

Template version: July 2023

Contract for Services (Business)

Date: (the "Commencement Date")

Unique Contract Reference:

Between:

(1) The Health Foundation

Registered Office: 8 Salisbury Square, London EC4Y 8AP

Registered Company Number: 01714937

Registered Charity Number: 286967

("Commissioner")

(2) *[insert Provider name]:*

Registered Office/Principal address: *[to be inserted]*

Registered Company Number: *[to be inserted]*

Registered Charity Number: *[to be inserted]*

("Provider")

The Commissioner and Provider hereby agree as follows:

1. Interpretation and Definitions

- 1.1 The definitions in **Schedule 1** apply to this Contract.
- 1.2 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.
- 1.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.4 A reference to this Contract is as amended, waived, and/or supplemented from time to time.
- 1.5 Clause, Schedule and Paragraph headings shall not affect the interpretation of this Contract.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and words in the plural shall include the singular.
- 1.7 This Contract shall be binding on, and be 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.
- 1.8 A reference to "writing" or "written" includes email.
- 1.9 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.10 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. Purpose of Contract

The Commissioner wishes to procure the Services from the Provider in accordance with the terms of this Contract.

3. Commencement and Term

This Contract is effective from and including the Commencement Date and shall continue for the Contract Period, unless terminated earlier in accordance with clause 9 (Termination) or as otherwise agreed by the parties in writing.

4. Supply of Services

- 4.1 The Provider shall provide the Services in accordance with the Service Specification and Timetable set out in **Schedule 2** and any other reasonable instructions from the Commissioner.
- 4.2 No amendment to the Service Specification and Timetable as set out in **Schedule 2** shall be effective unless made in writing and signed by a duly authorised representative of the parties.

5. Provider's responsibilities

5.1 The Provider shall provide the Services:

- 5.1.1 in accordance with the Service Specification and terms of this Contract ensuring at all times that any Deliverables conform with the Service Specification;
- 5.1.2 with the highest level of care, skill and diligence in accordance with best practice in the Provider's industry, profession or trade;
- 5.1.3 in cooperation with the Commissioner in all matters relating to the Services;
- 5.1.4 using its own equipment, tools, vehicles or other items required to provide the Services;
- 5.1.5 using personnel who are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Provider's obligations under the Contract are met;
- 5.1.6 to the extent that the Commissioner obtains any Intellectual Property Rights in relation to the Services, 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);
- 5.1.7 in compliance 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 and confidentiality);
- 5.1.8 having obtained and maintaining all relevant consents, authorisations and approvals required to provide the Services;
- 5.1.9 in compliance with the provisions and obligations contained in the Data Protection Legislation, including as set out in [Schedule 4](#);
- 5.1.10 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;
- 5.1.11 in accordance with any relevant policies and procedures that the Commissioner reasonably requests the Provider should comply with; and
- 5.1.12 ensuring that all personnel employed or engaged directly or indirectly in the performance of the Services are paid not less than the current Living Wage (as set by the Living Wage Foundation, an initiative of Citizens UK, registered charity number 1107264), as amended from time to time.

6. Payment for the Services

- 6.1 In consideration of the Services, the Commissioner will pay to the Provider the Price in accordance with the Payment Terms specified set out in [Schedule 3](#).
- 6.2 For the avoidance of doubt, the Price is inclusive of all expenses and disbursements, and also inclusive of VAT.
- 6.3 Interest on any late payment by the Commissioner of the Price under this Contract shall be capped at 2% above the Bank of England's base rate.

