

AGREEMENT FOR PROVISION OF SERVICES
OF EMPLOYEE ADVISORY RESOURCE LIMITED

This Agreement is made the 1st day of February 1997 BETWEEN PORTSMOUTH HEALTHCARE NHS TRUST("the Customer")

whose registered office is at St James Hospital, Locksway Road, Portsmouth, Hampshire PO4 8LD

and

EMPLOYEE ADVISORY RESOURCE LIMITED ("EAR") whose registered office is Premier House, 309 Ballards Lane, North Finchley, London, N12 8LU whereby EAR agrees to provide to the Customer the professional services of EAR Limited described in Schedule A hereto ("Services") in accordance with the following terms and conditions:-

1. **TERMS**

This Agreement will except as provided in Clause 15 continue until terminated by either party upon 90 days prior written notice which may be given at any time throughout the duration of the contract. The initial term of this contract is one year.

2. **CHARGES AND PAYMENTS**

2.1 The Customer will pay the charges in Schedule 'B' for services set out in Schedule 'A' and if the Customer subsequently requests Services under Clause 3 of this agreement, the charges will be EAR's then current rates in effect when such additional Services are requested. Unless otherwise specified the Customer will also pay for all travel expenses reasonably incurred by EAR for the specific purpose of performing such Services which have been previously agreed with the Customer. Rates for all travel expenses will be estimated as a sub-total of the requested additional services and submitted to the Customer for acceptance.

2.2 Charges for Services will be invoiced quarterly in advance.

2.3 All charges are subject to the addition of value added tax at the appropriate rate to which services provided by EAR are subject.

3. **REQUEST FOR SERVICES**

The Customer may, from time to time during the term of this Agreement, request EAR to furnish all or any of the Additional Services described in Schedule 'C' hereto. EAR will submit to the Customer a Statement of Work which describes the scope of the services, amount of service anticipated and related charges, and a schedule of work. Such charges will be considered final and binding except to the extent that any part of such charges are marked "Estimated Charge" in the Statement of Work. If accepted by the Customer within thirty days, EAR will furnish the Services described in and according to the Statement of Work. Any Statement of Work may be amended or revised by the written agreement of the parties after acceptance thereof by the Customer as provided in this clause or after commencement of Services.

4. **REPRESENTATIVES**

4.1 Both parties agree to designate an individual within their organisation who will act as their representative and who will be authorised to represent them in relation to all matters relating to this Agreement and shall notify the other party in writing, of any change to their designated representative.

5. **CONFIDENTIALITY AND RIGHTS IN AND TO INFORMATION AND MATERIAL**

5.1 EAR agrees to retain in confidence all data or information relating to the Customer's business which is confidential and which is submitted to, or obtained by EAR personnel in the course of furnishing the Services. Disclosure by EAR shall be limited to those employees who need the information in the performance of service related to this Agreement and who have agreed to maintain such information confidential. EAR will comply insofar as it may be applicable with the provisions of the Data Protection Act 1984 or any amendment or enactment thereof.

5.2 All original material and programmes, whether written or readable by machine, prepared for or with the Customer under this Agreement, will belong to and be the property of the Customer subject to 5.3 below.

5.3 In this Agreement "EAR Confidential Information" means the know-how, operating manuals, original material and programmes, confidential data or information of and relating to EAR and its business, all communications and other information whether written oral or visual of a confidential nature and all other materials supplied by EAR to Customer which were necessary for the proper performance by EAR of its obligations under this Agreement (whether or not such information was expressly stated to be confidential or marked as such) and also includes any information obtained from whatever source supplied to or obtained by Customer concerning the customers, business associations and transactions, financial arrangements and technical or commercial affairs of EAR.

5.4 All data or information relating to the Customer's business obtained by EAR during the course of this contract shall be returned, if so requested by the Customer at termination of the Agreement.

6. **STANDARD OF SERVICE**

6.1 EAR agrees to provide an EAP to the standard according to the British Association for Counselling and EAPA guidelines

7. **REMEDY**

If EAR fails to fulfil its obligations to the Customer as specified in this Agreement, the Customer's sole and exclusive remedies are limited to:

- (i) EAR will perform the Services to the extent necessary to correct such failure within the time scales negotiated with the Customer.
- (ii) If EAR is unable to correct the failure through re-performance, the Customer will have the right to recover all reasonable costs which it has reasonably incurred through EAR's lack of performance.

