Template version: December 2018

# Consultancy Contract

Date: This agreement will become effective when both parties have signed it. The date this agreement is signed by the Provider will be deemed the date of this agreement.

Unique Contract Reference:

Between:

1. **The Health Foundation**

Registered Office: 90 Long Acre, London WC2E 9RA

Registered Company Number: 1714937

Registered Charity Number: 286967 (“Commissioner”); and

1. **Company Name:**

Registered Office/Principal address:

Registered Company Number:

Registered Charity Number: (“Provider”);

The Commissioner and Provider agree as follows:

1. Definitions used in this Contract
   1. The definitions in [Schedule 1](#_Schedule_1) apply.
2. Specification of Services and support obligations
   1. The Provider shall provide the Services (in relation to the Project) as described in and in accordance with the Timetable set out in [Schedule 2.](#_Schedule_2)
   2. The Commissioner shall assist the Provider’s delivery of the Services by promptly responding to any reasonable requests of the Provider for further information, or instruction, needed to deliver the Services.
3. Standard of delivery Conditions
   1. It shall be a condition of the Contract that the Project shall be completed:
      1. with the diligence, care, skill, application and precision to be reasonably expected of a competent research provider of projects such as the Project;
      2. in accordance with all legal requirements applicable to the Services (including particularly all legal obligations relating to Health and Safety, Insurance, Employment, Clinical Practice and Confidentiality); subject to meeting the relevant approvals and information security for any technology (for example Medicines and Health Products Regulatory Agency approval for health software applications); and all codes of practice applicable to the Provider;
      3. in compliance with and have adequate measures in place to ensure that its staff comply at all times with the provisions and obligations contained in (as amended from time to time) The Data Protection Act (2018) as laid out in [Schedule 8 i](#_Schedule_8)n accordance with all policies and procedures of the Provider in terms reasonably satisfactory to the Commissioner.
4. Payment for the Service
   1. In return for the Provider’s provision of the Services, the Commissioner shall pay to the Provider the Price set out in and on Payment Terms specified in [Schedule 3.](#_Schedule_3)
   2. Subject to contrary express provision in the Contract, the Price is inclusive of expenses and VAT.
5. Relationship management provisions
   1. Liaison
      1. The Primary Contacts for each party are specified in [Schedule 2](#_Schedule_2) and may be changed by reasonable notice to the other party.
   2. Monitoring
      1. The Provider shall allow the Commissioner’s Primary Contacts and other notified authorised officers to observe, monitor and inspect delivery of the Services and any reasonable time on reasonable prior notice.
   3. Maintaining records and reporting
      1. The Provider shall inform the Commissioner immediately of any factor that will, or may, materially affect and/or change provision of the Services and their intended purpose and outcomes.
      2. The Provider shall inform the Commission immediately of any potential, or actual, conflict of interest arising in relation to the delivery of the Project.
      3. The Provider shall keep and maintain reasonable, full and accurate records of all activities undertaken, data collected, and material produced in relation to the Services and report to the Commissioner in accordance with the Timetable.
      4. The Provider shall retain such records and make them available to the Commissioner and permit the Commissioner to take copies of records at the Commissioner’s reasonable request, for a period of 6 Years from the end of the Year in which this Contract ends.
6. Publicity/Publications
   1. No publicity/publications relating to this Contract will be issued/approved by either party without the consent of the other (not to be unreasonably withheld) and no publicity, publications, or disclosure, written or oral, relating to the Project will be issued/approved by the Provider without the written approval of the Commissioner.
7. Communications and branding
   1. The Provider shall comply with the communication and branding requirements set out in [Schedule 6.](#_Schedule_6)
8. Dispute Resolution
   1. The Dispute Resolution Procedure in [Schedule 4](#_Schedule_4) shall apply.
9. The duration and end of the Contract
   1. The Contract shall continue for the Contract Period specified in ***Schedule 2***, subject to the provisions at clause 9.2 relating to early termination.
   2. Either party may terminate this Contract immediately by written notice if the other party:
      1. has committed a fundamental Breach of this Contract;
      2. has acted or failed to act in such a way as would constitute a Breach and not remedied such Breach in accordance with the required action and timescale contained in a Breach Notice;
      3. has repeated a Breach, or committed a series of Breaches, which as a result of the repetition, or cumulatively, amount to a fundamental Breach of this Contract;
      4. Commits or suffers any Insolvency Event;
   3. The Commissioner may terminate this Contract by notice in writing delivered to the Primary Contacts specified in Schedule 2, such termination to take effect on the date three months after such delivery.
   4. For the purposes of Clauses 9.2, a failure to meet the firm deadline specified in ***Schedule 2*** shall constitute a fundamental Breach.
   5. The Commissioner may suspend payments under this Contract in respect of any Breach by the Provider resulting in a Breach Notice, until the Breach is remedied as required.
   6. The end of this Contract shall not affect the right of either party that has arisen before termination.
   7. Any provision of this Contract that is expressly, or by implication, intended to have effect after termination shall continue in force for the intended period.
10. Protective provisions
    1. Status of Provider
       1. For the avoidance of doubt, any individual Provider, is not an employee of the Commissioner and must not represent him/herself as such. An individual Provider is responsible for the payment of national insurance and personal tax and social security payments due in respect of any sum paid to the Provider under this Contract, which sums will be paid without deduction of tax.
    2. Provider insurance obligations
       1. The Provider shall take out and maintain with reputable insurer policies of insurance reasonably appropriate to activities required to deliver the Services and professional accountability for the Services including reasonable professional liability/indemnity insurance.
       2. The Provider shall arrange minimum public liability insurance as follows:

* Self-employed/sole trader - £1million
* Limited company/public body - £5million
  + 1. and shall provide the Commissioner on reasonable request with copied of the insurance policies and appropriate evidence that they are in force.
  1. Commissioner control of Provider assignment and sub-contracting
     1. This Contract is particular to the Provider and the Provider may not assign the benefit or obligations under this Contract without the prior written consent of the Commissioner.
     2. The Provider may only sub-contract performance of obligations under this Contract to sub-contractors agreed in writing by the Commissioner.
     3. The provisions of clause 10.3.1 and 10.3.2 shall survive termination of this Contract.
  2. Confidential Information
     1. The parties shall ensure that Confidential Information is used only for the intended purposes under this Contract and is not disclosed to any unauthorised person.
     2. If a party is subject to any statutory disclosure provision, the other will reasonably co-operate with any relevant notified obligation, subject to any contrary obligation of confidentiality upon the other.
     3. The provisions of clause 10.4.1 and 10.4.2 shall survive termination of this Contract.

1. Intellectual Property Rights
   1. The provisions of [Schedule 5](#_Schedule_5) shall apply in relation to intellectual property rights and the commercial exploitation of intellectual property rights.
2. Indemnity
   1. The Provider indemnifies the Commissioner against all loss and costs caused by any breach of this Agreement by the Provider and/or any third party claim alleging breach of intellectual property rights, or data protection, or confidentiality obligations, arising from the Commissioner’s reliance on the Provider.
   2. This indemnity shall survive termination of this Agreement.
3. Standard clauses
   1. Force Majeure
      1. Neither party shall be liable for any delay in performing any of its obligations under this Contract if such delay is caused by a Force Majeure Event.
      2. A party experiencing a Force Majeure Event shall give the other party full particulars of the circumstances and use reasonable endeavours to resume performance as soon as possible.
   2. Notices
      1. Any notice to be given by either party to the other under this Contract may be personally delivered, or sent by recorded delivery to the address of the other party as set out in the heading to this Contract, or as otherwise notified in writing, or by transmission, with due transmission receipt, to an e-mail address notified in writing for the purpose.
      2. Any personally delivered, or e-mailed notice shall be deemed received on the day it was delivered or sent, if it was delivered or sent on a Working Day before 5.00pm and otherwise on the next Working Day.
   3. Non-Waiver
      1. Any failure, delay, or indulgence by either party in enforcing the provisions of this Contract shall not affect the rights of that party, nor shall any waiver of rights in respect of any Breach operate as a waiver of any rights in respect of any other Breach.
      2. No right, power or remedy under this Contract is exclusive of any other available right, power or remedy and each such right, power or remedy may be cumulative.
   4. Severability
      1. If one or more of the provisions of this Contract are or become to any extent invalid or unenforceable under any applicable law then the remainder of this Contract shall continue in full force and effect.
      2. If this happens then both parties shall negotiate in good faith to amend the provision concerned in such a way that as amended, it is valid and enforceable and, to the maximum extent possible, meets the original intention of the parties.
   5. Agency, Partnership and Joint Venture
      1. The Provider is an independent contractor and this Contract is not intended to nor shall it create any agency, partnership or joint venture.
      2. Neither party shall hold itself out as being entitled to represent or bind the other in any way.
   6. Third Party Rights
      1. This Contract does not and is not intended to provide any third party with any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
   7. Extent of Agreement
      1. This Contract is the exclusive statement of the agreement between the parties in relation to the Services. It supersedes all previous communications, representations, understandings arrangements and agreements between them in relation to the Services.
      2. Neither party has relied on (and waives any right to make any claim in respect of) any representation, understanding arrangement, understanding or agreement not expressly set out in this Contract including any provision in a tender not confirmed in this Contract.
   8. Secure Data Environment
      1. [Schedule 7](#_Schedule_7) shall apply where any usage is made of the Health Organisation’s Secure Data Environment
   9. Variation
      1. No variation to this Contract is effective unless agreed in writing signed on behalf of both parties.
   10. Governing Law
       1. This Contract is governed by and shall be construed in accordance with the law of England and Wales and the parties submit to the jurisdiction on the Courts of England and Wales.

Schedule 1

Definitions applicable in this Contract

In this Contract the following terms have the following meanings:

|  |  |
| --- | --- |
| “Breach Notice” | a written notice specifying:  another party’s Breach  the remedial action required and  the time within such action must be taken; |
| “Breach” | a failure by a party to fulfil its obligations under this Contract; |
| “Confidential Information” | any information of a confidential nature (whether specifically marked as such or otherwise) obtained under, or relating to this Contract but not including information:  in the public domain (otherwise than by Breach)  in the lawful possession of the receiving party before the date of this Contract (other than through liaison between the parties in anticipation of this Contract)  obtained from a third party free to divulge it  required to be disclosed by a court or other competent authority  properly disclosed on a confidential basis to staff, agents or professional advisers of the respective parties, for the purposes of this Contract; |
| “Contract Period” | as specified in [Schedule 2;](#_Schedule_2) |
| “Force Majeure” | a supervening event beyond the reasonable control of a party; |
| “Insolvency Event” | the calling of any meeting of a party’s creditors; the appointment of any receiver, administrator, or administrative receiver over all or any part of its assets or undertaking; the suspension or cessation of its business; any threat to suspend or cease its business; the making of a winding-up order; the convening of a meeting to pass a winding-up resolution; or it entering into liquidation; |
| “Payment Dates” | the Payment Dates specified in [Schedule 2;](#_Schedule_2) |
| “Price” | the price for the Service specified in [Schedule 2;](#_Schedule_2) |
| "Primary Contacts" | the individuals appointed by the Commissioner and the Recipient to primarily represent them under this Contract; the initial Primary Contacts are specified in [Schedule 2;](#_Schedule_2) |
| Professional liability / indemnity | Professional liability / indemnity is one insurance class and covers the protection of professionals against making errors and omissions as part of their work and also insures them against legal defence costs and other costs. |
| Public liability | Insurance covering liability exposures for individuals and [business owners](http://www.answers.com/topic/public-liability-insurance) which provides broad coverage, generally including all exposures for property damage and bodily injury. |
| “Records” | the records which the Provider is required to maintain and provide to the Commissioner under this Contract; |
| "Project" | the project specified in [Schedule 2;](#_Schedule_2) |
| “Services” | the services to be provided by the Provider as specified in any Invitation to Tender and Tender leading to this Contract and as described in [Schedule 2;](#_Schedule_2) |
| "Timetable" | the timetable for delivery of the Services as specified in [Schedule 2;](#_Schedule_2) |
| "Work IP Rights" | as defined in [Schedule 5;](#_Schedule_5) |
| “Working Days” | Monday to Friday inclusive but excluding bank holidays and public holidays; |
| “Year” | a year from the date and from each anniversary date of this Contract. |

## Schedule 2

### Service Specification

1. Project Description
2. Overall purpose of the Services
3. Invitation to Tender and Tender documents leading to this Contract:
   1. Invitation to Tender headed and dated:
   2. Tender headed and dated:
4. Description of the Services:
5. Contract Period: From the date of this Contract to [ ].
6. Termination on notice/break provisions (if any):
7. Service Outcomes
   1. Minimum requirements for Services
8. Key Performance Indicators
   1. On monitoring
   2. For each of the Service activities
   3. On final evaluation
9. Delivery Timetable (linked to deliverables and payments, including, as specified, target and firm deadlines)
10. Liaison/meeting/review requirements
11. Primary Contacts
    1. For Commissioner: [contact details]
    2. For Provider: [contact details]
12. Special Conditions (varying or additional to the Contract provisions)

## Schedule 3

### Price and Payment Provisions

1. Total Price (inclusive of expenses and VAT): £
   1. The Commissioner is not able to recover VAT and as such VAT charged is a direct cost. Any change to the VAT rate after the time of signing cannot affect the price without the prior agreement of Commissioner
2. Payment Provisions:
   1. Payment will be made against proper invoices issued in accordance with the final agreed budget (attach as an Appendix if appropriate) and the payment schedule in 2.7 below, subject to the applicable conditions and upon the applicable triggers.
   2. Payment will be made within 30 days of receipt of invoice.
   3. Payment will be by BACS. Please ensure all invoices include bank details and an email address for the remittance to be sent to.
   4. Payment queries should quote the unique contract reference, date and be addressed to: [finance.enquiries@health.org.uk](mailto:finance.enquiries@health.org.uk)
   5. The price may only be varied by written agreement between the Provider and the Commissioner.
   6. If any additional payments such as expenses are agreed in writing they must be included as an additional item in the invoice relating to the period in which the expenses were incurred and supported by reasonable evidence of having been properly incurred.
   7. Invoice date(s)

|  |  |  |
| --- | --- | --- |
| Invoice Date | Amount | Conditions and triggers for payment |
| mm/yyyy | £ | Contingent on… |
| mm/yyyy | £ | Contingent on… |
| mm/yyyy | £ | Contingent on… |
| Total | £ |  |

## Bank Account Details

To be completed by an authorised member of your finance department:

Finance Reference

Payee name Accounts receivable phone number

Remittance advice email address

Bank Sort code Bank Name

Account Number Bank address

Account holders name

Finance Department Member completing details:

Name:

Position:

## Schedule 4

### Dispute Resolution

1. Both parties shall do their upmost to attempt to resolve any dispute arising out of or in relation to this Contract through informal negotiations between persons who have the authority to settle the dispute.
2. Any dispute arising in connection with this Agreement shall, if formally raised in writing by one party, first be addressed by direct personal liaison between the Primary Contacts.
3. If any dispute has not been resolved by the Primary Contacts within 5 Working Days, the matter shall be referred to be resolved by direct liaison between more senior officers representing both parties.
4. If any dispute has not been resolved by such senior officers within a further 10 Working Days, the matter may be referred at the option of either party within a further 5 Working days, to mediation in accordance with the Model Mediation Procedure for the time being of the Centre for Effective Dispute Resolution ([www.cedr.com](http://www.cedr.com)).
5. If a dispute is referred to the Centre for Effective Dispute Resolution the parties shall engage with the Model Mediation Procedure in good faith and neither party shall start legal proceedings until such procedure is complete.
6. This Schedule shall not apply after a notice of termination has been duly served.
7. The parties shall pay their own costs in relation to mediation, subject to any determination of the mediator formally requested by either party as part of the applicable mediation procedure.

## Schedule 5

### Intellectual Property Rights

1.0 **Intellectual property rights and their commercial exploitation**

* 1. In this Schedule "Work" means the [Research Report] to be delivered by the Provider to the Commissioner on the terms and conditions of this Contract and all related preparatory and working data, documentation and materials.
  2. The Commissioner, under this Contract, is commissioning the Work, in which copyright and other intellectual property rights, such as (without limitation) trademarks and patent rights, possibly incorporating licensed third-party intellectual property rights, will, or may, subsist ("Work IP Rights").
  3. The Provider should notify the Commissioner promptly in writing when Work IP Rights arise and take reasonable steps to ensure that such Work IP Rights are protected and not published or otherwise disclosed publicly prior to protection (whilst at the same time ensuring that potential delays in publication are minimised).
  4. The Work is intended to be used by the Commissioner for its charitable purposes. The Work is not intended to be used by the Provider for its purposes. The mutual intention, under this Contract, is that all Work IP Rights will be transferred to and owned by the Commissioner.
  5. In consideration for payment under this Contract, the Provider hereby assigns to the Commissioner, subject to 1.6 and 1.7, with full title guarantee, any and all Work IP Rights in and arising from the Work.
  6. In as far as the Provider has used its own background intellectual property (i.e. work pre-dating the Contract and/or produced other than as required under this Contract) in producing the Work and this background intellectual property forms part of the Work, the Provider hereby grants to the Commissioner an irrevocable, perpetual and royalty free licence to use this background intellectual property as part of the Work.
  7. The Provider hereby warrants to the Commissioner that, subject to 1.8, no third party has any IP Rights in the Work and that the Work IP Rights are free of any encumbrances.
  8. The Provider hereby warrants to the Commissioner that, to the extent that there are, or may be, any third party IP Rights in the Work, the Provider has secured sufficient IP Rights (whether through assignments of legal ownership, or the grant of assignable irrevocable, perpetual, royalty free licence rights) to ensure that the Commissioner, with the benefit of the assignment, in 1.5 will own the Work absolutely and be able freely to use the Work for any purpose.
  9. The Provider’s moral right to be identified as the creator of the Work shall be recognised by the Commissioner through every publication of the Work, or a substantial part of it (including in oral presentations) by, or through, the Commissioner, being accompanied substantively by the following statement: “XXX” [project name] or ‘this research’ is/was commissioned by the Health Foundation, an independent charity committed to bringing about better health and health care for people in the UK and produced by [Provider].
  10. If the Provider develops a wish to use the Work for its own purposes, it may make a written request to the Commissioner for an appropriate use licence, which the Commissioner will reasonably consider. The Commissioner may, or may not, grant any such licence in its discretion and may attach any terms and conditions to any such licence in its discretion.
  11. For the avoidance of doubt, as the Commissioner is to be the absolute owner of the Work, the Commissioner will have the right, in its discretion, to exploit the Work commercially and the Provider will have no rights in relation to any such commercial exploitation.
  12. The Provider hereby undertakes to take any and all further actions as we may be necessary to procure the vesting in the Commissioner of all Work IP Rights.

**2.0 Indemnity**

2.1 The Provider indemnifies the Commissioner against all loss and costs caused by any breach of the Provider’s obligations and warranties under this Schedule and any third party claim alleging breach of intellectual property rights caused by the Commissioner’s reliance on the Provider.

2.2 This indemnity shall survive termination of this Contract

## Schedule 6

### Communications and Branding

1. The Provider should use the Commissioner’s corporate logo and/or the project-specific logo. The Commissioner will provide the Provider with the necessary logos. If the Provider is producing materials, eg a presentation, on behalf of the Commissioner for an external audience, this would include to award holders, the Provider must use the Health Foundation’s branding. The Commissioner will provide the Provider with its tone of voice, house style, and visual identity guidelines, which must be used as appropriate.
2. The Commissioner will lead on developing a set of core messages for the Project. Both parties will ensure that this language is used when communicating externally about the Project. This does not refer to academic publication and communication about the results and outputs from the Project, but is intended to develop a common language for the parties to describe the Project and its outputs to the public.
3. The Provider must also work to ensure that award holders use the Health Foundation’s logo and/or the project specific logo, as well as the core messages developed for the project or programme. The Provider must also keep the Commissioner informed of notable developments that they are made aware of within the programme, which might be of interest to an external audience and could be used by the Commissioner for communications purposes.
4. The Provider must alert the Commissioner if they are approached by an individual or organisation that wants the Provider or an award holder to speak about the programme or project. The Provider must consult the Commissioner on the appropriate course of action to take.

## Schedule 7

### Data Protection

This Data Protection schedule forms part of the existing contract between The Health Foundation (the Data Controller) and the provider (the Data Processor).

The Data Protection Act (2018) and the General Data Protection Regulation (GDPR) affect the processing of personal data in connection with existing and new agreements and mandates that the processing of such personal data is governed by a written contract.

The parties hereby agree to the following terms:

Processing of Personal Data. The Health Foundation is the Data Controller and the provider is the Data Processor of any personal data covered within the main contract/agreement. The Health Foundation instructs the Data Processor to process any such personal data in accordance with the main contract and instructions in this Schedule.

1. Security Measures. Consistent with good practice the Data Processor is required to implement and maintain appropriate technical safeguards to protect any such personal data covered within this contract. Upon request the Data Processor shall make available to the Data Controller any information deemed reasonable to demonstrate compliance with GDPR and sufficient information to demonstrate the appropriate technical and organisational security measures have been implemented.
2. Personal Data Breach. The Data Processor should inform the Data Controller immediately of any actual or suspected personal data breaches in order that the Data Controller can comply with its obligations to inform the Information Commissioners Office (ICO) within 72 hours. The email address [dpo@health.org.uk](mailto:dpo@health.org.uk) should be used to inform the Data Controller of any actual or suspected personal data breaches.
3. Third Parties. If, as agreed, and only if agreed, within the main contract the Data Processor sub-contracts any or all of the data processing to any third party then the Data Processor must ensure that obligations equivalent to this Schedule are imposed on any and all such third parties.
4. Data Subject Rights. The Data Processor must provide all necessary assistance to the Data Controller on receipt of and in response to a Subject Access Request. The legal timeframe to respond to such a request is 30 days, the Data Processor will therefore be required to respond to the requests of the Data Controller in order that the timetable may be met.
5. Cross-Border Transfers from the European Union. The Data Processor will not use any services that require personal data to be held or processed outside of the European Union, unless this has been specifically agreed in writing with the Data Controller.
6. Post-Termination. Upon termination of the main contract the Data Processor shall return or securely destroy all personal data that formed part of the contract and its processing, unless required by law or expressly justified in writing to the Data Controller

## Agreement of Parties to Terms and Conditions

**Signed** for and on behalf of the **Commissioner** by its authorised signatories:

|  |  |
| --- | --- |
| Signature: (1) |  |
| Name: |  |
| Position: |  |
| Date: |  |
| Signature: (2) |  |
| Name: |  |
| Position: |  |
| Date: |  |
| **Signed** for and on behalf of the **Provider** by its authorised signatory: | |
| Name: |  |
| Position: |  |
| Date: |  |