7. Monitoring and Reporting

- 7.1 The Primary Contacts for each party are specified in [Schedule 2](#) and may be changed by a party giving reasonable written notice to the other party from time to time.
- 7.2 The parties shall each use their best efforts to ensure that their Primary Contacts liaise on a regular basis to facilitate the smooth delivery of the Services.
- 7.3 The Provider shall allow the Commissioner's Primary Contacts and any other persons authorised by the Commissioner reasonable access to its employees, agents, premises, facilities and records for the purposes of discussing, monitoring and evaluating the Provider's delivery of the Services.
- 7.4 The Provider shall promptly (and in any event within 3 Working Days of becoming so aware) inform the Commissioner in writing of any factor that will, or may, materially affect and/or change the provision of the Services and/or the delivery of the Deliverables, or of any potential or actual conflict of interest in relation to delivery of the Services or Deliverables.
- 7.5 The Provider shall keep and maintain full and accurate records of all activities undertaken, data collected, and material produced in relation to the Services and allow the Commissioner to make copies of such records for a period of 6 years from the end of the Contract Period or termination of the Contract.
- 7.6 The Provider shall provide to the Commissioner promptly on request any other information requested by the Commissioner from time to time in connection with the Services and/or Deliverables (including, for the avoidance of doubt, any information requested by the Commissioner's auditors or by law or regulation).

8. Publicity and Publications

The Provider shall comply with any communication and branding guidelines that the Commissioner may set in connection with external communications relating to the Contract and/or the Services from time to time.

9. Termination

- 9.1 Without affecting any right or remedy available to it, and subject to clause 18 (Force Majeure), either party may terminate this Contract at any time by giving three months' written notice to the other party.

- 9.2 Without affecting any other right or remedy available to it, and subject to clause 18 (Force Majeure), the Commissioner may terminate this Contract with immediate effect by giving written notice to the Provider if it:
- 9.2.1 has acted, or failed to act, in such a way as would constitute a Breach which 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;
 - 9.2.2 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;
 - 9.2.3 suffers any Insolvency Event; or
 - 9.2.4 suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business or activities.
- 9.3 Upon occurrence of a Breach or Insolvency Event, the Commissioner reserves the right to suspend all or part of any payments due and payable by it under this Contract until the Breach or Insolvency Event is resolved.
- 9.4 Without affecting any other right or remedy available to it, and subject to clause 18 (Force Majeure), the Commissioner may terminate this Contract immediately by written notice if any member of the governing body, employee or consultant of the Provider has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Services or (b) taken any actions that are likely to bring the reputation of the Commissioner into disrepute.
- 9.5 The termination of this Contract shall not affect the rights of either party that have arisen before termination.
- 9.6 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. Obligations on termination and expiry

- 10.1 On expiry of the Contract Period or termination of this Contract for whatever reason the Provider shall:
- 10.1.1 within five Working Days deliver the Deliverables (whether or not then complete), and return any materials supplied by the Commissioner;
 - 10.1.2 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
 - 10.1.3 immediately cease to represent/describe itself as a service provider of the Commissioner; and
 - 10.1.4 if so requested by the Commissioner, co-operate fully with the Commissioner and/or any new provider of the Services appointed by the

Commissioner in ensuring the smooth handover and continued running of the Services and during such handover render such assistance to the Commissioner and/or the new provider as the Commissioner may reasonably request.

11. Representations and Warranties

- 11.1 The Commissioner represents and warrants that it is duly incorporated and validly existing under the laws of England and Wales.
- 11.2 The Provider represents and warrants that:
 - 11.2.1 it has the necessary resources and expertise to deliver the Services; and
 - 11.2.2 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.
- 11.3 Each party represents and warrants to the other party that it has the requisite power and authority to enter into and perform its obligations under this Contract.

12. Limitation of Liability

- 12.1 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.
- 12.2 The liability of the Commissioner under this Contract shall be limited to the Price.
- 12.3 The Provider shall be fully responsible and liable, financially and otherwise, for all liabilities, expenditure, claims, demands, actions, costs, expenses, losses and damages arising out of or in connections with any breach of its obligations under this Agreement.

13. Indemnity

- 13.1 Subject to clause 12 (Limitation of Liability), the Provider shall indemnify the Commissioner against all liabilities, costs, expenses, damages and losses (including, but not limited to, any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred or paid by the Commissioner arising out of or in connection with any claim brought against the Commissioner for:
 - 13.1.1 actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the receipt, use or supply of the Services or Deliverables;
 - 13.1.2 any breach of the Provider's obligations under this Contract.
- 13.2 Clause 13 shall survive termination of this Contract.

14. Provider insurance obligations

- 14.1 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.
- 14.2 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 a minimum amount of £5 million.
- 14.3 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.

15. Assignment and sub-contracting

- 15.1 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.
- 15.2 The Provider may only sub-contract performance of its obligations under this Contract to sub-contractors if agreed in writing by the Commissioner.
- 15.3 Clauses 15.1 and 15.2 shall survive termination of this Contract.

16. Confidential Information

- 16.1 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 16.2.
- 16.2 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 or for any internal or statutory reporting or audit requirements. 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 16.2; 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.
- 16.3 Neither Party shall use the other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.
- 16.4 Clause 16 shall survive termination of this Contract.

17. Intellectual Property Rights

[Please choose either 17.1 and 17.2 or 17.3 (which should be renumbered 17.1) square brackets should be removed and text should not be italicised and changed to black before sending to provider]

- 17.1 *[The Provider hereby assigns to the Commissioner, with full title guarantee, any and all Intellectual Property Rights in the materials created or arising from the Services, including the Deliverables ("Services IP Rights"). All Intellectual Property Rights in the Services IP Rights shall be the property of the Commissioner.*
- 17.2 *For the avoidance of doubt, all Intellectual Property Rights (1) belonging to a party to this Contract prior to the signing of this Contract, or (2) which has been developed independently by a party without using any monies/funding contemplated by this Contract or any other contribution by the other party (together, the "Background IP Rights") shall remain vested in that party.]*

18. Force Majeure

- 18.1 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.
- 18.2 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.
- 18.3 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 eight weeks, the party not affected by the Force Majeure Event may terminate this Contract by giving two weeks' written notice to the affected party.

19. Notices

- 19.1 All notices and other communications in relation to this Contract shall be made in writing to the Parties' Primary Contacts, or any other such authorised individuals notified in writing by one party to the other.
- 19.2 Such notices and communications shall be deemed to have been duly given if personally delivered, emailed, or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered or if emailed all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5pm on any working day, they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

20. Non-Waiver

- 20.1 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.

20.2 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.

21. Severability

21.1 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.

21.2 If the circumstances described in clause 21.1 transpire both parties shall negotiate in good faith to amend the affected provision(s) 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.

22. Agency, Partnership and Joint Venture

22.1 This Contract is not intended to nor shall it create any agency, partnership or joint venture between the parties.

22.2 Neither party shall hold itself out as being entitled to represent or bind the other in any way.

23. Third Party Rights

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.

24. Extent of Contract

24.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous promises, assurances, warranties, communications, representations, understandings, arrangements and agreements between the parties, whether written or oral.

24.2 Neither party has relied on (and waives any right to make any claim in respect of) any promises, assurances, warranties, communications, representations, understandings, arrangements or agreement not expressly set out in this Contract, including any provision in a tender not confirmed in this Contract.

25. Data Analysis Platform

Schedule 5 shall apply where any usage is made of the Commissioner's Data Analysis Platform.

26. Variation

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

27. Costs and Expenses

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

28. Anti-bribery, anti-corruption, anti-tax evasion and modern slavery

28.1 The Provider must at all times:

- 28.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010 and the Criminal Finances Act 2017;
- 28.1.2 have policies and procedures (including adequate procedures as determined in accordance with section 7(2) of the Bribery Act 2010 and any guidance issued under section 9 of that Act) to ensure compliance with clause 28.1.1 above;
- 28.1.3 commit to the prevention of any form of tax evasion in any areas of its business, in line with the Criminal Finances Act 2017;
- 28.1.4 promptly report to the Commissioner any request or demand for any undue financial or other advantage of any kind received by a party or by any of that party's staff in connection with this Contract;
- 28.1.5 promptly report to the Commissioner if it has a reason to suspect that fraud has occurred or is occurring or is likely to occur; and
- 28.1.6 comply with the provisions of the Modern Slavery Act 2015 and ensure that human trafficking is not taking place in any part of its business or any part of its supply chains.

