**ActionAid**

and

 **<<supplier name>>**

DATED

**Consultancy Supplier AGREEMENT**

for

**<<Description of Service>>**

**Contract Ref. No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**THIS AGREEMENT** is made the       day of

**BETWEEN:**

(1) ActionAid, registered in England and Wales (charity no. 274467) (company limited by guarantee no. 1295174) and Scotland (charity no. SC045476), of registered address: 33-39 Bowling Green Lane, London EC1R 0BJ (hereinafter known as the “Charity") and

1. The “Supplier”: <<Insert Supplier's Name>>, <<Insert Supplier's corporate details>>, of <<Insert Supplier's address>>.

The Charity has offered and the Supplier has accepted engagement, on the following terms.

**It is agreed** as follows:

1. Definitions and Interpretation
	* 1. In this Agreement, the terms listed below should be interpreted as following:

|  |  |
| --- | --- |
| “The Act” | In this Original Supplier Contract, “the Act” refers to the Data Protection Act 1998 and its successor legislation, including but not limited to the **General Data Protection Regulation** (**GDPR**) (Regulation (EU) 2016/679), where appropriate, terms used in this Clause shall have the meanings ascribed to them in the Act. |

|  |  |
| --- | --- |
| "**Agreement Start** **Date"**  |  <<Insert date Agreement starts>>; |
| **“Agreement End Date”** | <<Insert date Agreement ends>>; |

|  |  |
| --- | --- |
| **“Confidential** **Information”** | all information intended to be confidential between the parties (however recorded, preserved or generated) disclosed by either the Charity or the Supplier to the other party, or its employees, officers, representatives or advisers to the recipient and the recipient’s representatives, before or during the course of this agreement, including but not limited to:1. the terms of this Agreement;
2. any information that would be regarded as confidential by a reasonable business person relating to:
	1. the business, affairs, methods, plans, systems, finances, projects, customers, clients of the disclosing party; and
	2. the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party
 |
|  | 1. any information which has been clearly marked as “confidential” by either party
2. any information derived from the Confidential Information

but not including any information that:1. is, or becomes, generally available to the public (other than as a result of disclosure by the recipient party, or any of its representatives, in breach of this agreement); or
2. was available to the recipient on a non-confidential basis before disclosure by the disclosing party; or
3. was, is or becomes available to the recipient on a non-confidential basis from a person who, to the recipient’s knowledge, is not bound by a confidentiality agreement with the disclosing party, or otherwise prohibited from disclosing the information to the recipient; or
4. was lawfully in the possession of the recipient before the information was disclosed to it by the disclosing party; or
5. is, or forms part of, any Works owned by the Charity, either before or following the performance of this agreement, which the Charity intends to be able to exploit with third party suppliers without the Supplier’s consent; or
6. is trivial, obvious or useless.
 |
| **“Fees”** | the amount to be paid by the Charity to the Supplier in consideration of the Services, as set out in section C of the Terms of Reference;  |
| **“Force Majeure Event”** | An event outside either parties’ reasonable control including, any Act of God, fire, war or riot. The expression shall not include any of the following in relation to the party seeking to rely on that event:a) any event which was reasonably foreseeable by it, to the extent that it could reasonably have avoided the relevant event;b) any strike, lock-out or industrial dispute involving any of its own personnel;c) the financial failure or other failure in performance of a sub-contractor, to the extent that in turn the same does not result from an event beyond the reasonable control of the relevant sub-contractor. |
| **“Insolvency Event”** | in the case of either party, the appointment of, or the application for the appointment of a liquidator, administrator or similar, the entering into any arrangement for the benefit of creditors generally, or passing of a resolution to wind the company up (other than a voluntary winding-up as part of a reorganisation) or the company becoming unable or being deemed to be unable to pay its debts as and when they fall due within the meaning of section 123 of the Insolvency Act 1986. |
| **“Intellectual Property”** | patents, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, rights to goodwill and to sue for passing off and unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewals or extensions of, 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. |
| **“Original Supplier Contract”** | the present agreement, here considered the Original Supplier Contract. |
| **“Services”** | the provision of Services as set out in section A of the Terms of Reference; |
| **“Works”** | any design, artwork, drawing, code, document, invention, packaging, idea, concept, database, leaflets, brochures, posters, web banners, PDFs, other electronic media, other printed materials or similar work product which in the reasonable opinion of the Charity are useful for, or relate to the affairs of, the Charity. |

