

Momentum Charity Services Agreement

Trust Board	Item: 18
Date: 5th December 2018	Enclosure: N
Purpose of the Report:	
<p>To ask for Board approval of the enclosed SLA with Momentum so that the SLA can be signed by the appropriate executive as a deed.</p>	
For: Information <input type="checkbox"/> Assurance <input type="checkbox"/> Discussion and input <input type="checkbox"/> Decision/approval <input checked="" type="checkbox"/>	
Sponsor (Executive Lead):	Rachel Benton
Author:	<i>Anna Jebb, Associate Director Planned Care.</i>
Author Contact Details:	2071
Risk Implications – Link to Assurance Framework or Corporate Risk Register:	None known
Legal / Regulatory / Reputation Implications:	None known
Link to Relevant CQC Domain: Safe <input checked="" type="checkbox"/> Effective <input type="checkbox"/> Caring <input checked="" type="checkbox"/> Responsive <input type="checkbox"/> Well Led <input type="checkbox"/>	
Link to Relevant Corporate Objective:	
Document Previously Considered By:	Momentum Charity, Kingston Hospital Charity, Mairead McCormick Chief Operating Officer, Dr Andrew Winrow (Consultant Paediatrician with Special interest in Paediatric oncology).
Recommendations:	
<p>To give approval for the signing of the enclosed SLA with Momentum Charity.</p> <p>Signing of the document will be essential for engaging with Momentum in the future and in particular to enable the supportive fundraising they will be doing for the Paediatric Oncology Suite. Momentum have signed similar agreements with all their other acute Trust partners.</p> <p>Momentum provide a significant ongoing input to the children and families treated at the Trust both in terms of fundraising and direct provision of support. This SLA is essential to underpin the terms of that relationship with the Trust.</p>	

Enclosure N

29.10.18

MOMENTUM CHILDREN'S CHARITY

AND

KINGSTON HOSPITAL

CHARITY SERVICES AGREEMENT

for the provision of support for families and young people with cancer and other life-limiting conditions

CONTENTS

1	DEFINITIONS AND INTERPRETATION	1
2	ENGAGEMENT	2
3	TERM	2
4	SERVICES	2
5	CHARGES AND PAYMENT	3
6	AUDIT AND RECORD KEEPING	3
7	WARRANTIES	4
8	DATA PROTECTION	4
9	CONFIDENTIALITY AND ANNOUNCEMENTS	4
10	LIMITATIONS ON LIABILITY	5
11	INSURANCE	6
12	TERMINATION	6
13	FORCE MAJEURE	7
14	MOMENTUM PERSONNEL	7
15	INTELLECTUAL PROPERTY, FUNDRAISING AND CONSENT	8
16	GENERAL	9
	SCHEDULE 1 - SERVICE DESCRIPTION	11
	SCHEDULE 2 - KINGSTON HOSPITAL PROJECTS SERVICE	14

THIS DEED IS MADE ON.....[DD/MM/YYYY].

PARTIES

- (1) **Momentum Children’s Charity** of 139 Kings Road, Kingston upon Thames, Surrey, KT2 5JE, registered charity number 1106677 (“**Momentum**”)
- (2) **Kingston Hospital** of Galsworthy Rd, Kingston-upon-Thames, Surrey, KT2 7QB (“**Hospital**”)

BACKGROUND

- (A) Hospital wishes to appoint Momentum as a provider of additional holistic support for families whose children are being treated for cancer or other life-limiting conditions at local POSCU hospitals. The role of Momentum is not to replace services provided by the NHS but instead to take a holistic approach to enhancing these services and to improve the experience of sick children and their families.
- (B) Momentum has received full details of the nature and extent of the services required by Hospital by way of a statement of needs and wishes to be appointed to provide those services to Hospital.

1 DEFINITIONS AND INTERPRETATION

1.1 In the Agreement:

“**Agreement**” means this written agreement, including the Schedules, as varied, novated, supplemented, amended, or replaced from time to time in accordance with its terms.

