



Pharmacotherapy Goods – Contract for redemption of Valid Vouchers

Date of this Contract: the signature date of the parties indicated below, or if the parties have different signature dates, on the later of such dates.

Parties: as indicated in section 1 (Details of the parties).

Background to this Contract: see question 2.1 in the attached terms.

Each party agrees as follows

1. Contract

This Contract sets out the legally binding terms and conditions as between the Council and the Pharmacy in relation to the following:

- The supply of the Goods and Accompanying Services to Service Users.
- The obligation of the Council to pay the Pharmacy the Voucher Reimbursements.

2. Whether the Pharmacy is obliged to supply any goods and/or services to the Council

No.

3. What constitutes this Contract – all of the following in order of precedence, (as any of these are amended from time to time according to section 26 (Amendments) of the attached terms

(a) Annexures

All schedules (other than Schedule 1), annexures and appendices attached to it.

(b) Terms

The attached terms in Schedule 1.

(c) Cover page

This cover page.

Executed by the parties (or on their behalf by their respective authorised representatives) as an agreement on the respective dates indicated below:

| | Council | Pharmacy |
|---|---------------------------|-----------------|
| Signature | | |
| Date of signature | | |
| Name of signatory (please print) | Matt Pearce | |
| Title or role of signatory (please print) | Director of Public Health | |

Schedule 1 – terms of this Contract

1. Details of the parties

| Details | Council | Pharmacy |
|---|--|----------|
| (a) Name | Herefordshire Council | |
| (b) Address | Plough Lane, Hereford, HR4 0LE | |
| (c) Current Representative | Matt Pearce | |
| (d) Current Representative's telephone | 01432 383676 (Louise Harper Contract Support Officer) | |
| (e) Current Representative's e-mail | contracts@herefordshire.gov.uk | |
| (f) Bank details for payment | N/A | |

2. Background

2.1 Background to this Contract

- This Contract sets out the arrangements between the parties regarding the redemption of Valid Vouchers by the Council, to pay for certain Goods supplied from time to time by the Pharmacy to Service Users to whom Valid Vouchers are issued from time to time.
- At no time is the Pharmacy supplying any goods or services to the Council.
- Further details are indicated in the Specification.

3. Description of the Goods

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| 3.1 | Description of the Goods which the Pharmacy must provide a Service User who brings a Valid Voucher into the Pharmacy's premises | See the Specification. |
| 3.2 | Description of any services the Pharmacy must provide to a Service User to whom Goods are also supplied (' Accompanying Services ') | See the Specification. Such services must be provided lawfully, with reasonable skill and care, and according to the normal professional requirements expected of pharmacies generally. |
| 3.3 | Nature of the obligations of the Pharmacy under this section 3 | They are pre-conditions of any obligation of the Council to pay any claim for a Voucher Reimbursement in respect of such supply) |

4. Valid Vouchers

4.1 What constitutes a 'Valid Vouchers'

A voucher to which **all** of the following apply:

- It is in a form approved by the Council from time to time.
- It relates to the supply of any of the Goods.
- It has been issued to a relevant Service User.
- It has been signed by a qualified person whose details have been provided by the Council to the Pharmacist from time to time.
- It has been presented by the Service User to the Pharmacist.
- The Service User has presented the voucher to the Pharmacist no later than 7 days from the date of issue as indicated on the voucher (unless the Council has approved a longer period on a case-by-case basis).
- The Pharmacist has not terminated this Contract at the time the voucher is presented.

5. Licences, permits, accreditations etc.

5.1 Specific licences, permits, accreditations or the like which the Pharmacy must hold when providing the Goods and the Accompanying Services

It must hold all registrations applicable to pharmacies as required by Law.

6. Duration of this Contract

6.1 Commencement date of this Contract

- This Contract commenced on xxxxxxx
- This Contract applies retrospectively to relevant activities conducted on or after that date.

6.2 Expiry date of this Contract (unless terminated earlier according to this Contract)

31st March 2024

7. Location

7.1 Any particular location where the Goods must be provided

- At the address of the Pharmacy indicated in question 1(b); or
- Such other address of the Pharmacy as it notifies the Council from time to time.

7.2 If the Pharmacy is no longer located in Herefordshire

The Council shall not be obliged to recognise any claim for payment from the Pharmacy if it does not have a genuine place of business within Herefordshire at the time.

8. Honouring Valid Vouchers

8.1 Amount or calculation of the Voucher Reimbursements payable by the Council to the Pharmacy (to be all-inclusive, including any VAT)

According to the amounts shown as 'Invoice total claimed' on the relevant Summary Claim Form which relates to Goods which have been properly supplied by the Pharmacist to a Service User who brings a Valid Voucher into the Pharmacy's premises.

8.2 The extent to which the Pharmacy may impose additional charges or the like on Service Users for the Goods and Accompanying Services

No right to do so.

9. When the Pharmacy may issue claim for payments for payment

9.1 When the Pharmacy may issue to the Council the Pharmacy's claims for payments of Voucher Reimbursements I (e.g. frequency, dates, occurrence of events etc.)

Claims for payment in relation to a calendar month in which Goods are supplied to Service Users may be submitted at any time after the end of that calendar month.

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| 9.2 | Deadline applicable to the submission of each claim for payment by the Pharmacy | <ul style="list-style-type: none"> No later than 5pm on the 9th day of the next calendar month after the Goods were supplied (or if that day is not a Business Day, 5pm on the next Business Day). As extended by agreement in writing by the Representative of the Council, at discretion. |
| 9.3 | If an claim for payment is issued after the deadline in question 9.2 | <ul style="list-style-type: none"> The Council shall not be liable to pay it, even if Goods were supplied. Exception: where the delay is substantially caused or otherwise requested by the Council. |

10. Claims procedures

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| 10.1 | Procedures which the Pharmacy must follow to claim payment of Voucher Reimbursements to which the Pharmacy is entitled | As advised by the Council from time to time, acting reasonably. |
| 10.2 | Documents which must accompany any invoice | <p>None</p> <ul style="list-style-type: none"> The invoice process will be automated via Pharmoutcomes® |
| 10.3 | Consequences if an attempted claim for payment does not strictly meet the requirements in question 10.1 and question 10.2 | <ul style="list-style-type: none"> The claim for payment shall not be regarded as having been issued for the purposes of this Contract (particularly the payment terms described in question 11.1) until the problem is rectified by the relevant deadline in question 9.2. The Council shall act reasonably to bring any issue of non-compliance with any claim to the Pharmacy's attention. |

11. Due date for payment

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| 11.1 | Due date for payment of Voucher Reimbursements by the Council to the Pharmacy in respect of a claim which the Pharmacy has properly issued according to this Contract | <p>30 days.</p> <p>This period shall commence from the later of the following:</p> <ul style="list-style-type: none"> The date the relevant claim for payment is issued. The date on which the Pharmacy was first entitled to issue that claim for payment under section 9 (When the Pharmacy may issue claim for payments for payment) (if it is issued before then). |
| 11.2 | Right of the Council to refuse or delay or to make deductions from payment of amounts which are otherwise due for payment | <ul style="list-style-type: none"> As permitted in this Contract - see in particular, section 13 (Set off). As otherwise required by Law. Not otherwise. |

12. Right to suspend supplying Goods due to non-payment

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| 12.1 | Whether the Pharmacy may suspend the supply of Goods and/or Accompany Services to Service Users due to delays in payment of Voucher Reimbursements | No right to do so. |
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13. Set off

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| 13.1 | Rights of set off, deduction, counterclaim or the like of the Pharmacy in connection with this Contract | All such rights shall be waived by the parties to the fullest extent permitted by Law. |
| 13.2 | Rights of set off, deduction, counterclaim or the like of the Council in connection with this Contract | The Council may deduct from any debt which the Council then owes the Pharmacy any debt which the Pharmacy then owes the Council, subject to question 13.3, |

13.3 Rules in relation to the debts referred to in question 13.2

- (a) **Whether any such debts must be connected with this Contract**
- (b) **Whether any such debts includes non-liquidated debts**
- (c) **Whether it extends to any such debts which are subject to a dispute**

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| Not necessary. |
| Such debts include non-liquidated debts as determined by the Council acting reasonably and in good faith. |
| No, to the extent the dispute is genuine and where the person who owes the debt is using reasonable and genuine efforts to resolve that dispute. |

14. Pharmacy Personnel requirements**14.1** Strict requirements of Personnel to be used by the Pharmacy in relation to particular activities

| Nature of activity | Requirement |
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| Provision of Goods and Accompany Services directly to Service Users | Either: <ul style="list-style-type: none"> A registered pharmacist. A person with appropriate CPPE training, working under the supervision of a registered pharmacist. |
| Other - as required by Law. | As required by Law. |

14.2 Obligations of the Pharmacy in relation to its Personnel

- To ensure it has sufficient numbers of appropriately trained, skilled and experienced Personnel to supply the Goods and Accompanying Services.
- Not to give such Personnel directions which are inconsistent with this Contract.
- To accept liability for the acts (or failures to act) by such Personnel in connection with this Contract.
- To promptly remove such Personnel from supplying the Goods and Accompanying Services if requested to do so by the Council (where the Council has exceptional reasons for making the request, and having taken appropriate steps to discuss the matter with the Pharmacy's management).

15. Temporary interruption**15.1** Obligation of the Pharmacist if it discontinues trading for more than 7 days

To promptly communicate the matter to the Council.

16. Certain indemnities**16.1** For what the Pharmacy must indemnify (and keep indemnified) the Council (subject to this section 16)

For the Council's respective Losses in relation to any arm's length third party claim made or threatened against the Council to the extent it is the result of any of the matters described in question 16.2.

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| 16.2 | Matters to which the indemnity described in question 16.1 applies - any of the following by the Pharmacy (or by anyone acting on its behalf) in connection with this Contract | |
| (a) | Law | The Pharmacy's breach of the Law. |
| (b) | Breach of Contract | The Pharmacy's breach of this Contract. |
| (c) | Negligence | The Pharmacy's negligence. |
| (d) | Use of property | The Pharmacy's unauthorised use of that third party's property, and including the supply of goods in connection with the Goods in which that third party has any interest. |
| (e) | Misconduct | The Pharmacy's deliberate misconduct. |
| (f) | Other duty | The Pharmacy's breach of any other duty which it owes that third party (whether arising in tort, contract, statute or otherwise). |
| 16.3 | Exceptions to the indemnity given in question 16.1 | Where and to the extent the Pharmacy was acting according to the clear and properly authorised instructions of the Council. |
| 16.4 | Rules of interpretation in relation to the indemnity given by the Pharmacy to the Council under this section 16 (' Relevant Indemnity ') (not to be exhaustive and except to the extent otherwise indicated in this Contract) | |
| (a) | Nature of obligation | The Pharmacy's obligation to indemnify the Council includes an obligation to keep the Council indemnified. |
| (b) | Other rights and remedies | The Pharmacy's obligation to indemnify the Council shall not in itself limit the rights or remedies of the Council (except to the extent otherwise clearly indicated). |
| (c) | How Relevant Indemnities are to be read | Independently of each other. |
| 16.5 | Consequences of the expiry or earlier termination of this Contract on any Relevant Indemnity | Such events or circumstances do not in themselves affect any person's rights or obligations in respect of that indemnity. |
| 16.6 | Procedure for claiming and paying amounts owed under a Relevant Indemnity (without limiting any other formalities indicated elsewhere in this Contract covering a particular indemnity) | |
| (a) | How claimed | By written demand. |
| (b) | Deadline for payment by the Pharmacy to the Council | 30 days after the demand is given. |
| 16.7 | Circumstances where the Pharmacy can refuse to meet an indemnity in relation to a third party claim made or threatened against the Council - any of the following, as relevant | |
| (a) | If the Council has failed to give the Pharmacy written notice of the claim within the following period of the claim first being communicated to the Council in writing | 30 days. |
| (b) | If the Council has failed to give the Pharmacy proper control over the defence of the claim (if the Pharmacy requests in writing), subject to each of the following, to the extent relevant | |
| (i) | Legal restrictions | Any genuine legal or other restrictions on the Council giving Pharmacy such control. |
| (ii) | Consent from third parties | The parties obtaining all necessary consent from insurers and/or other arm's length third parties. |
| (iii) | Keeping the Council informed | The Pharmacy keeping the Council informed in a proper and timely manner of progress of the defence of the claim. |
| (iv) | The Council's requests | The Pharmacy acting reasonably to seek and to take account of the Council's reasonable requests in relation to the conduct of the defence. |
| (v) | Not bringing the Council's name into disrepute etc. | The Pharmacy not doing anything (without good reason) to bring the name of the Council into disrepute in the course of conducting the defence. |

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| (vi) | Council's assistance with the defence | <ul style="list-style-type: none"> The Council giving the Pharmacy reasonable and timely assistance with the defence of the claim if reasonably requested in writing by the Pharmacy. This is subject to the Pharmacy compensating the Council for the reasonable costs of the time and effort of its Personnel and for its other reasonable disbursements in providing that assistance. Such assistance may include (without limitation and as relevant) provision of relevant information, subject to relevant persons accepting reasonable confidentiality obligations. |
| (c) | Council has failed to defend or settle | The Council has failed to take reasonable and timely action to defend or settle the claim if so reasonably requested by the Pharmacy in writing (regardless of whether it is possible for the Pharmacy to take over the defence of the claim). |
| (d) | Not to harm defence | <p>The Council and/or its agent has done any act to substantially harm the Pharmacy's prospects of defending the claim (including without limitation, admitting liability or attempting to settle the claim).</p> <p>Exceptions: any of the following:</p> <ul style="list-style-type: none"> To the extent that act is authorised by the Pharmacy in writing (at its discretion). To the extent that act is required by Law. |

16.8 The Council's obligations to refund any portion of the Relevant Indemnity - the Council must refund to the Pharmacy any amount paid by the Pharmacy under the Relevant Indemnity if the Council receives any amount from another source (e.g. proceeds from an insurance claim, or a claim against a third party) in relation to the same event of circumstance, subject to the following

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| (a) | The amount to be refunded | It must not exceed the total amount paid by the Pharmacy to the Council in relation to that particular Relevant Indemnity. |
| (b) | Keeping informed | The Council must inform the Pharmacy in writing (and make payment of the relevant refund) promptly on receipt of the payment from that other source. |
| (c) | Extent to which the Council is under any duty to the Pharmacy to seek such payment from that other source | A duty to use reasonable endeavours to do so in a reasonably proper and timely manner (at the Council's own cost). |

17. Caps and exclusions of liability

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| 17.1 | Caps on the liability of the Pharmacy's liability (in tort, contract or otherwise) to the Council in connection with this Contract (subject to question 17.5) | Such liability shall be limited to the aggregate of Voucher Reimbursements paid or payable for the full duration of this Contract. |
| 17.2 | Caps on the liability of the Council's liability (in tort, contract or otherwise) to the Pharmacy in connection with this Contract, other than in payment of the Voucher Reimbursements (subject to question 17.5) | £100. |
| 17.3 | For what the liability (in tort, contract or otherwise) of one party to the other party in connection with this Contract is fully excluded (subject to question 17.5) | Its liability for the indirect or consequential losses of that other party is excluded. |
| 17.4 | Apportionment where a party's fault has only partly caused the other party's loss | Where the losses of a party ('X') in particular circumstances relevant to this Contract are partly caused by the fault of the other party ('Y') (whether in tort, contract or otherwise) and are partly caused by other factors (including the acts and failures to act by X itself), the liability of Y to X for compensation or the like shall be reduced fairly and proportionately to reflect Y's contribution to X's losses. |

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| 17.5 | Exceptions to any cap or exclusion of a party's liability otherwise indicated elsewhere in this Contract - any of the following, where relevant | |
| (a) | Death or personal injury | Death or personal injury caused by the negligence or deliberate misconduct of that party. |
| (b) | Certain deliberate breaches | That party's deliberate breach of this Contract in bad faith where a substantial purpose of that breach was to take advantage of any cap or exclusion of liability. |
| (c) | Fraud, deliberate breach of the Law. | <ul style="list-style-type: none"> That party's deliberate fraud or other deliberate breach of the Law or other deliberate misconduct. A party shall be regarded as having done (or failed to do) something deliberately if it was done in circumstances where that party's Representative and/or any other member of its senior management knew (or reasonably should have known in the circumstances) of that act (or failure to act). |
| (d) | Fraudulent misrepresentation | That party's fraudulent misrepresentation. |
| (e) | Indemnities for third party claims | Liability in connection with any indemnity for third party claims made or threatened against the indemnified person. |
| (f) | Cannot be capped or excluded by Law | <ul style="list-style-type: none"> Anything to which the Law does not allow such liability to be capped or excluded. If the cap or exclusion is partly permitted by Law, only that part of the cap or exclusion shall apply. |
| (g) | Other | As indicated elsewhere in this Contract. |

18. Insurance requirements of the Pharmacy

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| 18.1 | Minimum insurance cover the Pharmacy must have in place (at its own cost) whilst the Goods are being provided – all of the following | |
| (a) | Public liability | At least £5 million per event or series of connected events. |
| (b) | Professional indemnity | At least £5 million per event or series of connected events. |
| 18.2 | Further obligations of the Pharmacy | <ul style="list-style-type: none"> To provide the Council with suitable evidence that it meets its insurance obligations in question 18.1. To do so promptly on the Council's reasonable written request. |

19. Data protection

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| 19.1 | Which party is to be data controller in relation to personal data of Service Users provided to the Pharmacist in connection with the provision of the Goods and Accompanying Services | The Council. |
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20. Record keeping

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| 20.1 | Record keeping obligations of the Pharmacy | As indicated in the Specification. |
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21. Inspection

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| 21.1 | What the Council is entitled to inspect in relation to this Contract – any of the following | |
| (a) | Records | Records which the Pharmacy is required to keep under question 20.1. |
| (b) | Personnel records | Records relating to Personnel who are engaged by the Pharmacy, to the extent such records are relevant to allowing the Council to check that Personnel meet the requirements in question 14.1. |
| (c) | Premises | Premises from which the Goods and Accompanying Services are supplied. |
| 21.2 | Minimum notice before inspection | 5 working days. Exception: where the Council has reasonable grounds to suspect misconduct in connection with the things being inspected, it is not obliged to give any notice. |
| 21.3 | The Pharmacy's obligations in relation to an inspection, subject to the rest of this Contract - to give, and to direct its relevant Personnel to give, reasonable, proper and timely assistance to the representatives of the Council in connection with the relevant inspection, including the following (without limitation) | |
| (a) | Access | Ensuring access to relevant premises. |
| (b) | Records | Making relevant records available. |
| (c) | Providing facilities | Providing suitable facilities for the purposes of the inspection. |
| (d) | Providing explanations | Providing open and accurate explanations and discussions, as reasonably required by such representatives. |
| 21.4 | Purposes for which the Council must limit its inspections of the Pharmacy | The Council must limit to inspections to check compliance with this Contract. |
| 21.5 | Rights of the Council to take copies of records it is entitled to inspect in the course of the inspection | It may do so, subject to the following: <ul style="list-style-type: none"> Reimbursing the Pharmacy for its reasonable copying costs, and The Council observing confidentiality in relation to such records (to the extent such records are of a confidential nature, and subject to the Council's obligations to make disclosures by Law). |
| 21.6 | Right of the Council to remove original records or other property of the Pharmacy | It may not do so except with the prior written consent of the Pharmacy, at discretion. |

22. Termination for convenience

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| 22.1 | Right of either party to terminate this Contract 'for convenience' (i.e. even if no default applies to the other party) | Either party may do so, by communicating the matter to the other party in writing. |
| 22.2 | When termination of this Contract becomes effective if either party terminates it 'for convenience' (i.e. the notice period required to terminate) | Immediate, or on such other day indicated in the communication. |

23. Consequences of the end of this Contract

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| 23.1 | Consequences of the end of this Contract (i.e. expiry, early termination etc. as relevant) | The rights and obligations under this Contract (including the Pharmacy's obligations to supply Goods and Accompanying Services) shall immediately terminate. Exception: those indicated in question 23.2. |
| 23.2 | Rights and obligations to continue after the Contract comes to an end (i.e. expiry, completion of Goods, earlier termination etc.) - each of the following, to the extent relevant | |
| (a) | Already arisen or accrued | Those arising under this Contract which had then already arisen or accrued. |
| (b) | Relating to events or circumstances | Those which relate to events or circumstances in connection with this Contract which had already occurred or arisen. |
| (c) | Continuing nature | Those in connection with this Contract which are expressed (or are reasonably implied) to continue after this Contract comes to an end. |

24. Warranties and representations of the Pharmacy

The Pharmacy warrants and represents to the Council that each of the following (to be read independently) is significantly true and correct at the date of this Contract, except to the extent otherwise disclosed to the Council in writing with sufficient clarity and detail beforehand

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| 24.1 | No negligently or deliberately withheld information | There is no reasonably significant information about the Pharmacy which the Pharmacy has negligently or deliberately withheld from the Council which, if disclosed, would be reasonably likely to significantly affect the decision of the Council (acting reasonably in the circumstances) to enter this Contract on these terms. |
| 24.2 | Investigations | <p>The Pharmacy is not under any non-routine investigation (whether by the police or regulatory body or the like) for any serious matter that is (on a reasonable view) likely to result in the following:</p> <ul style="list-style-type: none">• Significantly and adversely affecting its ability to carry out its obligations under this Contract; and/or• Serious, unjustified and unfavourable publicity being brought to the Council. |
| 24.3 | Licences, permits, accreditations etc. in place | <ul style="list-style-type: none">• The Pharmacy has in place all licences, permits, accreditations or the like required under question 5.1 to carry out the Goods fully in accordance with this Contract.• The Pharmacy also has no reasonable grounds to expect it to suffer any loss or restrictions to such licences, permits, accreditations or the like to enable it to do so. |
| 24.4 | By entering into, and carrying out its obligations under this Contract, the Pharmacy will not breach any of the following (to the best of its knowledge having made reasonably necessary inquiries): | |
| | (a) Law | The Law. |
| | (b) Duties owed to third parties | Any duty it owes a third party (whether arising under tort, contract or otherwise). |
| | (c) Third party property rights | The property rights of any third party. |
| 24.5 | Specific Personnel requirements | Each of the Personnel of the Pharmacy (and those of its relevant subcontractors) meets the requirements in question 14.1 insofar as they are relevant to his/her activities in connection with this Contract. |
| 24.6 | Insurance | The Pharmacy has properly in place with a reputable insurer all relevant insurance cover required in question 18.1. |
| 24.7 | Not acting on behalf of a third party | The Pharmacy is not entering this Contract on behalf of any third party whose identity has not been sufficiently disclosed in writing to the Representative of the Council. |
| 24.8 | Valid execution | The Pharmacy has validly executed this Contract. |

25. Third party rights

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| 25.1 | Rights of third parties with rights under this Contract for the purposes of the Contracts (Rights of Third Parties) Act 1999 (including Service Users) | These are excluded to the fullest extent permitted by Law. |
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26. Amendments

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| 26.1 | How this Contract is to be validly amended (and no other way shall be valid, including the other conduct of the parties) | <ul style="list-style-type: none">• By agreement in writing of the Council and the Pharmacy, signed by their respective properly authorised representatives.• It must be clear in the written document that it is intended to amend this Contract. |
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27. Relationship between the parties

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| 27.1 | Nature of relationship created by this Contract between the Council and the Pharmacy | The Council's role is simply to pay Voucher Reimbursements in respect of Goods and Accompanying Services supplied by the Pharmacy to relevant Service Users who bring a Valid Voucher into the Pharmacy's premises. |
| 27.2 | Indicate relationships NOT created by this Contract between the Council and the Pharmacy | <p>Any relationship of client/customer and service provider/supplier.</p> <p>Any relationship where either party is authorised to do any act (e.g. incur any liability, make any statement etc.) on behalf of the other party, including</p> <ul style="list-style-type: none"> Any partnership relationship between them. Any principal-agent relationship between them. |
| 28. Dispute resolution | | |
| 28.1 | Application of this section 28 | <ul style="list-style-type: none"> To the resolution of any dispute between the parties in relation to matters connected with this Contract This section applies except to the extent otherwise agreed in writing by the parties. |
| 28.2 | Resolution by Representatives | <ul style="list-style-type: none"> The parties (as a first step) shall direct their Representatives to use reasonable endeavours to resolve the dispute in a prompt manner and in good faith, with each party bearing its own costs. Where appropriate, the Council shall escalate the matter to its Director of Public Health or his/her delegate. |
| 28.3 | Mediation | If the Representatives cannot resolve the dispute under question 28.2 within 30 days of starting to do so, the parties shall promptly refer the matter to mediation, subject to this section 28. |
| 28.4 | How mediation is commenced | By either party giving the other party a notice requesting mediation, such notice to summarise in reasonable detail the dispute (as understood in good faith by the party giving that notice). |
| 28.5 | Mediation procedure to be used | The Model Mediation Procedure of the Centre for Effective Dispute Resolution ('Centre') or the comparable rules of any successor body. |
| 28.6 | How the mediator is appointed | <ul style="list-style-type: none"> By agreement of the parties (acting promptly and in good faith). They shall appoint a suitably qualified, independent mediator. If they cannot agree on a mediator within 7 days of first considering the issue, they shall request the Centre to recommend a mediator, and they shall accept the person recommended. |
| 28.7 | General obligations of parties in the course of the mediation - all of the following | |
| | (a) Good faith | To act generally in good faith. |
| | (b) Cooperation | To co-operate fully and promptly with the mediator, including promptly doing such acts (including signing a document substantially in the form of the Centre's model agreement in force from time to time) as the mediator reasonably requires. |
| | (c) Directions to Personnel | To direct their respective appropriate Personnel to attend and cooperate with the mediation properly and in good faith. |
| | (d) Confidentiality | <ul style="list-style-type: none"> To carry out the mediation in strict confidence and without prejudice to their respective rights in any later proceedings between them. Any disclosures made to the mediator in the course of the mediation shall not breach confidentiality obligations in this Contract. |
| | (e) Engagement | Not to engage (in connection with further proceedings involving the dispute) the mediator as an advisor and/or to call him/her as a witness. |
| 28.8 | How mediation costs are to be borne | The parties shall share equally the costs of engaging the mediator but shall otherwise bear their own costs. |

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| 28.9 | Right of a party to commence legal proceedings in relation to the dispute | <ul style="list-style-type: none"> It may do so if the dispute is not resolved by mediation after at least 90 days from commencement of mediation. Nothing in this section 28 shall prevent a party from seeking specific performance or injunctions or other remedies of a similar nature in relation to matters relevant to this Contract. |
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29. Assignment

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| 29.1 | Consent of the Pharmacy required if the Council wishes to assign its rights, powers and benefits under this Contract | <ul style="list-style-type: none"> No consent required. The Council must give the Pharmacy notice of the assignment. The Pharmacy shall not be required to recognise the assignment until that notice is given. |
| 29.2 | Consent of the Council required in relation to the assignment of the following by the Pharmacy | |
| (a) | The assignment of any debts owed to it by the Council under this Contract (e.g. payment of Voucher Reimbursements) | <ul style="list-style-type: none"> No consent required. The Pharmacy must give the Council notice of the assignment. The Council shall not be required to recognise the assignment until that notice is given. |
| (b) | Assignment of any other of the Pharmacy's rights, powers or benefits under this Contract | <ul style="list-style-type: none"> The prior written consent of the Council shall be required. Such consent shall not be unreasonably refused. |

30. Interest on overdue debts

| | | |
|------|---|---|
| 30.1 | Debts to which this section 30 applies - any debt or other liability to the extent ALL of the following apply | |
| (a) | Who owes | It is owed by one party to this Contract in connection with this Contract. |
| (b) | Overdue | It is overdue. |
| (c) | No dispute | It is not subject to a genuine dispute which the relevant debtor is using reasonable and genuine efforts in good faith to attempt to resolve. |
| 30.2 | Interest payable by the debtor to the creditor in relation to any debt or other liability referred to in question 30.1 owed by the debtor to the creditor | <ul style="list-style-type: none"> Interest at the rate of 3% per annum over the Bank of England rate from time to time. Such interest shall compound monthly until payment, whether before or after judgement. |

31. Gifts

| | | |
|------|----------------------------|--|
| 31.1 | Rules in relation to gifts | The Pharmacy must not offer (or assist, direct or knowingly permit its Personnel or those of its subcontractors to offer) any unauthorised gifts, entertainment or other benefits to any Personnel of the Council which breaches any relevant policy on the matter of the Council (as communicated to the Pharmacy from time to time) or which are in any case breaches the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972. |
|------|----------------------------|--|

32. Remedies

| | | |
|------|--|---|
| 32.1 | Consequence of this Contract referring to a particular remedy in a particular circumstance | It does not in itself exclude the availability of any other remedy in that circumstance (unless otherwise clearly indicated). |
| 32.2 | Whether available remedies are cumulative | Yes. |
| 32.3 | Consequence if a person with rights under this Contract pursues a particular remedy in a particular circumstance | That shall not in itself constitute a waiver of that person's right to pursue other available remedies (whether under common law, equity, statute or otherwise) in those circumstances. |

| | | |
|------|---|--|
| 32.4 | Rights of a person with rights under this Contract to seek remedies other than damages against a party to this Contract | <ul style="list-style-type: none"> The parties acknowledge that damages may not always be an adequate remedy of that person in particular circumstances. Accordingly, that person may (without being required to prove special damage) obtain other remedies available to that person (whether arising under common law, equity, statute or otherwise), including without limitation, injunctions and/or specific performance. |
|------|---|--|

33. Waivers

| | | |
|------|--|---|
| 33.1 | Strict requirements for a waiver of a party's rights or powers under this Contract to be binding on that party | <p>Only if all of the following apply to the waiver (and not otherwise):</p> <ul style="list-style-type: none"> It is in writing. It is clearly indicated to be a waiver of the relevant right or power. |
| 33.2 | Other rules regarding waiver of any party's right or power in connection with this Contract | <ul style="list-style-type: none"> Delay or failure to exercise that right or power shall not in itself be a valid waiver of it. A waiver of that right or power on one occasion does not (except to the extent otherwise indicated in that waiver) in itself constitute a waiver of the same right or power on a later occasion, and does not affect any other right or power. |

34. Severance

| | | |
|------|--------------------------------|---|
| 34.1 | Application of this section 34 | It applies where any provision in this Contract is held by any court (or equivalent body) to be invalid or unenforceable for any reason. |
| 34.2 | First step | <ul style="list-style-type: none"> If possible, the relevant provision shall be modified by removing or altering those parts of that provision that create the invalidity or unenforceability. Such removal or alteration shall be to the minimum extent necessary to allow the provision to be held to be valid and enforceable, having regard to the purpose of the relevant provision. |
| 34.3 | Second step | <ul style="list-style-type: none"> If the action required in question 34.2 is not reasonably possible, the entire provision shall be severed from this Contract unless it alters the fundamental nature of this Contract or is otherwise against public policy. The remaining provisions shall remain in full force and effect. |

35. Definitions

The following words and expressions shall be given the meaning given to them respectively below, except to the extent the context otherwise requires

| Defined term | Definition |
|------------------------------|--|
| Accompanying Services | The services which the Pharmacy must provide the Service User in conjunction with the supply of the Goods, as described in question 3.2. |
| Formulary | A form bearing that title (or similar title) issued by the Council from time to time updating the maximum reimbursable cost of NRT products that can be supplied under this scheme. |
| Goods | The goods which the Pharmacy is to supply to a Service User. |
| Law | Any statute, regulation or other subordinate legislation, directive or other European instrument, industry code of conduct, treaty, judgement, rule of common law or equity, rule of any applicable stock exchange, order by a competent court, consents, guidance or the like issued by authorised government bodies (whether legally binding or not), or anything else having a legally binding effect on the respective activities connected with this Contract of either or both of the parties (as the context requires). |

| Defined term | Definition |
|-------------------------------|---|
| Losses | All losses, damages, costs, charges and expenses incurred by the relevant party in the relevant circumstances to which the context refers, whether in tort, contract, by Law or otherwise including, where relevant, third party claims, liabilities, demands, proceedings, interest, penalties and fines, damage to property, death or personal injury, and full legal costs charged on a solicitor-client basis, except to the extent any of these are capped or excluded in this Contract. |
| Personnel | <ul style="list-style-type: none"> In relation to a firm or other organisation, any individual who is as follows: <ul style="list-style-type: none"> Its genuine officers, employees, consultants, trustees, elected members, members of any partnership, agents, interns, volunteers, advisers and contractors belonging to or otherwise directly or indirectly engaged in good faith by that firm or other organisation. In relation to the Pharmacy: any other individual it directly or indirectly engages to supply any of the Goods and/or accompanying Services to Service Users, including (without limitation) any direct or indirect contractors, and any employees of such contractors. If the Pharmacy is a sole trader, it means him/her (as Personnel of the Pharmacy). |
| Relevant Indemnity | The indemnity given by the Pharmacy to the Council under this section 16. |
| Representative | <p>In relation to a party to this Contract, the current person holding that role according to question 1(c) or his/her replacement from time to time including:</p> <ul style="list-style-type: none"> Where the relevant individual is absent from time to time: any other individual deputising for him/her, as decided by that party. Where the position is vacant from time to time in the case of the Council: the Director of Public Health. |
| Service User | Any individual bringing into the premises of the Pharmacy a Valid Voucher in which he/she is identified. |
| Specification | <ul style="list-style-type: none"> The specification attached to this Contract. Such amended specification as issued from time to time by the Council to the Pharmacy. |
| Valid Voucher | See question 4.1. |
| Voucher Reimbursements | The reimbursements payable by the Council to the Pharmacy on presentation for a claim for payment by the Pharmacy according to this Contract. |

36. Interpretation

Except to the extent the context otherwise requires, this Contract shall be interpreted as follows

| | | |
|------|----------------------|---|
| 36.1 | Reference to a party | Reference to any party is a reference to a party to this Contract, and includes reference to that party's successors in title and permitted assignees. |
| 36.2 | Consents, approvals | Where consent, approval, permission or the like of a person is not to be unreasonably refused, it also cannot be unreasonably delayed or subject to unreasonable conditions. Where consent, approval, permission or the like of a person is to be at that person's discretion, it shall not be obliged to respond to a request for it, nor obliged to give reasons for its decision, nor liable to any person for any reason given for that decision. |
| 36.3 | Other references | Reference to one gender refers to all genders; reference to the singular includes the plural and vice versa; reference to any particular type of body, firm or other entity includes reference to any other type of body, firm or other entity. |
| 36.4 | Definitions | If a word or phrase is defined in this Contract, its other grammatical forms have a corresponding meaning. |
| 36.5 | Statutes, codes etc. | Reference to any statute, code or the like includes reference to any of these which amends, replacing, modifying or consolidating statute, code or the like on substantially similar subject matter. |
| 36.6 | 'In writing' | Use of the expression 'in writing' (or a similar word) includes (but is not limited to) an e-mail. |
| 36.7 | 'Including' | Use of the word 'including' (or a similar word) at the commencement of a list to illustrate a particular concept is deemed not to limit or restrict that concept in any way. |