming relief must then serve a detailed written notice within a further fifteen (15) Business Days. This detailed notice shall contain all relevant available information relating to the failure to perform the relevant obligations under this Contract as is available, including the effect of the event of Force Majeure, the mitigating action being taken and an estimate of the period of time required to overcome it and resume full delivery of Services.

27.4 A Party cannot claim relief as a result of an event of Force Majeure, if the event of Force Majeure is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant event of Force Majeure.

27.5 The Company shall not be entitled to exercise its rights to withholdings and/or deduction of payments under this Contract, to the extent that the circumstances giving rise to such rights arise as a result of an event of Force Majeure.

28 Provisions surviving Termination

28.1 Any rights, duties or obligations of any of the Parties which are expressed to survive, or which otherwise by necessary implication survive the expiry or termination for any reason of the Agreement, together with all indemnities, shall continue after such expiry or termination, subject to such other limitations of time as are expressed in the Agreement. For the avoidance

of doubt (and without limiting the scope of this clause), the Parties agree that **clauses** 11, 16, 17, 18, 20, 23 shall survive the termination or expiry of the Agreement.

29 Miscellaneous

- 29.1 The Parties acknowledge and agree that under the terms of the Head Contact, the Company is required to develop and promote a brand that can be associated with the Sexual Health Service (the “**Service Brand**”). The Company shall grant the Pharmacy a fully paid-up non-exclusive licence to use the Service Brand for the duration of the Agreement for the sole purpose of providing the Services and the Pharmacy shall only use the Service Brand for the purposes and in the manner directed by the Company and shall seek the Company’s prior written approval to use the Service Brand in any material produced by or on behalf of the Service Provider.
- 29.2 Except as set out expressly in this Contract, no Party will acquire the Intellectual Property Rights of the other Party. The parties shall agree that all intellectual property right and all works subsisting or created wholly or partially by the Service Provider and/or its staff at any time during the course of providing the Services under this Agreement shall automatically, on creation, vest in the Company absolutely. The Company shall grant to the Pharmacy a royalty free, non-exclusive and non-transferable licence for the duration of this Agreement to use these intellectual property rights only for the purpose of or in connection with this Agreement.
- 29.3 No forbearance or delay by either Party in enforcing its respective rights will prejudice or restrict the rights of that Party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.
- 29.4 If any of the provisions of the Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced, provided that this does not fundamentally frustrate the Parties’ original intentions, in which case the Agreement shall terminate forthwith.
- 29.5 No variation to the Agreement shall be valid unless it is in writing and signed by an authorised representative on behalf of both Parties.
- 29.6 Except as otherwise expressly set out in the Agreement, neither Party may assign any of its rights and obligations under the Agreement without the other Party’s prior written consent.
- 29.7 The Parties are not in partnership with each other and there is no relationship of principal and agent between them.
- 29.8 Except where these Terms and Conditions expressly provide otherwise, the written terms of this document record the entire agreement between the Company and the Pharmacy in connection with the Services and any other matters mentioned herein. Neither Party has relied on any representation which is not recorded here and both Parties will refrain from claiming otherwise. This does not affect either Party’s liabilities or remedies for fraud.
- 29.9 The Agreement shall be governed by the laws of England. Save where the Agreement provides otherwise, the English courts shall have exclusive jurisdiction.
- 29.10 Any notice required to be given under the Agreement shall be in writing and shall be delivered:

29.10.1 in the case of the Pharmacy, the Company Secretary at the Pharmacy's Registered Office Address via their preferred method of delivery as illustrated in 25.11 , or

29.10.2 in the case of the Company, to the following address:

Debra Adams (General Manager)

Virgin Care Services Limited

The Heath Business and Technical Park,

Runcorn, Cheshire, WA7 4QX

29.11 Notices:

29.11.1 by post shall be effective upon the earlier of actual receipt, or five (5) Operational Days after mailing;

29.11.2 by hand shall be effective upon delivery; and

29.11.3 by e-mail shall be effective when sent in legible form, but only if, following transmission the sender does not receive a non-delivery message.

30 Interpretation

30.1 The definitions and rules of interpretation in this clause apply to these Terms and Conditions.

30.1.1 “**Agreement**” means the Agreement made between the Parties based on these Terms and Conditions.

30.1.2 “**Company Complaints Policy**” means the Company's policy for dealing with complaints, as may be updated and amended (and subsequently communicated to the Pharmacy) from time to time

30.1.3 “**Audit Commission**” means the independent public body established under the Audit Commission Act 1998 which is responsible for ensuring that public money is spent economically, efficiently and effectively in the areas of local government, housing, health, criminal justice and the fire and rescue services.

30.1.4 “**Authorised Person**” means the Commissioners or any body or person concerned with the treatment or care of a patient approved by the Commissioners.

30.1.5 “**Carer**” means the person responsible for the day-to-day care of a Service User.

30.1.6 “**Commissioners**” means the Stockton on Tees Borough Council, Hartlepool Borough Council, Middlesbrough Borough Council, Redcar & Cleveland Borough Council, NHS England and NHS Improvement North East and Yorkshire, NHS Tees Valley Clinical Commissioning Group.

30.1.7 “**Competent Body**” means any body that has authority to issue standards or recommendations with which the Parties must comply.

30.1.8 “**Confidential Information**” means information which belongs or relates to any Party to the Agreement and which is disclosed to the other Party to the Agreement for the purpose of or incidentally to the carrying on of the Agreement and which would reasonably be considered to be confidential or which is designated as confidential by the Party disclosing it. Confidential Information includes data on patients but does not include information which is or becomes generally available to the public (other than as a result of disclosure by the Party receiving it, or its representatives or advisers); or is or becomes available to a Party otherwise than pursuant to the Agreement and free of any restriction as to its use or disclosure.

30.1.9 “**Consent**” means:

- (a) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by Law for or in connection with the performance of the Services; and/or
- (b) any necessary consent or agreement from any third party needed either for the performance of the Pharmacy’s obligations under the Agreement, or for the provision by the Pharmacy of the Services in accordance with the Agreement,

including any registration with the Care Quality Commission.

30.1.10 “**Contract Year**” shall mean a period of twelve (12) months commencing on the Effective Date and every anniversary of the Effective Date.

30.1.11 “**CPPE**” means the Centre for Pharmacy Postgraduate Education.

30.1.12 “**Data Processor**” has the meaning given in the DPA.

30.1.13 “**Data Subject**” has the meaning given in the DPA.

30.1.14 “**Designated Pharmacist**” has the meaning given in clause 8.8.

30.1.15 “**DPA**” means the Data Protection Act 2018.

30.1.16 “**Effective Date**” has the meaning given in **clause 1.1**.

30.1.17 “**Equipment**” means all equipment and consumables used by the Pharmacy in the performance of the Services.

30.1.18 “**Expiry Date**” means 31 July 2024.

30.1.19 “**First Extension**” has the meaning given in **clause 1.3**.

30.1.20 “**First Extension Request**” has the meaning given in **clause 1.3**.

30.1.21 “**FOIA**” means the Freedom of Information Act 2000.

30.1.22 “**Good Clinical Practice**” means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a

skilled, efficient and experienced clinical services provider and a person providing the services the same or similar to the Services at the time the Services are provided.

30.1.23 **“Good Health and Social Care Practice”** means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced health and social care provider and a person providing the services the same or similar to the Services at the time the Services are provided.

30.1.24 **“Guidance”** means any applicable health or social care guidance, direction or determination which the Company and/or the Pharmacy has a duty to have regard to, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Pharmacy by the Company and/or the Department of Health and which for the avoidance of doubt, shall include the NHS Operating Framework.

30.1.25 **“Head Contract”** means the contract made between the Company and the Commissioners for the provision of the Sexual Health Service.

30.1.26 **“Incident Reporting Policy”** means the policy for reporting Serious Untoward Incidents and Patient Safety Incidents, as may be updated and amended (and subsequently communicated to the Pharmacy) from time to time.

30.1.27 **“Indirect Losses”** means loss of profits (other than profits directly and solely attributable to the provision of the Services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis and for the avoidance of doubt the terms “Indirect Losses” does not include any loss of the Company under the Head Contract, or any other subcontract entered into by the Company.

30.1.28 **“Law”** means:

- (a) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
- (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;
- (c) any applicable judgment of a relevant court of law which is a binding precedent in England;
- (d) Guidance;
- (e) National Standards; and
- (f) any applicable code, including without limitation the Cabinet Office Code;

in each case, in force in England.

- 30.1.29 "**Lessons Learned**" means experience derived from provision of the Services, the sharing and implementation of which would be reasonably likely to lead to an improvement in the quality of the Pharmacy's provision of the Services.
- 30.1.30 **HealthWatch** means an entity established pursuant to contractual arrangements made by a local authority under section 221(1) of the Local Government and Public Involvement in Health Act 2007, the function of which is to carry on in such local authority's area the activities specified in section 221(2) of the Local Government and Public Involvement in Health Act 2007
- 30.1.31 "**Losses**" means all damages, direct loss, liabilities, claims, actions, reasonably incurred costs, expenses (including the cost of legal or professional services), proceedings, demands and charges whether arising under statute, contract or common law, but excluding Indirect Losses.
- 30.1.32 "**LPC**" means the relevant Local Pharmaceutical Committee.
- 30.1.33 "**NHS Care Records Service**" means the electronic Service User record management service which enables authorised health or social care professionals to access an individual Service User's integrated electronic care record at any time from any relevant health or social care premises.
- 30.1.34 "**NHS Employment Check Standards**" means the documents which set out the pre-appointment checks that are required by law, those that are mandated by Department of Health policy, and those that are required for access to the NHS Care Records Service and include, without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks.
- 30.1.35 "**National Audit Office**" means the independent office established under the National Audit Act 1983 which conducts financial audits and reports to Parliament on the spending of public money and any successor body.
- 30.1.36 "**National Standards**" means those standards applicable to the Pharmacy under the Law and/or Guidance, as amended from time to time.
- 30.1.37 "**Operational Day**" means a day other than a Saturday, Sunday or bank holiday in England.
- 30.1.38 "**Parties**" means the Company and the Pharmacy, and "**Party**" shall mean either one of them.
- 30.1.39 "**Patient Safety Incidents**" means any unintended or unexpected incident which could have led or did lead to harm to one or more Service Users receiving NHS-funded care.
- 30.1.40 "**Personal Data**" has the meaning given in the DPA.
- 30.1.41 "**Premises**" means premises controlled or used by the Pharmacy for any purposes connected with the provision of the Services.

- 30.1.42 **“Professional Registration”** means a member of Staff's registration or certification with, or accreditation by, a Regulatory Body;
- 30.1.43 **“Proposer”** has the meaning given in **clause 21.1**.
- 30.1.44 **“Quarter”** means a period of three (3) months commencing on the Services Commencement Date, the second of which will commence three (3) months after the Services Commencement Date, the third of which will commence six (6) months after the Services Commencement Date and so on during the term of the Agreement, apart from the final quarter which shall be the period from the end of the previous quarter until the date on which the Agreement expires or is terminated.
- 30.1.45 **“Rates”** means the rates set out in **Schedule 3**.
- 30.1.46 **“Recipient”** has the meaning given in **clause 21.3**.
- 30.1.47 **“Regulator”** means the Care Quality Commission established under the Health and Social Care Act 2008.
- 30.1.48 **“Regulatory Body”** means any body that has authority for registering, certifying or accrediting professionals performing services the same as the services being carried out by the relevant member of Staff, or any part of them;
- 30.1.49 **“Second Extension”** has the meaning given in **clause 1.7**.
- 30.1.50 **“Second Extension Request”** has the meaning given in **clause 1.7**.
- 30.1.51 **“Safeguarding Policies”** means the Commissioner's policies for safeguarding and promoting the welfare of children and adults in vulnerable circumstance derived from the Commissioners (acting jointly) as may be updated and amended (and subsequently communicated to the Pharmacy) from time to time.
- 30.1.52 **“Serious Untoward Incidents”** means an incident or accident or near-miss where a patient (whether or not a Service User), member of staff, or member of the public suffers a serious injury, major permanent harm or unexpected death and where the actions of the Pharmacy, the Staff or the Company are likely to be of significant public concern.
- 30.1.53 **“Service Brand”** has the meaning given in **clause 29.1**.
- 30.1.54 **“Service Location”** has the meaning given in **clause 6.1**.
- 30.1.55 **“Service Policies”** has the meaning given in **clause 10.1**.
- 30.1.56 **“Service User”** means a patient, service user, client or customer of the Commissioners or any patient, service user, client or customer who is referred or presented to the Pharmacy or otherwise receives Services under the Agreement.
- 30.1.57 **“Services”** means the services set out in **Schedule 1**.
- 30.1.58 **“Services Commencement Date”** has the meaning given in **clause 1.1**.
- 30.1.59 **“STI”** means sexually-transmitted infection.

- 30.1.60 **“Staff”** means all persons (whether clinical or non-clinical) employed or engaged by the Pharmacy (including volunteers, agency, locums, casual or seconded personnel) in the provision of the Services, or any activity related to, connected with the provision of the Services.
- 30.1.61 **“Subsequent Extension”** has the meaning given in **clause 1.7**.
- 30.1.62 **“Subsequent Extension Request”** has the meaning given in **clause 1.7**.
- 30.1.63 **“Term”** means the period from the Service Commencement Date to the Expiry Date, or date of termination if earlier.
- 30.1.64 **“Third Extension”** has the meaning given in **clause 1.9**.
- 30.1.65 **“Third Extension Request”** has the meaning given in **clause 1.9**.
- 30.1.66 **“Variation”** has the meaning given in **clause 21.1**.
- 30.1.67 **“Variation Proposal”** has the meaning given in **clause 21.1**.
- 30.2 **Person** includes a corporate or unincorporated body or association (whether or not having separate legal personality).
- 30.3 A reference to a statute or statutory provision is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 30.4 Writing or written includes faxes but not e-mail or any other form of electronic communication.
- 30.5 Where the words include(s) or including are used in these Terms and Conditions, they are deemed to have the words 'without limitation' following them.
- 30.6 The Schedules shall form part of these Terms and Conditions.
- 30.7 References in these Terms and Conditions to “the Commissioners” (or any one of them) shall include those bodies’ successor organisations.

Schedule 1 – The Services

1. Background

Sexual health services provided in a primary care setting under this agreement will be known as Pharmacy Sexual Health Services. These services will form a significant part of the integrated model of sexual health service provision delivered by the Company as part of the commissioned Head Contract.

2. Key Service Aims

The key service aims of the Integrated Teesside Sexual Health Service are:

- To provide Sexual health promotion, information and advice including that which aims to reduce stigma associated with STIs, HIV and unwanted pregnancy;
- Rapid and easy access to services for the prevention, detection and management (treatment and partner notification) of sexually transmitted infections to reduce prevalence and transmission;
- Rapid and easy access to the full range of contraceptive services for all ages;
- Prevention of unwanted pregnancy including unwanted pregnancy among teenagers;
- Rapid and easy access to NHS funded abortion services for those who choose this option;
- Supporting women and couples to plan pregnancy;
- Reducing late diagnoses of HIV;
- Improving the sexual health of people living with HIV;
- Continuous service improvement through development, innovation and consultation with service users and the local population;
- Prevention of infection and health improvement through providing screening and brief interventions for risk taking behaviours and lifestyles;
- Provide clinical leadership to a clinical network across Teesside maximising its cross organisation working to improve sexual health services;
- Deliver high quality open access sexual health services in line with NICE guidance / best practice guidance. This will include all aspects of a sexual health service including testing, treating and education programmes;
- Providing sexual health information and advice in order to develop increased knowledge, especially in high-need communities and within vulnerable groups;
- Ensuring that services are acceptable and accessible to people disproportionately affected by unwanted pregnancy and sexual ill health based on the most up to date sexual health needs assessment and Joint Strategic Needs Assessment (JSNA);
- Providing opportunities for people to manage their own sexual health either independently or with support;
- Rapid and easy access to services for the prevention, detection and management (treatment and partner notification) of sexually transmitted infections to reduce prevalence and transmission;
- Provision of chlamydia screening as part of the National Chlamydia Screening Programme (NCSP);
- Improve access for all age groups to a complete range and choice of contraception including long acting methods, emergency contraception, condoms and support to reduce the risk of

- unwanted pregnancy;
- Supporting evidence-based practice in sexual health (this should include participation in audit and service evaluations and may include research);
- Promoting the service and key sexual health messages to the local population, via the use of innovative and appropriate media and marketing techniques tailored to specific audiences.

3. Aim

Teesside Sexual Health Service aims to deliver a quality assured, open access, fully integrated sexual health service that offers services that are equitable and accessible, in the right locations to meet the needs of its diverse population, in particularly meeting the needs of residents who often do not access health care services.

The Company aim to commission Pharmacy Sexual Health Services that support the achievement of the Head Contract requirements, through their provision of:

- Access to Emergency Hormonal Contraception – EHC – for patients aged 13 years and over
- Chlamydia Screening (15-24 year old inclusive age range only)

4. Objectives of the Company

- To provide a front line community based pharmacy sexual health service that meets the needs of the resident and or registered population of Teesside
- To provide a point of access into wider sexual health services
- To provide a paper light/less service
- To ensure developed pathways are used to enable access into services required by patients attending pharmacy sexual health services in Teesside as part of a managed network
- To actively engage service users and local people to develop and improve pharmacy sexual health services
- To work within the Clinical Governance, Caldicott guidelines and safeguarding principles operated by TSHS/the local authorities commissioning the Head Contract
- To advertise and market the service working in conjunction with TSHS
- To ensure pharmacy sexual health services are compliant with current guidance on sexual health and contraceptive services
- To comply with safeguarding requirements as set out in section 8.2.

5. Evidence Base

The evidence base for the advice, care and treatment provided by the Integrated Sexual Health Service consists of best practice and expertise as prescribed by current clinical training, guidance from appropriate professional bodies, relevant national strategies issued by the Department of Health and research evidence including:

- A Framework for Sexual Health Improvement 2013;

- National Chlamydia Screening Programme and relevant sexual health NICE guidance (2005; Feb 2007, Feb 2014);
- MEDfash Standards (2014);
- Faculty of Reproductive Healthcare clinical standards (2013);
- The provider must ensure that services provided as part of this specification comply with up to date key policies, best practice, standards and guidelines.

6. Scope of Services

6.1. Service Outline

The 4 local authority areas of Teesside have a combined population of 578,000 residents. The Pharmacy Sexual Health Service will be provided from locations across the area offering as universal coverage as possible to residents from all areas.

6.2. Provision

The core elements in the provision of Pharmacy Sexual Health Services, are:

- Access to Emergency Hormonal Contraception – EHC;
- The provision of Chlamydia Screening via postal kits to targeted 15-24 inclusive age range;

6.3. Protocols

Protocols for the delivery of the service are shown within this schedule.

6.4. Signposting

The Service Provider will ensure that following any patient assessment or intervention, due regard is shown to considering the following:

- Onward referral to Integrated Sexual Health Services for all presentations of symptomatic infections;
- Recognising/referral/reporting for suspect sexual abuse and referral of safeguarding cases;
- Rapid signposting to an appropriate clinical service for emergency IUD fitting;
- Recognising/signposting/arranging of suitable rapid assessment for potentially urgent medical conditions;
- Termination of Pregnancy Services

6.5. TSHS support

The Company will provide:

- Induction training and information session regarding services and policies to include

safeguarding, and an annual update for Pharmacy sexual health provision and Safeguarding. (This does NOT include funding to backfill for time out of pharmacy);

- Condoms and chlamydia testing kits;
- Marketing materials as agreed on any marketing initiatives as part of an annually agreed plan;
- Available clinical support;
- Cost of PharmOutcomes modules for the provision of these services (paid to the Local Pharmaceutical Committee);
- Provision of information leaflets and other relevant information;

7. Days/Hours of operation

The Pharmacy shall use all reasonable endeavours to have sufficient appropriately qualified and experienced Pharmacists and other clinical and non-clinical Staff to ensure that Pharmacy Sexual Health Services are provided in all respects and at all times of their hours of operation.

The Pharmacy will ensure that a qualified Pharmacist is available at all times to oversee any dispensations/assessments completed by other staff from that location.

8. Staff Training and Qualifications

8.1 Staff Training

The Pharmacy will be responsible for ensuring current pharmacists and staff actively involved in the provision of the service have relevant knowledge and are appropriately trained in the operation of the service and meet sexual health service standards as defined by MEDFash and BASHH. Approved training in order to satisfy requirements is set out below:

- 1: Emergency Hormonal Contraception competence (CPPE certification);
- 2: Chlamydia screening (Local);
- 3: PharmOutcomes (Local).

8.2 Safeguarding Training

All Pharmacists will be trained as a minimum to level 3 Safeguarding children consistent with the requirements stipulated in the Royal College of Paediatrics and Child Health, Intercollegiate Document, March 2014.

All other Pharmacy staff involved in the delivery of the service must be appropriately trained in customer service, confidentiality and safeguarding training - level 2 as a minimum as per the below Intercollegiate guidance:

Level 1: - All staff working in health care settings: This level is equivalent to basic safeguarding/child protection training across all partner organisations working with children and young people.

The Pharmacy must be able to provide written records that show that all staff participate in organisational mandatory training and update training and that competencies are monitored through regular assessment and staff appraisal and that staff are enabled to progress through supported

learning. Such information can be provided by The Pharmacy on an anonymised basis.

The Pharmacy must be able to demonstrate on request that their workforce policies, processes, practices and strategies comply with all relevant applicable UK employment legislation and best practice.

9. Service Elements

9.1. Referral Criteria & Sources

The Pharmacy will provide open access for patient as follows:

- Emergency Hormonal Contraception (Aged 13 and above);
- Chlamydia Screening (15-24 year old inclusive age range);

9.2. Exclusion Criteria

Service users under the age of 13 (although advice as to where a referral should be sought may be given).

The Pharmacy has the right to refuse service provision to a user:

- Who is unsuitable for treatment under the terms of this specification;
- Who has not validly consented to the treatment provided as part of the service;
- For any unreasonable behaviour unacceptable to the Pharmacy, it's staff, the consultant or the named professional who is clinically responsible for the management of the care of such patient.

9.3. Referral processes into the service

Open access, self-referral, and referral by health practitioner.

9.4. Marketing

The Company will work with the Pharmacy to ensure that the service is effectively marketed. Appropriate marketing materials will be provided by the Company through advanced agreement. The Pharmacy will be responsible for ensuring that the marketing materials provided are utilised effectively.

9.5. Discharge Criteria and Planning

The Pharmacy shall be responsible for ensuring timely onward referral for those people who they are not able to manage – this includes patients outside the eligibility criteria or those requiring additional specialist support :

10. IM & T

All Pharmacies delivering Services will be required to:

- Utilise PharmOutcomes for the recording of all consultation data and invoicing;
- Ensure staff trained to a sufficient level to use PharmOutcomes;
- Ensure the completion of the NHS Information Governance Toolkit to a satisfactory level (level 2)
- In the event of the need for the Pharmacist to provide Patient Identifiable Data electronically use an authorised NHS.net email account for any electronic transfer of patient identifiable data to other parties where an approved shared clinical record system is not available to support such transfer;
- Comply with the NHS Patient Care Record Guarantee in processing and sharing of any electronic patient records;
- Demonstrate they have the permissions to access and use all IT systems (applications, data, infrastructure and networks) required to operate the service;
- Demonstrate they have IMT support arrangement in place to ensure they are able to operate the service. This should include IT technical support, Application support including training, configuration and Registration Authority, Information Governance and IT security advice;
- Have access to the internet from locations where the service is delivered

11. Reporting and Activity data

All activity and reporting data will be recorded in Pharmoutcomes and the Pharmacy will comply with any data recording requirements as requested. The Pharmacy will send the Company a monthly reconciled invoice generated from Pharmoutcomes with any other reporting information as required from the Company.

12. Pathways

The below attachment contains the pathways and protocols which the Pharmacies must comply with in the operation of the Services:

Pharmacy EHC – PGD



23.09.2020 FINAL
Ulipristal-National-PGE



FINAL 22-09-22
Levonorgesterol-Natio

Pharmacy Chlamydia Kit provision



Chlamydia Screening
Protocol.docx

Schedule 2 - Quality Standards and Outcomes

All Pharmacies involved in this agreement will be expected to ensure the following key performance indicators are achieved:

Ref / Indicator	Threshold	Method of Measurement	Consequence of breach	
Ref				
1.	Percentage of women who have access to urgent contraceptive advice and services (including emergency contraception) within 4 hours of accessing the service	95%	Monthly collection (from PharmOutcomes) For Quarterly Performance Report	Remedial action plan
2.	Evidence of at least one user experience survey annually. This survey will be drawn up and agreed through the Pharmacy Development Group by the end of Q2 in the first year of the service.	100% Demonstrable evidence of improvements and changes made to service delivery in response to feedback	Annual Report Local patient surveys to be supplied	Remedial action plan
3.	Percentage of service user feedback on surveys that rates satisfaction as	90% (<70% indicative of poor service)	Annual Report	Remedial action plan

	good or excellent	delivery)		
4.	Evidence of improvements made to service as a result of user feedback	Demonstrable evidence of improvements and changes made to service delivery in response to feedback	Annual Report	Remedial action plan
5	Percentage of clients whose notes record their first language	98%	Annual Report	Remedial action plan
6.	% of new 15 – 24 year olds registering for C Card offered a Chlamydia Screening Kit	100% offered	Monthly Report (from Pharmoutcomes)	Remedial action plan

Schedule 3 – Pricing

The below table shows the pricing for each subcontract element (all prices below include VAT):

Service Provision	Unit cost	Notes
Emergency Hormonal Contraception (Levonelle)	£20.00 per consultation + cost of drug (if provided) at drug tariff + 5% VAT.	The cost of the drug to be dispensed will be as specified in the PGD and will be reimbursed as per the national drug tariff + 5% VAT.
C Card registration (only for period 01/08/2021 – 31/03/2022)	£8.50	Consumables to be provided by TSHS
Supply of condoms under the C-Card scheme (only for period 01/08/2021 – 31/03/2022)	£1.75	Paid as distribution fee. Consumables to be supplied by TSHS
Supply of Chlamydia Screening Kits for 15-24 year olds	£3.60	Chlamydia Screening Postal kits to be provided to 15-24 year olds by the TSHS

Schedule 4 – C-Card Services

S4.1 Commissioners have extended the current provision of Pharmacy C-Card until the 31st March 2022.

S4.2 The Company requires the Pharmacy to continue with the provision of C-Card services during this period, in line with the protocol currently in place for this element of the service provision, as included below



C_Card_Protocol.doc
x

S4.3 Reports for C-Card activity will continue to be processed through the use of the PharmOutcomes system, to inform the reporting requirements of the Head Contract as detailed in Section 10 above.

S4.4 The Company will continue to provide the Pharmacy with consumables, training and support throughout this extension period in conjunction with Tees LPC

S4.5 In additional to the points of Clause 17, no later than 3 months prior to the end of this extension period, the Company will further inform the Pharmacy regarding any proposed development of Pharmacy C-Card Services

S4.6 For the purpose of clarity, in the event that the commissioners do not extend the C-Card services under the Head Contract with the customer in relation to the C-Card services, or such head contract terminates, C-Card services detailed under this schedule automatically expire and for the avoidance of doubt no later than 31st March 2022.

Schedule 5 – Safeguarding Policies

- 1 Health services not only have a duty to safeguard all patients but provide additional measures for patients who are less able to protect themselves from harm or abuse this includes vulnerable adults and children.
- 2 Pursuant to clause **Error! Reference source not found.** (Safeguarding Children and Vulnerable Adults) the Pharmacy must have clear Adult and Child Protection policies and procedures that clearly link to the Authorities' and Tees-wide Adult and Child Protection protocols for recognising, responding to, reporting and recording suspected or actual abuse and will comply fully with Local Safeguarding Children Boards.
- 3 The service will work within statutory guidance on making arrangements to safeguard and promote the welfare of children under Section 11 of the Children Act 2004 – Working Together to Safeguard Children 2010, including the following key features:
 - Senior Management commitment to the importance of safeguarding and promoting Children's welfare
 - A clear statement of responsibility towards Children and Young People that is available to all staff.
 - A clear line of accountability for work on safeguarding and promoting the welfare of Children and Young People.
 - A mechanism in place to ensure service development that takes into account the need to safeguard and promote welfare, informed where appropriate, by the views of Children, Young People and their families.
 - Safe recruitment procedures in place
 - Effective inter-agency working to safeguard and promote the welfare of Children and Young People.
 - Effective information sharing.

4 The Service will also recognise and adopt the following key principles in relation to safeguarding:

- The welfare of the child is paramount. The rights of parents, carers and pregnant women for support in fulfilling their parental roles and responsibilities do not override the welfare of a child to be protected and be treated as an individual.
- All staff will need to be competent when dealing with all child protection & safeguarding concerns, including mandatory training in the Common Assessment framework (CAF) Procedure.
- The Common Assessment Framework process for children, young people and families will help agencies meet the obligations set by Sections 10 and 11 of the Children Act 2004 to make arrangements to safeguard and promote the welfare of children and young people. The CAF process will help early identification of need and promote co-ordinated service provision for children with additional needs.
- Staff will receive regular and on-going child protection and safeguarding training that meets the appropriate level as set out by the Local Safeguarding Children Partnership.
- All practitioners who come into contact with adults, children, parents and families in their everyday work have a duty to safeguard and promote the welfare of the child.
- The services should adopt a 'no wrong door' ethos; contact for vulnerable families, with the service being able to open the door to a broader network of services
- While many parents with multiple vulnerabilities safeguard their children's well being, children's life chances may be limited or threatened as a result of those factors. Agencies should assess the impact on children, be alert to their needs and welfare and respond in an integrated way to emerging problems. Where the CAF process is followed, the Pharmacy shall support a CAF when appropriate for all parents referred to and within the service if such assessment has not already taken place.

- We should help children early and not wait for crises or tragedies to occur.

5 The Pharmacy shall ensure that all staff, including domestic staff, independent visitors and volunteers, know what action to take if they observe, suspect or have reported to them, possible evidence of abuse.

6 The Pharmacy shall communicate to staff within its policies that all reports of suspected abuse are taken seriously within the organisation and that staff can report legitimate concerns without prejudice to their employment or fear of any criticism.

7 This is the Company's Safeguarding Children and Young People policy.



VCL Safeguarding
Children and Young

8 This is the Company's Safeguarding Adults policy.



VCL - Policy -
Safeguarding Adult:

9. These are links to the Safeguarding policies and procedures of the commissioning authorities:

Teeswide Adults:

<https://www.tsab.org.uk/>

Hartlepool

https://www.hartlepool.gov.uk/info/20076/adults_and_older_people/275/teeswide_safeguarding_adults_board/1

<https://www.teescpp.org.uk/contact/hartlepool>

Middlesbrough

<https://www.middlesbrough.gov.uk/social-care-and-wellbeing/adult-social-care/safeguarding-adults-guide>

<https://www.middlesbrough.gov.uk/children-families-and-safeguarding/worried-about-child>

Redcar and Cleveland

<https://www.redcar-cleveland.gov.uk/resident/adult-children-health/adult-care/adult-care-services/Pages/Safeguarding-Adults.aspx>

<https://www.redcar-cleveland.gov.uk/resident/adult-children-health/children-services/more-information/Pages/What-to-do-if-you-are-worried-about-a-child.aspx>

Stockton-on-Tees

<https://www.stockton.gov.uk/our-people/safeguarding-adults/>

<https://www.stockton.gov.uk/our-people/hartlepool-and-stockton-on-tees-safeguarding-children-partnership-hsscp/>