“**Applicable Laws**” means all applicable laws, regulations, regulatory requirements and codes of practice of any relevant jurisdiction, as amended and in force from time to time.

“**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, financial information, or marketing or development or workforce plans and information, and information relating to services or products) but which is not service user health records or information relating to a particular service user, or personal data, or information which is disclosed in response to an FOIA request, or information which is published as a result of government policy in relation to transparency.

“**Data Protection Legislation**” means the Data Protection Act 1998, as subsequently amended or replaced by the General Data Protection Regulation 2016/679 (DPA) and all relevant guidance and code of practices issued by the Information Commissioner under or in connection with the DPA.

“Effective Date” means 29.10.18.

“FOIA” means the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

“Initial Term” means the period of 12 months from the Effective Date.

“Personal Data” shall have the same meaning as set out in Data Protection Legislation.

“Services” means the services to be provided by Momentum to Hospital as set out in Schedules 1 and 2.

- 1.2 In the Agreement the interpretation of general words shall not be restricted by words indicating a particular class or particular examples.

2 **ENGAGEMENT**

- 2.1 Hospital hereby engages Momentum, and Momentum hereby accepts such engagement, to provide the Services in accordance with this Agreement.

3 **TERM**

- 3.1 The Agreement shall commence on the Effective Date and shall (except as expressly provided otherwise in the Agreement) continue in force for the Initial Term.
- 3.2 After the Initial Term, the Agreement shall (except as expressly provided otherwise in the Agreement) continue in force unless and until terminated by either party giving not less than three (3) months’ written notice of termination to the other party such notice to expire at any time on or after the end of the Initial Term.
- 3.3 Hospital shall have the option to increase or decrease the Services required on one (1) months’ written notice to Momentum. Momentum shall not be required to provide increased capacity where it is not reasonably able to do so.
- 3.4 Momentum shall have the option to decrease the Services on one (1) months’ written notice to Hospital.

4 **SERVICES**

- 4.1 Momentum shall provide the Services to Hospital in accordance with:
- (a) the terms of the Agreement;
 - (b) Applicable Laws;
 - (c) due care, skill and diligence in a safe and competent manner; and

- (d) the applicable requirements, standards and/or recommendations issued from time to time by any relevant regulatory or governmental body.

4.2 In performing its obligations under the Agreement, Momentum shall at all times:

- (a) ensure that it applies such time, attention, resources and personnel trained and skilled as may be necessary for the due and proper performance of the Services;
- (b) ensure that, when providing the Services, it does not interfere with the activities of Hospital, its employees or agents including the Hospital's charity except as reasonably necessary to carry out the Services, and it co-operates with any other suppliers of products and services which may need to interface with, or be used in conjunction with, the Services;
- (c) act in Hospital's best interests and avoid conflicts of interest and promptly notify Hospital of any actual or potential conflict of interest which arises; and
- (d) comply with Hospital policies and procedures from time to time insofar as they are relevant to the Services, including all relevant security and code of conduct policies as shall be notified by the Hospital to Momentum.

4.3 In order to provide the Services, Hospital shall provide office space on-site in a convenient location when possible as agreed between the parties for Momentum personnel and Family Support Workers.

4.4 Hospital shall provide feedback to Momentum on a regular basis regarding the Services and to suggest any changes to the Services in accordance with clause 3.3.

5 **CHARGES AND PAYMENT**

5.1 Momentum shall provide the Services without requiring charges or payment from the Hospital.

6 **AUDIT AND RECORD KEEPING**

6.1 Momentum shall keep records detailing all actions taken in connection with the performance of its obligations under this Agreement ("**Records**").

6.2 Momentum shall retain the Records for the duration of the Agreement and then for as long as required by Applicable Law.

- 6.3 In order that Hospital and any regulatory or governmental body to which Hospital is subject may audit Momentum's compliance with the terms of the Agreement, Momentum shall provide Hospital, on request, at no additional charge, with reasonable access to, and copies of, the Records.

7 WARRANTIES

- 7.1 Each party represents and warrants that it has the power and authority to enter into and perform the Agreement, which constitutes valid and binding obligations on it in accordance with its terms.

8 DATA PROTECTION

- 8.1 Each party warrants that it has made all relevant notifications in accordance with its obligations under Data Protection Legislation to the extent required for the processing of Personal Data in the performance of its obligations and exercise of its rights under this Agreement.
- 8.2 The parties agree to comply with the relevant provisions of Data Protection Legislation and any directions issued by the Information Commissioner in its processing of such Personal Data.
- 8.3 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

9 CONFIDENTIALITY AND ANNOUNCEMENTS

- 9.1 Subject to clauses 9.2 and 9.3. a party that receives ("Receiving Party") Confidential Information from the other party ("Disclosing Party"), whether before or after the date of the Agreement shall:
- (a) keep the Confidential Information confidential;
 - (b) not disclose the Confidential Information to any third party without the Disclosing Party's prior written consent, except to such third parties and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the Agreement; and
 - (c) only use the Confidential Information for the purposes of the Agreement.
- 9.2 The provisions of clause 9.1 will not apply to any Confidential Information which:
- (a) is in or enters the public domain other than by breach of and/or non-compliance with the Agreement;

- (b) is obtained from a third party who is lawfully authorised to disclose such information;
- (c) is independently developed without access to the Confidential Information; or
- (d) If the Receiving Party is subject to the FOIA, must be disclosed to ensure compliance of the Receiving Party with FOIA.

9.3 Nothing in Clause 9.1 will prevent either party from disclosing Confidential Information:

- (a) to its employees, officers, representatives, advisers or agents who need to know such information for the purposes of carrying out that party's obligations under the Agreement; or
- (b) where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by Applicable Laws.

9.4 Momentum acknowledges that the Hospital is subject to the requirements of the FOIA, and agrees to assist and co-operate with the Hospital to enable the Hospital to comply with its disclosure obligations under FOIA.

9.5 Any announcement made in relation to the Agreement shall be in a form agreed in writing by the parties unless it is required to be made by Applicable Law, in which case that party shall, to the extent reasonably practicable, consult with the other party as to the form, content and timing of the announcement.

9.6 Both parties acknowledge that the Hospital may publish, release or otherwise make available to any third parties, any information, in relation to the results of the Services.

9.7 The obligations in this Clause 9 (*Confidentiality and announcements*) shall continue without limit in time.

10 **LIMITATIONS ON LIABILITY**

10.1 Subject to Clause 10.4, the liability of Momentum, its employees, agents and contractors, under or in connection with the Agreement, whether arising from contract, negligence or otherwise, shall be limited to £100,000 during the term of the Agreement.

10.2 Subject to Clause 10.4, Hospital's aggregate liability under or in connection with the Agreement, whether arising from contract, negligence or otherwise,

shall in no event exceed in any year the amount paid by Hospital to Momentum under the Agreement in that year.

10.3 Subject to Clause 10.4, neither party shall be liable for any indirect or consequential loss.

10.4 The exclusions and limitation of liability set out in this Clause 10 do not apply to:

- (a) liability arising from death or injury to persons caused by negligence;
- (b) liability arising as a result of fraud;
- (c) liability arising from a breach of clause 8 (Data Protection) or clause 9 (Confidentiality and Announcements); and
- (d) anything else which cannot be excluded or limited by Applicable Laws,

to which no limit applies.

11 **INSURANCE**

11.1 Without prejudice to the indemnities given by Momentum in the Agreement and Clause 10 (*Limitations on liability*), Momentum shall maintain in force at its own expense all insurances required by Applicable Laws (including employer's liability insurance, public liability insurance and professional indemnity insurance).

11.2 The insurances referred to in Clause 11.1 shall be maintained in force for the term of the Agreement.

12 **TERMINATION**

12.1 Notwithstanding clause 3.2, Hospital may terminate the Agreement with immediate effect by giving Momentum notice if:

- (a) Momentum commits a material breach of the Agreement which:
 - (i) is not capable of remedy; or
 - (ii) is capable of remedy, but which Momentum fails to remedy within 60 days of receiving notice from Hospital specifying the breach and requiring the breach to be remedied;
- (b) Momentum commits a persistent breach;

- (c) Hospital is required to terminate the Agreement by any regulatory or governmental body to which Hospital is subject.

12.2 Either party may terminate the Agreement with immediate effect by giving the other party notice if such other party undergoes an event of insolvency.

12.3 Termination or expiry of the Agreement (howsoever occurring) shall not affect either of the parties' accrued rights or liabilities, or the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination or expiry.

13 **FORCE MAJEURE**

13.1 Neither party shall be liable for any breach of the Agreement directly or indirectly caused by circumstances beyond the reasonable control of that party and which prevent that party from performing its obligations to the other.

13.2 If the circumstances described in clause 13.1 arise, the party prevented from performing its obligations shall:

- (a) take all reasonable steps to mitigate the consequences of that event;
- (b) resume performance of its obligations as soon as practicable; and
- (c) use all reasonable efforts to remedy its failure to perform its obligations under the Agreement as soon as is reasonably practicable.

14 **MOMENTUM PERSONNEL**

14.1 Momentum shall be solely responsible for all matters relating to Momentum personnel including all liabilities in relation to salaries, wages, bonus or commission, expenses, national insurance and pension contributions, liability to taxation, holiday entitlement and any other duties arising out of any contract of employment or engagement and their terms, whether express or implied.

14.2 Momentum shall indemnify Hospital from any losses which Hospital may suffer or incur as a result of any claim that an employment or other relationship exists between Hospital and the Momentum personnel.

14.3 In the event that on termination of the Services the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended ("**TUPE**") applies, the parties agree to comply with its applicable provisions.

14.4 Momentum shall indemnify Hospital against any claim for redundancy payment, unfair dismissal compensation or notice monies and expenses

(including legal expenses on an indemnity basis) or a protective award in connection with or as a result of any claim or demand by any Momentum personnel arising directly or indirectly from the termination of this Agreement or directly or indirectly from TUPE

- 14.5 Momentum shall remain responsible for all obligations that are performed by its subcontractors, employees and agents and for the acts and omissions of such subcontractors, employees and agents as if they were acts or omissions of Momentum.
- 14.6 Momentum shall ensure that any Momentum personnel working with children or young people has undergone a recent and valid Enhanced Disclosure and Barring Service (**DBS**) check.
- 14.7 Momentum personnel, including Family Support Workers, shall be entitled to use their mobile phones where appropriate within the Hospital for work purposes as required from time to time.

15 **INTELLECTUAL PROPERTY, FUNDRAISING AND CONSENT**

- 15.1 For the purpose of this Agreement “**Intellectual Property**” shall mean all inventions (whether patentable or not) patents, utility models, designs (both registered or unregistered), copyright, trade and service marks (both registered and unregistered) together with all rights to the grant of and applications for the same and including all similar or analogous rights throughout the world and all future rights of such nature.
- 15.2 If Momentum or any of its employees or agents makes or participates in making any invention or any design (whether registerable or not) or any copyright work in connection with the provision of the Services all rights in Intellectual Property which arises as a result thereof, shall be the sole and exclusive property of Momentum.
- 15.3 With the prior consent of the Hospital’s management team, Momentum can use the Hospital name and logo for the purposes of the exercise of their functions and for providing the Services under the Agreement subject to the conditions and stipulations imposed by Hospital.
- 15.4 Should any recording (whether by video, audio or both) or photography be required by Momentum, consent will be obtained by Momentum in accordance with Hospital’s policies and procedures as varied, novated, supplemented, amended, or replaced from time to time.
- 15.5 Subject to the provisions of this clause 15, with the prior written consent of Momentum and subject to such limitations or restrictions as Momentum may notify to Hospital from time to time, Hospital agrees, at Hospital’s sole discretion to publicise that it is “*working in collaboration with Momentum*” or “*supported by Momentum*” when referring to the Services.

- 15.6 Momentum shall not use the Hospital name or logo in any advertising, publication or press release without the prior written consent of the Hospital.
- 15.7 All descriptive text about Hospital and its work in any publication or press release must be approved by the Hospital before release.
- 15.8 Hospital agrees Momentum can distribute and place leaflets, flyers, posters and banners that contain fundraising messages, Momentum's name or Momentum's logo within the Hospital in locations agreed between the parties including leaflets regarding the Momentum Echoes service, which shall also be available in the Hospital's Accident and Emergency Department, where appropriate.

16 **GENERAL**

- 16.1 Momentum shall not, without the written consent of Hospital, assign or transfer any of its rights or obligations under the Agreement or any interest in them.
- 16.2 Momentum may not subcontract any of its rights or obligations (or both) under the Agreement without the prior written consent of Hospital. Momentum shall remain responsible for all obligations that are performed by its subcontractors, employees and agents and for the acts and omissions of such subcontractors, employees and agents as if they were acts or omissions of Momentum.
- 16.3 Nothing in the Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties. No party shall have the authority to bind the other party or to contract in the name of, or create a liability against, the other party in any way or for any purpose.
- 16.4 The parties do not intend any third party to have the right to enforce any provision of the Agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 16.5 The Agreement is the entire agreement between the parties, and replaces all previous agreements and understandings between them, relating to its subject matter.
- 16.6 No variation of the Agreement shall be effective unless it is in writing and signed by or on behalf of each party.
- 16.7 The rights and remedies expressly conferred by the Agreement are cumulative and additional to any other rights or remedies a party may have.
- 16.8 Communications under the Agreement shall be in writing and delivered by hand or sent by recorded delivery post to the relevant party at its address as set out in the Agreement or to the fax number provided by the relevant party. Without evidence of earlier receipt, communications are deemed received: if delivered by hand, at the time of delivery; if sent by recorded delivery, at 9.00

am on the second business day after posting; or, if sent by fax or email, at the time of transmission, and in the case of post, fax or email it shall be sufficient to prove that the communication was properly addressed and posted or transmitted.

16.9 This Agreement will be subject to the laws of England. The parties agree that the courts of England have exclusive jurisdiction to hear and settle any action, suit, proceedings or dispute in connection with the Agreement.

The Agreement has been entered into on the date stated at the beginning of the Agreement.

SCHEDULE 1 - SERVICE DESCRIPTION

The following service description gives an overview of Momentum and the services to be provided to the Hospital's children and young people's department.

Overview statement

Momentum is an independent Surrey-based charity, raising funds to support children who have cancer or a life-limiting condition, and their families. Momentum is committed to supporting families whose children are being treated at local POSCU hospitals. The role of Momentum in these hospitals is not to replace services provided by the NHS but instead to take a holistic approach to enhancing these services and to improve the experience of sick children and their families.

Momentum deliver environmental enhancement projects for POSCU hospital children's wards, and provide families with access to a range of support services outside of the hospital.

Services Momentum can provide to the Hospital:

- With prior consent of the relevant nursing team, identified Momentum Family Support Workers can visit children and their families, who have been referred to us previously by their local POSCU hospital, if they are admitted as an inpatient to the Hospital. This provides continuity of emotional and practical support, as the child and their family will already have a relationship with the Family Support Worker.
- Visits from Momentum would only be carried out by identified Momentum Family Support Workers with prior agreement from the relevant family and with prior consent of the relevant nursing team. On arrival at the Hospital, Family Support Workers will introduce themselves to the relevant nursing team who can advise the Family Support Worker if the visit is still appropriate.
- With the permission of the Consultant in charge of the child's care at KHFT, the Family Support Worker may attend the clinical MDT for the child for the benefit of the child. The Momentum Family Support Worker would keep clinical information shared at the MDT confidential in line with the data protection policies and guidelines that KHFT adhere to.
- Momentum can accept new referrals direct from staff at the Hospital, should a child and their family not already have been referred to us by their local POSCU hospital to Momentum for support, should the nursing team at the Hospital deem that the child and family would benefit from such support services.
- Momentum can accept self-referrals direct from families, should a child and their family not already have been referred to us by their local POSCU hospital or by the Hospital for our support, should they deem that their child and family would benefit from such support services.
- Momentum can also provide the following services for children and their families at the Hospital when appropriate. The Family Support Worker will liaise with the relevant nursing team to determine when in the child's treatment this service may be most helpful:

- music therapy – this can help a recently diagnosed child with improving physical health and ability, addressing emotional and behavioural difficulties, developing communication and social skills, increasing creativity, self-esteem and confidence. Momentum works with qualified music therapy providers to offer sessions to children of all ages;
- massage therapy - Momentum works with qualified massage therapists to offer sessions to children of all ages and their families; and
- character visits (princesses or Mo the Owl, the Momentum mascot) – to provide children and their families with a welcome distraction during long hospital stays.
- If a child dies, staff at Hospital (including within the Accident and Emergency Department) can refer families to Momentum who can provide bereavement support services through our Momentum Echoes programme. This includes assistance with funeral arrangements, memory boxes, counselling for parents and siblings, and ongoing support and group activities with other local bereaved families. Momentum shall contact the family within 24 hours of having been notified of a bereavement.
- We can provide a projects service whereby Momentum can improve and enhance areas within the Hospital, to benefit children with cancer or a life-limiting condition. This includes a full project management service to refurbish interior and exterior areas using a range of designs from our charity portfolio. This generally excludes medical equipment. A submission of needs must be agreed internally by the Hospital's Senior Management Team, including Estates and Head of Children's Services or equivalent and provided on the charity Statement of Needs Form to Momentum for review by the Board of Trustees. Momentum will confirm in writing when it is able to agree to support a hospital project and will work with Estates, Head of Children's Services, and Communications/Fundraising managers to agree the hospital project timeline, and allocate roles and responsibilities across the project delivery including a key contact for overall responsibility for the project within the Hospital and to agree communications to the public regarding the project. Where such a project is agreed, Hospital shall grant access to Momentum contractors to carry out the agreed work. (See Schedule 2 for further details of our projects service)

Key contacts:

Niki Mason, Family Support Worker. niki@moment-um.org

Bianca Effemey, Head of Family Support. Bianca@moment-um.org

Family support team: familysupport@moment-um.org

Telephone: 020 8974 5931

SCHEDULE 2 - KINGSTON HOSPITAL PROJECTS SERVICE

Since 2004, Momentum has been committed to a programme to enhance the hospital environment within the chosen hospitals we work with. In the fourteen years since we started, Momentum has completed over 50 projects in seven hospitals. We work independently of each hospital, seeking funding, co-ordinating, managing and delivering each project. Our emphasis is on projects that benefit oncology children and those children with life-limiting conditions.

We are delighted to offer our support for the following projects in the period starting 1ST May 2018 and ending 30TH APRIL 2019, subject to successful raising of funds by the charity:

1. Isolation Room, Dolphin Ward
2. Children's Play Area – Astro-turf
3. Phlebotomy Room
4. Sunshine/Dolphin Wards entrance + COPD
5. Paediatric Waiting Room – UTC.

Please note the follow terms & conditions apply to **each** and **every** project:

- 17 All projects are funded independently by Momentum and all funds are received into Momentum's bank account prior to the commencement of a project.
- 18 Momentum will endeavour to deliver the project within an agreed time period but reserves the right to delay this if funds are not in place.
- 19 Momentum will appoint and manage the design team and will be responsible for the design process.
- 20 Following completion, Momentum will publicise each project through its own PR and social media programme with prior approval from Hospital.
- 21 Momentum will liaise with the team appointed by the Hospital to manage the project.
- 22 The Hospital key contact is responsible for ensuring that the Hospital's management team is fully aware of each project.

EXECUTION PAGE

This document is executed as a deed and is delivered and takes effect at the date written at the beginning of it

Signed AS A DEED by

)

[name of duly authorised person]

)

)

for and on behalf of:

)

MOMENTUM CHILDREN'S CHARITY

Date

Duly authorised person

Signed AS A DEED by

)

[name of duly authorised person]

)

)

for and on behalf of:

)

Kingston Hospital

Date

Duly authorised person