



And

Terms and Conditions

For the Provision of

**Smoking Cessation Advice and Nicotine
Replacement Therapy (GP)**

CONTENTS

Clause	Heading	
1	DEFINITIONS.....	5
	PART A - OPERATIVE PROVISIONS	5
2	HEADINGS.....	9
3	NOTICES.....	9
4	ENTIRE AGREEMENT.....	9
	PART B - PROVISION OF SERVICES	10
5	CONTRACT PERIOD.....	10
6	PERFORMANCE.....	10
7	CONTRACT MANAGER.....	10
8	ORDERING PROCESS.....	11
9	TITLE TO GOODS	11
10	WARRANTY.....	11
11	CONTRACTOR'S EMPLOYEES	12
	PART C - PRICE AND PAYMENT	13
12	PRICE AND PAYMENT.....	13
	PART D - TERMINATION AND CONSEQUENCES OF TERMINATION	13
13	TERMINATION.....	13
14	CONSEQUENCES OF TERMINATION	15
15	DISPUTE RESOLUTION PROCEDURE	16
16	SURVIVAL.....	17
	PART E - INSURANCE AND LIABILITIES	17
17	INSURANCE	17
18	INDEMNITY AND LIABILITY	17
	PART F - PROTECTION OF INFORMATION	18
19	INTELLECTUAL PROPERTY.....	18
20	CONFIDENTIALITY AND PUBLICITY.....	18
21	DATA PROTECTION	19
22	FREEDOM OF INFORMATION.....	19
23	RECORD KEEPING AND MONITORING AND ASSISTANCE	19
	PART G - STATUTORY OBLIGATIONS	20
24	HEALTH AND SAFETY	20
25	CORPORATE REQUIREMENTS.....	21
26	LAW AND CHANGE IN LAW.....	21
27	TUPE AND RE-TENDERING	21
28	BUSINESS CONTINUITY.....	23
	PART H - GENERAL PROVISIONS	23
29	CONTRACT VARIATION	23
30	THIRD PARTY RIGHTS	23
31	NO WAIVER.....	23

32	SEVERANCE	23
33	ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY	24
34	FORCE MAJEURE	24
35	INDUCEMENTS	24
36	COSTS AND EXPENSES	25
37	NO AGENCY OR PARTNERSHIP	25
38	NON SOLICITATION AND OFFERS OF EMPLOYMENT	25
39	INSPECTION OF CONTRACTOR'S PREMISES	25
40	LAW AND JURISDICTION	26
41	OBLIGATION TO MITIGATE.....	26
42	LOCAL AUTHORITY RIGHTS.....	26
43	ATTESTATION.....	27

ANNEXES

ANNEX A CONTRACT PARTICULARS	28
ANNEX B SERVICE SPECIFICATION	30
ANNEX C PRICING SCHEDULE	39

CONDITIONS OF CONTRACT

THIS AGREEMENT is made the **1st day of April, 2014**

BETWEEN:

- (1) **Trafford Borough Council** of Trafford Town Hall Talbot Road, Old Trafford, Stretford, Manchester M32 0TH (**the "Council"**) and
- (2) **(Contractor Name)** whose registered office is at (Contractor address) (**the "Contractor"**)

WHEREAS:

- A. The Contractor will enter into this Agreement with the Council to provide a Smoking Cessation Advice and Nicotine Replacement Therapy service within the borough of Trafford as outlined in Annex B.

PART A - OPERATIVE PROVISIONS

1.1 DEFINITIONS

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

“Authorised Officer”	the person duly appointed by the Council to act as the representative of the Council for the purpose of the Contract and notified in writing to the Contractor from time to time and identified in the Contract Particulars or as amended from time to time and in default of such notification the Council’s head of procurement or similar responsible officer.
“Business Day”	The NHS contracted opening days and the NHS opening hours of the Contractor.
“Change in Law”	the coming into effect or repeal (without re-enactment or consolidation) in England and Wales of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Contract.
“Commencement Date”	the commencement date stated in the Contract Particulars.
“Confidential Information”	any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the Services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the DPA) and commercial sensitive information.
“Contract”	<p>the agreement in respect of the provision of the Services consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority:</p> <ol style="list-style-type: none">1. the Contract Particulars;

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

“Contractor”	the contractor and where applicable this shall include the contractor's Employees, sub-contractors, agents, representatives, and permitted assigns and, if the contractor is a consortium or consortium leader, the consortium members.
“Contract Manager”	the person named in the Contract Particulars as the contract manager and any replacement from time to time in accordance with clause 7.2.
Contract Review Monitoring Group	means those authorised officers appointed by the Council, from time to time, to manage and monitor the Services provided in accordance with this Agreement
“Contract Particulars”	the document attached hereto at Annex A and detailing the specific core terms agreed between the parties with regard to the Services which shall include but not be limited to the Pricing Schedule, Delivery Instructions, Commencement Date, Authorised Officer, Contract Manager, Key Personnel, Contract Period, and the Specification and relevant contract specific details.
“Contract Period”	the period of the contract as stated in the Contract Particulars.
“Control”	control as defined by section 416 of the Income and Corporation Taxes Act 1988.
“Council”	the Council named in the Contract Particulars and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists).
“DPA”	The Data Protection Act 1998.

“Delivery Instructions”	the instructions provided in the Contract Particulars and any other information that the Council considers appropriate to the provision of the Services.
“DRB”	means the Disclosure and Barring Service formerly Criminal Records Bureau (CRB)
“Employee”	any person employed by the Contractor to perform the Contract which will also include the Contractor's servants, agents, voluntary and unpaid workers and subcontractors and representatives or, in respect of clause 27 (TUPE and Re-Tendering) and any other TUPE obligation, an individual employed by the Contractor in the performance of the Services.
“EIR”	The Environmental Information Regulations 2004.
“FOIA”	The Freedom of Information Act 2000.
“Force Majeure”	any cause materially affecting the performance by a party of its obligations under this Contract arising from any act beyond its reasonable control and affecting either party, including without limitation: acts of God, war, industrial action (subject to clause 34.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies.
“Good Industry Practice”	the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the supply of services similar to the Services under the same or similar circumstances as those applicable to the Contract.
“HRA”	The Human Rights Act 1998.
“Intellectual Property Rights”	patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Invitation to Tender”	the Council’s invitation to tender for the Contract.
“Key Personnel”	those persons named in the Contract Particulars as being key personnel and any replacement from time to time under clause 10.1.5.
“Law”	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply.
“Liabilities”	all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.
“Order”	an order for Services to be provided where the Contract is identified in the Contract Particulars to be delivered by call off.
“Price”	the price of the Services as set out in the Contract Particulars. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for.
“Pricing Schedule”	the schedule from the Tender detailing the pricing as detailed at Annex C.
“Replacement Contractor”	any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this Contract
“Services”	the services described in the Specification to be supplied by the Contractor in accordance with the Contract together with all equipment required and any associated goods provided by the Contractor in relation to those services.
“Specification”	the specification included in the Contract Particulars setting out the Council's detailed

	requirements in relation to the Services.
“Standard Terms and Conditions”	the terms and conditions set out in this document.
“Tender”	the Contractor’s tender for the Services in response to the Council’s Invitation to Tender.
“TUPE”	The Transfer of Undertakings (Protection of Employment) Regulations 2006.
‘VfM’	means value for money.
“VAT”	means Value Added Tax or any similar tax from time to time replacing it or performing a similar fiscal function.

