

Contract for Services (Public Benefit)

Date: *[insert date on which both parties have signed this Contract for Services]* (the “**Commencement Date**”)
Unique Contract Reference: *[to be inserted]*

Between:

(1) The Health Foundation

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

(2) Provider Name:

[Registered Office/Principal address: [to be inserted]
Registered Company Number: [to be inserted]
Registered Charity Number [to be inserted]]

OR

[Full name of individual: [to be inserted]
Address of individual: [to be inserted]]

(“**Provider**”)

The Commissioner and Provider hereby agree as follows:

1.0 Interpretation and Definitions

The definitions in [Schedule 1](#) apply to this Contract.

The Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the Schedules.

A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

A reference to this Contract is as amended, waived, amended and/or supplemented from time to time.

Clause, Schedule and paragraph headings shall not affect the interpretation of this Contract.

Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

This Contract shall be binding on, and enure to the benefit of, the parties to this Contract and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

A reference to **writing** or **written** includes email.

Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2.0 Purpose of Contract

2.1 The Provider confirms that it has the relevant expertise and experience required to deliver the Services.

2.2 In reliance on that expertise, the Commissioner wishes to appoint the Provider to provide the Services to it in accordance with this Contract to support the Commissioner's furtherance of its charitable objects (including through public dissemination and, subject to the provisions of [Schedule 5](#) in this respect, applicable commercial exploitation).

3.0 Duration

3.1 This Contract is effective from and including the Commencement Date.

- 3.2 The Contract shall continue for the Contract Period, unless terminated earlier in accordance with Clause 12.0 (Termination) or other application provision of this Contract., this Contract.

4.0 Specification of Services and support obligations

- 4.1 The Provider shall provide the Services in accordance with the Service Specification and the Timetable set out in [Schedule 2](#).
- 4.2 The Commissioner shall co-operate with the Provider in good faith and where reasonably necessary to assist the Provider's delivery of the Services, including by promptly responding to any reasonable requests of the Provider for further information or instruction, in each case as required to deliver the Services.
- 4.3 [The Commissioner may consult with the Provider to arrange for reasonable peer review(s) and evaluation(s) of the Services in accordance with the Timetable and in each case at a reasonable time and with reasonable notice to the Provider and at the cost of the Commissioner. Such peer review(s) shall be used as an appropriate indicator of the standards of delivery for the Services and the Provider shall, in accordance with the Timetable, reasonably reflect peer review and evaluation comments in final amendments to the final Deliverables, as reasonably requested by the Commissioner.]

5.0 Provider's responsibilities

- 5.1 The Provider shall provide the Services and complete the Project:
- 5.1.1 with the diligence, care, skill, application and precision to be reasonably expected of a competent provider of Services in relation to projects such as the Project;
 - 5.1.2 efficiently with the optimum use of resources so as to provide the Services at the lowest reasonably obtainable overall cost;
 - 5.1.3 to the extent that the Commissioner obtains any Intellectual Property Rights in relation to the Project, in a way which does not do anything which could be prejudicial to the Commissioner's goodwill, image, reputation or such Intellectual Property Rights (in the Commissioner's view, acting reasonably);
 - 5.1.4 in accordance with all legal and regulatory requirements, approvals and codes of practice applicable to the Services (including but not limited to all legal and regulatory obligations relating to health and safety, insurance, employment, clinical practice and confidentiality;
 - 5.1.5 whilst obtaining and maintaining all relevant consents, authorisations and approvals required to provide the Services, including but not limited to (where applicable) Medicines and Health Products Regulatory Agency

approval for health software applications, and ethical approval and standards of research;

- 5.1.6 in compliance with the provisions and obligations contained in the Data Protection Legislation, including as set out in [Schedule 8](#) and in accordance with all policies and procedures of the Provider in terms reasonably satisfactory to the Commissioner;
- 5.1.7 if applicable, utilising a team led by specified personnel as set out in Schedule 2 (subject to variation by the Parties by further written agreement) and otherwise engaging sufficient and appropriately qualified, skilled and experienced personnel to deliver the Services; and
- 5.1.8 in accordance with the policies and procedures of the Provider.