1. **Description of the Services to be provided**
2. The Services to be delivered by the Supplier are detailed in the Terms of Reference.
3. Changes to the Services may only be extended, amended or renewed by mutual agreement of the parties in writing. Any changes will be reflected in a revised Terms of Reference, ~~or in an~~ **~~EXTENSION TO SUPPLIER AGREEMENT~~,** signed by both parties.
4. Appointment of the Supplier and Duration
	* 1. The Charity appoints the Supplier to carry out the Services for the period starting from the Agreement Start Date until Agreement End Date or until this Agreement is terminated in accordance with Clause 14 below.
		2. ~~Upon satisfactory delivery of services of products from the Supplier, the Charity may elect to extend this contract and will do so by adding an~~ **~~EXTENSION TO SUPPLIER AGREEMENT~~**~~, which shall become part of this Original Supplier contract with the Charity, and will meet all of the Charity’s requirements as the Original Supplier contract. Note that there is no guarantee of contract extension, the decision being solely at the Charity’s discretion. Any limitations to contract extension/s will be specified in the~~ **~~EXTENSION TO SUPPLIER AGREEMENT~~**~~, or incorporated into the Terms of Reference in the Original Supplier Contract.~~
5. Fees and Expenses
	* 1. Subject to 4.2 the Charity shall pay to the Supplier on receipt of invoice:
		2. the Fees as detailed in the Terms of Reference
		3. Any amounts for any additional services as agreed in accordance with section 2.2.
		4. Fees will only be payable to the extent that the services are delivered as specified within the Terms of Reference, within the agreed timetable and to an acceptable quality.
		5. The Charity shall reimburse the Supplier for those expenses, on presentation of original receipts, which may be incurred necessarily and properly incur for the purpose of providing the Services as detailed in the Terms of Reference.
6. Late Payment

If the Charity fails to make any payment due, the Supplier shall be entitled to:

* + 1. charge the Charity interest on the amount unpaid, at the rate of two per cent per annum above the Bank of England base rate from the date at which the invoice is due until payment is made in full.
1. Obligations of the Supplier

Throughout the period of this Agreement the Supplier shall:

* 1. perform the Services as specified in the Terms of Reference in an expert and diligent manner and to the best of their ability;
	2. not undertake any work not specified in the Terms of Reference without written approval from the Charity.
	3. inform promptly the Charity of any circumstances that might lead to the agreement being delayed or additional work required to deliver the agreed outcomes as set out in the Terms of Reference.
	4. inform promptly the Charity of any circumstances that indicates a conflict of interest between the Supplier and Charity. Both parties are under an affirmative requirement to discuss such conflicts of interests, and take appropriate action to resolve this issue, up to, and including, cancellation of this Original Supplier Contract.
	5. The Supplier shall not at any time make any untrue or misleading statements relating to the Charity.
1. Warranties of the Supplier
	1. The Supplier warrants to the Charity that in entering into this Agreement and performing the Services or any other obligations arising under the Agreement, they shall not be in breach of any contract or other obligation.
	2. The Supplier warrants to the Charity that it will comply with all applicable legislation and regulations in the provision of the services, obtain and maintain all necessary licenses and consents and that the services will be performed with reasonable care and skill and will conform with the description of the services contained in the Terms of Reference.
	3. The Supplier warrants that at the time of the signing of this Original Supplier contract there is no personal, familial, nor business relationship with any employee, officer, or Board member of Action Aid which would constitute a conflict of interest. Should later information become available which indicates a conflict of interest, the Supplier will take affirmative action as detailed in Clause 6.4 of this Original Supplier Contract.
	4. The Supplier warrants that it has thoroughly investigated its labour practices, and those of its direct suppliers, to ensure that there is no forced labour or slavery used anywhere in the Supplier’s business or by any of the direct suppliers of the Supplier; It has put in place all necessary processes, procedures, investigations and compliance systems to ensure that the warranties made in this clause will continue to be the case at all times; It has taken, and will take in the future, all necessary actions and investigations to validate the warranties made in this clause.
2. Indemnities
	1. The Supplier shall indemnify the Charity from all claims, liabilities costs, proceedings, damages and expenses awarded against, or incurred by, the Charity as a result of:
		1. any infringement of any third party’s Intellectual Property rights or other rights arising out of the supply of the Services; or
		2. any breach or negligent or delayed performance of this Agreement by the Supplier.

8.2 The provisions of this [clause](http://www.practicallaw.com/0-350-9991#a605566#a605566) shall survive termination of this agreement, however arising.

1. Access, Facilities & Insurance
	1. The Charity shall allow the Supplier such access to the Charity’s premises as is necessary to carry out the Services.
	2. The Supplier shall comply with the Charity’s Health and Safety Requirements (as specified in part D of the Terms of Reference) and regulations for the premises concerned.
	3. The Supplier will be expected to provide their own equipment and administrative support. The Charity will only make available to the Supplier the facilities as set out in the Terms of Reference.
	4. The supplier shall, at its own expense, ensure that it has in place insurance that reflects the supplier’s liabilities under this agreement, with a reputable insurance provider. The supplier shall produce on demand to the Charity such policies if required.
2. Intellectual Property
	1. The Supplier hereby assigns absolutely and irrevocably all Intellectual Property Rights in all Works specifically produced by or on behalf of the Supplier pursuant to this Agreement to the Charity.
	2. The Supplier shall use all reasonable endeavours to procure that any necessary third party shall, at the Supplier’s cost, execute such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.
	3. The Supplier warrants that any Works produced by or for the Supplier pursuant to this Agreement will not infringe Intellectual Property Rights owned by a third party.
3. Waiver of Moral Rights

The Supplier hereby irrevocably waives any rights they may have to be identified as the author of any copyright work produced pursuant to this Agreement under Sections 77 and 80 of the Copyright, Designs and Patents Act 1988. The Supplier undertakes to ensure that agents and sub-contractors shall not acquire any right to be identified as the authors of any copyright work.

1. Conflicting Activities

During the period of this Agreement, the Supplier shall not undertake any activities which in the reasonable opinion of the Charity conflict with the Services.

1. Personal Data
	1. In this Clause the “Act” means the Data Protection Act 1998 and its successor legislation, including but not limited to the **General Data Protection Regulation** (**GDPR**) (Regulation (EU) 2016/679), where appropriate, terms used in this Clause shall have the meanings ascribed to them in the Act.
	2. In the event that the Supplier has access to personal data held by the Charity for any reason or is provided or supplied with personal data by the Charity for any purpose, the Supplier shall:

13.2.1 use and/or hold the personal data only for the purposes and in the manner directed by the Charity and shall not otherwise modify or amend or alter the contents of such personal data or disclose or permit the disclosure of such personal data to any third party unless specifically authorised in writing by the Charity, unless required to do so by law; the Supplier shall take all such reasonable steps as may be necessary to safeguard such personal data;

13.2.2 the Supplier will comply in all respects with the Act and shall not do or permit anything to be done which might jeopardise or contravene the terms of the Charity’s registration under the Act, and its successor legislation

13.2.3 The Supplier shall assure the Charity and warrant that all data it processes under the direction of the Charity is confidentially held, and that all employees of the Supplier so processing the personal data are under a duty of confidentiality.

13.2.4 As to specific duties of the Supplier in the processing of personal data under this Act, refer to the **Data Security Agreement**, attached to this Original Supplier Contract. If no specific duties are outlined in the attached Data Security Agreement, it is to be understood by both Charity and Supplier that the Supplier does not process personal data as part of its remit to the Charity.

1. Termination
	1. Either party may terminate this Agreement at any time by giving the other party not less than 30 days’ notice in writing.
	2. The Charity may terminate this Agreement on or at any time after the supplier:

14.2.1 commits any material or persistent breach of this Agreement and, in the case of a breach which is capable of remedy, fails to remedy it within 21 days’ after receiving written notice by the Charity requiring the supplier to do so

14.2.2 becomes incapable, for any reason, of providing the Services;

14.2.3 suffers an Insolvency Event;

14.2.4 is found to use, or the Charity has reasonable grounds to believe that the supplier uses, modern slavery or any form of forced or involuntary labour within its organisation;

14.2.5 does anything which, in the reasonable opinion of the Charity, may seriously prejudice the Charity.

14.3 The Supplier may terminate this Agreement by giving written notice to the Charity if the Charity:

14.3.1 commits any material or persistent breach of this Agreement and, in the case of a breach which is capable of remedy, fails to remedy it within 21 days’ after receiving written notice by the Supplier requiring the Agency to do so

14.3.2 suffers an Insolvency Event

15 Effects of Termination

On the termination of this Agreement for any reason:

* 1. Termination shall not affect the rights of either party prior to the termination of this agreement;
	2. This Agreement shall continue in force to the extent necessary to give effect to those of its provisions which have effect after termination.
	3. The Charity has the right to offset sums owed to the Supplier against any damages it has suffered as a result of the breach of the contract.
	4. Subject to 15.3, any sum owing by either party to the other under any provisions of this Agreement shall become immediately payable;
	5. Subject to 15.3, the Supplier shall be entitled to a proportion of the Fees based on the work done before termination, but will not be entitled to any other payment or compensation whatsoever;
	6. each party shall immediately cease to use, either directly or indirectly, any Confidential Information, and shall destroy or return to the other party any documents in its possession or control which contain or record any Confidential Information;

15.7 neither party shall be under any further obligation to the other and;

15.8 the Supplier must no longer represent themselves as being connected with ActionAid in respect of this assignment in any way.

1. Confidentiality
	1. Each party to the Agreement shall at all times use its reasonable endeavours to keep confidential (and to ensure that its employees and agents shall keep confidential) the Confidential Information which it or they may acquire before or during the course of this Agreement and shall not disclose such Confidential Information except with the written consent of the other party.
	2. The obligations of each of the parties contained in sub-clause 16.1 shall continue for 10 years.
	3. It shall not be an infringement of this clause 16 for either party to disclose any Confidential Information if it is required to do so by any applicable law, or in connection with legal proceedings to which it is a party.
2. Events beyond the parties’ control (force majeure)

17.1 Neither party shall be liable for any delay in performing any of its obligations under this Agreement if such delay is caused by a Force Majeure Event.

17.2 A party experiencing a Force Majeure Event shall give the other party full particulars of the circumstances and use all reasonable endeavours to resume performance as soon as possible*.*

17.3 If and when the period of such incapacity exceeds 6 months then this Agreement shall automatically terminate unless the parties first agree otherwise in writing.

1. Relationship of Parties

Nothing in this Agreement shall create, or be deemed to create, a partnership, the relationship of principal and agent, or the relationship of employee and employer between the parties.

1. No Waiver

No failure or delay by either party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

1. Severance

If any provision of this Agreement is held by any court or other competent authority to be invalid or unenforceable in whole or in part, this Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.

1. Entire Agreement
	1. This Agreement contains the entire agreement between the parties and supersedes and replaces all previous agreements and understandings between the parties.
	2. Each party acknowledges that, in entering into this Agreement, it is not relying on any representation, warranty, pre-contractual statement or other provision except as expressly provided in this Agreement.
2. Non – Assignment

22.1 The Supplier may not assign the benefit or burden of this Agreement without the prior written consent of the Charity.

22.2 The Supplier may only sub-contract performance of its obligations under this Agreement as agreed in writing by the Charity.

1. Third Party Liability

23.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

1. Notices and Services
	1. All notices to be given under this Agreement by either party to the other shall be in writing and shall either be delivered personally or sent by first class, fax or email
	2. All notices to be given under Sub-clause 24.1 shall be delivered to the other party:
		* in the case of the Charity, to its registered or principal office; and
		* in the case of the Supplier, to their last known residential address

or to such other address as may be notified to either party by the other party in writing from time to time.

1. Right of Social Audit
	1. The Charity may carry out a social audit on employees of the Supplier at any time, upon giving no less than three days written notice, interviewing employees directly on matters relating to modern slavery and working conditions, and the Supplier shall cooperate and provide all reasonable assistance to the Charity.
2. Ethical Standards
	1. The Supplier agrees to uphold and adhere to the Charity’s Ethical Code of Business Conduct set out in Appendix A.
3. Applicable Law and Jurisdiction
	1. This Agreement shall be governed by and construed in accordance with the laws of England and Wales.
	2. The parties agree to submit to the exclusive jurisdiction of the courts of England and Wales.

**AS WITNESS** by the signatories belowthis Agreement has been duly executed as detailed above.

SIGNED by

<<Insert name of person signing for Charity>> *[Additional signatures may be required depending on the contract value and level of authorisation of the commission staff member]*

for and on behalf of ActionAid

SIGNED by

Name:

Job Title:

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For and on behalf of <<Insert Supplier's name>> Limited **TERMS OF REFERENCE**

[Guidance: The terms of reference should provide detail to the main agreement. Rather than duplicate, it may be appropriate to refer to other documents (e.g. a pitch brief) – though an explicit reference should be made and the relevant document attached.]

1. **Description of services**

*[This section should contain an agreed :*

* + *rationale for the service*
	+ *description of the services to be provided*
	+ *the deliverables*
	+ *any quality standards that should be adhered to*
	+ *any other specific information or obligation under the agreement]*
1. **Time For Completion of Terms of Referenced Services**

*[This section should outline the key stages of delivery and the date by which they must be delivered]*

|  |  |  |
| --- | --- | --- |
| Key Stage | Deliverable (if applicable) | Date |
|  |  |  |

1. **Fees**

|  |  |  |
| --- | --- | --- |
| Key Stage | Fees | Date that Fees fall due |
|  |  |  |

Payment to be made within 30 days of receipt of Invoice.

**Informal Extensions to this Contract:**  If circumstances require that this contract be extended beyond the End Date, such an extension is allowed only to complete services or receive product supply as detailed in the Terms of Reference of the Original Supplier Contract. Actions to achieve an Informal Extension must commence at least 30 days before the End Date and shall not exceed a period of three (**3**) months.

**Is this Supplier subject to GDPR regulations as a Data Processor or Data Controller?**

 **\_\_\_\_\_\_\_\_ Yes \_\_\_\_\_\_\_\_\_ No**

**Supplier will be a \_\_\_\_\_ Data Processor \_\_\_\_\_\_\_\_ Data Controller**

**If YES, please attach a signed Data Security Agreement to this contract**

**D. Health & Safety Requirements**

ActionAid recognises and accepts its duty to protect the health and safety of all visitors to the Charity. The Charity does however expect suppliers to take reasonable care of their own and others people’s welfare whilst carrying out this assignment and to report any situation which may pose a threat to the well being of any other person.

All injuries, however small, sustained by the Supplier in the course of this assignment must be reported, in London to the Facilities Manager, or in Chard, to the Health & Safety Officer. Accident records are crucial to the effective monitoring and revision of the policy and must therefore be accurate and comprehensive.

Managers within the Charity that commission suppliers are responsible for ensuring that Health & Safety Policy is not compromised and that the Supplier is adequately briefed in line with their duties.

**E. Facilities**

*[In general suppliers are expected to supply their own equipment and support. Detail here what facilities and assistance the Charity will make available to the Supplier during this assignment]*

***Appendix A***

**Ethical Code of Business Conduct**

ActionAid UK (AAUK) is committed to achieving the highest ethical standards in all that we do. This Ethical Code has therefore been developed to clearly set out the ethical standards which apply to AAUK’s UK business activities, and which we want our suppliers and partners to also achieve.

AAUK is a member of the ActionAid International (AAI) federation. Our role is to carry out influencing work in the UK, and to raise funds for our partner organisations to deliver programme work in developing countries. The AAI Secretariat has a mandate for putting in place global policies and procedures, and for ensuring compliance with them. For this reason, there are already global policies in place which cover many of the principles set out below. However, there is currently no global policy document which pulls together a common set of ethical standards for business conduct across the federation.

AAUK is therefore committed to working with AAI to support the agreement of a single common set of ethical standards, which will apply to business dealings across the federation and all our supply chains in due course.

**Principles**

**Business Ethics and Integrity**

We have a zero tolerance approach to corruption, fraud, and bribery. As a minimum we will comply with the requirements of the Bribery Act 2010 and all applicable anti-bribery, anti-money laundering, anti-terrorism and proceeds of crime laws, rules and regulations.

**Legal Compliance**

We will comply with all applicable laws and regulations.

**Transparency and accountability**

Subject to protection of personal data and commercial confidentiality as required, we aim to be open and accountable in all our business dealings. We have in place robust governance structures and systems, maintain true accurate and appropriate record keeping, have clear decision making processes, and aim to be transparent and fair in the award of contracts.

**Human Rights**

We respect the inherent dignity and equal rights of all members of the human family, as proclaimed in the UN Universal Declaration of Human Rights. We will avoid engaging in, and as far as reasonably possible benefiting from, any activity which would result, directly or indirectly, in the abuse of human rights. We are committed to keeping our workplace free of any form of harsh or inhumane treatment.

**Equality and Diversity**

We are committed to treating all people fairly and equally, and welcome diversity in the workplace. We will not engage in, and will take active steps to prevent, discriminatory behaviours on the basis of age, disability, gender reassignment, marriage or civil partnership status, pregnancy and maternity, race, colour, ethnic or social origin, religion or belief, sex, sexual orientation, or any other protected status.

**Health and Safety**

We will provide a safe and healthy working environment for our employees, on-site contractors, volunteers and visitors, and comply with all applicable laws and regulations.

**Environmental**

We recognise our responsibilities towards the environment and are committed to reducing any negative impact on the environment that our work may have. This includes having policies in place to encourage the responsible use of resources and to reduce our output of all types of waste and harmful emissions.

**Code of Fundraising Practice and Guidance**

We are committed to the highest standards of ethical engagement with members of the public and supporters in any fundraising activity that we undertake. We will adhere to, and require that any professional fundraiser or commercial participators fundraising on our behalf are compliant with, the Fundraising Regulator’s Code of Practice and Guidance

**Tax Avoidance**

We are opposed to immoral tax practices, which deprives poorer countries of much-needed funds to deliver vital public services. We are committed to ensuring compliance with all proper requests to pay taxes, duties, and charges imposed or levied on us.

**Modern Slavery and Child Labour**

We will apply a zero tolerance approach to tackling the practice of modern slavery, child labour, trafficked, bonded, or compulsory labour in any of its forms

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***Guidance on the application of this Code:*** *The provisions of this code constitute minimum and not maximum standards, and this code should not be used to prevent the exceeding of these standards. Suppliers and Partners applying this code are expected to comply with national and other applicable law and, where the provisions of law and this code address the same subject, to apply that provision which affords the greater protection.*