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

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

2. HEADINGS

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

3. NOTICES

3.1 Any notice required by this Contract to be given by either party to the other shall be in writing and shall be served personally, by fax or by sending it by registered post or recorded delivery to the appropriate address, fax number or email address notified to each other as set out in the Contract Particulars.

3.2 Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served 48 hours after it was posted; any notice sent by fax will be deemed to have been served 24 hours after it was despatched and any notice sent by email before 5 p.m. will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.

4. ENTIRE AGREEMENT

4.1 The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause 4 shall not exclude liability in respect of any fraudulent misrepresentation.

PART B - PROVISION OF SERVICES

5. CONTRACT PERIOD

- 5.1** The Contract shall commence on the Commencement Date and subject to clause 5.2 shall continue for the Contract Period.
- 5.2** If the Contract Period includes an option to extend and the Council intends to take up the option, the Contractor shall be notified in writing within the period stated in the Contract Particulars prior to the commencement of the extension. If no such notification is issued the Contract shall automatically expire after the initial Contract Period.

6. PERFORMANCE

- 6.1** The Services shall be provided in accordance with any Delivery Instructions. The NHS contracted opening days and the NHS opening hours of the Contractor.
- 6.2** The time of the delivery of the Services is of essence to the Contract.
- 6.3** The Council will have the right to observe the Contractor's performance of the Services at any time and at the place of performance of the Services which shall not be limited to those Services which are being performed on the Council's premises.
- 6.4** If the Contractor at any time becomes aware of any act or omission, or proposed act or omission by the Council which prevents or hinders, or may prevent or hinder the Contractor from performing the Services in accordance with the Contract, the Contractor shall inform the Council and the Council may, at its absolute discretion, extend the period of the Contract accordingly.
- 6.5** If the Contractor at any time becomes aware of any material matter that could affect the performance of the Services in accordance with the Contract, the Contractor shall inform the Council immediately.
- 6.6** If the Contractor has a change in Control, the Contractor shall inform the Council as soon as reasonably practicable.
- 6.7** The Council retains the Contractor for the performance of the Services on a non exclusive basis.

7. CONTRACT MANAGER

- 7.1** The Contractor shall employ a competent and authorised Contract Manager empowered to act on behalf of the Contractor for all purposes connected with the Contract.
- 7.2** The Contractor shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Contractor shall give maximum possible notice to the Council before changing its Contract Manager.

8. ORDERING PROCESS

- 8.1** Where this Contract is identified as requiring Orders in the Contract Particulars the Contractor shall accept Orders made in writing by the Council under the provisions of this clause.
- 8.2** Except where specified Orders are required to call off the Services the Council gives no guarantees whatsoever as to when any Order will be placed during the Contract Period or under the Contract.
- 8.3** The Orders shall state the type of or part of the Services required including the Council's requirements with regard to timescale for delivery of those Services.

9. TITLE TO GOODS

- 9.1** Title in any goods provided as part of the Services shall pass to the Council upon delivery or early payment without prejudice to any rights of rejection which may accrue to the Council under the Contract or otherwise.

10. WARRANTY

- 10.1** The Contractor warrants to the Council that the Services will be provided:
- 10.1.1** in a proper, skilful and workmanlike manner;
 - 10.1.2** by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice;
 - 10.1.3** in accordance with the Contract and any descriptions provided by the Contractor;
 - 10.1.4** to the reasonable satisfaction of the Authorised Officer;
 - 10.1.5** by Key Personnel (if any) who shall not be released from providing the Services permanently without the agreement of the Council, except by reason of sickness, maternity leave, paternity leave, termination of employment or because they have been requested to do so by the Council, or the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction or other extenuating circumstances explained to the Council. Any replacements for the Key Personnel shall be subject to the agreement of the Council and such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. The cost of effecting such replacement shall be borne by the Contractor; and
 - 10.1.6** in a way that the Contractor takes every reasonable precaution to safeguard the Council's property entrusted to the care of the Contractor.
- 10.2** The Contractor warrants to the Council that to the extent that any goods, equipment or consumables are provided as part of the Services they will:
- 10.2.1** be free from defects in design, material and workmanship; and

10.2.2 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.

10.3 Without prejudice to the Council's rights to terminate under clause 13 (Termination), if any of the Services supplied are not in accordance with the Contract, the Council shall be entitled to:

10.3.1 require the Contractor to provide replacement Services in accordance with the Contract as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so; or

10.3.2 subject to clause 18 (Indemnity and Liability) require repayment of the proportion of the Price which has been paid in respect of such Services together with payment of any additional expenditure over and above the Price reasonably incurred by the Council in obtaining replacement Services.

11. CONTRACTOR'S EMPLOYEES

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

11.1.1 any member of the Contractor's Employees; and/or

11.1.2 any person employed or engaged by a sub-contractor, agent or servant of the Contractor

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

11.2 When directed by the Council, the Contractor shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably desire.

11.3 The Contractor's Employees, engaged within the boundaries of any of the Council's premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.

11.4 The decision of the Council as to whether any person is to be refused access to any premises occupied by or on behalf of the Council shall be final and conclusive.

11.5 The Contractor shall replace any of the Contractor's Employees who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor's Employees for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

11.6 The Contractor shall bear the cost of or costs arising from any notice, instruction or decision of the Council under this clause.

PART C - PRICE AND PAYMENT

12. PRICE AND PAYMENT

- 12.1** The Council shall pay the Price for the Services to the Contractor.
- 12.2** The Contractor shall submit an invoice in the format prescribed in the Contract Particulars to the Council no later than the intervals specified in the Contract Particulars detailing the Services provided during the calendar month and the amount payable.
- 12.3** Payment of any undisputed invoice will be made no later than thirty (30) days following the date of receipt of the invoice by the Council.
- 12.4** The Council reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Contractor has either failed to provide the Services at all or has provided the Services inadequately and any invoice relating to such Services will not be paid unless or until the Services have been performed to the Council's satisfaction.
- 12.5** Any overdue sums will bear interest from the due date until payment is made at 2% per annum over the Co-operative Bank plc. base rate from time to time. The Contractor is not entitled to suspend provision of the Services as a result of any overdue sums.
- 12.6** The Council will be entitled but not obliged at any time or times without notice to the Contractor to set off any liability of the Council to the Contractor against any liability of the Contractor to the Council (in either case howsoever arising and whether any such liability is present or future, liquidated or liquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Contractor into any other currency or currencies in which the obligations of the Council are payable under this Contract. The Council's rights under this clause will be without prejudice to any other rights or remedies available to the Council under this Contract or otherwise.
- 12.7** Further details of payment, if any, are set out in the Pricing Schedule and/or Contract Particulars.
- 12.8** Prices and all other sums payable under this Contract are stated exclusive of VAT. Where applicable, VAT shall be payable by the Council to the Contractor only upon receipt of a valid VAT invoice therefore.

PART D - TERMINATION AND CONSEQUENCES OF TERMINATION

13. TERMINATION

- 13.1** Subject to the provisions of clause 34 (Force Majeure) the Council may terminate the Contract with immediate effect by notice in writing to the Contractor on or at any time if:
- 13.1.1** There is a change of Control in the Contractor or its Parent Company; or

- 13.1.2** the Contractor, being an individual, or where the Contractor is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors; or any similar event occurs under the law of any other jurisdiction; or has a receiver appointed under the Mental Health Act 1983 or dies; or
- 13.1.3** the Contractor, being a company, passes a resolution, or the Court makes an order that the Contractor or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Contractor or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the Contractor or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction; or
- 13.1.4** The Contractor is convicted of a criminal offence; or
- 13.1.5** The Contractor ceases or threatens to cease to carry on its business; or
- 13.1.6** There is a risk or a genuine belief that reputational damage to the Council will occur as a result of the Contract continuing; or
- 13.1.7** the Contractor is in breach of any of its obligations under this Contract that is capable of remedy and which has not been remedied to the satisfaction of the Council within 14 days, or such other reasonable period as may be specified by the Council after issue of a written notice specifying the breach and requesting it to be remedied; or
- 13.1.8** There is a material or substantial breach by the Contractor of any of its obligations under this Contract which is incapable of remedy; or
- 13.1.9** The Contractor commits persistent minor breaches of this Contract whether remedied or not.
- 13.2** The Council reserves the right to terminate the Contract in part in the case of termination under clauses 13.1.7, 13.1.8 and 13.1.9.
- 13.3** The Council reserves the right to perform the Services at any time in whole or part itself where the Contractor is in breach of the Contract.

- 13.4** Where this Contract is subject to Orders as specified in the Contract Particulars the Council has the right to terminate any individual Order or Orders or the whole Contract under the provisions of this clause 13.
- 13.5** This Contract may be terminated in accordance with the notice of termination requirements as specified in the Contract Particulars.
- 13.6** This Contract may be terminated in accordance with the Force Majeure termination rights as specified in the Contract Particulars.
- 13.7** The Council may terminate this Contract in accordance with clause 35.3.

14. CONSEQUENCES OF TERMINATION

14.1 If this Contract is terminated in whole or in part the Council shall:

14.1.1 be liable to pay to the Contractor only such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination; and/or

14.1.2 except for termination under clause 13.5, be entitled to deduct from any sum or sums which would have been due from the Council to the Contractor under this Contract or any other contract and to recover the same from the Contractor as a debt any sum in respect of any loss or damage to the Council resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the supply of the Services or any parts of them and any reasonable costs incurred by the Council in accordance with clause 13.3; and/or

14.1.3 in the event that any sum of money owed by the Contractor to the Council (the Contractor's debt) exceeds any sum of money owed by the Council to the Contractor (the Council's debt) under this Contract then the Council shall, at its sole discretion, be entitled to deduct the Contractor's debt from any future Council's debt or to recover the Contractor's debt as a civil debt;

14.2 Where the Contractor engages in conduct prohibited by clauses 35.1 and 35.2 in relation to this or any other contract with the Council, the Council has the right to:

14.2.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or

14.2.2 Recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause whether or not the Contract has been terminated.

14.3 Upon the termination of the Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to

termination, neither party shall have any further obligation to the other under the Contract.

- 14.4** Where termination arises under clause 13.5, the terminating party shall pay to the other party any reasonable, direct and quantifiable costs reasonably incurred by the other party due to early termination subject to the maximum liability provision in clause 18.
- 14.5** If the Contract is terminated in accordance with clause 34.4 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.
- 14.6** If it becomes necessary for the Council to terminate the Contract in whole or in part and procure the provision of the whole or any part of the Services the Contractor shall, in addition and without prejudice to any other claim which the Council may have against him, pay all costs which the Council may properly incur in procuring an alternative contractor to deliver the Services to the extent caused by or arising out of such termination

15. DISPUTE RESOLUTION PROCEDURE

- 15.1** If a dispute arises between the Council and the Contractor in connection with the Contract, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.
- 15.2** If a dispute is not resolved within fourteen (14) days of referral under clause 15.1 then either party may refer it to an officer of suitable seniority or an appropriate nominated officer of each party for resolution and such officers shall meet for discussion within 14 days or longer period as the parties may agree.
- 15.3** A dispute not resolved in accordance with clauses 15.1 and 15.2, shall next be referred at the request of either party to a mediator appointed by agreement between the parties and such appointment shall be made not later than 28 days or longer period as the parties may agree after service of a request in writing by either party to do so. The parties shall contribute equally to the costs of mediation.
- 15.4** Where one party refuses to agree or appoint a mediator, or fails to do so within the time specified, in accordance with clause 15.3 the other party, may give notice in writing to the party in default that it proposes to appoint a mediator to act as sole mediator and if the party in default does not within 7 clear days of that notice being given agree an arbitrator or make the required appointment, and notify the other party that it has done so, the other party may appoint a mediator as sole mediator. The parties shall contribute equally to the costs of mediation.
- 15.5** Where parties fail to reach an agreement to resolve the dispute through the mediation procedure detailed in clauses 15.3 and 15.4, either party may pursue any other available remedy in accordance with this Contract. For the avoidance of any doubt where parties fail to reach an agreement both parties shall contribute equally to the costs of mediation.
- 15.6** Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

15.7 For the avoidance of any doubt this clause 15 shall not be invoked where a party wishes to terminate the Contract, with or without notice, in accordance with clause 13.

16. SURVIVAL

16.1 The following clauses will survive termination or expiry of the Contract: Clause 9 (Risk in and Title to the Goods), Clause 14 (Consequences of Termination), Clause 19 (Intellectual Property), Clause 20 (Confidentiality and Publicity), Clause 21 (Data Protection), Clause 22 (Freedom of Information), Clause 23 (Record Keeping and Monitoring), Clause 27 (TUPE and Re-Tendering), Clause 32 (Severance), Clause 38 (Non Solicitation and Offers of Employment) and Clause 40 (Law and Jurisdiction).