6.0 Right of substitution

- 6.1 The Provider may appoint one or more suitably qualified and skilled substitutes of equivalent expertise to perform the Services.
- 6.2 The Provider acknowledges the Commissioner has the right to refuse to accept the substitute if, in the reasonable view of the Commissioner having regard to the specification, the substitute has insufficient qualifications or expertise.
- 6.3 Where substitution occurs, the other terms and conditions of this contract, and in particular (but not limited to) the specified fees, will remain unchanged, unless otherwise agreed by both parties in writing. For the avoidance of doubt, the Provider shall be responsible for the payments and expenses of any substitute.
- 6.4 It is also agreed that the Provider will be liable for all acts and/or omissions of any substitute(s) provided.

7.0 Payment for the Services

- 7.1 In consideration for the Provider's provision of the Services, the Commissioner will pay to the Provider the Price set out in, and on the Payment Terms specified in, [Schedule 3](#).
- 7.2 For the avoidance of doubt, the Price is inclusive of all expenses and disbursements, and also inclusive of VAT.

8.0 Relationship management, monitoring and reporting provisions

8.1 Liaison

- 8.1.1 The Primary Contacts for each party are specified in [Schedule 2](#) and may be changed by reasonable written notice to the other party from time to time.
- 8.1.2 The parties shall each use their best efforts to ensure that their Primary Contacts liaise on a regular basis to facilitate the smooth running of the Contract and delivery of the Services and with the intention to identify concerns early enough to prevent disputes arising in relation to the Contract.

8.2 Monitoring

- 8.2.1 The Provider shall allow the Commissioner's Primary Contacts and other notified authorised officers to observe, monitor and inspect delivery of the Services from time to time, in each case at any reasonable time on reasonable prior notice.

8.3 Maintaining records and reporting

- 8.3.1 The Provider shall inform the Commissioner promptly, and in any event within 3 Working Days of becoming so aware, of any factor that will, or may, materially affect and/or change the provision of the Services and/or the delivery of the Project.
- 8.3.2 The Provider shall inform the Commissioner promptly, and in any event within 3 Working Days of becoming so aware, of any potential, or actual, conflict of interest arising in relation to the provision of the Services or the delivery of the Project.
- 8.3.3 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.
- 8.3.4 The Provider shall ensure that (if applicable) ethical approval for the Project allows the Commissioner to inspect all records and data collected, including recordings and transcripts of interviews with patients and others.
- 8.3.5 The Provider shall retain all records contemplated by clauses 8.3.3 and 8.3.4. 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.
- 8.3.6 The Provider shall provide to the Commissioner, promptly on request, with any other information requested by the Commissioner from time to time in connection with the Services and/or the Project (including, for the

avoidance of doubt, any information requested by the Commissioner's auditors or by law or regulation).

9.0 Publicity and Publications

- 9.1 No publicity or publications relating to this Contract will be issued 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 by the Provider without the written approval of the Commissioner.
- 9.2 The Commissioner may publish final Deliverables as, and in such media as, it considers appropriate.
- 9.3 If the Provider is a university, the Commissioner may publish final Deliverables after the first publication by the Provider. If the Provider does not publish any results or outcomes of the Project within six (6) months from the Project end date, the Commissioner may publish final Deliverables without further discussion with or approval from the Provider.
- 9.4 The Provider's rights to make use of the Deliverables are set out in [Schedule 5](#).

10.0 Communications and branding

- 10.1 The Provider shall comply with the communication and branding requirements set out in [Schedule 6](#).

11.0 Dispute Resolution

- 11.1 The Dispute Resolution Procedure in [Schedule 4](#) shall apply in relation to any disputes in relation to this Contract.

