

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (the "Agreement") dated the

BETWEEN:

(the "Client") Swansea Bay University Health Board

- AND -

(the "Consultant")

BACKGROUND:

The Client is of the opinion that the Consultant has the necessary qualifications, experience and abilities to provide consulting services to the Client.

The Consultant is agreeable to providing such consulting services to the Client on the terms and conditions set out in this Agreement.

IN CONSIDERATION OF the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Client and the Consultant (individually the "Party" and collectively the "Parties" to this Agreement) agree as follows:

Services Provided

The Client hereby agrees to engage the Consultant to provide the Client with the following consulting services (the "Services"):

1. Undertake a clinical review role in relation to the maternity and neonatal review in Swansea Bay as specified in the Terms of Reference to be agreed by the Oversight Panel.

Performance of the Services

During the term of this Agreement, the Consultant will:

1. ensure that the Services provided conform in all respects with, and are achieved by any deadlines specified in, the Terms of Reference; and

2. ensure that the Services are provided with all due care, skill and ability; and
3. to the best of their ability, provide such services and exercise such responsibilities and functions as are specified in this Agreement; and
4. collaborate with such persons as the Client shall from time to time specify in relation to the Services and observe all directions and requirements as the Client may lawfully give (however, for the avoidance of doubt, the Consultant is in sole charge of how the Consultant fulfils their contractual obligations to provide the Services and the Consultant shall not be subject to any right of supervision or control by the Client).

The Contractor shall be responsible for providing the Contractor's own equipment for the performance of the Services.

Nothing in this Agreement shall prevent the Consultant from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the term of the Agreement provided that such activity does not cause a breach of any of the Consultant's obligations under this Agreement.

Term of Agreement

The term of this Agreement (the "Term") will begin on the date of this Agreement and will remain in full force and effect until the completion of the Services, subject to earlier termination as provided in this Agreement. The Term of this Agreement may be extended with the written consent of the Parties.

Performance

The Parties agree to do everything necessary to ensure that the terms of this Agreement take effect.

Currency

Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in GBP.

Payment

The Consultant will charge the Client a fee of () per day (based on a 7.5 hour day) per person for the Services (the "Payment"). For the avoidance of doubt, no fee shall be payable in respect of any period during which the Services are not provided.

The Payment is fully inclusive of all incidental and associated costs incurred by the Consultant in providing the Services.

On the last working day of each month during the term of this Agreement, the Consultant shall submit to the Client an electronic invoice by email to ().

Each invoice must include:

- the full name of the Consultant;
- the full name of the Client;
- each of the days that the Consultant has worked during the month for the purposes of this Agreement;
- a breakdown of the work completed on each of these days for the purposes of this Agreement; and
- the amount payable (plus VAT, if applicable) based on the Payment for the Services during that month.

Payment for invoices submitted by the Consultant to the Client are due within 30 working days of receipt, subject to the invoice complying with the requirements of this Agreement.

In the event that this Agreement is terminated by the Client prior to completion of the Services but where the Services have been partially performed, the Consultant will be entitled to pro rata payment of the Payment to the date of termination provided that there has been no breach of contract on the part of the Consultant.

The Payment as stated in this Agreement does not include Value Added Tax. Any Value Added Tax required will be charged to the Client in addition to the Payment subject to the Client receiving a copy of the Consultant's VAT Registration upon demand (if applicable).

The Client shall be entitled to deduct from the Payment (and any other sums) due to the Consultant any sums that the Consultant may owe to the Client at any time.

The Consultant will be fully responsible for and shall indemnify the Client in respect of any income tax liabilities and National Insurance and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services or similar contributions relating to the Payment and/or with the performance of the Services.

The Consultant will indemnify the Client in respect of any such payments required to be made by the Client and against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by

the Client in connection with or in consequence of any such liability, deduction, contribution, assessment or claim.

The Consultant will be solely responsible for the payment of all remuneration and benefits due to the employees of the Consultant, including any National Insurance, income tax and any other form of taxation or social security costs.

The Client shall reimburse all reasonable expenses for travel and accommodation properly and necessarily incurred by the Consultant in the course of this Agreement, subject to production of receipts or other appropriate evidence of payment.

Penalties for Late Payment

Any late payments will trigger a fee of (%) per month on the amount still owing.

Confidentiality

Confidential information (the "Confidential Information") refers to any data or information relating to the business of the Client which would reasonably be considered to be proprietary to the Client including, but not limited to, accounting records, business processes, staff and volunteer records, patient records, records of individuals that the Client supports and client records and that is not generally known in the industry of the Client and where the release of that Confidential Information could reasonably be expected to cause harm to the Client.

The Consultant agrees that they will not disclose, divulge, reveal, report or use, for any purpose, any Confidential Information which the Consultant has obtained, except as authorised by the Client or as required by law and in any such case the Consultant shall notify the Client in writing in advance of any such disclosure required by law. The obligations of confidentiality will apply during the term of this Agreement and will survive indefinitely upon termination of this Agreement.

All written and oral information and material disclosed or provided by the Client to the Consultant under this Agreement is Confidential Information regardless of whether it was provided before or after the date of this Agreement or how it was provided to the Consultant.

Data Protection and Security

The Consultant shall, and shall procure that all of its staff, employees, consultants, agents and volunteers, duly observe in full all its obligations under the General Data Protection Regulation (UK) ('the UK GDPR') which arise in connection with the Agreement.

The Consultant shall, in the performance of its obligations under the Agreement, process Personal Data (as defined by the UK GDPR) and special category data on behalf of the Client as a Data Processor (as defined by the UK GDPR).

When handling:

- (a) data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - (i) supplied to the Consultant by or on behalf of the Client; or
 - (ii) which the Consultant is required to generate, process, store or transmit pursuant to this Agreement; or
- (b) any Personal Data (as defined by the UK GDPR) for which the Client is the Data Controller (as defined by the UK GDPR),

The Consultant shall comply with the Client's data policy and ensure the security of the data is maintained in line with the security requirements of the Client as notified to the Consultant from time to time. The Consultant shall ensure that no personal or sensitive data, documents or information shall be stored or transferred to personal devices.

The Consultant shall only access and use Personal Data for the purposes of the review as outlined in the terms of reference. The Client shall provide access to necessary documents for a period no longer than four months from the date of this Agreement. Following the completion of the review the Consultant shall appropriately delete and securely dispose of all Personal Data provided by the Client for the purposes of this Agreement.

The Consultant is responsible for any data breach leading to the accidental or unlawful destruction, loss, unauthorised disclosure of or access to personal data processed whilst in their possession either during or after the review has been completed.

Ownership of Intellectual Property

All intellectual property and related material, including any trade secrets, moral rights, goodwill, relevant registrations or applications for registration, and rights in any patent, copyright, trademark, trade dress, industrial design and trade name (the "Intellectual Property") that is developed or produced under this Agreement, will be the sole property of the Client. The use of the Intellectual Property by the Client will not be restricted in any manner.

The Consultant may not use the Intellectual Property for any purpose other than that contracted for in this Agreement except with the written consent of the Client. The Consultant will be responsible for any and all damages resulting from the unauthorised use of the Intellectual Property.

Capacity/Independent Contractor

In providing the Services under this Agreement it is expressly agreed that:

- this Agreement constitutes a contract for the provision of services and not a contract of employment; and
- this Agreement does not create a partnership or joint venture between the Parties; and
- the relationship of the Consultant to the Client will be that of independent contractor; and
- nothing in this agreement shall render them an employee, worker, agent or partner of the Client and the Consultant shall not hold themselves out as such.

Raising Concerns

If the Consultant wishes to raise any concerns in relation to the Client, they can do so via the Client's internal procedures which enable employed staff to raise concerns.

For the avoidance of doubt, this does not impact on the Consultant's status as a self-employed independent contractor.

Insurance and liability

The Consultant shall indemnify and keep indemnified the Client against all loss, liabilities, damages, penalties, claims and costs suffered or incurred by the Client and its respective employees, agents or any third party arising from or in connection with any negligence in the performance of the Services and /or any breach of this Agreement.

Notice

All notices, requests, demands or other communications required or permitted by the terms of this Agreement will be given in writing and delivered to the Parties at the following addresses:

Consultant-

Client- Client- Swansea Bay University Health Board
Headquarters

1 Talbot Gateway
Seaway Parade
Port Talbot
SA12 7BR

or to such other address as either Party may from time to time notify the other.

Additional Clause

The Client shall use best endeavours to comply with all reasonable information requests made by the Consultant. The Consultant will stipulate, in the body of the investigation report, those requests which were denied or otherwise not met.

Nothing in this Agreement shall in any way limit or exclude either party's liability for death or personal injury caused by that party's negligence or for fraudulent misrepresentation. Subject to the preceding sentence, the aggregate liability of the Client (whether such liability arises due to negligence, breach of Agreement, misrepresentation or otherwise) shall be limited to the Payment.

Modification of Agreement

Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorised representative of each Party.

Assignment

The Consultant will not voluntarily, or by operation of law, assign or otherwise transfer its obligations under this Agreement without the prior written consent of the Client.

Entire Agreement

It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

Enurement

This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators and permitted successors and assigns.

Titles/Headings

Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.

Gender

Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

Governing Law

This Agreement will be governed by and construed in accordance with the laws of England and Wales.

Severability

In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

Waiver

The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.

SIGNED

On behalf of the Client

Name:

Position:

Signature:

Date:

On behalf of the Consultant

Name:

Position:

Signature:

Date: