

Commissioning Contract for Research/Evaluation Services for [Project name]

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 Number:

Between:

(1) The Health Foundation

Registered Office: 8 Salisbury Square, London EC4Y 8AP
Registered Company Number: 1714937
Registered Charity Number: 286967 (“Commissioner”); and

(2) Company Name

Registered Office/Principal Address:
Registered Company Number:
Registered Charity Number (“Provider”);

The Commissioner and the Provider agree as follows:

- 1.0 Definitions used in this Contract
 - 1.1 The definitions in [Schedule 1](#) apply.
- 2.0 Purpose
 - 2.1 The purpose of this Contract is for the Provider to deliver to the Commissioner the Deliverables in accordance with the Specification for use in accordance with the Commissioner's charitable purposes, including through public dissemination and (subject to the provisions of [Schedule 6](#) in this respect) applicable commercial exploitation.
 - 2.2 The Provider's supplementary rights to make use of the Deliverables (if any) are set out in [Schedule 6](#).
- 3.0 Specification of the Services
 - 3.1 The Provider shall provide the Services in accordance with the Specification and the Timetable set out in [Schedule 2](#).
 - 3.2 The Commissioner shall assist in the Provider's delivery of the Services (in addition to payment of the Price) by promptly responding to any reasonable requests of the Provider for further information, or instruction, needed to deliver the Services.
 - 3.3 The Commissioner may, in accordance with the Timetable, arrange for reasonable peer review and evaluation of the Services, in consultation with the Provider, which the Provider shall accept as an appropriate indicator of the standards of delivery and the Provider shall, in accordance with the Timetable, reasonably reflect peer review and evaluation comments in final amendments to the final Deliverable, as reasonably requested by the Commissioner.
 - 3.4 The Commissioner may publish final Deliverables as and in such media as it considers appropriate.
- 4.0 Standards of delivery conditions
 - 4.1 It shall be a condition of the Contract that the Project shall be completed:
 - 4.1.1 with the diligence, care, skill, application and precision to be reasonably expected of a competent research provider of projects such as the Project;
 - 4.1.2 in accordance with all applicable 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;
 - 4.1.3 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](#) in accordance with all policies and procedures of the Provider in terms reasonably satisfactory to the Commissioner

- 4.1.4 in accordance with all policies and procedures of the Provider in terms reasonably satisfactory to the Commissioner
- 5.0 Payment for the Service
- 5.1 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](#).
- 5.2 Subject to contrary express provision in this Contract, the Price is inclusive of expenses and VAT.
- 6.0 Relationship management provisions
- 6.1 Liaison
 - 6.1.1 Each party shall appoint (and may change), by written notification to the other party, a Primary Contact to be the primary contact for the purposes of this Contract.
 - 6.1.2 The parties shall ensure that their Primary Contacts liaise on a regular basis for the purpose of ensuring the smooth running of the Contract and to identify concerns early enough to prevent disputes arising.
- 6.2 Monitoring and reporting
 - 6.2.1 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.
 - 6.2.2 The Provider shall inform the Commissioner immediately of any potential, or actual, conflict of interest arising in relation to the delivery of the Services.
 - 6.2.3 The Provider shall allow the Commissioner's Primary Contact and other notified authorised officers to observe, monitor and inspect delivery of the Services at any reasonable time on reasonable prior notice.
- 6.3 Maintaining records and reporting
 - 6.3.1 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. The Provider shall report these to the Commissioner as required and in accordance with the Timetable.
 - 6.3.2 The Provider shall ensure that ethical approval for the project allows members of the Research Directorate of The Health Foundation to inspect all records and data collected in 6.3.1, including recordings and transcripts of interviews with patients and others.
 - 6.3.3 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.
- 7.0 Communications, Branding, Publication and Publicity
- 7.1 The provisions of [Schedule 4](#) shall apply.