Nothing in this clause shall entitle EAR to exclude or limit its liability for death or personal injury or professional negligence to the Customer's employees resulting from the negligence of EAR or under the indemnity contained in Clause 12.

8. CUSTOMER INFORMATION

8.1 The Customer understands that EAR may be gathering and storing certain confidential data concerning those eligible to use the service under this Agreement. Apart from its use in the counselling of these persons, EAR may not use this information except for statistical evaluation and research and only then as directly related to performance under this Agreement and all such information shall be kept confidential.

8.2 The Customer will provide EAR with:-

- i) Copies of relevant policies, procedures and work practices which are usually provided to the Customer's employees, as are reasonably required by EAR for the provision to the Customer of the Services.
- ii) Scheduling, organisation and equipment reasonably necessary for feedback, training or communication sessions on the Customer's premises. EAR would advise in advance of any special equipment required.
- iii) Reasonable and appropriate office accommodation and facilities if an EAR counsellor is on site to see the Customer's employees, in pursuance of this Agreement.

9. USE OF EMPLOYEE INFORMATION

9.1 The relationship between EAR and those eligible to use the Service under this Agreement, and all communications in connection with that relationship, shall be strictly restricted to the extent permitted by law. EAR shall be under no obligation to communicate with the Customer with respect to any information obtained by EAR pursuant to this relationship, even if such communication might be beneficial to the Customer (subject always to the British Association for Counselling Code of Ethics and Practice) other than as described in Clause 9.2. Without the Customer being represented, EAR shall have the right to communicate directly with those eligible to use the service under this Agreement as necessary to carry out EAR's obligations to the Customer or those eligible to use the service under this

Agreement. EAR shall not in any circumstances carry out any form of recruitment or employment activity with the Customer's employees or utilising information gained hereunder.

9.2 EAR shall not disclose or make use of any information concerning any employee of the Customer save for the purpose of providing the Services or:-

- i. Where it is legally required to do so or
- ii. Where EAR consider disclosure is reasonably required to avoid a serious danger to health or safety.

10. **PROPRIETARY INFORMATION AND MARK**

10.1 The Customer acknowledges that the mark "Employee Advisory Resource" and/or the initials "EAR" are proprietary to Employee Advisory Resource in the context of the provision of the Services and agrees not to use or reproduce such marks or market or provide any service or business under such marks or any imitation thereof in connection with or in relation to any service similar to the services being offered hereunder either during or after the termination of this Agreement without the prior written consent of EAR, other than advertising the said service to employees.

10.2 The Customer understands that it will be presented with and have access to such EAR proprietary information. The Customer agrees not to use display, part with, sell or otherwise dispose of such proprietary information without EAR's prior written approval.

11. **REFERRALS**

EAR will use its best efforts (as described in Schedule A (c)) to refer those eligible to use the Service under this Agreement to competent persons or organisations for assistance, subject to the payment of the relevant charges either by the person receiving the benefits of the referral or by the Customer. For the Customer to pay, written approval must always be obtained prior to the referral taking place. Such referral will be to one of the Associates. EAR will monitor their standards, performance, services and activity, and take whatever steps necessary to maintain these standards. EAR hereby warrants that the Associate

shall be appropriately qualified to deal with the employee's case. However, EAR makes no warranties or representations, express or implied, with respect to any performance, services or activity supplied by such other persons or organisations, nor shall EAR be liable for the acts or omissions or negligence of those persons or organisations.

12. **CUSTOMER RESPONSIBILITIES**

EAR shall be under no obligation to follow or comply with any personnel policy, procedure and/or work practice of the Customer that is in breach of any statute or is otherwise unlawful. In the event that EAR consider that any personnel policy, procedure and/or work practice of the Customer is any way unlawful, EAR will notify the Customer accordingly.

13. **DISCLAIMER OF WARRANTY AND LIMITATION OF REMEDIES**

Save as set out in Clauses 6 and 7, the Customer understands and agrees as follows that EAR shall not be liable for any indirect loss or damage caused by any delay in or the effects of furnishing Services or any other performance under or pursuant to this Agreement.

14. **TERMINATION IN DEFAULT**

14.1 If either party fails to fulfil its material obligations under this Agreement then the other party shall, upon the expiry of fourteen days written notice to remedy such failure served by recorded delivery, have the immediate right to terminate this Agreement. This agreement may also be terminated by either party forthwith on giving notice in writing to the other if the other party passes a resolution for winding up (other than for purposes of solvent reconstruction or amalgamation) or shall suffer the appointment of a receiver, administrative receiver or administrator of any of its property or income or undertaking or shall make any deed or arrangement with or composition for the benefit of any of its creditors. The Customer's obligation to pay all valid charges which have accrued will survive any termination of this Agreement. Any termination of this Agreement will be without prejudice to any other remedies either party may have.

- 14.2 Where an individual's counselling contract extends beyond the termination date on-going counselling to conclude such contract will be charged on an hourly basis at the then current rate for a maximum of three months beyond the termination date.
- 14.3 Upon the termination of this Agreement (howsoever determined) Customer shall cease to market or advertise to its employees the fact the Employee Advisory Resource is or has provided services to its employees servants or agents and shall not make any use of any proprietary information in the nature of the information described in clause 10 of this Agreement nor any EAR confidential information (as defined in clause 5.3 of this Agreement) (all of which shall hereinafter in this clause 14 be described as "the Information") and agrees not to use or reproduce the marks "Employee Advisory Resource" and "EAR" or market or provide any service or business under such marks or any imitations thereof in connection with or in relation to any service similar to the services performed or to be performed by EAR under this Agreement.
- 14.4 Upon the termination of this Agreement (howsoever determined) Customer shall deliver to EAR all correspondence and other papers in so far as it is able and all other property belonging to EAR which may be in its possession or under its control (including any such that may have been made or prepared by Customer with the consent of EAR or which have come into the possession of Customer or be under its control except that which is the Customer's rightful property) and relating in any way to the affairs of EAR or the services provided or to be provided under this Agreement and Customer shall not retain any copies thereof. Upon termination of the Agreement, EAR shall return all information (except information pertaining to or provided by eligible users) kept in whatever format which EAR has received from Customer directly or during the course of the Service, within 30 days following the date of effective termination.
- 14.5 If so required by EAR the Customer shall send to EAR a statement in writing signed by a director of Customer confirming that it has complied with sub clause 14.4 hereof.

14.6 Both EAR and the Customer agree that for the period of 12 months following the termination of this Agreement (howsoever determined) it will not directly or indirectly for whatever reason solicit or entice or endeavour to solicit or entice away from each other any employees of each other for the purpose of providing services similar to those performed by EAR for those eligible to use the service under this Agreement whether as direct employees of Customer and EAR or as employees of any other person, firm or company for the purposes of providing such service for those eligible to use the service under this agreement PROVIDED THAT whilst the restriction contained in this clause is considered by the parties to be reasonable in all the circumstances as at the date hereof it is acknowledged that restrictions of such a nature may be invalid because of a change in circumstances or other unforeseen reasons and accordingly it is hereby agreed and declared that if any one or more of such restrictions shall be judged to be void or going beyond what is reasonable in all the circumstances for the protection of the interests of EAR and the Customer, but would be valid if part of the wording were deleted or the period thereof reduced or the range of activities or area covered reduced in scope, the said restrictions shall be deemed to apply with such modifications as may be necessary to make them valid and effective and any such modification shall not thereby affect the validity of any other restriction contained herein.

14.7 Except as provided by clause 14.8 and 14.9 Customer shall at all times:-

(i) use its best endeavours to keep all the Information confidential and accordingly not to disclose any of the Information to any other person.

(ii) after the termination of this Agreement (howsoever determined) not to use any of the said Information for any purpose whatsoever.

14.8 The Information may be disclosed by Customer to any governmental or other authority or regulatory body to such extent only as is necessary for the purposes contemplated by this Agreement or as is required by law and subject in each case to Customer using its best endeavours to advise that the person in question keeps the same confidential and

does not use the same except for the purposes for which the disclosure is made.

- 14.9 The Information may be used by Customer for any other purpose or disclosed by Customer to any other person to the extent only that:

(i) it is at the date of this Agreement or hereafter becomes public knowledge through no fault of Customer (provided that in so doing Customer shall not disclose any of the Information which is not public knowledge).

15. **INITIAL TERM**

The initial term will be twelve months commencing on 1.2.97 to 31.1.98

16. **GENERAL PROVISIONS**

16.1 EAR shall with the Customer's prior written approval be entitled to disclose the fact of its engagement hereunder to any third party to whom EAR may reasonably be able to provide a service similar to the Services being performed hereunder and shall keep the Customer informed of the fact of such disclosure.

16.2 Neither party may assign or otherwise transfer its rights or obligations under this Agreement except with the written consent of the other party.

16.3 The terms and conditions of this Agreement shall prevail, notwithstanding any variance with the terms and conditions of any prior order or other instrument submitted by the Customer or EAR.

16.4 This Agreement supersedes all prior oral or written proposals and communications between the parties related to this Agreement.

16.5 Unless otherwise specified in this Agreement, this Agreement shall not be modified, amended, rescinded, cancelled or waived, in whole or in part, except by written amendments signed by authorised representatives of the parties.

16.6 This Agreement is governed by and construed and takes effect according to English Law and the parties hereto agree that the courts of law in England shall have jurisdiction to entertain any action in respect hereof.

17.0 HEALTH & SAFETY

It shall be the absolute duty of EAR to ensure that all equipment supplied under the provision of the Agreement shall conform to all and any European Community Product Directives that apply to such equipment.

The Agreement shall be carried out with the proper regard to Health and Safety and shall observe and conform to all statutory enactments and regulations and any by-laws and/or regulations of local or any other authorities applicable to the performance of the Agreement or generally to the site where the Agreement is to be performed.

It shall be the absolute duty of EAR to provide only those goods, which whether as to their use storage or in any other way, are such that they shall not directly cause the Subscriber to be in breach of the Health and Safety, etc., at Work Act 1974 the terms of its contracts of employment with its employees or of any other duty statutory or otherwise as to the Health and Safety of those employees or any other persons lawfully on the premises.

In the event of any goods being found to be in breach of the foregoing clause it shall be the duty of EAR to take all such measures as are reasonable whether or not requested by the Subscriber to abate or altogether remove the effects of the particular goods. Without prejudice to the generality of this requirement EAR shall also at its sole expense remove the goods from such place as it might be and make such repairs, adjustments or modifications as are required.

AGREED BY:
FOR AND ON BEHALF OF
PORTSMOUTH HEALTHCARE
NHS TRUST

ACCEPTED BY:
FOR AND ON BEHALF OF
EMPLOYEE ADVISORY
RESOURCE LTD

Signed: **Code A**

Signed: **Code A**

Position: *Occ Health Manager*

Position: *CHIEF EXECUTIVE*

Date: *15 August 1997*

Date: *22 August 1997*

SCHEDULE A

Services - Employee Advisory Resource (EAR)

EAR will provide the EAP Service as detailed below;

An Employee Assistance Programme shall be established at all locations available to all employees and family members.

12.3 DEFINITIONS

An EAP is a professional confidential resource which provides a work-based intervention programme aimed at the early identification and/or resolution of both work and personal problems that may adversely affect performance. These problems may include, but are not limited to health, legal, marital, relationships, family, financial, substance abuse or emotional concerns.

The specific core activities of an EAP include:

1. Expert consultation and training to managers, Health Care and Human Resource (HR) staff in the identification and resolution of job performance issues related to employee concerns outlined above.
 2. Confidential and timely problem-assessment, diagnosis, and short-term counselling, of employees with problems or referral to an appropriate community resource.
 3. The formation of internal and external relationships between the workplace and community resources not available within the scope of the EAP.
- a) Provide a professional and appropriately qualified telephone counselling and information service to the ELIGIBLE USER i.e. the Customer's employees and their families offering services 24 hours a day, 365 days a year. Employees have the option to use one of two telephone numbers, the first operates Monday to Friday, 8.00am to 10.00pm, and weekends 9.00am to 5.00pm the other operates freephone 24 hours a day.

- b) Provide a maximum of 8 sessions of face-to-face counselling by a professional appropriately qualified resource for the ELIGIBLE USER at a convenient location to the ELIGIBLE USER within 48 hours of the request.
- c) Identify and provide referrals, as appropriate, to qualified professional sources. The task of accurately matching the ELIGIBLE USER needs, to the skills and knowledge of a professional resource is important and sensitive. EAR will use all its reasonable endeavours to ensure ELIGIBLE USER/specialist compatibility including geographical location and availability, as well as the ability of the specialist to help the ELIGIBLE USER deal effectively with the ELIGIBLE USER'S concern.

Following such referral, responsibility for initiating contact with the specialist is the employee's. Negotiation of fees, number and duration of contacts shall be a matter between the ELIGIBLE USER and the specialist. Responsibility for paying the fees will be the ELIGIBLE USER'S and these may be paid directly by the ELIGIBLE USER where applicable or by the Customer, where prior agreement has been reached between EAR and the Customer.

- d) Provide user statistical information as agreed with the Customer on a quarterly basis using aggregate statistical data where in EAR's judgement it would not violate employee confidentiality, and a utilisation report on an annual basis. These reports will be distributed to the designated Customer representative as defined in Clause 5 of the agreement within 30 days after the end of each calendar month.
- e) Provide access to legal and financial consultation within the European Employee Assistance Centre. If the problem is complex and the Information Specialist feels it appropriate, to arrange a consultation on the telephone (the first half hour of which is included in the fee) with an appropriate resource.
- f) Provide an on-going consulting service to the managers, supervisors, Occupational Health and Human Resource Specialists and of the Customer regarding issues and problems involved in supervising the troubled employee.
- g) Provide initial and ongoing training to all employees on the use of the EAP service.

- h) Provide training sessions to the Customer's managers and personnel specialists covering appropriate intervention and referral to EAR.
- i) In addition 5 training days per annum per site will be available in the contract price for manager/supervisor training, plus refresher employee training. Additional training days will be costed as in schedule 'B'.
- j) Provide as required and as specified, EAR brochure, wallet card Factsheets from EAR's Factsheet List of Titles and posters to promote the service plus Listen Newsletter.
- k) In clarification the use of the term 'counselling' as used herein encompasses the following -

Giving the ELIGIBLE USER an opportunity to explore, discover and clarify ways of living more resourcefully and towards greater well-being, helping them to help themselves by a non-directive, non-judgmental process which assists them to come to terms with their feelings, see what options are open to them, choose between them and to marshal their own inner responses to overcome their own problems which may in turn have a beneficial impact on maintaining and improving individual job performance.
- l) EAR will review the service with the Customer's designated representative on an annual basis.
- m) EAR will provide a Critical Response Team with sufficient counsellors to cover an incident involving up to 25 people, within 24 hours of notification. This service is included as part of the agreed contract fee. Where additional counsellors are required with larger group incidents, charges will be discussed and agreed with the Customer.

SCHEDULE B

Schedule of Charges

- a) The services described in Schedule A are to be charged to the Customer at the rate of £20 per employee per year. This rate includes all eligible users. The total cost for the services detailed in Schedule A is based on a headcount figure of 4764, a total of £95,280.00 and is for the Initial Term of 1.2.97 to 31.1.98.
- b) The number of employees used for the calculation of the cost of the services is the total headcount of all staff included in the programme at the beginning of the contract year. An adjustment to the cost will be made in the event of a fluctuation of more than ten per cent up or down of the original headcount and notified by the customer prior to the next billing period in Clause 2.2
- c) All charges for services are subject to the addition of value added tax at the current rate.
- d) Additional training will be costed at £350 for employee relaunch and £450 for Management and Supervisor Training.
- e) The reasonable costs of travel to Customer's premises when required, e.g. during launch and training sessions plus senior management meetings. Accommodation and subsistence expenses will be charged to Customer. One site visit per annum for service review will be provided by EAR inclusive of travel. If additional visits are required by the customer, only the expenses are chargeable.
- f) The Customer will pay the costs relating to the distribution of communication and promotion material to the ELIGIBLE USER, and to the cost of design, artwork and production of any audio visual material as may be required. Unless standard materials are used, such materials will be exclusive to the charges for services and shall be charged separately.
- g) Standard materials are inclusive to the fee however subsequent supplies of this material will be charged at cost. Standard materials include EAR brochure and wallet cards 2 of each employee initially and during launch/reprint.

- h) The manuals provided to support the Management Awareness Workshops will be charged to the Customer at £7.50 each.

SCHEDULE C

Additional Services

The Customer will have the option to purchase (as and when required) supplementary services as follows:-

- a) A further range of talks, seminars and workshops provided to educate the Customer employees on how to deal better with issues often considered problematic.
- b) Special clinics run by legal or financial specialists arranged on the Customer premises to give face to face assistance to employees.
- c) Promotional material designed to enhance the use of EAR.
- d) Any training courses designed and run specifically for the Customer.
- e) Additional counselling sessions at £45 per hour + V.A.T.
- f) All travel expenses and subsistence will be charged in addition.

Addendum

EAR holds Professional Indemnity Insurance to the value of £1M.

Public Liability Insurance is also held for both on and off shore purposes to the value of £2M.

Definitions

Associate

Shall mean a person not employed by EAR contracted by EAR to provide a service under the terms of this Agreement. Associates have been vetted by EAR

Eligible User

Means Customer employees and family members.

Service

Means that service to be carried out by EAR which is detailed in Schedule A of this Agreement.

Specialist

Shall mean an employee or associate of EAR purporting to practise in a particular area of activity comprising part of the Service.