

DEVELOPMENT OF COMMERCIAL CONTRACTS POLICY

Approved by: **Finance & Performance
Committee**

On: **28 March 2018**

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Corporate / Directorate **Corporate**

Clinical / Non Clinical **Non Clinical**

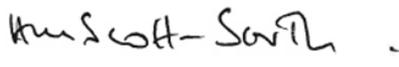
Department Responsible
for Review: **Procurement**

Distribution:

- Essential Reading
for: **Directors / Associate Directors /
Business Managers**
- Information for: **All Managers / Heads of
Department**

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Signature: 
Chief Executive

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BURTON HOSPITALS NHS FOUNDATION TRUST

POLICY INDEX SHEET

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Responsible Group / Committee	Finance & Performance Committee
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REVIEW AND AMENDMENT LOG

Version	Type of change	Date	Description of Change
3		12.04.2012	Update
4	Update	02.04.2015	Review of expired policy
5	Update	15.01.2018	Review of expiring policy

DEVELOPMENT OF COMMERCIAL CONTRACTS POLICY

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Burton Hospitals NHS Foundation Trust

DEVELOPMENT OF COMMERCIAL CONTRACTS POLICY

1. BACKGROUND

A contract can be defined as an agreement between two or more parties which is intended to be enforceable by law. To be valid, a contract must include an offer from one party, acceptance of that offer, and 'consideration' – value of some kind, whether monetary or not. A contract can be as simple as a purchase order, through to a large formal signed document, or anywhere in between.

Burton Hospitals NHS Foundation Trust frequently enters into contracts with other organisations for the purchase of goods and services as well as the purchase or provision of Healthcare. In order to ensure that there is a consistent approach to the development, monitoring and costing of these contracts this Policy has been developed as a guide to all managers who are considering setting up a contract for any of the above instances.

Agreeing to contract terms that are not in the interest terms of the Trust could be extremely detrimental, either in terms of the quality of goods or services received; or by increasing financial risk. Subsequently only staff with an understanding of contract law should agree contracts on behalf of the Trust.

The procedure for making all contracts by or on behalf of the Trust shall comply with Standing Orders and Standing Financial Instructions.

2. POLICY OBJECTIVE

The objective of this Policy is to ensure that the Trust puts in place robust contractual arrangements when contracting its services to other organisations, both within the NHS and beyond.

3. DEFINITION (S)

For the purposes of this Policy the term "Contract" is intended to cover both those Clinical Services that the Trust provides to other organisations either in the form of direct patient care, or services intended to aid the delivery of Patient Care e.g. Consultant outreach services to community hospitals, as well as the procurement of goods and services from private sector organisations.

4. AUTHORISED SIGNATORIES

Trust staff should not enter into verbal agreements with or sign any documentation requested by suppliers. Entering into contractual arrangements should only be undertaken by the following staff, who will ensure appropriate contractual form as well as compliance with Standing Financial Instructions:

- Head of Procurement – goods and services
- Head of Estates – works contracts
- Head of Pharmacy – pharmaceutical arrangements
- Divisional General Managers – NHS to NHS agreements

or a designated deputy as appropriate.

5. STAGES IN DEVELOPMENT OF A CONTRACT

5.1 The Procurement Department will lead on contracts for services purchased or provided by non NHS/commercial bodies. The Procurement Department will ensure that all contracts will include as a minimum:

- The goods or service to be delivered in the contract
- The cost
- The conditions of contract
- Relevant terms of tender
- Supplementary conditions
- The start and expiry date of the contract
- Any start up arrangements
- Cancellation provisions
- A clear and well defined specification
- A Service Level Agreement or Key Performance Indicators where appropriate

5.2 The Business Managers will lead on contracts between NHS bodies such as outreach sessions. The Business Managers will ensure that as a minimum these will include;

- Lead time
- Service quality issues
- Arrangements for remedial action
- Expected cost projections
- Mechanisms for change control
- Review mechanisms and period
- Main contacts and addresses, telephone numbers and e-mail addresses

6. CONTENTS OF COMMERCIAL CONTRACTS

As a minimum, all Commercial contracts should include:

- A clear and well defined specification. The better the specification the better the management of the contract and the avoidance of doubt. Service type contracts are prone to unmanaged expansion during service delivery
- A start and finish date
- A list of measurable deliverables in order that reviews can take place
- A definition of quality requirements and how they can be measured
- A sequence for review
- A defined and recordable change control methodology to allow recording of authorisation
- An escalation procedure
- The duties and responsibilities for ensuring the provision and receipt of appropriate services
- Key contact details or Authorised/Lead Officer
- Confidentiality statements and Information Governance provisions as applicable
- Billing or invoicing arrangements as applicable

7. CONTENTS OF SERVICE LEVEL AGREEMENTS (SLA)s

As a minimum, all Service Level Agreements should cover the following areas:

- Parties to the Agreement
- Key contact details or Authorised/Lead Officer
- Objectives
- Services to be Provided
- Amendments to Service
- Indemnity
- Duration & Renewal of Agreement
- Review
- Assignment & Subcontracting
- Free of Charge Services
- Force Majeure
- Termination
- Volumes & Mix
- Price
- Billing & Payment
- Quality Standards
- Monitoring
- Remedies for Non-Performance/disputes/disagreement
- Confidentiality and Information Governance

8. AWARD AND MANAGEMENT OF COMMERCIAL CONTRACTS

8.1 Categorisation of Commercial Contracts

Prior to tenders or quotations being invited a risk assessment must be carried out on the goods and services to be contracted for. The Trust must consider the risk that the Trust might be under should the goods or service fail to be delivered. This categorisation must allow identification of low and high risk

contracts in order that appropriate steps can be put in place to ensure continuity of delivery.

Categories are detailed below

Category A Goods or services are available from only one supplier and delivery failure will have a critical effect on patient care.

Category B Goods or services are available from more than one supplier and delivery failure will have a critical effect on patient care.

Category C Goods or services are available from only one supplier and delivery failure will not have a direct effect on patient care.

Category D Goods or services are available from more than one supplier and delivery failure will not have a direct effect on patient care.

In this instance critical means that non-availability will have a detrimental effect on the care of in-patients, and the pre-planned visit of outpatients.

8.2 Contract Management of Commercial Contracts

Procurement operate an 'Active and Enabling' model with regard to contract management. This will mean that high value and/or high risk contracts will involve procurement support in the contract management process. In other contracts, procurement may provide the necessary training, tools and knowledge to enable the contract lead to perform the contract management requirements.

The type and level of contract management will be determined by its categorisation and value as will the frequency of review.

Category A. The management of the contract will be initiated and controlled by the Procurement Department. There will always be a signed contract and service level agreement. Contract review should be between two and four times each year. Review meetings should be attended by representatives of the user, the supplier and the Procurement Department. Within the contract the supplier needs to provide a copy of their Business Continuity Plan for review to mitigate any critical effects on patient care.

Category B. The management of the contract will be initiated and controlled by the Procurement Department. There will always be a signed contract and service level agreement. Contract review should be between two and four times each year. Review meetings should be attended by representatives of the user, the supplier and the Procurement Department. Within the contract the supplier needs to provide a copy of their Business Continuity Plan for review to mitigate any critical effects on patient care.

Category C. Dependent on value, no formal contract management may be required. Where appropriate the management of the contract may be initiated and controlled by the Procurement Department, or by the contract user. Preferably there will be a signed contract and service level agreement. Contract review meetings and their

frequency will depend on dialogue between the user and the Procurement Department. There will be written communication between the Procurement Department and the department at least twice a year. Discussion on variation of review arrangements must be agreed with the Procurement department prior to contract.

Category D. Dependent on value, no formal contract management may be required. Where appropriate the management of the contract may be initiated and controlled by the Procurement Department, or by the contract user. Preferably there will be a signed contract and service level agreement. Contract review meetings and their frequency will depend on dialogue between the user and the Procurement Department. There will be written communication between the Procurement Department and the department at least twice a year. Discussion on variation of review arrangements must be agreed with the Procurement department prior to contract.

8.3 Contract Review

In reviewing both contracts and Service Level Agreements, the review process should include

- Performance against the service level agreement
- Budgetary performance
- Product range or service development or configuration
- Cost to budget projections
- Cost management issues
- Change

9. SERVICE LEVEL AGREEMENT DOCUMENT MANAGEMENT

9.1 A central register will be held in each Division containing the details of all NHS Contracts / Service Level Agreements that have been set up.

The register will, as a minimum, include the following information:

- Name of Provider/Purchaser
- Services Purchased / Provided
- Contract Value
- Lead Officers (both parties)
- Current Status of Contract
- Appropriate activity targets or monitoring arrangements
- The dates of the contracts in place, i.e. when it commenced and the duration set out in the contract

10. DUTIES AND RESPONSIBILITIES

10.1 Chief Executive

The Chief Executive, as the Accountable Officer, will ensure that regular reports are provided to the Board of Directors or relevant Sub Committee, detailing actual and forecast income from the SLAs. This will include, where appropriate, information on costing arrangements which increasingly should be based upon Healthcare Resource Groups (HRGs). Where HRGs are unavailable for specific services, all parties should agree a common currency for application across the range of SLAs. The Chief Executive shall nominate an officer who shall oversee and manage each contract on behalf of the Trust.

10.2 Trust Executive Committee (TEC)

The Trust Executive Committee is collectively responsible for the ratification of this Policy.

10.3 Divisional Responsibilities

Directors and Associate Directors are responsible for ensuring that they adhere to this Policy for all contracted services.

Divisional General Managers have a responsibility to ensure SLAs with NHS bodies / organisations are in place and that the SLA register and reviews are updated and maintained.

10.4 Procurement Department

Dependent on value, the Procurement Department will have a role in the management of commercial contracts. It will also be responsible for ensuring that appropriate arrangements are put in place for contract review.

11. POLICY EFFECTIVENESS

The effectiveness of this policy will be regularly monitored through Divisional meetings. Compliance with the process will also be subject to regular review by the Trust's Internal Auditors. The effectiveness of compliance of this Policy will be monitored by the Trust Executive Committee. Regular reports will be presented to the Committee giving details of issues requiring resolution as well as the risk associated with entering into contracts of material value.