- 8.0 Dispute Resolution
- 8.1 The Dispute Resolution Procedure in **Schedule 5** shall apply.
- 9.0 The duration and end of the Contract
- 9.1 The Contract shall continue for the Contract Period specified in **Schedule 2**, subject to the provisions at clause 9.2 relating to early termination.
- 9.2 Either party may terminate this Contract immediately by written notice if the other party:
- 9.2.1 has committed a fundamental Breach of this Contract;
 - 9.2.2 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;
 - 9.2.3 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;
 - 9.2.4 Commits or suffers any Insolvency Event;
- 9.3 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.
- 9.4 For the purposes of Clauses 9.2, a failure to meet the firm deadline specified in **Schedule 2** shall constitute a fundamental Breach.
- 9.5 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.
- 9.6 The end of this Contract shall not affect the right of either party that has arisen before termination.
- 9.7 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.
- 10.0 Protective provisions
- 10.1 Provider insurance obligations
- 10.1.1 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.
 - 10.1.2 The Provider shall arrange minimum public liability insurance as follows:
 - Self-employed/sole trader - £1million
 - Limited company/public body - £5million
 - 10.1.3 and shall provide the Commissioner on reasonable request with copied of the insurance policies and appropriate evidence that they are in force.
- 10.2 Commissioner control of Provider assignment and sub-contracting
- 10.2.1 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.

- 10.2.2 The Provider may sub-contract performance of obligations under this Contract to notified and approved members of its research team, or otherwise as agreed in writing by the Commissioner.
 - 10.2.3 In the case of any assignment (subject to contrary agreement), or sub-contract the Provider may not relinquish its primary responsibility to the Commissioner for performance of this Contract and shall take responsibility for control of every sub-contractor under the terms of the relevant sub-contract.
- 10.3 Confidential Information
- 10.3.1 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.
 - 10.3.2 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.
 - 10.3.3 The provisions of clause 10.3.1 and 10.3.2 shall survive termination of this Contract.
- 11.0 Intellectual Property Rights
- 11.1 The provisions of **Schedule 6** shall apply in relation to intellectual property rights and the commercial exploitation of intellectual property rights.
- 12.0 Indemnity
- 12.1 The Provider indemnifies the Commissioner against all loss and costs caused by any breach of this Contract 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.
 - 12.2 This indemnity shall survive termination of this Agreement.
- 13.0 Standard Clauses
- 13.1 Force Majeure
- 13.1.1 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.
 - 13.1.2 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.
- 13.2 Notices
- 13.2.1 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.

- 13.2.2 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.
- 13.3 Non-Waiver
- 13.3.1 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.
- 13.3.2 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.
- 13.4 Severability
- 13.4.1 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.
- 13.4.2 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.
- 13.5 Agency, Partnership and Joint Venture
- 13.5.1 The Provider is an independent contractor and this Contract is not intended to nor shall it create any agency, partnership or joint venture.
- 13.5.2 Neither party shall hold itself out as being entitled to represent or bind the other in any way.
- 13.6 Third Party Rights
- 13.6.1 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.
- 14.0 Extent of Agreement
- 14.1 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.
- 14.1.1 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.
- 14.2 Secure Data Environment
- 14.2.1 **Schedule 7** shall apply where any usage is made of the Health Organisation's Secure Data Environment

14.3 Variation

14.3.1 No variation to this Contract is effective unless agreed in writing signed on behalf of both parties.

14.4 Governing Law

14.4.1 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 of the Courts of England and Wales

Schedule 1

Definitions applicable in this Contract

In this Contract the following terms have the following meanings:

<i>“Breach Notice”</i>	a written notice specifying: <ol style="list-style-type: none"> 1. another party's Breach 2. the remedial action required and 3. the time within such action must be taken;
<i>“Breach”</i>	a failure by either party to fulfil its obligations under this Contract;
<i>“Confidential Information”</i>	any information of a confidential nature (whether specifically marked as such or otherwise) obtained under, or relating to this Contract but not including information: <ol style="list-style-type: none"> 1. in the public domain (otherwise than by Breach) 2. 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) 3. obtained from a third party free to divulge it 4. required to be disclosed by a court or other competent authority 5. properly disclosed on a confidential basis to staff, agents or professional advisers of the respective parties, for the purposes of this Contract;
<i>“Contract Period”</i>	as specified in Schedule 2 ;
<i>“Deliverables”</i>	the required contractual outcomes of the Services to be delivered by the Provider under this Contract as defined in Schedule 2 ;
<i>“ Force Majeure ”</i>	a supervening event beyond the reasonable control of a party;

<i>"Insolvency Event"</i>	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;
<i>"Payment Dates"</i>	The Payment Dates specified in Schedule 3 ;
<i>"Price"</i>	The price for the Service specified in Schedule 3 ;
<i>"Primary Contacts"</i>	The individuals appointed by the Provider and the Commissioner to primarily represent them under this Contract; the initial Primary Contacts are specified in Schedule 2 ;
<i>"Project"</i>	the project constituted by the Services;
<i>"Records"</i>	the records which the Provider is required to maintain and provide to the Commissioner under this Contract;
<i>"Services"</i>	the services to be provided by the Provider as described in Schedule 2 ;
<i>"Specification"</i>	the specification of the Services in any Invitation to Tender and Tender leading to this Contract and as set out in Schedule 2 ;
<i>"Timetable"</i>	the timetable for delivery of the Services as specified in Schedule 2 ;
<i>"Work IP Rights"</i>	as defined in Schedule 6 ;
<i>"Working Days"</i>	Monday to Friday inclusive but excluding bank holidays and public holidays;
<i>"Year"</i>	A year from the date and each anniversary date of this Contract.

Schedule 2

Specification

1.0 Overall purpose of the Contract

As described in the ITT

2.0 Contract Period

From the date the agreement is signed until xx/xx/xxxx

3.0 Description of the Services

Describe the services to be delivered including:

- Methodology;
- Activities to be undertaken;
- Data to be collected;
- Interim reports to be delivered;
- Final report/s or other final output/s to be delivered;
- Any other material to be produced (if applicable)
- Publicity activities;

4.0 Project Management, Governance and Reporting

Give a clear outline of how the contract will be managed including:

- The frequency and nature of progress reports from the supplier
- Risk Register
- Governance Arrangements, including details of any Advisory Groups, THF membership of any steering group, ethical approval if required
- Review - the arrangements for reviewing reports and expectations around responding to reviewers' comments or other feedback and updating the report

5.0 Deliverables

Describe the key deliverables as appropriate for the project, for example:

- Detailed plan (if applicable)
- Interim reports (minimum requirements for these)
- Final draft report (minimum requirements for this)
- Final report following review / THF comments
- Other deliverables

6.0 Budget and Resources

Include the budget from the ITT including any subsequently agreed changes

7.0 Milestones and Timetable

This could be presented as a gantt chart or other format if available.

The timetable should correspond with deliverables listed in section 5 and with the payment schedule (**schedule 3**)

- Submit detailed Plan:
 - Final delivery date: []

- Submit interim report/s
 - Final delivery date: []

- Submit final draft report/s
 - Final delivery date: []

- Submit final report following review / THF comments
 - Final delivery date: []

- Targets for other Deliverables (if applicable)

8.0 Specified Personnel and Primary Contacts

[Insert any individuals involved with the Provider who are personally essential to the Project unless satisfactorily replaced e.g. specific academics within a recipient university]

Specified Personnel

[e.g. Leader of Research Team]

[e.g. other key members of Research Team]

Primary Contacts

For Commissioner: [contact details]

For Provider: [contact details]

Schedule 3

Price and Payment provisions

- 1.0 Total Price (inclusive of expenses and VAT): £
- 1.1 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 the Commissioner.
- 2.0 Payment Provisions:
- 2.1 Payment will be made against proper invoices issued in accordance with the final agreed budget (Appendix 1) and the payment **schedule** in paragraph 2.7 below, subject to applicable conditions and upon applicable triggers.
- 2.2 Payment will be made within 30 days of receipt of invoice.
- 2.3 Payment will be by BACS. Please ensure all invoices include bank details and an email address for the remittance to be sent to.
- 2.4 Payment queries should quote the unique contract reference, date and be addressed to: invoices@health.org.uk
- 2.5 The price may only be varied by written agreement between the provider and the commissioner.
- 2.6 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.
- 2.7 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

Communications, Branding, Publication and Publicity

- 1.0 Where appropriate, the Commissioner may develop its branding materials to the specifics of this Project (in the absence of specific project branding the Health Foundation corporate branding will be used). Once the specifications are confirmed by the Commissioner, both parties will ensure that the branding developed is suitably adopted in all communication and media, for example presentations, academic articles, publications, websites or videos, both internally and externally.
- 2.0 The Provider should use the Commissioner's corporate logo and/or the project-specific logo along with the following text (in academic articles no logo is necessary, but use the text below):

"XXX" [project name] or 'this research' is/was supported by the Health Foundation, an independent charity committed to bringing about better health and health care for people in the UK.'

Short version (only to be used in copy or when space is very restricted):

"Supported by the Health Foundation", or just use the Health Foundation logo.

- 3.0 If appropriate, the Commissioner will lead on developing a set of core messages for the Project in order to develop a common language to describe the Project and its outputs to the public. Both parties will ensure that this language is used when communicating externally about the Project. The Provider shall ensure that it also uses this language when communicating in relation to the Project. This does not refer to academic publication and communication about the results and outputs from the Project. Where appropriate, the Commissioner will provide the Provider with a set of templates and logos for this purpose.
- 4.0 The Provider may, subject to the written consent of the Commissioner, publish work undertaken in relation to this Contract in professional and peer reviewed journals and present related papers at conferences. The Provider is required to notify the Commissioner of all instances where work is presented or published; this includes its publication date and details, ie a link to the article. The Commissioner can share this link with external audiences.
- 5.0 The Commissioner has sole responsibility and discretion for any media activity or publication in the general press or other media, including all contact with the press and the preparation and issuing of press releases associated with the work under this Contract.
- 6.0 The Commissioner will as far as practicable show all external media and briefing material for external audiences to the Provider in advance of publication and allow the Provider a reasonable opportunity to comment.

Schedule 5

Dispute Resolution

- 1.0 Both parties shall do their utmost 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.
- 2.0 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.
- 3.0 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.
- 4.0 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).
- 5.0 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.
- 6.0 This Schedule shall not apply after a notice of termination has been duly served.
- 7.0 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 6

Intellectual Property Rights and Commercial Exploitation

	Usage of the property	Combination of rights and licences	Text model	Type of agreement
1	We will definitely use; they may request usage.	We own the rights to the property. We give no licence to them (although they can apply to us for one).	IPR 1	Commissioning or Consultancy Contract
2	We will definitely use; they may use.	We own the rights to the property. We give a licence to them.	IPR 2	Commissioning or Consultancy Contract

Schedule 7

Use of Secure Data Environment (SDE)

1. Only Approved Users will be granted access to data held by the Health Foundation in its Secure Data Environment (SDE) for the purpose of this Project.
2. An Approved SDE User must:
 - i. complete the SDE Information Governance Induction Training and, if necessary, the annual refresher course;
 - ii. sign the appropriate Non-Disclosure Agreement; and
 - iii. read and acknowledged the SDE User Manual.
 - iv. complete The Health Foundation's conflict of interest form
3. Any breach of the above may result in immediate termination of this contract.
4. The Provider will also ensure that any breach of this agreement will be communicated to the Health Foundation, and that appropriate disciplinary action will be taken towards their employees and sub-contractors in the case of serious breach

Schedule 8

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.

- 1.0 **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.
- 2.0 **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 should be used to inform the Data Controller of any actual or suspected personal data breaches.
- 3.0 **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.
- 4.0 **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.
- 5.0 **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.
- 6.0 **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:
