

**A copy of the local agreement for Consultants appointed to carry out work  
within NHS Bristol**

**The Agreement**

**1 Background**

- 1.1 The Trust is a commissioner of the services of ??? Consultancy Service from the provider

**2 Specification and prices**

- 2.1 The specification of Services is set out in Annex A
- 2.2 The price schedule is set out in Annex B
- 2.3 The Authorised Officers for both parties are set out in Annex C

Note-Should any of the above named documents conflict, the NHS Bristol specification (Annex A) for the required services will be assumed to be an accurate and fair representation of the requirements under this agreement

**3 Provider's Status**

- 3.1 Nothing in this agreement shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Trust and the Provider.
- 3.2 The Provider shall not, nor shall the Provider procure that his agents and servants, say or do anything that might lead any other person to believe that the Provider is acting as the agent of the Trust; and
- 3.3 Nothing in this agreement shall impose any liability on the Trust in respect of any liability incurred by the Provider to any other person but this shall not be taken to exclude or limit any liability of the Trust to the Provider that may arise by virtue of either a breach of the agreement or any negligence on the part of the Trust, his staff or agents.
- 3.4 The Provider undertakes to the Trust that it will duly pay any tax and National Insurance contribution which are due in respect of anyone employed or engaged by the Provider in the discharge of this contract.

**4 Period of Agreement**

- 4.1 The period of this agreement is from ??? and ??.

## **5 Assignment and Subcontracting**

- 5.1 No Party shall assign the whole or any part of the Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).
- 5.2 The Provider shall not use subcontractors for the execution of any part of the Services without the prior written consent of the Trust (such consent not to be unreasonably withheld or delayed).

## **6 Service Variations**

- 6.1 Any variations to the Services or any provisions of this Agreement must be agreed by both Parties and shall be recorded in writing and signed by both Parties. See Annex D

## **7 Authorised Officers**

- 7.1 The Provider's Authorised Officer  
Any notice, information or communication given or made by or to the Provider's Authorised Officer or his nominated deputy shall be deemed to have been given or made by or to the Provider.
- 7.2 The Trust's Authorised Officer  
Any notice, information or communication given or made by or to the Trust's Authorised Officer or nominated deputy shall be deemed to have been given or made by or to the Trust.

## **8 Meetings and Monitoring**

- 8.1 Meetings  
The Trust's Authorised Officer and the Provider's Authorised Officer shall hold regular Contract Meetings at times and places to be agreed between the Parties. Likely to be weekly.
- 8.2 Monitoring  
The Trust's Authorised Officer (or any person authorised by the Trust's Authorised Officer) may, acting reasonably, at any reasonable time inspect, measure, monitor or test the Services or any part of them, and the Provider shall ensure that reasonable time and opportunity is allowed for such inspection, measurement, monitoring and testing.
- 8.3 Record keeping  
The Provider will maintain records of the hours worked and meetings attended on behalf of trust in the execution of this contract.

## **9 Prices and Payment**

- 9.1 The Trust shall pay the Provider for the provision of the Services in accordance with the mechanism and prices detailed in Annex B. With the exception of basic expenses, no additional charges shall be levied by the Provider in respect of the Services without the written consent of the Authorised Officer.

- 9.2 The Provider will invoice the Trust in arrears at the end of each month. The invoices shall set out details of the work carried and the hours spent on each day.
- 9.3 Payment of undisputed sums is to be made within twenty eight (28) Calendar Days of receipt of the relevant invoice, and payment of disputed sums is to be made within twenty eight (28) Working Days of such sums being agreed or determined in accordance with the Dispute Resolution Procedure.
- 9.4 The Trust shall notify the Provider in writing within twenty eight (28) Calendar Days of receipt of the relevant invoice if it disputes any of the charges payable under such invoice. On the Provider receiving such notice of dispute, the Parties shall instigate the Dispute Resolution Procedure.

#### *Accounts*

- 9.5 The Provider shall keep full, accurate and separate written records of the hours worked and meetings attended on behalf of trust in the execution of this contract. These should be available for inspection on request by the Trust.
- 9.6 The Provider is required to follow the instructions set out in Annex B regarding 'How to Invoice NHS Bristol'

### **10 Insurance**

- 10.1 The Provider shall have professional indemnity insurance to a minimum value of £ ???? and provide on request a copy of the relevant policy to the Trust's Authorised Officer.

### **11 Termination**

#### *Termination on Trust Default*

- 11.1 Without prejudice to any other right or remedy it may possess, the Provider shall be entitled upon the happening of any of the following events to immediately terminate this Agreement by written notice:
- 11.1.1 the Trust without reasonable excuse failing to pay the price as detailed in Annex B for a period of two (2) consecutive periods from the date payment is due (subject to the Provider serving no less than two (2) written notices of non payment on the Trust's Authorised Officer, the last such notice to be served no later than one (1) Month prior to termination);
- or**
- 11.1.2 the Trust otherwise committing a serious and fundamental breach of this Agreement which is not remedied within thirty (30) days of the Provider serving notice of such breach on the Trust or such longer period as is agreed between the Parties
- or**
- 11.1.3 breach of any warranty or undertaking made by the Trust in connection with this Agreement **or**
- 11.1.4 the Trust committing a serious and fundamental breach of this Agreement;

#### *Termination on Provider Default*

- 11.2 Without prejudice to any other right or remedy it may possess the Trust shall be entitled upon the happening of any of the following events to immediately terminate this Agreement by written notice:
- 11.2.1 the Provider convening a meeting of its creditors, or a proposal being made for a voluntary arrangement within Part 1 of the Insolvency Act 1986, or a proposal being made for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors, or the Provider being unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or a receiver, administrative receiver or similar officer being appointed in respect of all or any part of the business or assets of the Provider, or a petition being presented, or a meeting being convened for the purpose of considering a resolution, or any other steps being taken for the winding up of the Provider or for the making of an administrative order (otherwise than for the purpose of a solvent amalgamation or reconstruction)
- or**
- 11.2.2 breach of any warranty or undertaking made by the Provider in connection with this Agreement
- or**
- 11.2.3 the Provider committing a breach of this Agreement which is not remedied within thirty (30) days of the Trust serving notice of such breach on the Provider or such longer period as is agreed between the Parties;
- or**
- 11.2.4 the Provider committing a serious and fundamental breach of this Agreement;
- or**
- 11.2.5 the Provider committing a breach of paragraph 15 of this agreement in respect of patient confidentiality;
- or**
- 11.2.6 the Provider committing a Prohibited Act or any offence under the Prevention of Corruption Acts 1889-1916 under paragraph 20 of this agreement.

#### *Effect of Termination and Expiry*

- 11.3 In the event that following the occurrence of an event entitling a Party to terminate this Agreement pursuant to this paragraph, the non-defaulting Party wishes to terminate this Agreement, then without prejudice to any other rights or remedies of that Party:
- 11.3.1 the Party will notify the other Party in writing of its intention to terminate this Agreement specifying the date upon which this Agreement will terminate (the "**Termination Date**"); and
- 11.3.2 the Provider shall continue to provide the Services until the Termination Date, save where any breach of this Agreement by the Trust substantially frustrates or renders it impossible for the Provider to perform its obligations under this Agreement.

- 11.4 Upon expiry of this Agreement through effluxion of time or on earlier termination, and without prejudice to any other provisions of the Agreement:
- 11.4.1 the Parties shall co-operate in achieving an orderly and efficient handover of the Services to the Trust or to any Replacement Provider; and
- 11.4.2 the Provider shall deliver to the Trust all documents, records (including patient records) and other relevant data relating to the provision of the Services.
- 11.5 Expiry or termination of this Agreement shall be without prejudice to the rights, obligations and duties of the Parties accrued prior to expiry or termination taking effect.

## **12 Force Majeure**

- 12.1 No Party shall be entitled to bring a claim for a breach of obligations under the Contract by the other Party or incur any liability to the other Party for any Loss or damages incurred by that party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that event of force majeure.
- 12.2 In the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.
- 12.3 As soon as practicable, following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Contract.

*Note: Force Majeure is-something that happens which is out of the control of the parties who have signed this contract, such as a war, a storm, a flood, an earthquake and includes the sudden outbreak of an influenza pandemic which prevents the contract being fulfilled.*

## **13 Proceedings**

- 13.1 On written request from the Trust's Authorised Officer, the Provider shall provide to the Trust all relevant information (including, but not limited to, documentation and statements from Staff) in connection with any Proceedings.
- 13.2 The Provider shall, and shall procure that its Staff shall, co-operate and give and provide evidence in respect of such Proceedings.

## **14 Dispute Resolution Procedure**

- 14.1 In the event of a dispute between the Parties arising out of this Agreement, either Party may serve on the other written notice of the dispute, setting out full details of the dispute.
- 14.2 The Trust's Authorised Officer and the Provider's Authorised Officer shall meet in good faith as soon as possible and in any event within seven (7) days

of notice of the dispute being served, at an ad-hoc Contract Meeting convened for the purpose of resolving the dispute.

- 14.3 If the dispute remains after the meeting detailed in paragraph 14.2 has taken place, the Parties' respective chief executives or nominees shall meet in good faith as soon as possible after the relevant Contract Meeting and in any event within fourteen (14) days of the date of the Contract Meeting, for the purpose of resolving the dispute.
- 14.4 If the dispute still remains after the meeting detailed in paragraph 14.3 has taken place, then the Parties will attempt to settle such dispute by mediation in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure or any other model mediation procedure as agreed by the Parties. To initiate mediation, the Parties may give notice in writing (a "**Mediation Notice**") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator. The mediation shall commence within twenty eight (28) days of the Mediation Notice being served. Neither Party will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one (1) hour. Thereafter, paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Parties). The Parties will co-operate with any person appointed as mediator, providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or in the absence of such determination such costs will be shared equally.
- 14.5 Nothing in this paragraph shall in any way affect either Party's right to terminate this Agreement in accordance with any of its terms or take immediate legal action.

## **15 Confidentiality**

- 15.1 Save as required to be disclosed by law, both Parties and their staff and agents shall at all times keep confidential and secret and shall not disclose to any person, other than a person so authorised by the other Party, any information, materials or documents acquired in connection with this Agreement which concern such other Party, its staff, business or procedure. These obligations shall continue without limit in point of time save that they shall cease to apply to any information coming into the public domain other than by breach of these obligations.
- 15.2 The Provider shall not disclose to any person, other than a person so authorised by the Trust, the identity, medical condition, treatment received or other personal data within the meaning of the Data Protection Act 1998 (the "**1998 Act**") of any patient information, ensuring that the person identifiable is governed by clear and transparent protocols. These are defined in Schedule 3 and also referred to as the Caldicott Guidelines.
- 15.3 All of the Parties shall comply with the 1998 Act and any other applicable data protection legislation and must ensure that all personal data processed by its staff on behalf of and/or in the course of this Agreement, is processed in accordance with the provisions and principles of the 1998 Act.

- 15.4 At the end of this contract- the provider will ensure that any data belonging to NHS Bristol- shall be returned.

## **16 Notices**

- 16.1 Any notice or other document to be given under this Agreement shall be in writing and shall be deemed to have been duly given if left or sent:

16.1.1 by hand; or

16.1.2 by registered post

to the Trust's Authorised Officer or the Provider's Authorised Officer (as appropriate), or such other person as each Party may from time to time designate by written notice to the other Party for such purpose.

- 16.2 Any notice or other document shall be deemed to have been received by the addressee two (2) Working Days following the date of despatch of the notice or other document by post, or where the notice or other document is delivered by hand, simultaneously with the delivery. To prove the giving of a notice or other document it shall be sufficient to show that it was despatched or delivered (as appropriate).

## **17 Rights of Third Parties**

- 17.1 A person who is not a Party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this Agreement.

## **18 Waiver**

- 18.1 No failure or delay by any Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right or remedy.

## **19 Severability**

- 19.1 If any provision of this Agreement, not being of a fundamental nature, shall be held to be illegal or unenforceable, the enforceability of the remainder of this Agreement shall not thereby be affected.

## **20 Prevention of Corruption**

- 20.1 The Provider shall not do, and warrants that by signing this Agreement it has not done any of the following (hereafter referred to as "**Prohibited Acts**"):

20.1.1 offered, given or agreed to give to any Crown servant or any Health Purchaser Representative (which term shall include any sub contractor) any gift or consideration of any kind as an inducement or reward;

20.1.2 for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown;

- 20.1.3 for showing or not showing favour or disfavour to any person in relation to this or any other contract with the Crown; or
- 20.1.4 entered into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the other Party and to the Crown.
- 20.2 If the Provider (or any of its employees, agents or subcontractors) does any of the Prohibited Acts or commits any offence under the Prevention of Corruption Acts 1889 -1916 in relation to this Agreement, the Trust shall be entitled:
- 20.2.1 to terminate this Agreement and recover from the Provider the amount of any loss resulting from such termination;
- 20.2.2 to recover from the Provider the amount or value of any such gift, consideration or commission; and
- 20.2.3 to recover from the Provider any other loss sustained in consequence of any breach of this Clause, where this Agreement has not been terminated.

## **21 Right to Set Off**

- 21.1 Each Party reserves its right to set-off any debt owed to it by the other Party under this Agreement and any liability, damage, loss, charge or expense which it has incurred in consequence of any breach by the other of this Agreement.

## **22 Entire Agreement**

- 22.1 This Agreement (including the documents referred to in this Agreement) supersedes all prior representations and agreements between the Parties (whether written or oral) relating to the subject matter of the Agreement, and sets forth the entire agreement and understanding between the Parties.
- 22.2 Each Party warrants to the other that it has not relied on any representation or agreement (whether written or oral) not expressly set out or referred to in the Agreement.

## **23 Human Rights Act 1998**

- 23.1 The Parties shall ensure that their respective officers, employees, agents and subcontractors shall *act at all times in a way which is compatible with the Convention Rights within the meaning of the Human Rights Act 1998*.

## **24 Non-Discrimination**

- 24.1 The Provider shall not:
- 24.1.1 discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of colour, race, nationality, or ethnic or



national origins contrary to any part of the Race Relations Act 1976 or otherwise contravene any part of that Act;

24.1.2 discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of sex, sexual orientation, or religion or belief;

24.1.3 discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of disability; nor

24.1.4 discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of age.

## **25 Freedom of Information Act**

25.1 The Provider shall cooperate with the Trust (including, but not exclusively, providing assistance in retrieving information held) to enable the Trust to comply with its duties under the Freedom of Information Act 2000.

25.2 The Trust shall consult with the Provider in relation to any disclosure of confidential information in accordance with the Freedom of Information Act 2000.

## **26 Mitigation**

26.1 Each Party shall at all times take reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against any other pursuant to this Agreement.

## **27 Governing Law**

27.1 The Parties agree to submit to the jurisdiction of the English courts and agree that the Agreement is to be governed and construed according to English law.

## **28 Environmental issues**

28.1 The Provider shall comply in all material respects with applicable environmental laws and regulations in force from time to time in relation to the Services. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the Provider shall comply with such agreements or codes of practices as if they were incorporated into English law subject to those voluntary agreements being cited in tender documentation.

## **29 Intellectual Property Rights( IPR)**

29.1 The Provider assigns to the Trust all Intellectual Property Rights (IPR) in any material owned by the Provider which is generated by the Provider and delivered to the Trust in the performance of the Services. The Provider waives all moral rights relating to such material.

29.2 In performing the Services the Provider shall not infringe the Intellectual Property Rights of any third party. Where a third party owns existing rights, the Provider shall obtain third party consent before using the material and this consent is to include the right of the Trust to use, copy, modify adapt or enhance the material.

- 29.3 The Provider shall indemnify the Trust against all actions, suits claims, demands losses, charges, costs and expenses which the Trust may suffer or incur as a result of or in connection with any breach of this Condition.
- 29.4 Subject to any prior rights and to the rights of third parties, copyright and every other property right in all reports, documents and things produced or information obtained by the Provider or which is prepared or obtained under the Provider's direction or control under this Agreement shall vest in the Trust.
- 29.5 The Provider shall not disclose any specifications, plans, instructions, drawings, patents, models or other information obtained pursuant to or by reason of the Contract, without the written permission of the Trust (such consent not to be unreasonably withheld or delayed). If there is any doubt- please contact the Associate Director of Procurement.
- 29.6 The provisions of this Condition shall apply during the continuance of this Contract and after its termination howsoever arising, without limitation of time.

### **30 Bribery Act 2010**

- 30.1 If the Provider or its employees(or anyone acting on its behalf)commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the Commissioner in relation to this agreement, the Commissioner or NHS Bristol shall be entitled:
- To exercise its right to terminate this agreement under paragraph 11( Termination) And to recover from the provider the amount of any loss resulting from the termination: and
  - To recover from the Provider the amount of value of any gift, consideration or commission concerned: and
  - To recover from the Provider any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.

**EXECUTED** by Bristol Primary Care Trust by:

Signed (Authorised Officer) .....

Name/Position .....

Date.....

**EXECUTED** by ????:

Signed (Authorised Officer) .....

Name/Position .....

Address of Oragnisation.....

Date.....