

Dated

2016

CITY OF YORK COUNCIL

and

[]

**Agreement relating to the provision of Nicotine Replacement Therapy to eligible
residents of York**

PARTIES

- 1) **CITY OF YORK COUNCIL** of West Offices, Station Rise, York, YO1 6GA (the **Council**); and
- 2) [] (the **Provider**).

together “the Parties”

BACKGROUND

- (A) The Council has commenced a “Stop Smoking Support” scheme, a targeted programme offering intensive support for women resident of York who are pregnant, smoke and who wish to give up and for whom pharmacotherapies are the chosen therapy to aid giving up smoking (**Scheme**),
- (B) The Council has also introduced a temporary ‘hardship fund’ scheme (**Hardship Fund**) to support smokers resident of York who are on very low incomes who may be sourcing their tobacco outside of ‘mainstream outlets’ (or using ‘roll your own tobacco’). To ensure that such residents are not deterred from quitting due to the increased cost of pharmacotherapies compared with these methods the Council is seeking to encourage use of NRT Products by individuals it identifies as eligible under the Council’s hardship criteria.
- (C) In accordance with the Scheme and the Hardship Fund the Council is seeking to engage with York based pharmacies who provide pharmacotherapies to York residents.
- (D) The purpose of this Agreement is to set out temporary terms on which the Council shall reimburse the Provider following the Provider providing NRT Products to Customers from the specific Community Pharmacy in accordance with the Agreement.

1. DEFINITIONS

- 1.1. In this Agreement, save where the context requires otherwise, the following words, terms and expressions shall have the following meanings:

Agreement means this agreement including Schedules.

Claim a claim by the Provider to the Council following where the Provider provides NRT Product to a Customer via the Community Pharmacy in connection with this Agreement. The Provider shall submit such a claim via PharmOutcomes.

Commencement Date means []

Community Pharmacy means the pharmacy/ pharmacies named at Schedule 1 at which the Provider confirms it may provide NRT Products to Customers in accordance with this Agreement.

Confidential Information means any information or data in whatever form disclosed, which by its nature is confidential or which the Disclosing Party acting reasonably states in writing to the Receiving Party is to be regarded as confidential, or which the Disclosing Party acting reasonably has marked ‘confidential’ (including, without limitation, financial information, or marketing or development or work force plans and information, and information relating to services or products) but which is not relating to a particular Customer, or Personal Data, pursuant to an FOIA request, or information which is published as a result of government policy in relation to transparency

Customer means an individual identified by the Council who is resident of York and who is either a pregnant woman or an individual meeting hardship criteria set by the Council. The identity of such a Customer shall initially be communicated to the Provider by the Council using PharmOutcomes.

DPA means the Data Protection Act 1998

Data Processor has the meaning set out in the DPA

Data Subject has the meaning set out in the DPA

Dictionary of Medicines and Devices means an NHS standard dictionary of descriptions and codes which represent medicines and devices in use across the NHS.

Disclosing Party means the Party disclosing Confidential Information

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the information commissioner or relevant government department in relation to such legislation and the Environmental Information Regulations 2004

Indirect Losses means loss of profits (other than profits directly and solely attributable to the provision of the Services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis

Law means:

- a) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
- b) any enforceable community right within the meaning of Section 2(1) European Communities Act 1972;
- c) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales.

Losses means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, excluding Indirect Losses

NRT Products means the Nicotine Replacement Therapy Products subject of this agreement listed at Schedule 2.

Personal Data has the meaning set out in the DPA

PharmOutcomes means the electronic system by which the Council may contact the Provider identifying a Customer and by which the Provider shall submit a claim. Screenshots are at Schedule 3.

PhamOutcomes Contact means contact by the Council or a Public Health Wellbeing Officer in accordance with Schedule 3 section 1.

Receiving Party means the Party which has received Confidential Information as applicable.

Public Health Wellbeing Officer means Council officer involved in the delivery of the Scheme, the identity of whom shall be communicated to the Provider.

- 1.2. In this Agreement, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes or practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto. Where relevant, references to English statutes and statutory provisions shall be construed as references also to equivalent statutes, statutory provisions and rules of law in other jurisdictions.
- 1.3. Any headings to Clauses and the front cover and are for convenience only and shall not affect the meaning of this Agreement. Unless the contrary is stated, references to Clauses and Schedules shall mean the clauses and schedules of this Agreement.
- 1.4. Where a term of this Agreement provides for a list of items following the word “including” or “includes”, then such a list is not to be interpreted as being an exhaustive list.
- 1.5. In this Agreement, words importing the singular only shall include the plural and vice versa.
- 1.6. In this Agreement, “staff” and “employees” shall have the same meaning and shall include reference to any full or part time employee or officer, director, manager and agent.
- 1.7. Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Parties shall be in writing.
- 1.8. All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended from time to time.

2. TERM

- 2.1 This Agreement shall be deemed to have taken effect on the Commencement Date.
- 2.2 This Agreement shall (subject to the provisions for early termination set out in Clause 5) expire on [].

3. PROVIDER OBLIGATIONS

- 3.1.1 The Provider agrees that where it receives PharmOutcomes Contact and it then decides to provide the related NRT Product to the Customer that it shall submit a Claim to the Council in accordance with Schedule 3.
- 3.1.2 The Provider acknowledges that Claims can only be made under this Agreement in connection with NRT Products it provides to Customers at the specified Community Pharmacy.
- 3.1.3 The Provider shall make any Claims by the 9th day of a month.
- 3.2.1 The Provider also agrees that it shall:
 - 3.2.1.1 provide any NRT Products to Customers in accordance with any respective product licences, including regarding appropriate dosage and dosage reduction.
 - 3.2.1.2 at all times ensure it, the Community Pharmacy and any related staff comply with the standards at Schedule 4 in connection with this Agreement and when dealing with Customers; and
 - 3.2.1.3 ensure all staff at the Community Pharmacy engaged in delivering NRT Products to Customers:

- (i) cooperate with any Council led assessment of the Provider's provision of NRT Products to Customers; and
 - (ii) inform Public Health Wellbeing Officers and the Council of any problems that arise relating to the Provider's provision of NRT Products to Customers.
- 3.3.1 The Provider acknowledges the decision whether or not to ultimately provide an NRT Product to a Customer in connection with this Agreement rests with the Provider.
- 3.4.1 The Provider acknowledges the Council is under no obligation to make PharmOutcomes Contact.

4. COUNCIL OBLIGATIONS

- 4.1 The Council agrees that where the Provider submits a valid Claim the Council shall pay the Provider:
 - 4.1.1 a reimbursement of the Dictionary of Medicines and Devices price of the specific NRT Product at the time it was provided to a Customer by the Provider; and
 - 4.1.2 a dispensing fee of £3 per Claim.
- 4.2 Payments by the Council in accordance with 4.1 shall be paid to the Provider within 28 days following receipt of a Claim via BACs payment to the Provider's account details provided by the Provider on PharmOutcomes.

5. TERMINATION:

- 5.1 The Parties acknowledge the Agreement is intended to a temporary arrangement and is dependent upon the Council's continuing budget availability.
- 5.2 The Agreement shall cease in accordance with 2.2 however either Party can terminate this Agreement by providing 90 days written notice to the other Party provided to in accordance with the notice provisions at Clause 6.

6. NOTICES

- 6.1 Any notice to be given under this Agreement shall either be delivered personally or sent by first class post or electronic mail. The address for service of each Party shall be as set out in Clause 6.2 or such other address as each Party may previously have notified to the other Party in writing.
- 6.2 The address for service of notices as referred to in Clause 6.1 shall be as follows unless otherwise notified to the other Party in writing:

- 6.2.1 if to the Council, addressed to City of York Council, Public Health Team, City of York Council, West Offices, Station Rise, York, YO1 6GA

Tel: 01904 554513

Email: yorkwellbeing@york.gcsx.gov.uk

- 6.2.2 if to Provider addressed to []

Tel: []

Email: []

7. VARIATION

- 7.1 No variation or modification to the Agreement is valid unless it is made in writing and signed by a duly authorized representative of the Parties.

8. CONFIDENTIALITY

- 8.1 Other than as allowed in this Agreement, Confidential Information is owned by the Party that discloses it (the "Disclosing Party") and the Party that receives it (the "Receiving Party") has no right to use it.
- 8.2 Subject to clauses 8.1 and 8.2, the Receiving Party agrees:
- 8.2.1 to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Agreement;
 - 8.2.2 not to disclose the Disclosing Party's Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
 - 8.2.3 to maintain the confidentiality of the Disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.
- 8.3 The Receiving Party may disclose the Disclosing Party's Confidential Information:
- 8.3.1 to comply with the Law;
 - 8.3.2 to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in clause 8.2;
- 8.4 The obligations in clause 8.1 and clause 8.2 will not apply to any Confidential Information which:
- 8.4.1 is in or comes into the public domain other than by breach of this Agreement;
 - 8.4.2 the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
 - 8.4.3 the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.

9. FREEDOM OF INFORMATION

- 9.1 The Provider agrees that they will co-operate with the Council to enable any the Council receiving a request for information under the FOIA to respond to a request promptly and within the statutory timescales. This co-operation shall include but not be limited to find, retrieving and supplying information held.

10. DATA PROTECTION

- 10.1 The Parties acknowledge their respective duties under the DPA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.
- 10.2 To the extent that the Provider is acting as a Data Processor on behalf of the Council, the Provider shall, in particular, but without limitation:

- 10.2.1 only process such Personal Data as is necessary to perform its obligations under this Agreement, and only in accordance with any instruction given by the Council under this Agreement;
- 10.2.2 put in place appropriate technical and organisational measures against any unauthorised or unlawful processing of such Personal Data, and against the accidental loss or destruction of or damage to such Personal Data.
- 10.2.3 take reasonable steps to ensure that all Staff who will have access to such Personal Data, are informed of the confidential nature of the Personal Data and that such Staff are properly trained in protecting Personal Data;
- 10.2.4 provide the Council with such information as the Council may reasonably require to satisfy itself that the Provider is complying with its obligations under the DPA;
- 10.2.5 promptly notify the Council of any requests for disclosure of or access to the Personal Data;
- 10.2.6 promptly notify the Council of any breach of the security measures put in place; and
- 10.2.7 ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA.

11. RIGHTS OF THIRD PARTIES

- 11.1 A person who is not a party to this agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

12. LIMITATION OF LIABILITY

- 12.1 Neither Party shall be liable to the other Party (as far as permitted by Law) for Indirect Losses in connection with this Agreement.
- 12.2 Each Party shall at all times take all reasonable steps to minimise and mitigate any Losses.
- 12.3 Nothing in this Agreement will exclude or limit the liability of either Party for:
 - 12.3.1 death or personal injury caused by its negligence; or
 - 12.3.2 fraud or fraudulent misrepresentation.

13. ASSIGNMENT AND SUB CONTRACTING

- 13.1 The Parties shall not sub contract, assign or transfer the whole or any part of this Agreement.

14. EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY

- 14.1 Nothing in this Agreement creates a partnership or joint venture or relationship of employer and employee or principal and agent between the Council and the Provider.

15. ENTIRE AGREEMENT

- 15.1 This Agreement constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement between the Parties relating to the subject matter of this Agreement.

16. COUNTERPARTS

- 16.1 This Agreement may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument. No counterpart shall be effective until each Party has executed at least one counterpart.

17. GOVERNING LAW AND JURISDICTION

- 17.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 17.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS WHEREOF this Agreement has been signed for and on behalf of the Parties on the date first above written

Signed by **CITY OF YORK COUNCIL** acting by:)
) Authorised signatory
)
)
) Name

Signed by [] acting by a director in the)
 presence of:) Director
)
)
) Name

.....
Witness

.....
Name

Schedule 1

COMMUNITY PHARMACY

The Provider confirms for the purposes of this Agreement it may provide NRT Products to Customers at the Community Pharmacy listed below:

[]

Schedule 2
NRT PRODUCTS

- 24-hour patch 7mg / 7 pack
- 24-hour patch 14mg / 7 pack
- 24-hour patch 21mg / 7 pack
- 16-hour patch 10mg / 7 pack
- 16-hour patch 15mg / 7 pack
- 16-hour patch 25mg / 7 pack
- Nicotine oromucosal (mouth) spray 1mg/dose / 13.2 ml pack
- Nicotine oromucosal (mouth) spray Duo-pack
- lozenge (mini) 1.5mg / 60 pack
- lozenge (mini) 2mg / 36 pack
- lozenge (mini) 2mg / 72 pack
- lozenge (mini) 4mg / 20 pack
- lozenge (mini) 4mg / 36 pack
- Nicotine lozenge (mini) 4mg / 60 pack
- Nicotine lozenge (mini) 4mg / 72 pack
- Nicotine lozenge 1mg / 96 pack
- Nicotine lozenge 2mg / 72 pack
- Nicotine lozenge 4mg / 72 pack
- Nicorette Cools 4mg / 80 pack
- Nicorette Cools 2mg / 80 pack
- Nicorette Cools 2mg / 20 pack
- Nicotine Gum 2mg / 96 pack
- Nicorette Gum 2mg / 105 pack
- Nicotine Gum 4mg / 105 pack
- Niquitin Strips / 60 pack
- Niquitin Strips / 15 pack
- Nicotine gum 2mg / 72 pack
- Nicotine gum 4mg / 96 pack
- Nicotine sublingual tablet 2mg / 100 pack
- Nicotine inhalator 15mg/cartridge / 4 cartridge pack
- Nicotine inhalator 15mg/cartridge / 20 cartridge pack
- Nicotine inhalator 15mg/cartridge / 36 cartridge pack
- Nicotine nasal spray 500mg/dose / 10ml pack

NRT Product values claimed by the Provider and reimbursed by the Council shall correspond with the Dictionary of Medicines and Devices (dm+d) value at the time the NRT Product subject of a Claim was provided to a Customer

Schedule 3

PHARMOUTCOMES CLAIM PROCEDURE

1. The Council will make any PharmOutcomes Contact via PharmOutcomes. At present the screen the Council will complete shall resemble the below.

PharmOutcomes - Live System
Exit Logged in as: Karen from City of York Council

PharmOutcomes® Delivering Evidence

Home Services Assessments Reports Claims Admin Gallery Help

This page has been restored after an intervening prompt. Security word check
Please check carefully that we have navigated to the correct page before continuing.

Service Design

NRT Supply - Referral to Pharmacy (Preview)

- Browse Service Library
- View service accreditations
- Edit Service Design
- Preview Claim for this service

Provision Reports Preview

Basic Provision Record (Sample)
NRT Voucher (Sample)

Service Support

You can download a copy of the formulary [Error: download file](#)
"here" is not available. No permission to access CommFM area 95021 from User area 101431
- Please contact: North Yorkshire County Council

Supply date: 25-Jul-2016
Name:
Postcode:

Referral Number Information

Referral Number:
NRT 1 Supplied:
Quantity:

Referral Number for a client is their initials followed by 4 unique digits
i.e. KB1000

Referral Information

Name of Pharmacy:
Start to type in name of pharmacy and select from list

Enter the name of the pharmacy that referral is being sent to

Test Values

2. Following such PharmOutcomes Contact above the Provider will receive a page in similar format to the below. If the Provider provides an NRT Product to the Customer in connection with the Agreement it will need to complete.

Service Design

NRT Supply - Referral Received (Preview)

- Browse Service Library
- View service accreditations
- Edit Service Design
- Preview Claim for this service

Provision Reports Preview

Basic Provision Record (Sample)

Registration Details brought forward

Original Referral	25 Jul 2016
Referred from	Violet Patch Pharmacy (Branch: 5477 - Flowers Medical Centre: F1234)
Client Name	Mickey Mouse
Postcode	AB12 3CD

Referral Number	Answer to Referral Number single line input
NRT 1 Supplied selection	Selection from Dictionary of Medicines and Devices (dm+d) NRT Product subset lookup list
NRT 1 Supplied value	Value from Dictionary of Medicines and Devices (dm+d) NRT Product subset lookup list
NRT 2 supplied selection	Selection from Dictionary of Medicines and Devices (dm+d) NRT Product subset lookup list
NRT 2 supplied value	Value from Dictionary of Medicines and Devices (dm+d) NRT Product subset lookup list
NRT 3 supplied selection	Selection from Dictionary of Medicines and Devices (dm+d) NRT Product subset lookup list
NRT 3 supplied value	Value from Dictionary of Medicines and Devices (dm+d) NRT Product subset lookup list
NRT 4 supplied selection	Selection from Dictionary of Medicines and Devices (dm+d) NRT Product subset lookup list
NRT 4 supplied value	Value from Dictionary of Medicines and Devices (dm+d) NRT Product subset lookup list

Acceptance and completion of referred service

This referral has been made to your organisation.
If you are unable to complete the referral, you can reject it, but please state the reason for rejection in the Notes box below.
If you can accept the referral but cannot complete the associated actions immediately, click on the accept button to acknowledge receipt of the referral. You can make relevant notes in the Notes box.

Complete now Accept Reject referral

3. Following completion a screen similar to the below shall display.

Service Design

- Browse Service Library
- View service accreditations
- Edit Service Design
- Preview Claim for this service

Provision Reports Preview

 Basic Provision Record (Sample)

NRT Supply - Referral Received (Preview)

Registration Details brought forward

Original Referral	25 Jul 2016
Referred from	Violet Patch Pharmacy (Branch: 5477 - Flowers Medical Centre F1234)
Client Name	Mickey Mouse
Postcode	AB12 3CD

Referral Number	Answer to Referral Number single line input
NRT 1 Supplied selection	Selection from Dictionary of Medicines and Devices (dm+d) NRT Product subset lookup list
NRT 1 Supplied value	Value from Dictionary of Medicines and Devices (dm+d) NRT Product subset lookup list
NRT 2 supplied selection	Selection from Dictionary of Medicines and Devices (dm+d) NRT Product subset lookup list
NRT 2 supplied value	Value from Dictionary of Medicines and Devices (dm+d) NRT Product subset lookup list
NRT 3 supplied selection	Selection from Dictionary of Medicines and Devices (dm+d) NRT Product subset lookup list
NRT 3 supplied value	Value from Dictionary of Medicines and Devices (dm+d) NRT Product subset lookup list
NRT 4 supplied selection	Selection from Dictionary of Medicines and Devices (dm+d) NRT Product subset lookup list
NRT 4 supplied value	Value from Dictionary of Medicines and Devices (dm+d) NRT Product subset lookup list

Acceptance and completion of referred service

Referral Accepted for completion now [Revert and discard changes](#)

Provision Date

NRT 1 Supplied

Quantity

Prescription Status

Levy Status

[Test Values](#)

Schedule 4

STANDARDS

Quality and Clinical Governance Standards

- The Provider will ensure that any paperwork relating to the service, local procedures and guidelines issued by the Council are easily accessible in the pharmacy.
- The Provider will notify the Council of any significant incidents in connection with the Agreement and notify the Council urgently by secure email at Yorkwellbeing@york.gcsx.gov.uk. Examples of significant incidents could include a Customer severe reaction to the NRT Products or in event of NRT Products being dispensed.
- The Provider will record and provide the Council with a summary of any Customer complaints and action taken.
- The Provider will discuss NRT Product use and common side effects, risks and benefits with a Customer.
- The Provider will use Fraser competency guidelines to assess Customers as required.

Ethical standards

- The Provider will abide by the code of ethics and standards and professional requirements set by the Royal Pharmaceutical Society of Great Britain at all times when carrying out any relevant matters in connection with the Agreement.
- The Provider confirms it will have due regard to promote equality and eliminate unlawful discrimination as set out in the Race Relations (Amendment) Act 2000, the Disability Equality Duty and the Gender Equality Duty.
- The Provider will ensure that all Customers are treated with dignity and respect at all times and in connection with its activities under the agreement. The Provider will ensure that it meets the needs and rights of Customers with regard to dignity, including by meeting the relevant requirements of the Human Rights Act 1998, the Race Relations Act 1976 (as amended), the Disability Discrimination Act 1995, the Disability Discrimination Act 2005 and the Equality Act 2006.