12.0 Termination

- 12.1 Without affecting any other right or remedy available to it, and subject to clause 19 (*Force Majeure*), either party may terminate this Contract with immediate effect by giving written notice to the other party if the other party:
- 12.1.1 has acted, or failed to act, in such a way as would constitute a Breach which Breach is irremediable or (if such Breach is remediable) fails to remedy that Breach within a period of 20 Working Days after being notified in writing to do so;
 - 12.1.2 has repeated a Breach, or committed a series of Breaches, in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
 - 12.1.3 suffers any Insolvency Event; or

- 12.1.4 suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business or activities;
- 12.2 The Commissioner may terminate this Contract by giving three months' prior notice in writing delivered to the Primary Contacts.
- 12.3 The Commissioner may suspend all or part of any payments due and payable by it under this Contract upon the occurrence of any termination event (in respect of the Provider) set out in Clause 12.1 above, in each case whilst such termination event is continuing.
- 12.4 The termination of this Contract shall not affect the right of either party that has arisen before termination.
- 12.5 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.

13.0 Obligations on termination and expiry

13.1 On termination or expiry of this Contract the Provider shall:

- 13.1.1 within five Working Days deliver the Deliverables (whether or not then complete), and return any materials supplied by the Commissioner to the Provider;
- 13.1.2 within five Working Days refund any fees paid by the Commissioner in respect of any Services which have not been performed by the Provider by the date of termination or expiry; and
- 13.1.3 immediately cease to represent/describe itself as a service provider of the Commissioner.

14.0 Representations and Warranties

- 14.1 The Commissioner represents and warrants that it is duly incorporated and validly existing under the laws of England and Wales.
- 14.2 The Provider represents and warrants that it shall perform its obligations under this Contract in a manner that uses all reasonable endeavours not to infringe, or constitute an infringement or misappropriation of, any third-party Intellectual Property Rights.
- 14.3 Each party represents and warrants to the other party that:

- 14.3.1 it has the requisite power and authority to enter into and perform its obligations under this Contract; and
- 14.3.2 this Contract when executed shall constitute valid, lawful and binding obligations on it, enforceable in accordance with its terms.

15.0 Limitation of Liability

- 15.1 Nothing in this Contract shall operate to exclude or limit the liability of either Party to the other for fraud, death or personal injury arising out of negligence or any other liability which cannot be excluded or limited by law.
- 15.2 A Party's ("**Party A**") liability to the other Party ("**Party B**") in respect of any indemnity given under this Contract (including for the avoidance of doubt any obligations of Party A under this Contract relating to data privacy, or any liability of Party A under the Data Protection Legislation) shall be subject to the limitations set out in this Clause 15 and furthermore limited to the aggregate level of insurance coverage of Party A required under Clause 16.2 (*Provider insurance obligations*) (in relation to the Provider) or the existing levels of insurance coverage generally (in relation to the Commissioner).
- 15.3 Without prejudice to clauses 15.1, 15.2 and 15.4, neither Party shall be liable to the other Party for:
 - 15.3.1 any business opportunities or damage to goodwill (whether direct or indirect); or
 - 15.3.2 any indirect or consequential loss or damage, in each case arising under or in relation to this Contract, even if the first Party was aware of the possibility that such loss or damage might be incurred by the other Party.

in each case arising under or in relation to this Contract, even if the first Party was aware of the possibility that such loss or damage might be incurred by the other Party.

- 15.4 Subject to clauses 15.1 to 15.3 (inclusive), Party B shall be entitled (without limitation) to recover from Party A in full the following costs or losses incurred by Party B to the extent that they arise as a result of any act or omission of Party A in breach of its obligations under this Contract or the Data Protection Laws (each a "**Party A Default**"):
 - 15.4.1 any additional operational and/or administrative costs and expenses incurred by Party B, including costs relating to time spent by or on behalf of Party B in dealing with the consequences of the Party A Default;
 - 15.4.2 any wasted expenditure or charges rendered unnecessary; and/or
 - 15.4.3 any fine, penalty or court judgment incurred by Party B and any related legal costs incurred by Party B.

16. Protective provisions

16.1 Status of Provider

- 16.1.1 For the avoidance of doubt, any individual Provider is an independent contractor and is not an employee of the Commissioner and must not represent him/herself as such. Any individual Provider is responsible for the payment of national insurance contributions, personal tax and social security payments due in respect of any sum paid to an individual Provider under this Contract. Sums paid to individual Providers will be paid without deduction of tax.

16.2 Provider insurance obligations

- 16.2.1 During the term of this Contract (and for a period of 6 years after the expiry or termination of this Contract), the Provider shall take out and maintain in force, with a reputable insurer, policies of insurance reasonably appropriate to activities required to deliver the Services.
- 16.2.2 At a minimum, this shall include public liability insurance and professional liability / indemnity (which includes sufficient coverage in relation to data privacy), in each case for the following minimum amounts:
- Self-employed/sole trader - £1million
 - Limited company/public body - £5million
- 16.2.3 On the Commissioner's reasonable request, the Provider shall provide the Commissioner with copies of the insurance policies and appropriate evidence that they are in force.

16.3 Assignment and sub-contracting

- 16.3.1 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.
- 16.3.2 The Provider may only sub-contract performance of its obligations under this Contract to sub-contractors if agreed in writing by the Commissioner.
- 16.3.3 Clauses 16.3.1 and 16.3.2 shall survive termination of this Contract.

16.4 Confidential Information

- 16.4.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party or, if applicable, of any member of the group of companies to which the other party belongs, except as permitted by clause 16.4.2.
- 16.4.2 Each party may disclose the other party's Confidential Information:
- a. to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 16.4; and
 - b. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. If a party is subject to any such disclosure provision, the other will reasonably co-operate with any relevant notified obligation, subject to any contrary obligation of confidentiality upon that party.
- 16.4.3 Clauses 16.4.1 to 16.4.2 shall survive termination of this Contract.

17.0 Intellectual Property Rights

- 17.1 The provisions of [Schedule 5](#) shall apply in relation to Intellectual Property Rights and the commercial exploitation of Intellectual Property Rights generated in connection with the Services.

18. Indemnity

- 18.1 Subject to clause 15 (Limitation of Liability), 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.
- 18.2 Clause 18.1 shall survive termination of this Contract.

19. Standard clauses

19.1 Force Majeure

- 19.1.1 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.
- 19.1.2 A party experiencing a Force Majeure Event shall give the other party full particulars of the circumstances of the Force Majeure

Event in writing promptly and use all reasonable endeavours to mitigate the effect of the Force Majeure Event on its ability to perform its obligations under this Contract and to resume performance as soon as possible.

- 19.1.3 If the Force Majeure Event prevents, hinders or delays a party's performance of its obligations under this Contract for a continuous period of more than 8 weeks, the party not affected by the Force Majeure Event may terminate this Contract by giving 2 weeks' written notice to the affected party.

19.2 *Notices*

- 19.1.4 Any notice to be given by either party to the other under or in connection with this Contract shall be in writing and shall be:

- a. delivered by hand or by first-class 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; or
- b. sent by e-mail, with due transmission receipt, to an e-mail address notified in writing for the purpose.

- 19.1.5 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.

- 19.1.6 Any posted notice shall be deemed received on the second Working Day after posting.

19.2 *Non-Waiver*

- 19.1.7 Any failure or delay 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.

- 19.1.8 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.

19.3 *Severability*

- 9.1.9 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.

- 9.1.10 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.

19.4 Agency, Partnership and Joint Venture

- 19.1.11 This Contract is not intended to nor shall it create any agency, partnership or joint venture.
- 19.1.12 Neither party shall hold itself out as being entitled to represent or bind the other in any way.

19.5 Third Party Rights

- 19.1.13 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.

19.6 Extent of Contract

- 19.1.14 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.
- 19.1.15 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.

19.7 Secure Data Environment

- 19.1.16 [Schedule 7](#) shall apply where any usage is made of the Commissioner's Secure Data Environment.

19.8 Variation

- 19.1.17 No variation to or waiver to this Contract is effective unless agreed in writing signed on behalf of both parties.

19.9 Costs and Expenses

- 19.1.18 Each party shall (except as expressly provided or otherwise mutually agreed) bear its own costs and expenses in connection with the preparation, negotiation, and execution of this Contract.

19.10 Governing Law

- 19.1.19 This Contract is governed by and shall be construed in accordance with the laws of England and Wales and the parties submit to the exclusive 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:

“Breach”	a failure by a party to fulfil its obligations under this Contract;
“Commencement Date”	the date both parties have signed this Contract;
“Confidential Information”	any information of a confidential nature (whether specifically marked as such or

	<p>otherwise) obtained under, or relating to this Contract but not including information:</p> <ul style="list-style-type: none"> • 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; or • 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 ;
“Data Protection Legislation”	<p>as applicable:</p> <ul style="list-style-type: none"> • the UKGDPR and any related legislation which applies in the UK, including (without being limited to) the Data Protection Act 2018; • the Privacy and Electronic Communications (EC Directive) Regulations (2003) and any successor or related legislation; and/or <p>all other applicable laws and regulations relating to the processing of data and/or governing individuals’ rights to data privacy; including statutory instruments;</p>
“Deliverables”	any outputs of the Services to be delivered by the Provider to the Commissioner as specified in Schedule 2 ;
“Employer’s Liability”	insurance that can pay the compensation amount and legal costs if an employee claims compensation from their employer for a work-related illness or injury;
“Force Majeure Event”	any circumstance not within a party’s reasonable control including, without limitation:

	<ul style="list-style-type: none"> • acts of God, flood, drought, earthquake or other natural disaster; • epidemic or pandemic; • terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; • nuclear, chemical or biological contamination or sonic boom; • any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; • collapse of buildings, fire, explosion or accident; • any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); • non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and • interruption or failure of utility service.
<p>“Insolvency Event”</p>	<p>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;</p>
<p>“Intellectual Property Rights”</p>	<p>all trademarks, business names, domain names, patents, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and know-how however arising for their full term and any renewals and extensions;</p>
<p>“Payment Dates”</p>	<p>the Payment Dates specified in Schedule 3;</p>

"Price"	the price for the Services specified in Schedule 2 ;
"Primary Contacts"	the individuals appointed by the Commissioner and the Provider to primarily represent them under this Contract; the initial Primary Contacts are specified in 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 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"	a proposed or ongoing set of tasks, as specified in any Invitation to Tender and Tender leading to this Contract and as described in this Contract Schedule 2 ;
"Services"	the services to be provided by the Provider in relation to the Project;
"Timetable"	the timetable for delivery of the Services as specified in Schedule 2 ;
"Work"	as defined in Schedule 5 ;
"Work IP Rights"	as defined in Schedule 5 ;
"Working Days"	Monday to Friday inclusive but excluding bank holidays and public holidays in England and Wales;
"Year"	a year from the date and from each anniversary date of this Contract.

Schedule 2

Service Specification

- 1.0 Description of the Services:
- 2.0 Contract Period: From the Commencement Date to [].
- 3.0 Delivery Timetable:
- 4.0 Liaison/meeting/review requirements:
- 5.0 Primary Contacts:
 - 5.1 For Commissioner: [contact details]
 - 5.2 For Provider: [contact details]

Schedule 3

Price and Payment Provisions

- 1.0 **Price** (inclusive of expenses and disbursements, as well as 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 Commissioner
- 2.0 **Payment Provisions:**
 - 2.1 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.
 - 2.2 Payment shall be made within 30 days of receipt of invoice.
 - 2.3 Payment shall be made 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 and date and be addressed to: finance.enquiries@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	£	

Schedule 4

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 and good faith negotiations between the Primary Contacts (or such other persons who have the authority to settle the dispute in relation to this Contract).
- 2.0 If any dispute has not been resolved by the Primary Contacts within 10 Working Days, the matter shall be referred to be resolved by direct liaison between more senior officers representing both parties.
- 3.0 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 10 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).

- 4.0 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.
- 5.0 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.
- 6.0 If the parties remain unable to settle the dispute by following the applicable mediation procedure, the dispute shall be finally resolved by the courts of England and Wales in accordance with clause 19.10 of this Contract, or such other means as the parties may mutually agree.
- 7.0 This Schedule shall not apply after a notice of termination has been duly served.

Schedule 5

Intellectual Property Rights

In-house instructions only

Select the correct template via the LINK shown in the table below and copy into this schedule.

Name of schedule	Description	
<i>IPR (a)</i>	<i>We own; they do not have licence to use (but can request it)</i>	<i>LINK</i>
<i>IPR (b)</i>	<i>We own; they have licence to use</i>	<i>LINK</i>
<i>IPR (c)</i>	<i>We have licence to use; they own (normally for usage with universities)</i>	<i>LINK</i>

Delete all blue text from the final version.

Schedule 6

Communications and Branding

In-house instructions only

Select the correct template via the LINK shown in the table below and copy into this schedule.

Name of schedule	Description	
Comms & branding (a)	Default option for all grant contracts except where we are commissioning research	LINK
Comms & branding (b)	For all grant contracts where we are commissioning research	LINK

Delete all blue text from the final version.

Schedule 7

Use of Secure Data Environment (SDE)

1. Only Approved Users will be granted access to Information Assets held within The Health Foundation's Secure Data Environment (SDE) for the purpose of this Project.
2. Information Assets include special categories of personal data as described by the UK General Data Protection Regulation (UKGDPR) 4(1) and the Data Protection Act (DPA) 2018 s.3(2), concerning data that relate to an identified or identifiable natural person.
3. An Approved User is an individual who can meet the following criteria:
 - Has completed the SDE Training, and if necessary, the annual refresher course;

- Has signed the SDE Non-Disclosure Agreement
 - Has read and signed the Terms and Conditions of Use pertaining to the SDE
 - Has completed The Health Foundation's Conflict of Interest declaration
4. It is the joint responsibility of The Health Foundation's Data Manager and the signatory of this Agreement to ensure that these criteria are met before access to the SDE commences.
 5. 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 a serious breach.
 6. The User will be subject to the schedule of the Data Protection Act 2018 and the General Data Protection Regulation, in addition to other legislation relevant to accessing Health and Social Care data. This will be explained at the SDE Training course.
 7. The Approved User may act either as a Data Processor or as a Data Controller. This will depend on the nature of the Project undertaken.
 8. The Data Protection Act 2018 and the UK General Data Protection Regulation (UKGDPR) 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.
 9. The parties hereby agree to the following terms:
 - 9.1 Access to the Information Assets is being provided for the statistical and analytical purposes as outlined in the relevant Data Sharing Agreement (exchanged between the Foundation and relevant Data Suppliers). Access to Information Assets shall not be used for any other purpose without the prior written consent of The Health Foundation, and where necessary, the Data Supplier.
 - 9.2 The Approved User shall not disclose nor compromise any of Information Assets that they access in the course of their use of the SDE.
 - 9.3 The User shall not attempt to link Information Assets to any other files in order to relate the particulars to any identifiable individual person, unless such data linkage exercise has been explicitly approved at the time of the project application or approved subsequently as part of an amendment submitted to the Data Supplier or their delegated decision-making body.
 - 9.4 The User will cite the source of the data they have used for their statistical purposes in any publications or outputs publicly distributed.
 - 9.5 The Health Foundation reserves the right to monitor, record and audit, or to request a written report from the User regarding their use, and activities relating to the use, of the Information Assets during the Period of Use.

- 9.6 Any data security events must be reported immediately to the Data Manager in the first instance; or else, the SDE Management Group. The Approved User agrees to co-operate with any subsequent investigation which may be warranted.
- 9.7 The Information Assets accessed by the User remains the property of the Data Supplier.
- 9.8 Any outputs to be removed from the SDE must first be screened by staff at The Health Foundation to ensure that the risk of any Data Subject being re-identified, and/or any confidential information being released, is minimised. This is a process known as Statistical Disclosure Control (SDC). Approved Users are responsible for applying SDC concepts as advised by The Health Foundation staff as part of the SDE Training. The final decision to release an output remains with The Health Foundation and not the User or the User Organisation.

Schedule 8

Data Processing agreement

In-house instructions only – to be deleted from final version

*This version of Schedule 8 is a data processing agreement. This assumes that the other party is a **processor** and not a controller. Sometimes the other party will have its own data processing agreement - normally major companies. We are content to use these instead, subject to them being reviewed by the Data Protection Officer via dpo@health.org.uk*

The outcome of the privacy impact assessment will indicate whether or not we need section 12 of this schedule and the accompanying table. Delete both from the final version if they are not needed.

Very occasionally, we may need a more detailed data processing agreement than this one. If so, this will have become apparent during the data protection step in Award and Contract Governance.

*If the other party is a data **controller**, this will have become apparent as a result of the data protection step in Award and Contract Governance. In these cases, we need to use the alternative schedule 8 instead of this one, ie 'Schedule 8 Data Sharing Agreement'.*

The parties hereby agree to the following terms:

Definitions. In this agreement the terms “process”, “processing”, “controller”, “processor” “data subject”, “personal data breach” and “personal data” shall have the meanings given to them in the UKGDPR and “Personal Data” shall mean any personal data processed by the Processor in order to provide the Services under the Contract;

Interaction with Contract. This agreement is supplemental to the Contract and is intended to ensure that the Commissioner meets its legal obligation to ensure that the Provider processes the Personal Data on its behalf in accordance with the Controller’s obligations under the Data Protection Legislation. To the extent there is any conflict or inconsistency between any provision of the Contract and any provision of this agreement, the provisions of this agreement shall prevail.

Processing of Personal Data. The Commissioner is the Controller and the Provider is the Processor of any Personal Data. The Provider (hereafter “**the Processor**”) shall process the Personal Data only on the documented instructions of the Commissioner (hereafter “**the Controller**”) in accordance with the Contract and this agreement save that the Processor may process Personal Data when required to do so by EU, Member State or UK law which applies to the Processor but, in such circumstances, the Processor must notify the Controller unless prohibited by law on important grounds of public interest. The Processor shall promptly inform the Controller if it reasonably believes that an instruction from the Controller infringes Data Protection Legislation or other EU, Member State or UK law.

Confidentiality and Security Measures. The Processor shall ensure that all personnel processing Personal Data have committed to process such Personal Data in confidence. Consistent with good practice the Processor is required to implement and maintain appropriate technical safeguards to protect any such Personal Data, including, where appropriate, by:

- the pseudonymisation and encryption of Personal Data;

- ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- restoring the availability and access to Personal Data in the event of a physical or technical incident; and
- regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring security of the processing.

Upon request the Processor shall make available to the Controller any information deemed reasonable to demonstrate compliance with the Data Protection Legislation and sufficient information to demonstrate that the appropriate technical and organisational security measures have been implemented.

Personal Data Breach. The Processor shall inform the Controller immediately and in any event within 24 hours of becoming aware of any actual or suspected personal data breaches in order that the Controller can comply with its obligations to inform the Information Commissioners Office (ICO) within 72 hours of the Controller becoming aware of the breach. The email address dpo@health.org.uk should be used to inform the Controller of any actual or suspected personal data breaches.

Third Parties. If the Controller has agreed to the Processor sub-contracting under clause 15.3 of this Contract, then the Processor shall not sub-contract any or all of the data processing to any third party (i) without verifying that the sub-contractor will provide sufficient guarantees to protect the Personal Data, (ii) without the prior written consent of the Controller, (iii) without ensuring that any third party to which it sub-contracts any processing has entered into a written contract with the Processor which contains obligations which comply with the Data Protection Legislation and are no less onerous than the Processor's obligations under this agreement, and (iv) the contract is governed by EU or UK law. The Processor shall remain fully liable for the performance of the obligations of such third parties.

Data Subject Rights.

The Processor shall ensure that it protects the rights of data subjects under the Data Protection Legislation.

The Processor must provide all necessary assistance to the Controller on receipt of and in response to any requests from individuals to exercise any of their rights under Articles 15-22 of the UKGDPR either that it receives or the Controller receives. The legal timeframe to respond to a request to access a data subject's personal data is 30 days. The Processor will therefore be

required to respond to the requests of the Controller in order that the timetable may be met.

Cross-Border Transfers from the UK/ European Union. The Processor will not use any services that require Personal Data to be held or processed outside of the UK or the European Union, unless this has been specifically agreed in writing with the Controller (on the conditions that the Controller may reasonably specify).

Post-Termination. Upon termination of this Contract, the Processor shall return or securely destroy all Personal Data unless required by law or expressly justified in writing to the Controller.

Further assistance. Taking into account the nature of processing and the information available to the Processor, the Processor shall assist the Controller to:

- ensure the security of Personal Data, in accordance with Article 28(3)(f) UKGDPR;
- notify any personal data breaches to affected data subjects and the data protection authority;
- assist with any data protection impact assessments; and
- assist with any consultations required with the data protection authority.

Audit. The Processor shall make available to the Controller all information necessary for the Processor to demonstrate compliance with this Schedule and shall contribute to audits, including inspections, conducted by the Controller or another auditor appointed by the Controller as required under Article 28(3)(h) UKGDPR.

Particulars of Processing. The parties confirm that the particulars of processing are as set out in the Appendix to this Agreement.

Appendix

Specific Processing Details

	Component	Information	Response
1	Data Subject	In the following section document what type of data is being processed?	
	Data Subject	Please document the types of people whose data we are processing (e.g. employees, customers)	

	Data Categories	Please document the categories of personal data such as business contact details, bank details, home address and phone number	
	Special Categories of data	Please document any special categories of data being processed such as medical or health information, race or ethnicity	
2	Purpose	In this section document the purpose the data is being processed	
	What is the purpose or purposes of processing the data	Please document the purpose for which the data is being processed and include the benefits of the processing	
	What is the legal basis under which we are processing the data	Please document the legal basis under which the data is being processed	
3	How is the information shared	Please document how the information will be shared between the parties	
	Methods of exchange	Please document what tools or methods are used to transfer the data e.g. file transfer, email etc.	
	Security of exchange	Please detail any specific security measures applied to the method of transfer e.g. example are emails encrypted	
4	Named representative	Please enter the contact details of the individuals from each party who are responsible for the safety and security of the data	
	Commissioner	Name, Job Title, Address, Email and Phone Number	
	Provider	Name, Job Title, Address, Email and Phone Number	
5	Security Measures	What security measures must be in place at all parties to ensure the protection of the data. This must document any particular specific requirements established to enable the secure sharing and use of data	
	Information Security Policy	Document any general security standards adhered	

		to and what security policies each party has in place	
	Additional security measures	Document any specific security requirements required to enable the sharing of the data	
6	Data Governance	Each party shall make reasonable efforts to ensure the data provided is up to date, accurate and relevant	
	Data Accuracy	Document any measures required to ensure and maintain data accuracy	
	Data Retention and Deletion	Document whether there are specific retention requirements in place for the data that is shared (e.g. disposed after the end of a project) or whether the controllers rely on their own retention schedules	
7	Data Transfer outside of the EU	If either party requires the transfer of data outside of the EU the following will need to be completed	
	Legal basis for data transfer	Document the legal basis under which the data will be transferred overseas	
	Additional protections	Document any additional measures in place to ensure the secure processing of data outside of the EU	
8	Sub-processors	Document any sub-processors used in the Data Processing	
	Sub-processor	List the sub-processors	

Agreement of Parties to the Contract

Signed for and on behalf of **THE HEALTH FOUNDATION** in its capacity as the **Commissioner** by its authorised signatories:

Signature: (1)

Name:

Position:

Date: _____

Signature: (2) _____

Name: _____

Position: _____

Date: _____

Signed for and on behalf of **[INSERT FULL LEGAL NAME]** in its capacity as the **Provider** by its authorised signatory:

Name: _____

Position: _____

Date: _____