28.2 Breach by a Party of the provisions of this clause 28 shall be deemed to be an irremediable Breach of this Contract for the purposes of clause 9 (Termination) and the Provider shall indemnify the Commissioner for any loss it suffers as a result of a breach of this clause 28.2.

29. Governing Law

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:

<i>"Breach"</i>	a failure by a party to fulfil its obligations under this Contract;
<i>"Commencement Date"</i>	the date both parties have signed 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: (a) in the public domain (otherwise than by Breach); (b) 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); (c) obtained from a third party free to divulge it; (d) required to be disclosed by a court or other competent authority; or (e) 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>"Data Protection Legislation"</i>	all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);
<i>"Deliverables"</i>	any outputs of the Services to be delivered by the Provider to the Commissioner as specified in Schedule 2 ;

<i>"Force Majeure Event"</i>	<p>any circumstance not within a party's reasonable control including, without limitation:</p> <ul style="list-style-type: none"> (a) acts of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemic; (c) 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; (d) nuclear, chemical or biological contamination or sonic boom; (e) 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; (f) collapse of buildings, fire, explosion or accident; (g) 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); (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and (i) interruption or failure of utility service.
<i>"Insolvency Event"</i>	<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>
<i>"Intellectual Property Rights"</i>	<p>patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names,</p>

	rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use and protect the confidentiality of confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
" <i>Payment Dates</i> "	the Payment Dates specified in Schedule 3 ;
" <i>Price</i> "	the price for the Services specified in Schedule 3 ;
" <i>Primary Contacts</i> "	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 ;
" <i>Services</i> "	the services to be provided by the Provider;
" <i>Service Specification</i> "	Description of the Services and Deliverables as set out in Schedule 2 ;
" <i>Timetable</i> "	the timetable for delivery of the Services as specified in Schedule 2 ;
" <i>Working Days</i> "	Monday to Friday inclusive but excluding bank holidays and public holidays in England and Wales;

Schedule 2

Service Specification

1. Description of the Services:
2. Contract Period: From the Commencement Date to *[insert date]*.
3. Delivery Timetable:
4. Liaison/meeting/review requirements:
5. Primary Contacts:
 - a. For Commissioner:
 - b. For Provider:

Schedule 3

Price and Payment Provisions

1. Price (inclusive of expenses and disbursements, as well as VAT): £ [insert figure].

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:

2.1 Payment will be made against proper invoices issued in accordance with this Schedule and the final agreed budget (attach as an Appendix if appropriate) and the payment schedule in 2.6 below, subject to the applicable conditions and upon the applicable triggers.

2.2 All invoices should be emailed to invoices@health.org.uk in pdf format and should include the unique contract reference (if applicable), bank details for payment, the name of the Commissioner's Primary Contact, and a contact email address in case of any queries.

2.3 Payment shall be made by BACS by the Commissioner to the Provider within 30 days of receipt of a proper invoice.

2.4 The Price may only be varied by written agreement between the Provider and the Commissioner.

2.5 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.

2.6 Invoice date(s)

Invoice Date	Amount	Conditions and triggers for payment
mm/yyyy	£	Contingent on ...
mm/yyyy	£	Contingent on ...
mm/yyyy	£	Contingent on ...
Total	£	

3. Bank Account and Confirmation of Financial Status

3.1 This section must 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

Legal entity (eg company, charity, educational institution, government body, NHS body)

Organisation/Individual's country of residence

Taxpayer Identification Number (if based outside the UK)

Signed by Finance Department Member completing details:

Name:

Position:

Schedule 4

Data Processing Agreement

[insert relevant data processing template]

Schedule 5

Use of Data Analysis Platform (DAP)

N/A

Schedule 6

[Intellectual Property Rights]

[only to be included if clause 17.3 is chosen above in which case insert relevant IPR schedule – otherwise delete schedule]

Name of schedule	Description
IPR (a)	We own the IPR and the Provider does not have a licence to use
IPR (b)	We own the IPR and the Provider has a licence to use for specified purposes
IPR (c)	The Provider owns the IPR and we have a licence to use it for our charitable purposes

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:

Signature:

Name:

Position:

Date