

**BOEHRINGER INGELHEIM LIMITED**  
**SPIOLTO® PRICING AGREEMENT**

THIS AGREEMENT is made BETWEEN:

(1) **Boehringer Ingelheim Limited**  
(registered in England and Wales under number 711858) whose registered office is at Ellesfield Avenue, Bracknell, Berkshire, RG12 8YS ("BI UK"); and

(2) **NHS ROTHERHAM CCG**

("PCO")

whose registered office is at:

OAK HOUSE  
MOORHEAD WAY  
BRAMLEY  
ROTHERHAM  
S66 1YY

(PCO Address).

## INTRODUCTION

Subject to the terms of this Agreement, BI UK offers to the PCO a Discount (as described in Schedule 1) on purchases of the Product which are prescribed and dispensed within the PCO's Area to treat Eligible Patients

## IT IS AGREED AS FOLLOWS:

### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (except where the context otherwise requires) the following words and expressions shall have the following meanings:

**Area** shall mean the geographic area for which the PCO has responsibility in the provision of healthcare services for members of the public living in that area;

**Confidential Information** means any information relating to the subject matter of this Agreement including without limitation the terms and conditions of this Agreement (but not its existence) and any information concerning the

business or affairs of either party which is disclosed in connection with this agreement;

**Confidential Information** does not include information which (i) is or becomes legitimately available to the public; or (ii) is available to the receiving party otherwise than pursuant to this Agreement and free of any restrictions as to its use or disclosure;

**Discount(s)** shall mean the difference in price between the NHS List Price and the actual cost of the Products payable, as calculated in accordance with Schedule 1;

**Effective Date** shall mean the date of last signature of the Agreement;

**Eligible Patient** shall mean an adult patient who (i) lives within the Area, (ii) requires a maintenance bronchodilator treatment to relieve symptoms of chronic obstructive pulmonary disease (iii) is appropriate to be prescribed the Product

**ePACT data** shall mean the Electronic Prescribing Analysis and Cost service for pharmaceutical and prescribing advisors which allows real time on-line analysis of the previous sixty months prescribing data held on the NHS Prescription Services Database;

**Invoice** shall mean the PCO Invoice detailing the Payment calculation for the relevant Quarter;

**NHS List Price** shall mean the price published by the NHS in Mims for the sale of the Product;

**Product** shall mean tiotropium and olodaterol fixed dose combination as manufactured for and on behalf of BI UK and marketed under the brand name "Spiolto® RespiMat®", and

**Quarter and Quarterly** shall mean a period of 3 months as set out in Schedule 1.

1.2 Any reference in this Agreement to a statute, statutory provision, subordinate

legislation, code or guideline ("legislation") is a reference to such legislation as amended and in force from time to time.

## 2. TERM AND TERMINATION

2.1 This Agreement shall commence on the Effective Date and shall continue for an initial period of 2 years. Following the initial period, the Agreement shall be automatically renewed for successive periods of one year until termination.

2.2 This Agreement is designed to ensure the PCO is free to use any competitor product at any point in time and as such the PCO shall be entitled to terminate this Agreement at any time without providing a reason by serving one calendar month's notice of the termination to Bt UK.

2.3 [REDACTED]

2.4 [REDACTED]

2.4.1 [REDACTED]

2.4.2 [REDACTED]

2.4.3 [REDACTED]

2.5 [REDACTED]

## 3. DISCOUNT MECHANISM

3.1 Following execution of this Agreement, the PCO shall submit to BI UK Quarterly Invoices containing their ePACT data and a claim for the applicable Discount for the Area during each Quarter in accordance with Schedule 1.

3.2 For the avoidance of doubt, there is no obligation on the PCO to prescribe the Product and no requirement for the PCO to reach a minimum volume of Product prescriptions in order to receive the Discount.

## 4. PCO OBLIGATIONS

4.1 The PCO shall ensure that all ePACT data provided to BI UK for the purposes of the operation of this Agreement is accurate. The PCO shall comply with data protection and other laws and recognised good practice in relation to patient confidentiality requirements and that all relevant consents and permissions have been obtained.

4.2 If ePACT restates its data at any time, payment of future Discounts shall be adjusted accordingly to account for any changes to payments already made.

## 5. ASSIGNMENT & SUBCONTRACTING

5.1 The PCO shall not without the prior written consent of BI UK (such consent not to be unreasonably withheld or delayed) transfer any rights or obligations under this Agreement, or subcontract any or all of its obligations under it except as set out below.

5.2 If the PCO wishes to appoint a third party subcontractor to manage the submission of the ePACT Data and the claim for the Discount

Payment, it shall notify BI UK in writing of the contact details of the subcontractor (unless already listed at Schedule 1), and ensure that the subcontractor enters into a subcontract agreement with the PCO which is consistent with the terms of this agreement.

## 6 CONFIDENTIALITY AND FREEDOM OF INFORMATION

6.1 Each party ("Receiving Party") undertakes that it shall keep confidential and not disclose to any person any Confidential Information it receives from the other party ("Disclosing Party") except that the Confidential Information may be disclosed:

6.1.1 where it is required by the Receiving Party's professional representatives or a person employed or engaged by the Receiving Party in connection with the proper performance of this Agreement; or

6.1.2 where it is required to be disclosed by any law or any legal or regulatory authority, provided that the Receiving Party shall notify the Disclosing Party of the information to be disclosed and the circumstances before such disclosure must be made and shall take all reasonable action to avoid and limit such disclosure, or

6.1.3 to other NHS bodies

6.2 Any disclosure of Confidential Information permitted under clause 6.1.1 shall only be to the extent necessary and provided that such persons are informed of the confidential nature of the Confidential Information and agree to confidentiality obligations equivalent to those contained in this Clause 6.

6.3 If the PCO receives a request under the Freedom of Information Act 2000 for the disclosure of any Confidential Information, BI UK agrees that the existence of this Agreement and the terms of this Agreement may be disclosed in response to a request under the Freedom of Information Act 2000 WITH THE EXCEPTION OF: a) any

personally identifiable information and b) Clauses 2.3-2.5, 3 and Schedule 1 which BI considers to be both strictly confidential to it and commercially sensitive. Should any clarification be required, the PCO may contact: [FALegal.GB@boehringer-ingelheim.com](mailto:FALegal.GB@boehringer-ingelheim.com)

6.4 Each party hereby undertakes to use Confidential Information disclosed to it by or on behalf of the other party solely in connection with the performance or enforcement of this Agreement.

6.5 Without prejudice to any other rights or remedies that the Disclosing Party may have, the Receiving Party acknowledges and agrees that the Disclosing Party shall, without proof of special damage, be entitled to an injunction, specific performance or other equitable relief for any threatened or actual breach of the provisions of this clause, in addition to any damages or other remedy to which it may be entitled.

6.6 This clause 6 shall continue in force for a period of five years following the termination or expiry of this Agreement.

## 7. NOTICES AND CONTACTS

7.1 Any official notice given under this Agreement shall be in writing and served by either hand, prepaid first class recorded or registered post to the PCO Agreement Lead for the PCO and the Account Manager for BI UK as listed in Schedule 2 of this Agreement. Any such notice shall be deemed to have been served at the time of delivery. For the avoidance of doubt, except where email is expressly specified as a method of communication, official notices given under this Agreement shall not be validly served if sent by email.

## 8. FORCE MAJEURE

8.1 In this Agreement "force majeure" shall mean any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events,

omissions or accidents beyond the reasonable control of the party so prevented.

8.2 If either party is prevented from performance of any of its obligations under this Agreement by force majeure, that party shall as soon as reasonably possible serve notice in writing on the other party specifying the nature and extent of the circumstances and shall have no liability in respect of any delay in performance or any non-performance of any such obligation to the extent that the delay or non-performance is due to force majeure.

8.3 If either party is prevented from performance of substantially all of its obligations by force majeure for a continuous period of more than six (6) months in total, the other party may terminate this Agreement immediately on service of written notice upon the party so prevented, in which case neither party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

## 9. ALTERNATIVE DISPUTE RESOLUTION

9.1.1 If any dispute arises out of or in connection with this Agreement (or its validity, construction, performance or enforceability) (a "Dispute"), directors or other senior representatives of the parties with authority to settle the Dispute shall, within seven (7) days of a written request from one party to the other (a "Dispute Notice"), meet in good faith with a view to resolving the Dispute.

9.1.2 If the Dispute is not resolved pursuant to Clause 9.1.1, the parties may negotiate in good faith to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure as in force from time to time.

9.1.3 To initiate the mediation a party must give notice in writing (a "Mediation Notice") to the other party to the dispute requesting mediation. The mediation will start not later than

21 days after the date of service of the Mediation Notice, unless the other party objects to mediation by written notice within that period.

## 10. SEVERANCE

10.1 If any provision of this Agreement is in whole or part held to be invalid, unlawful or unenforceable by a court of law, competent legal or regulatory authority, such invalidity or unenforceability shall not affect the other provisions of this Agreement, which shall be enforced as closely as possible according to the original terms.

## 11. GENERAL

11.1 Nothing in this Agreement shall create or be deemed to create a partnership, joint venture or principal-agent relationship between the parties and neither party shall have authority to bind the other in any way.

11.2 No provision of this Agreement shall be modified or varied without the written consent of the parties.

11.3 In no event will any delay, failure or omission (in whole or in part) by BI UK in enforcing, exercising or pursuing any right conferred by or arising under this Agreement or by law, be deemed to be a waiver in respect of the circumstances in question, or bar the enforcement of that right in any other instance at any other time.

11.4 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement.


11.5 The only remedy available to either party for breach of this Agreement shall be for breach of contract under the terms of this Agreement and neither party shall be liable in tort or otherwise arising from such breach. Nothing shall limit or exclude any liability for fraud.


11.6 The PCO confirms it has received a copy of the Boehringer Ingelheim Code of Conduct and The Boehringer Anticorruption Policy (ACP) dated 6<sup>th</sup> January 2004 by Boehringer Ingelheim Limited or can otherwise access the documents via the Boehringer Ingelheim website at <http://www.boehringer-ingelheim.co.uk>. The PCO agrees to comply with the contents of the ACP and acknowledges the ACP forms an integral part of PCO's obligations under this Agreement. The PCO agrees that any violation of the ACP can result in amongst other things the immediate termination of this Agreement and adverse legal consequences or legal action being against the PCO as is permitted or required by contract or law.


11.7 The validity, construction and performance of this Agreement (and any claim, dispute or matter arising under or in connection with it or its enforceability) shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales

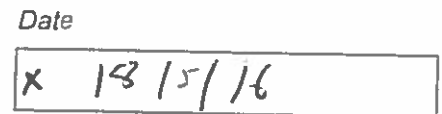
*Authorised PCO signature:*

SIGNED by

) Signature 

) Print Name 


) 

) Date 

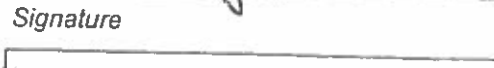
a signatory, duly authorised on behalf of the PCO

*Authorised BI UK signatories :*


SIGNED by

) 

) Signature

) 


) Print Name

) 


) Position

) 27 MAY 2016

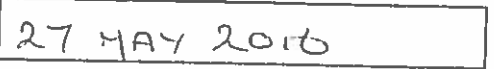
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) Signature

) 

) Print Name

) 

) Position

) 31.5.16

) Date

signatories duly authorised on behalf of BI UK

Schedule 2

Spiolto® RespiMat® Pricing Agreement Contacts List

PCO Name: NHS ROTHORHAM CCG

PCO Contacts

Function	PCO Agreement Lead
Name	X [REDACTED]
Title	X [REDACTED]
Address	X NHS ROTHORHAM CCG, OAK HOUSE, BRANLEY MOORTWAD WAY - ROTHORHAM SO6 1YY.
Phone number	X 01709 [REDACTED]
Email	X [REDACTED]@rothorhamccg.nhs.uk

Function	PCO Claim Management Contact
Name	X [REDACTED]
Title	X [REDACTED]
Address	X NHS ROTHORHAM CCG, OAK HOUSE, MOORTWAD WAY BRANLEY, SO6 1YY
Phone number	X 01709 [REDACTED]
Email	X [REDACTED]@rothorhamccg.nhs.uk

Boehringer Ingelheim Contacts

Function	Contract Signatory / Account Manager
Name	[REDACTED]
Title	[REDACTED]
Address	Boehringer Ingelheim Ltd, Ellesfield Avenue, Bracknell, RG12 8YS
Phone number	[REDACTED]
Email	[REDACTED]@boehringer-ingelheim.com

Function	Boehringer Ingelheim Claim Management
Name	[REDACTED]
Title	[REDACTED]
Address	Boehringer Ingelheim Ltd, Ellesfield Avenue, Bracknell, RG12 8YS
Phone number	01344 [REDACTED]
Email	[REDACTED]@boehringer-ingelheim.com