PART E - INSURANCE AND LIABILITIES

17. INSURANCE

17.1 The Contractor shall maintain insurance necessary to cover any liability arising under the Contract as set out in the Contract Particulars.

17.2 The Contractor shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request provide evidence that all premiums relating to such insurances have been paid.

17.3 If the Contractor does not maintain the necessary insurances under the Contract the Council may insure against any risk in respect of the default and may charge the Contractor the cost of such insurance together with a reasonable administration charge.

18. INDEMNITY AND LIABILITY

18.1 Neither party seeks to exclude or limit its liability for:

- 18.1.1** Death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party's negligence);
- 18.1.2** Fraudulent misrepresentation; or
- 18.1.3** Any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.

18.2 Except as specifically provided, neither party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit, loss of business opportunity, loss of business, loss of goodwill, loss of production and pure economic loss) however caused.

18.3 Subject to clauses 18.1, 18.2 and 18.5, the Contractor's liability to the Council under the Contract whether in contract, tort (including negligence) or otherwise shall be limited to the proportion of the Price stated in the Contract Particulars which is paid and payable at the time that the liability arises.

18.4 Subject to clauses 18.1 and 18.2, the Council's liability to the Contractor under the Contract whether in contract, tort (including negligence) or otherwise shall be limited to the proportion of the Price stated in the Contract Particulars which is paid and payable at the time that the liability arises.

- 18.5** The Contractor shall indemnify the Council in full without limit of liability for any direct loss of or damage to the real or personal property of the Council or any third party, including Intellectual Property Rights, or injury claimed by any third party and against all Liabilities awarded against or incurred by the Council (including legal expenses on an indemnity basis) arising from the Contractor's negligence, any defect or fault in the Services or any act or omission of the Contractor in delivering the Services.

PART F - PROTECTION OF INFORMATION

19. INTELLECTUAL PROPERTY

- 19.1** All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

19.1.1 provided to the Contractor by the Council shall remain the property of the Council;

19.1.2 Prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of the Contract shall belong to the Council subject to any exceptions set out in the Contract Particulars.

- 19.2** The Contractor shall obtain necessary approval before using any material, in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the Intellectual Property Rights grant to the Council a non-exclusive licence, or if the Contractor is itself a licensee of those rights, the Contractor shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, and novae or assign to other Councils, the replacement Contractor or to any other third party providing services to the Council, and shall be granted at no cost to the Council.

- 19.3** It is a condition of the Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Council against all Liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to the act or omission of the Council.

- 19.4** At the termination of the Contract the Contractor shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Services, including any back-up media.

20. CONFIDENTIALITY AND PUBLICITY

- 20.1** Any documents provided by the Council and information which the Contractor may acquire as a result of the Contract shall to the extent that they are not in the public domain or required to be disclosed by operation of Law remain confidential to the Council and shall not be disclosed disposed of or used for any purpose without prior written consent from the Council.

- 20.2** All Confidential Information provided by the Council to the Contractor shall be returned to the Council at the end of the Contract.

20.3 Without prejudice to the Council's obligations under the FOIA or EIR, neither party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other party (such consent not to be unreasonably withheld or delayed).

20.4 Both parties shall take all reasonable steps to ensure the observance of the provisions of this clause by all of their servants, Employees, sub-contractors, agents, professional advisors and consultants.

21. DATA PROTECTION

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

22. FREEDOM OF INFORMATION

22.1 The Council is subject to the FOIA and the EIR ("the Acts"). As part of the Council's duties under the Acts, it may be required to disclose information forming part of the Contract to anyone who makes a reasonable request. The Council has absolute discretion to apply or not to apply any exemptions under the Acts.

22.2 The Contractor shall assist and cooperate with the Council (at the Contractor's expense) to enable the Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Council.

23. RECORD KEEPING, MONITORING AND ASSISTANCE

23.1 In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Contractor shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Contract has been completed, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request allow the Council or the Council's representatives such access to (and copies of) those records as may be required by the Council in connection with the Contract.

23.2 The Contractor will at its own cost, provide any information that may be required by the Council to comply with the Council's procedures for monitoring of the Contract.

23.3 The Contractor will at its own cost, provide any information that may be required by the local government Ombudsman.

23.4 The Council is committed to helping improve the efficiency of contracted suppliers through sharing information on performance measurement. The criteria for measuring performance shall be agreed by the Council and the Provider and shall be formally documented. It is possible that measurement criteria will develop during the Contract Period and any such developments shall also be documented following agreement by the parties. All contract monitoring shall be conducted in accordance with the Agreement, including but not limited to, the provisions detailed in the Specification.

23.5 The Provider shall ensure that the information, records, and documentation necessary to effectively monitor the performance of the Agreement are accurately

maintained at all time. The Council shall ensure that the validity of the data is checked at regular intervals.

- 23.6** Where the Contractor or any of its staff become aware of any incident, accident or any other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Service, it shall notify the Council immediately in writing.
- 23.7** The Contractor shall meet with the Commissioner where appropriate following completion of the self-assessment tool and Pre Payment Verification visits for the purposes of monitoring and improving the Service.
- 23.8** As part of its Quality Assurance System, the Contractor shall undertake a customer satisfaction survey of those service users to whom this Service will be supplied to in accordance with this Agreement in intervals of not less than every six months during the period of this Agreement. The outcomes of any such survey shall be supplied to the Council.

PART G - STATUTORY OBLIGATIONS

24. HEALTH AND SAFETY

- 24.1** The Contractor shall comply with all relevant health and safety legislation in force, accepted industry best practice and all its own health and safety policies from time to time and the Contractor shall at its own costs provide copies of such policies to the Council upon request by the Council.

25. CORPORATE REQUIREMENTS

- 25.1** The Contractor shall comply with all obligations under the HRA.
- 25.2** The Contractor shall adopt and comply with its own policies and rules, such as, but not limited to:
 - 25.2.1** equality and diversity policies which shall comply with its statutory obligations under the Equality Act 2006 and all other relevant anti-discrimination and equalities legislation (including but not limited to the Race Relations Act 1976, the Sex Discrimination Act 1975, the Disability Discrimination Act 1995, the Human Rights Act 1998, the Race Relations (Amendment) Act 2000, the Gender Recognition Act 2004, the Disability Discrimination Act 2005, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Age) Regulations 2006), codes of practice and guidance and accordingly will not unlawfully discriminate against (either directly or indirectly) or treat less favourably than others any person or group of people because of their colour, race, nationality or ethnic origin, disability, sex or sexual orientation, religion or belief, or age; Public Health Act 1968, Misuse of Drugs Act 1971 (revised 2001 and 2005), Mental Health Act 1983, Disabled Persons (Services and Consultation and Representation) Act 1986, AIDS (Control) Act 1987, Children Act 1989,

Children ACT (DH 19910), NHS and Community Care Act 1990, Carers (Recognition and Services) Act 1995, Environmental Health and Hygiene, NIHCE guidelines 24, Health and Safety at Work Act 1974, Data Protection Act 1998, Freedom of Information Act 2000, Control of Substances Hazardous to Health (C.O.S.H.H), Racial Discrimination and Equal Opportunities, Employment Law, Relevant European Legislation

- 25.2.2** sustainability;
- 25.2.3** information security rules;
- 25.2.4** whistleblowing and/or confidential reporting policies; and
- 25.2.5** all site rules and relevant legislation relevant to the fulfilment of the Contractor's obligations in the performance and delivery of the Services.

