DATED: 1 November 2016

CHESHIRE AND WIRRAL PARTNERSHIP NHS FOUNDATION TRUST (1)
and
(2)

This Agreement is dated the 1 of November 2016

Between:

(1) **CHESHIRE AND WIRRAL PARTNERSHIP NHS FOUNDATION TRUST** , whose main place of business is at
Trust Board Offices - Redesmere
Countess of Chester Health Park
Liverpool Road
Chester CH2 1BQ
"**the Commissioner**" and

(2) **,** whose Head Office is at
"**the Provider".**

Recitals

A. The Commissioner is Cheshire and Wirral Partnership (CWP), a NHS Foundation Trust, providing mental health services across the Cheshire and Wirral. With regard to this contract, CWP is the lead provider of substance misuse services to the residents of East Cheshire (commissioned by Cheshire East Borough Council).

B. The Provider is a pharmacy that has agreed to assist in the delivery of Cheshire East substance misuse service by dispensing of medications, observed consumption of prescribed medication and pharmacy needle exchange services.

C. The Provider wishes to provide and the Commissioner wishes to commission dispensing of medications, observed consumption of prescribed medication and pharmacy needle exchange services in accordance with the terms and conditions of this Agreement. The parties have therefore agreed to enter into this Agreement on the terms and conditions set out below to govern the relationship between them.

1. Definitions, interpretation and construction

1.1 In this Agreement the following words and expressions shall, save where the context or the express provisions of this Agreement otherwise requires or admits, have the following respective meanings:

"**Agreement Date"** means the date of this Agreement;

"**Business Day**" means any day on which banks are generally open for business in the City of London (other than Saturdays, Sundays or public holidays) and the expression "Business Days" shall be construed accordingly;

"**Change Control Procedure**" means the procedure for change as set out in Schedule 5;

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"**Charges**" means the charges to be paid by the Commissioner in accordance with Schedule 3 and Clause 2.2;

"**Commencement Date**" means 1 April 2017;

"**Confidential Information**" means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a Party (the Disclosing Party) to the other Party (the Receiving Party) whether before or after the Agreement Date including information relating to the Disclosing Party's products, operations, processes, plans and intentions, product information, know-how, design rights, trade secrets, market opportunities, business affairs and other confidential information;

"**Default**" means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence, or statement of either Party, its employees, agents or Sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other;

"**Dispute Resolution Procedure**" means the procedure for resolving disputes as set out in Schedule 4.

"**DPA**" means the Data Protection Act 1998;

"**Expiry Date**" means 31 October 2018;

"**Pharmacy Patient Medication Record**" means the record where pharmacies record medication supplied through their pharmacy;

"**Patient**" means any individual who is the subject of medical treatment or assessment by either the Commissioner or the Provider;

"**Party**" means a Party to this Agreement and the word "Parties" means all of the Parties to this Agreement;

"**Personal Data**" means 'personal data' as defined in the DPA which is supplied by one Party to the other or acquired by either Party during the course of fulfilling its obligations under this Agreement;

"**Services**" means the services described in Schedule 1;

"**Service Levels**" means the service levels set out in Schedule 2; and

"**Year**" means each successive period of 12 months, the first commencing on the Commencement Date.

1.2 All Clause, paragraph and section headings and marginal notes and references to them in this Agreement are for identification and indexing purposes only. They shall be deemed not to be part of this Agreement and they shall not affect construction or interpretation of this Agreement.

1.3 Save where the context otherwise requires, words importing the singular meaning shall include the plural meaning and vice versa and words denoting the masculine gender shall include the feminine and neuter genders.

1.4 Where the context so admits, words denoting persons shall include natural persons, companies, corporations, firms, partnerships, limited liability partnerships, joint ventures, trusts, voluntary associations and other incorporated and/or unincorporated bodies or other entities (in each case, whether or not having separate legal personality) and all such words shall be construed interchangeably in that manner.

1.5 In this Agreement, a reference to a statutory provision includes a reference to the statutory provision as modified, re-enacted, amended, revised or extended from time to time whether before or after the Agreement Date (and any subordinate legislation made under the statutory provision) whether before or after the Agreement Date.

1.6 References in this Agreement to Clauses and the Schedules are to be construed as references to the Clauses of, and the Schedules to, this Agreement and references to this Agreement include the Schedules and the Schedules shall be deemed to have full force and effect as if set out in the main body of this Agreement.

2. Obligations of the Parties

2.1 In consideration of an agreement to pay the Charges by the Commissioner the Provider shall provide the Services in accordance with the provisions of Schedule 1.

2.2 In consideration of an agreement to provide the Services by the Provider the Commissioner shall pay the Charges in accordance with Schedule 3 via a web based data management system.

2.3 The Provider shall provide the Services in accordance with the Service Levels.

3. Term & Termination

3.1 This Agreement shall commence on the Commencement Date and shall continue in force until the Expiry Date unless terminated early in accordance with this Clause 3 or otherwise agreed in writing between the Parties (the “Term”).

3.2 Either Party may terminate this Agreement before the expiry of the Term in the event that:

3.3 The other Party is in Default of any obligation under this Agreement and the Default is not capable of remedy, or being capable of remedy has not been remedied within 14 days of the party in Default being notified of it; or

3.4 The other Party fails to pay any sum due under this Agreement and such failure (save where failure to pay is subject to a dispute and the Dispute Resolution Procedure is invoked) continues for 30 days from the date such payment is due.

3.5 Either party may terminate this Agreement before the expiry of the Term immediately at any time upon giving written notice to the other in the event that the other;

3.5.1 Suffers any negative publicity the nature of which might bring the terminating party into disrepute or prevent or hinder the terminating party from complying with its obligations under this Agreement;

3.5.2 Being any form of NHS Trust other than a Foundation Trust, is dissolved or otherwise ceases to operate by virtue of an order of the appropriate Secretary of State, the Department of Health, or otherwise;

3.5.3 Being an NHS Foundation Trust:

3.5.3.1 An order is made pursuant to section 54 of the National Health Service Act 2006 (“2006 Act”) to dissolve the other party; or

3.5.3.2 Monitor, being the regulating body, exercises any one or more of the powers in sections 52(3) or 52(4) of the 2006 Act or requires action under section 53 of the 2006 Act; or

3.5.3.3 Monitor transfers any or all of the other party’s responsibilities and such transfer materially affects the other party’s ability to perform its obligations under this Agreement; or

3.5.3.4 The other party's terms of authorisation are amended such that the other party is no longer able to provide (whether temporarily or permanently) any or all of the Services; or

3.5.3.5 The other party applies to Monitor for its dissolution and the transfer of its property and liabilities to another body corporate pursuant to section 56 of the 2006 Act.

3.6 In addition to the provisions of Clauses 3.2 and 3.5 either Party may terminate this Agreement at any time by giving to the other not less than 12 months' notice in writing.

4. Consequences of Termination

In addition to any obligations set out in the Dispute Resolution Procedure, in the event of termination of this Agreement:

4.1 the Provider shall continue to provide the Services to the required Service Levels until the date of termination of this Agreement provided always that such Service Levels shall only apply to the extent that the Services to which they relate are required to be performed in accordance with this Agreement;

4.2 All sums due to either Party which shall have accrued up to and until the date of termination shall become immediately due and payable; and

4.3 Each Party shall return to the other all property belonging to or relating to the other in its possession to the extent that it is able to do so whilst complying with its statutory obligations and its obligations under this Agreement.

5. Charges

5.1 The Charges shall be calculated and paid in accordance with Schedule 3.

5.2 All Charges and fees payable under this Agreement shall be payable in pounds sterling by electronic transfer of funds to the nominated bank account of the Provider and shall be exclusive of VAT which shall, if payable, be paid by the Commissioner in addition. Each remittance shall reference the invoice number to which it relates.

5.3 The Charges will be paid quarterly in arrears. The Provider shall enter activity through a web based data management solution to create invoices paid via the web based management system.

6. Warranties

6.1 The Provider warrants throughout the Term that:

6.1.1 The Services shall be performed by appropriately experienced, qualified and trained personnel with all reasonable skill, care and diligence and in accordance with the standards, practices, methods and procedures of a skilled and experienced person engaged in providing services similar to the Services in the circumstances envisaged by this Agreement and in accordance with good clinical and good healthcare practice;

6.1.2 It has the power and necessary authority to execute this Agreement and has obtained all consents necessary to allow it to enter into this Agreement and comply with its obligations under it.

6.2 The Commissioner warrants throughout the Term that:

6.2.1 It has the power and necessary authority to execute this Agreement and to undertake the obligations set out in this Agreement; and

6.2.2 It will perform all of its obligations under this Agreement with all due skill, care and diligence and in accordance with good clinical practice.

6.3 The Provider and the Commissioner each warrant that they will at all times observe all of their obligations under the DPA in relation to any Personal Data to which they may have access whilst performing their obligations under this Agreement.

6.4 Each of the Parties warrants that this Agreement is executed by their duly authorised representatives.

6.5 Except as expressly stated in this Agreement, all warranties and conditions by either Party (including, but not limited to, warranties and conditions as to fitness for purpose and description) whether express or implied by statute, common law or otherwise are hereby excluded to the fullest extent permitted by law.

7. Change Control Procedure

Any requirement for a change under this Agreement shall be subject to the Change Control Procedure. For these purposes, a "change" includes any proposed amendment to the Agreement, any proposed assignment, and novation or sub-contracting of the Agreement, any proposed change to the Services or any proposed change to the Charges. For each such change which is agreed by the Parties the terms of this Agreement shall be amended to the extent necessary to give effect to that change. However, unless and until such amendment is made in accordance with the Change Control Procedure, the terms of this Agreement shall not in any way be considered to have been amended. For the avoidance of doubt, the Provider and/or the Commissioner shall be under no obligation to agree to any change in the Services, the Charges, or this Agreement nor provide any additional or modified Services to the Commissioner and neither the Provider nor the Commissioner shall be deemed to be in breach of this Agreement in the event that it does not agree to provide such additional or modified Services or agree to any change in the Services, this Agreement or the Charges.

8. Indemnities

8.1 Each party shall indemnify the other in respect of any death or personal injury or loss of or damage to tangible property or any losses, liabilities, costs, claims (including but not limited to professional fees) expenses and damages suffered or incurred by the other or its respective employees or authorised agents or patients ("Losses") to the extent that such Losses are caused by:

8.1.1 any Default on the part of the indemnifying party, its employees or agents or sub-contractors in connection with the performance or purported performance of the Services or any of its obligations under this Agreement; or

8.1.2 Any negligence of the indemnifying party, its employees or agents.

8.2 In the event of any claim or demand being made or action brought to which Clause 8.1 above applies, the Party making the claim shall promptly notify the other and the other shall at its own expense conduct all negotiations for settlement of the same and any legal proceedings that may arise therefrom. Each Party hereby agrees to grant to the other exclusive control over any such negotiations or litigation. Each Party shall consult with and pay due regard to the interests and views of the other in the conduct of any defence to any claim or demand hereunder, but shall not be required to comply with such interests or views. Each Party, its employees and agents, shall at the request of the other afford all reasonable assistance for the purpose of contesting any such claim or demand or action and shall be repaid any reasonable expenses incurred in so doing and shall not make any admissions which may be prejudicial to the defence of such claim or demand or action.

8.3 For the avoidance of doubt nothing in this Clause 8 shall affect any obligation or right of either Party in relation to the Clinical Negligence Scheme for Trusts ("CNST") including but not limited to any obligation to maintain insurance through the CNST or any right to refer any claims to the CNST for handling, settlement and/or litigation. Both parties shall take out and maintain insurance (or maintain their memberships of the National Health Service Litigation Authority ("NHSLA"), Existing Liability Scheme, Liabilities to Third Parties Scheme and Property Expenses Scheme and other relevant schemes operated by the NHSLA***)*** against claims made pursuant to Clause 8.1 with a minimum limit of indemnity of £1 million per incident in respect of loss of or damage to property and unlimited in respect of personal injury or death.

9. Limitation of liability

9.1 Nothing in this Agreement seeks to exclude or limit the liability of either Party for death or personal injury arising from its negligence or the negligence of its employees or agents or any liability of either Party for fraud or fraudulent misrepresentation.

9.2 Subject always to the provisions of Clause 9.1 the liability of the Provider for any breach of its obligations pursuant to this Agreement shall in no event exceed a sum equalling 10% of the amount paid for the relevant Services under this Agreement by the Commissioner to the Provider over a 12 month period which shall be calculated as 12 times the monthly average of the amount paid over the 3 months immediately preceding the event of Default (or the last of them).

9.3 Subject always to the provisions of Clause 9.1 the liability of the Commissioner for any breach of its obligations pursuant to this Agreement shall in no event exceed a sum equalling 10% of the amount paid for the relevant Services under the Agreement by the Commissioner to the Provider over a 12 month period which shall be calculated as 12 times the monthly average of the amount paid over the 3 months immediately preceding the event of Default (or the last of them).

9.4 Both Parties shall at all times use their best endeavours to minimise and mitigate any losses they may incur under this Agreement.

9.5 Neither Party shall in any event be liable to the other for any indirect or consequential loss or damage (including but not limited to loss of business, goodwill, and loss of profits, loss of anticipated savings or increased management and staff costs).

9.6 The Parties expressly agree that should any limitation or provision contained in this Clause 9 be held to be invalid it shall to that extent be deemed omitted but if any Party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

9.7 The Parties agree and acknowledge that this Agreement has been negotiated and the limitations of liability set out herein are reasonable in all of the circumstances and reflect the commercial position and bargaining position of the Parties.

10. Notices

10.1 A notice or other communication under or in connection with this Agreement shall be in writing in the English language and shall be delivered personally or sent by first (1st) class pre-paid post or by facsimile transmission to the Party due to receive the notice or other communication, at its address or to the facsimile number set out in Clause 10.2 or to such other address or facsimile number as a Party may have notified to the other Party by not less than five (5) Business Days' prior notice. In the absence of evidence of earlier receipt, service of a notice or other communication is deemed to have been effected as follows:

10.1.1 If delivered personally, at the time when left at the address referred to in Clause 10.1;

10.1.2 If sent by first (1st) class prepaid post, on the second (2nd) Business Day after it is put in the post; and

10.1.3 If sent by facsimile transmission, at the time of transmission or, if the time of transmission is outside normal working hours (which shall be deemed to be 9.00 a.m. to 5.00 p.m. Monday to Friday excluding public holidays), at 9.00 a.m. upon the next Business Day.

10.2 For the purposes of Clause 10.1:

10.2.1 The Commissioner's details are as follows:

Address: Trust Board Offices - Redesmere
Countess of Chester Health Park
Liverpool Road
Chester CH2 1BQ

Telephone No: 01244 397377

Attention: Tim Welch – Director of Finance / Deputy Chief Executive

10.2.2 the Provider's details are as follows:

10.3 In proving service under this Clause 10, it shall be sufficient to prove that personal delivery was made, or as the case may be, that the letter was properly addressed and posted or, as the case may be, the facsimile transmission was properly addressed and despatched and that the sender shall have received a transmission report confirming continuous uninterrupted transmission of the facsimile notice or communication.

10.4 E-mail notice shall not be valid for the purposes of this Agreement.

11. Force Majeure

11.1 For the purposes of this Agreement the expression 'Force Majeure' shall mean any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including but not limited to war, terrorist activity, governmental regulation, fire, flood, natural disaster, or industrial dispute, any or all of which are not directly attributable to the acts or omissions of one of the Parties.

11.2 Neither Party shall be liable to the other for any loss, expense, claim or liability of any kind whatsoever including but not limited to any damages or charges whether directly or indirectly caused to or incurred by the other Party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue or resume performance of such obligations hereunder for the duration of such Force Majeure event.

11.3 If the performance of this Agreement by either Party is prevented, hindered or delayed by reason of any Force Majeure event, both Parties shall be entitled to a reasonable extension of time in which to perform their respective obligations under this Agreement. However, neither

Party shall be entitled to any additional costs incurred as a result of the delay provided that the Party affected by the delay notifies the other Party in writing immediately upon becoming aware of the delay (with both Parties mutually notifying the other if both are delayed).

11.4 In the event that the Parties are prevented from complying with their obligations under this Agreement for a period exceeding 3 months, either Party shall be at liberty to terminate this Agreement upon giving to the other 30 days' notice in writing.

11.5 If either of the Parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

12. Legal obligations

Both Parties will comply with all obligations contained in the Data Protection Act 1998, Freedom of Information Act 2000, Caldicott recommendations, and all other relevant UK and Economic Union legislation.

13. Pharmacy Patient Medication Records

13.1 The Provider shall create records, which shall form part of Pharmacy Patient Medication Record, for all Patients receiving medication as part of the Services. Pharmacy Patient Medication Records shall be kept in an appropriate secure location. The Commissioner shall be granted access to such Patient Medication Records and shall be entitled to inspect them and require copies to be provided by the Provider at any time.

13.2 The Parties shall comply with any duty arising from the Patient's entitlement to confidentiality of his Pharmacy Patient Medication Record and any other information (including Personal Data) relating to him as a Service User in accordance with all relevant legislation and common law duties including, without limitation, the Human Rights Act 1998, the DPA, Access to Health Records Act 1990 and the common law duty of confidentiality.

14. Provision of Information

14.1 The Provider shall, at the request of the Commissioner, produce within 7 days, or such other period as may be agreed between the Parties, to the Commissioner or to a person authorised in writing by the Commissioner or allow it, or a person authorised in writing by it, to access, on request:

14.1.1 Any information which is reasonably required by the Commissioner for the purposes of or in connection with this Agreement; and

14.1.2 Any other information which is reasonably required in connection with the Commissioner's functions.

14.2 The nominated representatives of the Parties will meet at intervals to be agreed (but at least once every 6 months) to consider and discuss the provision of the Services and any issues arising from the operation of this Agreement.

14.3 The parties shall keep each other fully informed on a day to day basis of all matters relevant to the operation of this Agreement.

15. Notifications to the Commissioner

15.1 In addition to any requirements of notification elsewhere in this Agreement, the Provider shall notify the Commissioner in writing, as soon as reasonably practicable, of:

15.1.1 Any serious incident that, in the reasonable opinion of the Provider, affects or is likely to affect the Provider's performance of its obligations under this Agreement;

15.1.2 Any circumstances which give rise to the Commissioner's right to terminate this Agreement under Clause 3;

15.1.3 Any serious untoward incident, which for the purposes of this Clause 15 means an incident or accident where any person suffers serious injury, major permanent harm or unexpected death and where the actions of the Provider or the Provider's Staff are likely to be of significant public concern; and

15.1.4 Any patient safety incident, which for the purposes of this Clause 15 means any intended or unexpected incident which could have or did lead to harm to one or more Patients.

16. Clinical Governance

The Provider shall have an effective system of clinical governance. The Provider shall nominate a person who will have responsibility for ensuring the effective operation of the system of clinical governance. The person nominated shall be a person who performs or manages the Services under this Agreement.

17. Confidentiality

17.1 Each Party hereby undertakes that:

17.1.1 Any person employed or engaged by it to perform any or all of the Services shall only use Confidential Information disclosed to it or them by the other Party for the purposes of this Agreement and the performance of the Services;

17.1.2 Any person employed or engaged by it shall not disclose any Confidential Information disclosed to it or them by the other Party to any third Party without the prior written consent of the other Party except as expressly provided for in this Agreement;

17.1.3 It shall take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of this Agreement by its employees, servants, agents or sub-contractors;

17.1.4 It shall comply (and shall ensure that its employees, servants, agents and sub-contractors comply) with all instructions and/or guidelines produced by the other Party from time to time for the handling and storage of the other Party's Confidential Information;

17.1.5 It shall obtain from any sub-contractors engaged in connection with this Agreement a signed confidentiality undertaking in substantially the same form as the obligations set out in this Clause 17; and

17.1.6 It shall ensure that its employees are subject to obligations of confidentiality which are equivalent to those in this Clause 17.

17.2 The provisions of this Clause 17 shall not apply to any information which:

17.2.1 Is or becomes public knowledge other than through a breach of this Clause 17;

17.2.2 Is in the legitimate possession of the receiving Party prior to the date of receipt from the disclosing Party;

17.2.3 Is received from a third Party who lawfully acquired it and who is under no obligation restricting its disclosure;

17.2.4 Is independently developed without access to the Confidential Information; or

17.2.5 Is required by law or a court of competent jurisdiction to be disclosed.

17.3 Nothing in this Clause 17 shall be deemed to prevent either Party from disclosing any Confidential Information obtained from the other Party:

17.3.1 To any other department, office or agency of Her Majesty's Government and in the case of the Provider only to Monitor but only insofar as is required for the Provider to comply with its legal obligations in that respect provided that such information is treated as confidential by such departments, offices or agencies;

17.3.2 To any professional or legal advisor, consultant, sub-contractor or other person engaged in connection herewith but only as far as such professional or legal advisor, consultant, sub-contractor or other person has a need to receive such Confidential information;

17.3.3 Which is disclosed as a result of an obligation to supply information for parliamentary, governmental, judicial or other administrative or regulatory purposes;

18. Freedom of Information and transparency

18.1 The Provider acknowledges that the Commissioners are subject to the requirements of the FOIA. The Provider must assist and co-operate with each Commissioner to enable it to comply with its disclosure obligations under the FOIA. The Provider agrees:

18.1.1 That this Contract and any other recorded information held by the Provider on a Commissioner's behalf for the purposes of this Contract are subject to the obligations and commitments of the Commissioner under FOIA;

18.1.2 That the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under FOIA is a decision solely for the Commissioner to whom the request is addressed;

18.1.3 That where the Provider receives a request for information under FOIA and the Provider itself is subject to FOIA, it will liaise with the relevant Commissioner as to the contents of any response before a response to a request is issued and will promptly (and in any event within 2 Operational Days) provide a copy of the request and any response to the relevant Commissioner;

18.1.4 That where the Provider receives a request for information under FOIA and the Provider is not itself subject to FOIA, it will not respond to that request (unless directed to do so by the relevant Commissioner to whom the request relates) and will promptly (and in any event within 2 Operational Days) transfer the request to the relevant Commissioner;

18.1.5 That any Commissioner, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Provider and this Contract either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and

18.1.6 To assist the Commissioners in responding to a request for information, by processing information or environmental information (as the same are defined in 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 FOIA, and providing copies of all information requested by that Commissioner within 5 Operational Days of that request and without charge.

18.2 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Contract is not Confidential Information.

18.3 Notwithstanding any other term of this Contract, the Provider consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of FOIA

18.4 In preparing a copy of this Contract for publication the Commissioners may consult with the Provider to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Commissioners' absolute discretion.

18.5 The Provider must assist and cooperate with the Commissioners to enable the Commissioners to publish this Contract.

19. No Partnership

Nothing in this Agreement shall create or be deemed to create a partnership or joint venture between the Parties or the relationship of employer and employee between the Parties.

20. Variation

Subject to the provisions of Clause 7 no variation of this Agreement shall be effective unless in writing signed by duly authorised officers on behalf of both Parties hereto.

21. Waiver

Any failure by either Party at any time to enforce any provision of this Agreement shall not prejudice any future enforcement of any right under this Agreement.

22. Third Party Rights

Any person who is not Party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This Clause does not affect any rights or remedy of any person which exists or is available otherwise than pursuant to that Act.

23. Legal Status

The construction validity and performance of this Agreement shall be governed by English law and subject to clause 23 the English Courts shall have exclusive jurisdiction over any disputes. For the purposes of this Agreement both parties agree that this Agreement shall not have the status of an NHS Contract within the meaning of Section 9 of the 2006 Act and as such is intended to create legally binding relationships.

24. Dispute Resolution

24.1 Both the Commissioner and the Provider will use common sense discussions and negotiation before resorting to the use of the Dispute Resolution Procedure under this Agreement.

24.2 Disputes between the Commissioner and the Provider in relation to this Agreement that cannot be resolved by discussion at review meetings may be referred at the instigation of either Party to the Dispute Resolution Procedure.

25. Assignment and Sub-Contracting

25.1 This Agreement shall be binding on the successors and permitted assignees of the parties which for the avoidance of doubt shall include anybody which substantially takes over or assumes the responsibilities of either the Commissioner or the Provider.

25.2 Neither party shall assign or novate any obligation or right it may have under this Agreement or any part of them without the proper consent of the other party, such consent not to be unreasonably withheld or delayed.

26. Severability

If any provision if this Agreement is held or becomes invalid, illegal or unenforceable for any reason such provision shall be severed from this Agreement and the remainder of the provision shall continue in full force and effect.

27. Entire Agreement

This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior representations, agreements, negotiations or understandings with respect to this Agreement, whether made orally or in writing (but nothing in this Clause 27 shall apply to any fraudulent misrepresentations made by either party).

28. Equity of Access, Equality and Non-Discrimination

28.1 The Parties must not discriminate between or against Service Users, Carers or Legal Guardians on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics, except as permitted by the Law.

28.2 The Provider must provide appropriate assistance and make reasonable adjustments for Service Users, Carers and Legal Guardians who do not speak, read or write English or who have communication difficulties (including hearing, oral or learning impairments). The Provider must carry out an annual audit of its compliance with this obligation and must demonstrate at Review Meetings the extent to which Service improvements have been made as a result.

28.3 In performing its obligations under this Contract the Provider must comply with the obligations contained in section 149 of the Equality Act 2010 and section 6 of the Human Rights Act 1998. If the Provider is not a public authority for the purposes of those sections it must comply with them as if it were.

28.4 In consultation with the Co-ordinating Commissioner, and on reasonable request, the Provider must provide a plan or plans setting out how it will comply with its obligations under Service Condition 13.3. If the Provider has already produced such a plan in order to comply with the Law, the Provider may submit that plan to the Co-ordinating Commissioner in order to comply with this Service Condition 13.4.

29. Information Governance – General Responsibilities

29.1 The Parties acknowledge their respective obligations arising under FOIA, DPA and HRA, and under the common law duty of confidentiality, and must assist each other as necessary to enable each other to comply with these obligations.

29.2 The Provider must complete and publishing an annual information governance assessment using the NHS Information Governance Toolkit.

29.3 The Provider must:

29.3.1 Nominate an Information Governance Lead, to be responsible for information governance and for providing the Provider's Governing Body with regular reports on information governance matters, including details of all incidents of data loss and breach of confidence;

29.3.2 Nominate a Caldicott Guardian and Senior Information Risk Owner, each of whom must be a member of the Provider's Governing Body;

29.3.3 Ensure that the Commissioner is kept informed at all times of the identities of the Information Governance Lead, Caldicott Guardian and the Senior Information Risk Owner;

29.4 The Provider must adopt and implement the recommendations of the Caldicott Information Governance Review and the Response to Caldicott.

29.5 The Provider must, at least once in each Contract Year, audit its practices against quality statements regarding data sharing set out in NICE Clinical Guideline 138.

29.6 The Provider must achieve a minimum level 2 performance against all requirements in the relevant NHS Information Governance Toolkit.

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

30. The Provider as a Data Controller

30.1 The Parties acknowledge that:

30.1.1 in relation to Personal Data processed by the Provider for the purpose of delivering the Services the Provider will be sole Data Controller; and

30.1.2 In relation to Personal Data required by a Commissioner for the purposes of quality assurance, performance management and contract management, that Commissioner and the Provider will be joint Data Controllers.

30.2 The Provider must ensure that all Personal Data processed by the Provider in the course of delivering the Services is processed in accordance with the relevant Parties' joint obligations under the DPA.

30.3 The Provider's obligations in relation to Personal Data processed by the Provider in the course of delivering the Services include:

30.3.1 Publishing, maintaining and operating policies relating to confidentiality, data protection and information disclosures that comply with the Law, the Caldicott Principles and Good Practice;

30.3.2 Publishing, maintaining and operating policies that describe the personal responsibilities of Staff for handling Personal Data and applying those policies conscientiously;

30.3.3 Publishing, maintaining and operating a policy that supports the Provider's obligations under the NHS Care Records Guarantee;

30.3.4 Publishing, maintaining and operating agreed protocols to govern the disclosure of Personal Data;

30.3.5 Where appropriate having a system in place and a policy in relation to the recording of any telephone calls or other telehealth consultations in relation to the Services, including the retention and disposal of those recordings.

30.4 The Provider must have in place a communications strategy and implementation plan to ensure that Service Users are provided with, or have made readily available to them, the information specified in paragraph 2(3) of Part II of Schedule 1 DPA.

30.5 Where the Commissioner requires information for the purposes of quality management of care processes, the Provider must provide anonymised, pseudonymised or aggregated data, and must not disclose that Personal Data to the relevant Commissioner for those purposes without written consent or some other lawful basis for disclosure.

30.6 The Provider must (unless it can lawfully justify non-disclosure) disclose defined or specified confidential patient information to or at the request of the Co-ordinating Commissioner where support has been provided under the S251 Regulations, respecting any individual Service User's objections and complying with other conditions of the relevant approval.

31 The Provider as a Data Processor

31.1 Where the Provider, in the course of delivering the Services, acts as a Data Processor on behalf of a Commissioner, the Provider must:

31.1.1 Process relevant Personal Data only to the extent necessary to perform its obligations under this Contract, and only in accordance with instructions given by the Commissioner

31.1.2 Take appropriate technical and organisational measures against any unauthorised or unlawful processing of that Personal Data, and against the accidental loss or destruction of or damage to such Personal Data having regard to the state of technological development, the nature of the data to be protected and the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage;

31.1.3 Take reasonable steps to ensure the reliability of Staff who will have access to Personal Data, and ensure that those Staff are aware of and trained in the appropriate Policies and Procedures.

31.1.4 Not cause or allow Personal Data to be transferred outside the European Economic Area without the prior consent of the Commissioner.

Schedule 1

Services

Service Specification for Supervised Self-Administration:

Final Supervised Consumption Spec.dc

Service Specification for Needle Exchange:

Final Needle Exchange Spec.docx

These services apply to the following:

Pharmacy Name	Address	Post Code	Dispensing of controlled and non-controlled medication	Supervised Self-Administration	Needle Exchange

If you have any concerns in relation to prescribing, please do not hesitate to contact the service direct –

The Barnabas Macclesfield 01625 712000
Monday to Friday 09.00-17.00hrs (late opening until 19.00hrs on Wednesday)

Catherine House Crewe 01270 656301
Monday to Friday 09.00-17.00hrs (late opening until 19.00hrs on Tuesday)

Schedule 2

Service Levels

1. The Services will be provided by suitably qualified and experienced medical, nursing and support staff. The mix and expertise level of staff shall be agreed between the parties prior to the commencement of this Agreement. The Provider shall use its best endeavours to maintain the mix and expertise levels agreed and will notify the Commissioner if any divergence from such mix shall be necessary.

2. All staff involved in providing the Services shall receive such training as is necessary and appropriate in order to ensure that the Services are provided in accordance with good clinical practice and good healthcare practice.

3. The Provider will give 48 hours' notice to the Patient and the Commissioner where any Patient appointment is to be cancelled for any reason other than Force Majeure. Where any Patient appointment is cancelled due to Force Majeure the Provider will notify the Patient and the Commissioner as soon as it becomes aware of the need to cancel the appointment

Schedule 3

Charges

Both Supervised Consumption and Needle exchange are quarterly invoices and quarters run as below

Nov – Jan
Feb – Apr
May – Jul
Aug- Oct

Supervised Consumption

Methadone Liquid Supervision	£1.54
Methadone Tabs Supervision	£1.54
Buprenorphine Supervision	£1.85
Morphine Supervision	£1.85
Dexamphetamine Supervision	£1.54
Start Up Payment	£100

Start Up Payment is made when the pharmacy had first invoice

VAT 0%

Needle Exchange

Packs Supply is the sum of all packs supplied and the cost is based on bands below per invoice/claim month

Additional supply is based on the number of packs supplied each month and based on bands below.

No of packs per month	Additional Payment	Packs Payment
0 - 9		£25.63
10 - 40		£76.88
41 - 60	£10.25	£87.13
61 - 80	£20.50	£97.38
81 - 100	£30.75	£107.63
101 - 120	£41.00	£117.88
121 - 140	£51.25	£128.13
141 - 160	£61.50	£138.38
161 - 180	£71.75	£148.63
181 - 200	£82.00	£158.88
201 - 220	£92.25	£169.13
221 - 240	£102.50	£179.38

241 - 260	£112.75	£189.63
261 - 280	£123.00	£199.88
281 - 300	£143.50	£220.38
301 - 320	£153.75	£230.63
321 - 340	£164.00	£240.88
341 - 360	£174.25	£251.13
361 - 380	£184.50	£261.38
381 - 400	£194.75	£271.63
401 - 420	£205.00	£281.88
421 - 440	£215.25	£292.13
441 - 460	£225.50	£302.38
461 - 480	£235.75	£312.63
481 - 500	£246.00	£322.88
501 - 520	£256.25	£333.13
521 - 540	£266.50	£343.38
541 - 560	£276.75	£353.63
>560	£276.75	£353.63

VAT – 20%

NEX, we generate a consolidated invoice summing the individual invoices in the quarter, we process 2 months data including the current claim period when processing individual month invoices

Example for quarterly invoice, Feb 2017 to April 2017, if the total invoice amount due is £1359.18,
below is the breakdown

Claim Period	Amount	Pack Supply count
Feb 2017 claim period	£363.88	298
Mar 2017 claim period	£384.38	306
Apr 2017 claim period	£384.38	315
Total (ex VAT)	£1,132.64	
VAT (20%)	£226.54	
Total (inc VAT)	£1,359.18	

Schedule 4

Dispute Resolution Procedure

1. In the case of any dispute arising out of or in connection with this Agreement, the Provider and the Commissioner must make every reasonable effort to communicate and cooperate with each other with a view to resolving the dispute, before referring the dispute for determination in accordance with paragraphs 2 to 6.

2. If the negotiations referred to in paragraph 1 above do not resolve the matter in question, then either Party may at its discretion give notice in writing to the other Party of its intention to invoke the Dispute Resolution Procedure set out in paragraphs 3 to 6 below.

3. Within 28 days of receipt of the notice served in accordance with paragraph 2, or any such other period agreed between the Parties, the Parties' respective authorised representatives shall meet together to attempt to resolve the said dispute.

4. In the event that the individuals referred to in paragraph 3 above fail to resolve the said dispute within 10 days of the meeting referred to in paragraph 3 (or such other period agreed between the Parties) then the dispute shall be referred to a single arbitrator to be agreed upon by the Parties, or in default of an agreement within 21 days to be nominated by the President for the time being of the Institute of Arbitrators in accordance with the Arbitration Act 1996.

5. In the event that the individuals referred to in paragraph 3 above agree a course of resolution of the said dispute the party in default shall have 12 weeks in which to action the dispute to the satisfaction of the other party. In the event that the other party is not satisfied with the action taken, the dispute shall be referred to a single arbitrator in accordance with paragraph 4.

6. The arbitration shall be in accordance with the Arbitration Act 1996 and in accordance with such arbitration rules as the Parties may agree, or in default of agreement in accordance with the Rules of the London Court of International Arbitration.

7. The decision of the Arbitrator shall be final and binding on the parties.

Schedule 5

Change Control Procedure

Any Change to the Contract must be in writing and agreed by both parties for it to take effect.

In witness whereof the Parties have caused this Agreement to be duly executed on the day and year first above written

Signed for and on behalf of
The Commissioner

By …….
(DIRECTOR OF FINANCE)

Date …….

Signed for and on behalf of
The Provider

By …….
(CHIEF EXECUTIVE/DIRECTOR)

Date …….