The Contractor shall ensure that such policies are compatible with the Council's policies and shall at its own costs provide copies of any such policies to the Council upon request by the Council.

- 25.3** The Contractor shall not unlawfully discriminate within the meaning and scope of any law including but not limited to the Contractor's obligations under the Disability Discrimination Act 1995 and all regulations and Codes of Practice made thereunder, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment and the Contractor in performing the Services shall have due regard to the need:

- 25.3.1** to eliminate unlawful racial discrimination; and
- 25.3.2** to promote equality of opportunity and good relations between people of different racial groups
- 25.3.3** the Contractor shall comply at all times with any Race Relations Performance Requirements in the performance of the Services.

- 25.4** The Contractor shall comply with all relevant legislation relating to its Employees however employed including (but not limited to) the compliance in law of the ability of the Employees to work in the United Kingdom.

- 25.5** If the Contractor has a finding against it relating to its obligations under clause 25.4 it will provide the Council with:

- 25.5.1** details of the finding; and
- 25.5.2** the steps the Contractor has taken to remedy the situation.

26. LAW AND CHANGE IN LAW

- 26.1** The Contractor shall comply at all times with the Law in its performance of the Contract.

- 26.2** On the occurrence of a Change in Law which has a direct effect upon the Price the parties shall meet within fourteen (14) days of the Contractor notifying the Council of

the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Contractor. If the parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either party may refer the matter to dispute resolution in accordance with clause 15.

- 26.3** Any agreed additional sums payable as a result of the operation of clause 26.2 shall be included in the Price. For the avoidance of doubt nothing in this Contract is intended to allow the Contractor double recovery of any increase in costs.

27. TUPE AND RE-TENDERING

- 27.1** In the event of expiry or termination of this Contract or whenever reasonably requested by the Council in preparation for tendering arrangements the Contractor will provide the Council with such assistance as the Council may require and provide at no cost to the Council any information the Council (whether on its own account or on behalf of any potential or confirmed Replacement Contractor) may request in relation to the Employees including but not limited to, providing employee liability information as required under Regulation 11 of TUPE and such information is to be provided by the Contractor to the Council within a reasonable period as specified by the Council which shall be no longer than 28 days from the Council's request for such information in any event.

- 27.2** The Contractor authorises the Council to pass any information supplied to any Replacement Contractor or potential Replacement Contractor and the Contractor will secure all necessary consents from relevant Employees in order to do this.

- 27.3** The Contractor will keep the Council and any Replacement Contractor indemnified in full against all Liabilities arising directly or indirectly in connection with any breach of this clause or inaccuracies in or omissions from the information provided.

- 27.4** The Contractor shall comply with the TUPE requirements.

28. BUSINESS CONTINUITY

- 28.1** The Contractor accepts that the Council has to meet its obligations under the Civil Contingencies Act 2004. Under this agreement the Provider agrees to assist the Council in meeting its obligation under this legislation.

- 28.2** The Contractor must:

28.2.1 operate a business contingencies policy for as long as this Contract is in force; and

28.2.2 develop and adopt a business continuity plan, (taking into account the Civil Contingencies Act 2004); and

28.2.3 provide the Council with a copy of any such plan at its request.

Failure by the Contractor to comply with its obligations under this clause 28.2 may be regarded as a fundamental breach of this Contract.

- 28.3** The Contractor acknowledges and accepts their obligations to:

- 28.3.1** provide and update the service in line with the practices existing business continuity plan and business impact assessment, where any issues of continuity arises the commissioner must be notified; and
- 28.3.2** implement exercise plans, (business continuity plan tests) on a regular basis, but not less than once every two (2) years We expect that the service continues to test its ability to deliver the services in terms of changes to staff numbers, opening hours, building developments and environmental matters and any other matter which could affect delivery. Any changes of this nature which may impact the delivery of service must be reported to the commissioner within a timely manner

28.4 The Contractor shall notify the Council in advance of any business continuity plan test and the Council reserves the right to attend any such test.

PART H - GENERAL PROVISIONS

29. CONTRACT VARIATION

29.1 Subject to clause 29.2, no variation or modification to the Contract is valid unless it is in writing and signed by the Council and the Contractor.

29.2 The Council shall be entitled to issue to the Contractor in writing or, in case of urgency orally (provided the Council confirms oral instructions in writing as soon as it is practicable), variation orders requiring the addition, suspension, reduction or cessation of provision of any Services and/or the provision of emergency Services in accordance with revised Delivery Instructions. The Contractor shall charge for the impact of the variation order in accordance with the rates and prices used to calculate the Price in the Tender.

30. THIRD PARTY RIGHTS

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

31. NO WAIVER

31.1 Failure by either party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of the Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.

31.2 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause 3 (Notices).

32. SEVERANCE

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

33. ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY

33.1 Subject to any express provision of this Contract, the Contractor shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract or sub-contract the provision of the Services.

33.2 The Council shall be entitled to:

33.2.1 assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2006 as amended); or

33.2.2 transfer, assign or novate its rights and obligations where required by Law.

33.3 The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and Employees as though they were its own.

34. FORCE MAJEURE

34.1 Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure.

34.2 If the Council or the delivery location is affected by circumstance of Force Majeure, the Council shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Contractor against the Council nor entitle the Contractor to terminate the Contract.

34.3 Industrial action by, or illness or shortage of the Contractor's Employees, agents or subcontractors, failure or delay by any of the Contractor's suppliers to supply goods, components, services or materials and breach of the Contractor's warranties under clause 10 shall not be regarded as an event of Force Majeure.

34.4 If the event of Force Majeure continues for more than the period of time specified in the Contract Particulars either party may give written notice to the other to terminate the Contract immediately or on a set termination date.

34.5 If the Contract is terminated in accordance with clause 34.4 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.

35. INDUCEMENTS

35.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

35.2 The Contractor warrants that it has not paid commission nor agreed to pay any commission to any Employee or representative of the Council by the Contractor or on the Contractor's behalf.

35.3 Where the Contractor engages in conduct prohibited by clauses 35.1 and 35.2 in relation to this or any other contract with the Council, the Council has the right to:

35.3.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or

35.3.2 recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause whether or not the Contract has been terminated.

36. COSTS AND EXPENSES

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

37. NO AGENCY OR PARTNERSHIP

37.1 Nothing contained in this Contract, and no action taken by the parties pursuant to this Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

38. NON SOLICITATION AND OFFERS OF EMPLOYMENT

38.1 The Contractor and the Council agree that it will not, without the prior written consent of the Contractor and the Council, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, Employee, agent, consultant, partner or otherwise during the Contract Period or for a period of 12 months following termination of this Contract:

38.1.1 solicit or entice, or endeavour to solicit or entice, away from the contractor or the Council, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Contractor or the Council at the date of the termination of this Contract or at any time during the period of one month immediately preceding the date of termination; or

38.1.2 attempt, or knowingly assist or procure any other person to do the above.

39. INSPECTION OF CONTRACTOR'S PREMISES

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

40. LAW AND JURISDICTION

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

41. OBLIGATION TO MITIGATE

41.1 The rights and remedies of the Contractor and the Council under the Contract are without prejudice to their obligations at common law to mitigate their losses.

42. LOCAL AUTHORITY RIGHTS

42.1 Nothing contained in this Contract shall prejudice the Council's rights, powers and duties as a local authority.

43. ATTESTATION

IN WITNESS of which this document has been executed on the date set out in the heading to this Contract

SIGNED by

duly authorised to sign for and on behalf of

Trafford Council

Name:

Kylie Thornton

Position:

Commissioning and Service Development Manager

SIGNED by

.....

duly authorised to sign for and on behalf of

Name:

.....

In the presence of:

.....

Name:

.....

Address:

.....

.....

ANNEX A
SUPPORT TO DELIVERY OF A SMOKING CESSATION ADVICE AND NICOTINE
REPLACEMENT THERAPY CONTRACT PARTICULARS

Contract Title	DELIVERY OF SMOKING CESSATION ADVICE AND NICOTINE REPLACEMENT THERAPY	
Contract Date		
Council	Trafford Council, Trafford Town Hall, Talbot Road, Stretford M32 0TH	
Contractor		
Commencement Date	1 st April, 2014 – 31 st March, 2015	
Contract Period (including option to extend)	The provision of Services pursuant to the Agreement shall commence on the Commencement Date and, subject to any other rights of termination set out in the Agreement, will continue for an initial term which shall expire on 31 st March, 2015 (“The Initial Term”)	
To be called off by Order	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Services/Goods/Works	Services	
Specification/Description	See Specification documents attached hereto at Annex B	
Address for Notice	Trafford Council Trafford Town Hall Talbot Road Stretford M32 0TH	
Price	The only sums payable by the Council to the Contractor for the provision of the Services shall be the Price detailed in the Pricing Schedule. All other costs, charges, fees and expenses of whatever kind arising in connection with the Agreement shall be the responsibility of the Contractor.	
Invoice Particulars	As stated in the Pricing Schedule at Annex C	
Invoice Frequency	Invoices shall be provided monthly in arrears	
Delivery Instructions	NOT APPLICABLE	
Retrospective rebate (%)	NOT APPLICABLE	
Intellectual Property Rights	NOT APPLICABLE	
Force Majeure Termination Rights	If the event of Force Majeure continues for more than the period of eight concurrent weeks during the Contract Period either party may give written notice to the other to terminate the Contract immediately or on a set termination date.	

Notice of Termination Requirements	Either party may terminate the Agreement at any time during the Contract Period by serving at least six months' notice in writing to the other party.
---	---

Council Authorised Officers		
Name	Position	Contact Details
Kylie Thornton	Commissioning and Service Development Manager	0161-912-4776
Heather Stanton	STaR Procurement Officer	0161-912-1287

Contractor Manager	
Name	Contact Details

Contractor Key Personnel		
Name	Position	Contact Details

Insurance	
Insurance type:	Minimum level
Employer's Liability Insurance	£10,000,000 (not less than)
Public Liability Insurance	£5,000,000 (third Party not less than. Unlimited for any one accident or series of accidents for damage to persons or property)
Professional Indemnity Insurance	£5,000,000

ANNEX B

SERVICE SPECIFICATION

1. **Executive Summary**

This new contract aims to provide clear minimum standards for providers, reward high quality services and make better use of the skills of staff. This contract is an enhanced service to be delivered by appropriate providers.

This Trafford specification has been developed to improve the quality of the delivery, and health outcomes for the provision of smoking cessation advice.

Trafford Council recognise the effectiveness of the role played by healthcare and other professionals in a wide range of settings. They have a key role to play in providing services to people who wish to quit smoking. They also act as a link to the specialist advice service for smokers by acting as referral agents for that service. The Council would like to encourage the growth in quality and breadth of the service.

2. **Aims and Objectives of the services**

The overall aim of services to smokers are to assist the patient to remain healthy, reduce the harm caused to health through smoking, work towards a Quit date by providing smokers with regular contact with a healthcare professional and to help them access further advice or assistance.

Specifically, the aim of the service is to:

- Provide evidence based, effective and quality treatment interventions for the management of people who are motivated and ready to stop smoking

The Stop Smoking Service is expected to achieve the best health outcomes for individuals wanting to quit smoking by ensuring the provision of:

- a. an equitable, accessible community based intensive behavioural support programme offering choice to smokers who want to give up smoking
- b. a confidential, private and safe service
- c. public health advice and support to local and national tobacco control initiatives and to raise awareness of those initiatives
- d. Nicotine Replacement Therapy (NRT) and other pharmacotherapies to support quit attempts
- e. increase the success rate of quitters particularly in the target areas

Providers providing smoking cessation advice to smokers will ensure compliance with the agreed Level 2 support programme and aim to improve the numbers of people quitting smoking by providing a good level 2 support service. This is detailed below:

Level 1

The Level 1 service comprises Brief Intervention or (opportunistic advice) which can be delivered in a confidential space when the opportunity presents itself. The Specialist Stop Smoking Service provides training for Level 1 advisors. The Level 1 service consists of:

- offering brief, or very brief, advice to all smokers
- referring those who are ready to quit to a Level 2 Stop Smoking Advisor – which may be in the same provider or another provider.

Brief intervention is considered to be part of normal care. It is not funded separately.

Level 2

The Level 2 (intermediate) service comprises the provision of behavioural support by trained and registered Stop Smoking Advisors together with pharmacotherapy where indicated.

Whenever appropriate, providers should facilitate onward referral to the specialist (level 3) smoking cessation service.

Providers should wherever possible promote their smoking cessation service.

Advice and support must take place in a private or quiet area.

It is essential that providers have an operating procedure in place specific to their premises.

There will be a requirement to share relevant information with all professionals involved in the treatment of individuals – this within the bounds of staff professional confidentiality guidelines.

The National Institute for Health and Clinical Excellence (NICE) has produced a wide range of guidance in relation to smoking cessation which has been considered in the development of this specification. Specific guidance includes:

1. Brief Interventions and Referral for Smoking Cessation PH1.
<http://publications.nice.org.uk/brief-interventions-and-referral-for-smoking-cessation-ph1>
2. Smoking Cessation Services PH10 <http://publications.nice.org.uk/smoking-cessation-services-ph10>
3. Smoking Cessation Varenicline TA123 <http://publications.nice.org.uk/varenicline-for-smoking-cessation-ta123>
4. Workplace Interventions to Promote Smoking Cessation PH5
5. The National Centre for Smoking Cessation and Training (NCSCT) supports the delivery of effective evidence-based tobacco control programmes and smoking cessation interventions provided by local stop smoking services. NCSCT set standards for training and provide face-to-face and on-line accredited courses.
<http://www.ncsct.co.uk/>
6. Department of Health Stop Smoking Service: Monitoring and Guidance Update
<http://www.dh.gov.uk/health/2012/09/stop-smoking-services/>
7. Department of Health Stop Smoking Service Delivery and Monitoring Guidance 2011/12
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_125389

The **Provider** should take a continuous and active account of the latest developments and guidance pertinent to supporting people to stop smoking

The main contact for this specification will be:

Graeme Snell

The contact details are:

1st Floor
Trafford Town Hall
Talbot Road
Stretford
MANCHESTER
M32 0TH

graeme.snell@trafford.gov.uk

The following pages detail the expectations of this specification, the payment regime and the data reporting requirements.

3. **Smoking Cessation Advice**

Definition – of a Smoking Cessation Advice Service

The provision of the service is to include:

- Access to advice and information on quitting smoking
- Advice on appropriate NRT products and other pharmacotherapies to support quit attempts
- Facilitating access to NRT and other pharmacotherapies
- Encouraging users to register with a GP (if not registered with one)
- Referral to other health and social care services where appropriate
- Provide information about agencies offering further support

It is important that care and interventions offered match the level of training and expertise of the staff and that staff are appropriately trained. This contract would expect to see included in the Smoking Cessation service a range of interventions that include:

- Risk assessment
- Referral to GPs where appropriate
- Referral to level 3 specialist smoking cessation team where appropriate

The Provider will work in collaboration with the specialist smoking cessation team, who will be the first point of contact for queries and will support the Provider to deliver the contract.

The target population

- Adults over the age of 16 years who disclose as smokers are the target population
- Pregnant women
- Asian and Muslim communities

Aims and objectives

- To assist the service user to remain healthy until they are ready to cease smoking and ultimately achieve a life free from tobacco
- To increase the numbers of patients quitting at 4 weeks
- To promote healthier lifestyles, to reduce the risk of CVD and respiratory disease
- To help patients access other health and social care services and to act as a gateway to those services
- To ensure the safe management of NRT products and other pharmacotherapies

4. Stop smoking support and advice

This contract requires that all patients should be:

- Given advice, taking account of any other health issues presented by the smoker
- Provided with information about NRT products and other pharmacotherapies to support a quit attempt
- Provided with information of the continued risks of smoking

The NCSCT Standard Treatment Programme can be found on the NCSCT web site at <http://www.ncsct.co.uk/usr/pub/NCSCT%20STP.pdf>

4.1.1 Staff

Providers should ensure that staff who deliver the service receive appropriate training for the level of service they offer. As a minimum this should include awareness training on the importance of quitting smoking to health, differing NRT products and general health promotion advice. All Stop Smoking Advisors need to receive specific training to carry out their role, which should conform to the training standards and competencies set out by the NHS Centre for Smoking Cessation and Training (NCSCT) http://www.uknsc.org/uknsc2011_presentation_12.php <http://www.ncsct.co.uk/>. Advisors are able to demonstrate a basic level of competence by achieving stage 1 certification from the NCSCT. Changes to personnel and to their training must be communicated to the specialist service.

Staff must be aware of and operate within the framework of the providers' protocols. Particular consideration should be given to the safety of staff using completely closed consulting rooms

4.2 Patients taking medication

Stopping smoking can affect the blood levels of some medicines. The dosage of medicine may need alteration.

Patients who are taking any of the following medications should be referred to their GP by the Stop Smoking Adviser, prior to stopping smoking.

- Warfarin
- Theophylline
- Chlorpromazine
- Clozapine
- Olanzapine
- Methadone
- Insulin

Patients who are taking any of the following medications should be advised to see their GP.

- Flecainide
- Mexiletine
- Melatonin
- Benperidol
- Fluphenazine
- Haloperidol
- Thioridazine
- Tricyclic antidepressants
- Fluvoxamine
- Ropinirole
- Riluzole
- Tacrine
- Quinine
- Sulphonylureas
- Cinacalcet

4.3 How many quit attempts can a client make?

Service guidance states “When a client has not managed to stop smoking there is no definitive period of time between the end of a treatment episode and the start of another. The Stop Smoking Adviser should use discretion and professional judgement when considering whether a client is ready and motivated to receive support to immediately attempt to stop again”.

For each new quit attempt, a new monitoring form should be completed and a 4-week follow-up performed in order to claim for further payment.

If a client has made more than one unsuccessful quit attempt, referral to the level 3 Specialist Stop Smoking Service for more intensive behavioural support should be considered.

4.4 Referral to the level 3 Specialist Stop Smoking Service

Where appropriate, clients should be referred to the level 3 Specialist Stop Smoking Service.

Before referring to the level 3 specialist service, the **Provider** must confirm the client's eligibility. The eligibility check will include confirmation that the client is motivated to quit and is willing and able to engage with the service throughout the quit attempt. The following are considered to be appropriate referrals:

1. People who have tried to stop smoking at least twice with support from a Level 2 Stop Smoking Advisor.
Or
2. People who have tried to stop smoking at least once with support from a Level 2 Stop Smoking Advisor that fit into the following categories:
 - Diagnosed with one or more chronic disease such as heart disease; respiratory disease e.g. asthma, COPD; diabetes; hypertension; stroke or cancer.

- Mild to moderate mental health problems e.g. stress anxiety or depression.
 - Pre-op patients who wish to stop smoking.
 - Co-morbid substance-use disorder e.g. drugs and alcohol.
 - Pregnant.
3. People who can access the specialist service without a previous quit attempt:
- Require a home visit owing to a person being housebound.
 - Smokers who wish group support to quit.
 - In-patients and out-patients.

5. Nicotine Replacement Therapy and other pharmacotherapies

Stop smoking medicines currently approved by NICE are Nicotine Replacement Therapy (NRT), bupropion (Zyban) and varenicline (Champix). They increase the probability of a quit attempt being successful.

Patients should be provided with information and guidance so that they can make an informed choice.

Products should be prescribed in line with their Summary of Product Characteristics (SPC).

Recommended quantities of NRT for 1 weeks and 2 weeks supply are as follows.

[insert table]

It is recommended that:

- Stop smoking medication should only be prescribed in combination with stop smoking advice.
- Where a client relapses during a quit attempt and does not wish to make another quit attempt, no further pharmacotherapy should be provided until such time that the client is motivated to make another quit attempt.
- Prescriptions should be for a limited duration to maximise opportunities for monitoring progress, providing support and completing four week follow up. Also to minimise waste if relapse occurs.

5.1 Voucher Format (2-week and 1-week)

An individual voucher enables a client to be given single or combination treatment.

Single treatment, for example patch, can be given as a 1 or 2-week supply. Where possible a 1-week supply of a product should be given in the first week of quitting with the client returning in the second week for a review. Continuation of treatment should then be for 1 or 2-weeks depending on the client's motivation and progress.

Combination therapy can also be given on a voucher and should be used to give a 1-week supply of two NRT products, for example, 1-week of patch and 1-week of gum. (If a client pays for their prescriptions, two prescription charges will be payable.)

Clients who pay prescription charges should be informed about the availability of pre-payment certificates.

5.2 How many NRT vouchers can a client have?

Stop Smoking Advisers should follow NRT guidelines and provide a maximum of **12-weeks** NRT reducing strengths as required on a voucher basis of 1 or 2-weeks supply at a time. If a client requires additional NRT above this then the client should purchase this or be referred to their GP for a prescription.

5.3 Can voucher booklets be used for cutting down to quit or pre-quit approaches?

No, voucher booklets should only be used when a client is ready to set a quit date after they have cut down on cigarettes.

5.4 What is one or two weeks supply of NRT?

Product	One week	Two weeks
Nicotine patches	Box of 7	Box of 14 or two boxes of 7 (depending on dosage/make)
Nicotine chewing gum	Box of 105 or 96 (depending on make)	Box of 210 or 204 or two boxes of 105 or 96 (depending on dosage/make/flavour)
Nicotine lozenges	Box of 96	Two boxes of 96
Mini lozenges (Niquitin)	Box of 60 + box of 20	Two boxes of 60 + two boxes of 20
Cool lozenges (Nicorette)	Box of 80	Two boxes of 80
Microtabs (Nicorette)	Box of 100	Two boxes of 100
Quickmist (Nicorette)	One bottle	Duo pack
Nasal spray (Nicorette)	One bottle	Two bottles
Inhalator 15mg (Nicorette)	One box of 20 cartridges	One box of 36 cartridges
NiQuitin Strips 25mg	One box of 60	Two boxes of 60

5.5 Clients who wish to use one of the other pharmacotherapies

If a client wishes to use either bupropion (Zyban) or varenicline (Champix) to support their quit attempt, they should be referred to their GP for an assessment of whether it is suitable for them, and if so a prescription.

6. Payment

Will be monthly and in arrears on production of a certified invoice submitted with completed Monitoring Forms.

Payments for stop smoking advice given:

- £40 per quitter confirmed with CO validation
- £20 per self-reported quitter

Trafford Metropolitan Borough Council reserves the right to revise fees.

All contractors must submit an invoice and audit data in a timely manner. Payments will not be made if audit data is not submitted. Any invoice which relates to work completed more than four months prior will not be paid.

Expected outcomes:

(equates to about 55 patients seen per year in each GP practice)

Claim form:

Practice instead of organisation

7. Training Requirements

Training must be updated regularly in response to changes in local or national smoking cessation strategies, promotions or legislation. This may be through formal events organised or endorsed by Trafford Council or other accredited agencies, through newsletters, information packs and a variety of on-line learning hubs about smoking cessation.

8. Performance Monitoring

Monitoring is an integral part of any commissioned service agreement and compliance with the terms of service is essential for continuity by the provider. Information agreed between the commissioner and the provider will be supplied to specialist cessation service team leader

The Provider will submit monitoring data for each smoker advised (either by sending a completed copy of the paper monitoring form to the specialist smoking cessation team or by entering the data on the Quit With Us database).

This data to be sent to: The specialist smoking cessation team

Indicators will be:

	<i>Performance indicator</i>	<i>Risk Threshold</i>	<i>Method of measurement</i>	<i>Consequence of breach</i>
Outcomes	<i>The service should aim to achieve a CO validation rate of 60% of reported 4 week quits.</i>	<i>Cannot be less than 60%</i>	<i>Client tracking system/ database on a quarterly basis</i>	<i>Noted as part of the quarterly performance contract monitoring and provider to identify remedial actions</i>
Outcomes	<i>The service should achieve a success rate for the 4 week smoking quitter (self-report and CO validated) of between 35%-70% of those setting a quit date.</i>	<i>Cannot be less than 35%</i>	<i>Client tracking system/ database on a quarterly basis</i>	<i>Noted as part of the quarterly performance contract monitoring and provider to identify remedial actions</i>

ANNEX C

PRICING SCHEDULE

Payments for stop smoking advice given:

- £40 per quitter confirmed with CO validation
- £20 per self-reported quitter

Payments will be made monthly and in arrears on production of a certified invoice submitted no later than 22nd of the month with completed Monitoring Forms.

Trafford Metropolitan Borough Council reserves the right to revise fees.

All contractors must submit an invoice and audit data in a timely manner (including nil returns). Payments will not be made if audit data is not submitted. Any invoice which relates to work completed more than four months prior will not be paid.

For year end, quarter four claims must be submitted no later than 22nd May.

Claim Form

GP Practice & non-pharmacy Intermediate Smoking Cessation Advice

CLAIM INVOICE TO TRAFFORD COUNCIL FOR THE MONTH OF

2014/15

(to be submitted with completed Monitoring Forms)

From:		For calculating payment due please complete this form and return to: Trafford Stop Smoking Service Trafford Town Hall 1 st Floor Talbot Road Stretford M32 0TH
Address		
Postcode		
Tel:		0300 4562400
Fax:		

Purchase Order Number:

Stop Smoking Monitoring Forms submitted	Total number submitted	Number of Carbon Monoxide verified quits (£40 per quit)	Number of self reported quits (£20 per quit)	Total claimed (£)
Number of stop smoking monitoring forms returned <i>(Top sheet of monitoring forms only)</i>				

Signed:

Name (please print):

Date:

Note: Failure to fill in all the fields on either the Monitoring Form could result in the claim not being processed. All claims are subject to audit.

FOR USE BY TRAFFORD STOP SMOKING SERVICE	Payment due:
Signed:	Name: Date: