**PROGRAMME FUNDING AGREEMENT FOR DELIVERY PARTNER**

This programme funding agreement (the “**Agreement**”) is dated on the signature date hereof between Mind and the Partner.

**WHEREAS:**

1. Mind is a mental health charity in England and Wales.
2. Partner is Healthwatch Kingston upon Thames
3. Mind has received funding to lead the Programme and the Partner shall deliver the Project as part of the Programme.
4. **Prevailing Terms** 
   1. This Agreement is formed of three parts: (1) the Programme Terms, (2) the Standard Terms and Conditions and (3) the 6 Schedules to the Programme Terms. In the event of any conflict between the Programme Terms, the Standard Terms and Conditions and the Schedules, the provisions of the Programme Terms shall prevail followed by the Standard Terms and Conditions. In the event of any overarching conflict, the Funder terms shall prevail as set out in Schedule 6.
5. **Programme Terms**
   1. In this Agreement the following words and phrases shall have the following meanings unless the context otherwise requires:

|  |  |
| --- | --- |
| **Mind** | Mind (The National Association of Mental Health) incorporated and registered in England and Wales with company number 424348 registered as a Charity no. 219830 whose registered office is at Granta House,15/19 Broadway, Stratford, London E15 4BQ. |
| **Partner** | Healthwatch Kingston upon Thames  Registered office: Healthwatch Kingston upon Thames, Kingston Quaker Centre, Fairfield East, Kingston, Surrey, KT1 2PT  Company number: 8429159 |
| **Funder** | Big Lottery Fund  Comic Relief  Department of Health and Social Care |
| **Start Date** | Project funding commenced on 01/04/2016 from the Funder.  Mind and the Partner shall commence this Agreement on 01/03/2019 or on the date on which the Agreement is signed by both parties, if this be later than 01/03/2019 |
| **Term** | This Agreement shall commence on the Start Date and continue until 31 August 2020 when it shall terminate automatically without notice, unless terminated earlier in accordance with this Agreement. |
| **Programme** | Time to Change |
| **Project** | Time to Change Hub to be delivered by the Partner as part of the Programme |
| **Programme Logo** | Subject to clause 10 of the Terms and Conditions, the following logo has been created and is owned by Time to Change for the Programme:  See the source image |
| **Funding** | Subject to clause 2 of the Terms and Conditions, Mind shall pay the Partner the following amounts:  £ 7,500 payable no earlier than 01/04/2019; and  £ 7,500 payable no earlier than 10/11/2019, subject to the review set out in Schedule 1, B. ii |
| **Geographic Location** | The Partner shall deliver the Project in the following geographic regions: Royal Borough of Kingston upon Thames |
| **Mind Contact** | Elizabeth Ladimeji |
| **Partner Contact** | Stephen Bitti, Chief Officer, Kingston upon Thames |
| **Senior Representative** | Any Disputes arising from this Agreement shall be referred to the following persons after the initial contacts:  For Mind: Nick Wilson Young  For Partner: Liz Meerabeau, Chair, Healthwatch Kingston upon Thames |
| **Mind Brand** | Subject to clause 10 of the Terms and Conditions, the Partner shall be entitled to use Time to Change trade mark and logo for the Project pursuant to this Agreement. |
| **Partner Brand** | Subject to clause 10 of the Terms and Conditions, Mind shall not be entitled to use Partner’s trade mark and logo for the Project pursuant to this Agreement. |
| **Data** | The Partner shall collect, process and own the Data only for the purposes of this Agreement. The Partner shall share the Data with Mind quarterly and pursuant to the Data Sharing Agreement at schedule 5.  The Partner is the Data Controller and Mind a Data Processor for the purposes of each Party’s respective obligations under the Data Protection Legislation and compliance therewith.  All Data shared with the Partner shall be deemed Confidential Information and owned by the Partner. |
| **Mind Obligations** | Mind shall provide the Mind deliverables set out in Schedule 2 and manage the Project throughout the Term, including managing all correspondence with the Funder. |
| **Partner Services** | During the Term, the Partner shall provide the services set out in this Agreement and the Partner Deliverables by the dates specified in Schedule 3 and within the Partner Budget set out in Schedule 4. |
| **Policies** | The Partner has and shall maintain throughout the Term policies on the following:   * Data Protection Policy * Complaints Policy * Equal Opportunities * Children and Vulnerable Adults Safeguarding Policy * Health and Safety Policy and Procedure * Incident Management Procedure * Risk Management and Procedure * Hub partnership terms of reference |

1. **CONFIDENTIAL INFORMATION**
   1. All Volunteers must complete a confidentiality pledge for handling sensitive information prior to any activity is commenced.
   2. Where a Party receives a complaint it shall manage it within its own complaints policy and procedures. Where the Partner receives any complaint it shall notify the Mind Contact and [complaints@mind.org.uk](mailto:complaints@mind.org.uk) within 24 hours of receipt of a complaint, which Mind at its sole discretion shall determine if Mind wishes to manage to complaint.

**2) SAFEGUARDING AND RISK MANAGEMENT**

a) Hub partnership members working directly with Time to Change Champions and / or members of the public are required to have appropriate safeguarding and risk management policies and practices in place, as set out in the policies section above.

b) The Partner is responsible for ensuring that Time to Change is notified immediately of any serious safeguarding incidents involving Time to Change Champions participating in Hub Partnership activity or which has occurred during Hub Partnership activity. This may include, but are not limited to, incidents as defined by incident management policy, issues that pose a risk to Mind’s reputation, have a strategic impact on wider organisational work or may include media work.

c) Any complaints received by the Hub partnership should be firstly dealt with by the individual partnership member organisation against who the complaint is made, following their internal complaints procedure, unless otherwise instructed by the Hub Partnerships terms of reference.

The Partner is responsible for ensuring that Time to Change is notified immediately of potentially damaging complaints received by the Hub. Please contact your regional Communities Equalities Co-ordinator or their manager

**3.TERMINATION**

3.1 Mind may terminate this Agreement on giving the Partner 2 month’s written notice in the circumstances listed in section 6 of the Standard Terms and Conditions.

This Agreement has been entered into on the date stated on signing:

|  |  |
| --- | --- |
| Agreed for and on behalf of **MIND**: | Agreed for and on behalf of **PARTNER**: |
| ………………………………………………………… | …………………………………………………………… |
| Signed by duly authorised signatory | Signed by duly authorised signatory |
|  |  |
| NAME: **Jo Loughran** | NAME: **Stephen Bitti** |
| DATE: | DATE: 26.07.19 |

**Standard Terms and Conditions**

These Standard Terms and Conditions are annexed to, and form a part of, the Agreement.

1. **Definitions and Interpretation**
   1. The following definitions in this clause apply in this Agreement (unless the context requires otherwise):

|  |  |
| --- | --- |
| **Brand** | Depending on the context the respective Mind Brand and Partner Brand as defined in the Deal Terms and includes the Programme Logo; |
| **Confidential Information** | any and all information relating to all or any part of the business, property, assets, activities, financial affairs, management, administration or clients of either Party and information in respect of which either Party owes an obligation of confidence to any third party, but shall not include any information in the public domain (other than to the extent that it is in the public domain due to a breach of any obligations on the part of either Party; |
| **Data Protection Legislation** | the Data Protection Act 2018 and the General Data Protection Act, , the Privacy and Electronic Communications (EC Directive) Regulations 2003 and, to the extent that it deals with data protection, the E-Commerce Directive 2000/31/EC together with any legislation, regulations or codes of practice made there under, and where "Data Controller", "Data Subject" and "Personal Data" are referred to in this Agreement they shall have the meaning set out in the Data Protection Legislation; |
| **Day** | a day other than a Saturday, Sunday or public holiday in England and Wales when banks in England and Wales are open for business; |
| **Directors** | the Director of Networks and Communities at Mind and the CEO of the Partner; |
| **Dispute** | any dispute arising in connection with this Agreement or the performance, validity or enforceability of this Agreement; |
| **Force Majeure Event** | any event affecting the performance of any provision of this Agreement arising from or attributable to acts, events, omissions, or accidents which are beyond the reasonable control of a party including any abnormally inclement weather, flood, lightning, storm, fire, explosion, earthquake, subsidence, structural damage, epidemic or other natural physical disaster, transport, disruptions, failure or shortage of power supplies, war, military operations, riot, crowd disorder, strike, lock-outs or other industrial action, terrorist action, civil commotion and any legislation, regulations, ruling or omission of any relevant government, court, competent national authority or governing body; |
| **Good Industry Practice** | the demonstration of that degree of skill, care, diligence and foresight which would reasonably and ordinarily be expected from a prudent and experienced, properly qualified and competent person engaged in the same type of services provided by each Party under the same or similar circumstances; |
| **IP Rights** | all intellectual property rights and interests including without limitation: (i) copyright, patents, database rights and rights in trade marks, designs, know-how moral rights, database rights, domain names, topography rights and confidential information or any similar right exercisable in any part of the world (whether registered or unregistered) for the duration of their full terms (including any renewal or extension thereof); (ii) applications for registration, and the right to apply for registration, for any of these rights; and (iii) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world; |
| **Party** | Mind and the Partner (each a Party and together the Parties); |
| **PO Number** | the Purchase Order number provided by Mind to the Partner; |
| **Prior IP Rights** | Any and all IP Rights existing prior to the commencement of this Agreement; |
| **Resulting IP** | Any IP Rights resulting from or developed by either Party in whole or mainly in connection with or arising out of this Agreement, including any jointly created IP Rights; |
| **Works** | Any content created for the Programme and/or Project including but not limited to protocols, programmes, leaflets, booklets, websites, logos, trademarks, Programme Logos, and other works that may be protected by IP Rights, Confidential Information and know how. |

* 1. The headings in this Agreement are inserted for convenience only and shall not affect its construction.
  2. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
  3. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders and the same for plural or singular.

1. **Funding**
   1. Funding is solely for the Project as set out in Schedule 1 and within the specified budget to this Agreement and shall not be used for any other purpose. The Partner shall ensure all Funding is used to achieve the Partner Services set out in Schedule 3.
   2. Any material change in Partner Services is subject to prior agreement from Mind (and potentially the Funder) and may affect the Funding to the Partner, including complete withdrawal of Funding for the Project.
   3. The Partner will hold any unused part of the Funding on trust and the Partner will repay any Funding (including any unused Funding) to Mind immediately upon demand. The Partner may not transfer or dispose of the Funding in any manner.
   4. Funding and payments are subject to Mind’s satisfaction of the Monitoring requirements set out in clause 4 of these Terms and Conditions or by the Funder in Schedule 5.
   5. Mind shall raise a purchase order for the payment and send the PO Number to Partner. The first purchase order will be supplied within two weeks of this Agreement being signed by Healthwatch Kingston upon Thames. The Partner shall send a valid invoice to Mind at invoice@mind.org.uk including the PO Number, which subject to Mind’s receipt of payment from the Funder Mind shall pay the invoice within 30 Days of receipt.
   6. Mind will not be liable for any losses or costs (including, but not only, bank charges) if:
      1. Mind does not make Funding payments on the agreed date; or
      2. The Funder refuses or fails to make any payment at all to Mind.
   7. Other than the Funding, each Party shall bear their own costs in relation to this Agreement and participation with the Programme, and neither Party shall be liable to the other for any costs incurred.
   8. It is the intention of the Parties that it represents a contract for services. Accordingly the Funding paid under this Agreement is business income and the Partner will be responsible for including any such monies in the accounts of the business and for paying taxes which may be due thereon, if appropriate. The Partner shall ensure that Mind pays no more than the Funding as if the payment is not subject to tax. In no event shall the Partner receive additional monies in the event of any overspend or miscalculation.
   9. Mind may retain or set off any sums owed to it by the Partner pursuant to this Agreement.
2. **Audit**
   1. The Partner shall keep separate, proper and up-to-date records and books of account in relation to the Programme for at least 7 years after termination of the Project, and shall be open at all reasonable office hours to inspection and audit by Mind or its duly authorised agent or representative, who shall be entitled to take copies of the same. If such inspection or audit should reveal a discrepancy, the Partner shall immediately make up the difference and reimburse Mind in respect of any professional charges incurred for such audit or inspection.
   2. The Partner will acknowledge the Funding in its annual report and accounts, including the Programme and its related expenditure as a restricted fund under the description of the name of the Programme and will not be included in general funds.
   3. Where required provide access to the Funder or Funder’s duly authorised agent or representative, to upon reasonable notice and in reasonable hours inspect and audit the Partner’s books and records in relation to the Project.
3. **Monitoring**
   1. The Partner will:
      1. closely monitor the delivery and progress of the Project throughout the Term to ensure that the objectives of the Project are being met, Partner Deliverables are met and the terms of this Agreement adhered to;
      2. complete and provide to Mind all reports set out in this Agreement in the form required by Mind/Funder by the due dates set out in Schedule 5, including having answered any and all of Mind’s reasonable queries arising from such documentation to Mind’s (and where applicable the Funder’s) satisfaction;
      3. not make any significant changes to the Partner Deliverables without Mind’s prior written consent, this includes the Project’s aims, delivery, outcomes, and sub-partners;
      4. notify Mind immediately in writing of anything that significantly delays, threatens or makes unlikely the Partner’s Deliverables on time and/or to budget; and
   2. Upon Mind’s request the Partner will provide to Mind any additional information, explanations and documents to Mind as requested about the Project or Funding.
   3. Upon reasonable notice to the Partner and subject to Mind’s reasonable request, the Partner will attend and will permit any person authorised by Mind to monitor delivery, including visits to Project sites and compliance visits, attend meetings with Mind at any time during or after completion of the Project.
4. **Withholding, Suspending or Claw Back of Funding**
   1. If either Party believes that the other Party is in remedial breach of any material obligations under this Agreement, it may assert the alleged breach, in full detail and written notice to the other Party, specifying the reasonable remedy and timescale for such remedy.
   2. Mind may suspend, withhold or require repayment of any or all of the Funding in the following events:
      1. In anticipation of the Funder withholding or suspending payment of the Programme funding and/ or requires repayment of all or part of the Funding;
      2. If Mind considers that the Partner:
      3. has used the Funding to pay for purposes not set out on the Project or Partner Services;
      4. fails to provide the Partner Deliverables by the Due Dates in Schedule 3, including only partial delivery;
      5. fails to meet any of the terms of this Agreement, including but not limited to the Policies and/or clause 12 (Compliance) herein;
      6. has not made substantive satisfactory progress with the Project;
      7. has not commenced the Project within six (6) months of the Start Date; or
      8. has failed to deliver stages of the Project on time (or at all) and or to the Partner Budget in Schedule 4; or
      9. has failed to complete the end of Project report to Mind’s satisfaction;
      10. The Partner undertakes activities that Mind considers are likely to bring it into disrepute, including but not limited to dishonest, fraudulent or negligent manner;
      11. The Partner publishes anything or provides information to Mind that is inaccurate or misleading; or
      12. any reason set out in clause (Termination),
   3. Where Mind suspends payment of the Funding due to any reason set out in this clause 5.2 Withholding), Mind shall not be liable for any consequences, whether direct or indirect, arising from such suspension even if the investigation finds no cause for concern.
   4. During any investigation by Mind or the Funder, the Partner will:
      1. assist Mind and/or the Funder with its investigations; and
      2. not use any unspent Funding without Mind’s prior written approval.
   5. Mind reserves the right to impose additional terms and conditions where Mind investigates the Partner or Project pursuant to this clause 5.2 (withholding), including reallocating Funding to another partner in the Programme or Project where deemed appropriate.
   6. Where Mind or the Funder terminates the funding for the Project for any reason, the Funder will promptly return any unspent Funding to Mind and complete a final report. Mind reserves the right to take action to recover Funding payments already paid to the Partner.
   7. Mind may require part or full repayment of the Funding paid to the Partner where any event arises under clauses above:
      1. The Funding has not been used for the purposes of the Project – clause 5.2.3;
      2. The Partner has failed to deliver the Partner Services or any agreed Partner Deliverables as set out in clause – clauses 5.2.4 - 5.2.12;
      3. Where the Partner has any unspent funds from the Funding;
      4. Where there is a substantial variation in actual income and expenditure from original Partner Budgets; or
      5. Where an event arises under clause 6 (Termination events).
5. **Term and Termination Events**
   1. This Agreement shall continue for the Term and then automatically terminate as set out in the Programme Terms.
   2. Without prejudice to any rights or remedies that have accrued under this Agreement or any of its rights or remedies, either Party may terminate this Agreement immediately on written notice to the other Party if:
      1. the other Party commits any material breach of any of its obligations under this Agreement which (if redeemable) is not remedied within 10 Days of written notice specifying the breach and requiring it to be remedied; or
      2. the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that the conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement or deliver the Project; or
      3. the other Party ceases to trade either in whole, or in any part or division involved in the performance of this Agreement); or
      4. the other Party becomes insolvent or unable to pay off its debts within the meaning of the insolvency legislation applicable to that Party; or
      5. a person (including the holder of a charge or other security interest) is appointed to manage or take control of the whole or part of the business or assets of that party, or notice of an intention to appointed such a person is given or documents relating to such appointment are filed with any court; or
      6. the ability of that Party’s creditors to take any action to enforce their debts is suspended, restricted or prevented or some or all of that Party’s creditors accept, by agreement to pursuant to a court order, an amount of less than the sums owing to them in satisfaction of those sums; or
      7. any process is instituted which could lead to that Party being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purposes of solvent amalgamation or reconstruction); or
      8. the other Party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors; or
      9. the Partner, members of its governing body, employees or volunteers are subject to an investigation or formal enquiry by any regulatory body;
      10. where there is a significant change in purpose, ownership or recipient of the Partner during the Project beyond the scope of the Project; or
      11. any warranty given in clause 14 of these Terms and Conditions is found to be untrue or misleading.
6. **Effect of Termination**
   1. On termination of this Agreement for any reason:
      1. all licences granted within this Agreement shall terminate immediately and neither party shall have any further obligation to the other under this Agreement after its termination;
      2. the Partner shall promptly return all material and copies of documents (including all digital copies) to Mind or destroy at Mind’s request;
      3. the accrued rights and liabilities (however arising) of the Parties as at termination shall survive and continue in full force and effect;
      4. any unspent sums shall be repaid to Mind by the Partner within 30 days of the termination date;
      5. all provisions of this Agreement shall cease to have effect, except for clauses 3, 7, 8, 9, 10, 11, 15, and 22.
      6. notwithstanding its obligations otherwise set out in this Agreement, if a Party is required by any law, regulation, government or regulatory body to retain any documents or materials (including Confidential Information), it shall notify the other Party in writing of such retention, giving details of the documents or materials that it must retain.
7. **Confidentiality**
   1. Each Party undertakes that it shall not at any time disclose to any person any Confidential Information of the other Party, except as permitted by clause 8.2 of these Terms and Conditions.
   2. Each Party may disclose the other Party's Confidential Information:
      1. to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Party's obligations under this Agreement;
      2. each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's Confidential Information comply with this clause 8.2.3 of these Terms and Conditions; and
      3. as may be required by law, court order or any governmental or regulatory authority.
   3. No Party shall use any other Party's Confidential Information for any purpose other than to perform its obligations under this Agreement.
   4. Mind may provide the Partner with access to certain protocols and resources pursuant to this Agreement and shall be treated as Confidential Information. The Partner shall only use such resources for the direct purpose of providing the Services under this Agreement and the Partner shall not copy or share the resources or their output with any other person (including without limitation other employees of the Partner).
8. **Data Protection**
   1. Any and all Personal Data collected or processed in connection with this Agreement shall be handled in accordance with the Data clause set out in the Programme Terms and in compliance with all Data Protection Legislation at all times (even after termination of this Agreement).
   2. Subject to clause 15 of these Terms and Conditions, each Party shall indemnify and hold the other Party harmless from all liabilities, losses, costs, damages and expenses (including without limitation reasonable legal costs) suffered or incurred by the other party directly arising from any third party claim (including Information Commissioners Office) of a breach or claimed breach of this clause 8.
9. **Intellectual Property Rights**
   1. Unless otherwise agreed or as set out in Schedule 6 hereto, Partner shall not be permitted to use any of the Funder’s IP Rights.
   2. Except as Mind and Partner may otherwise agree in writing, any IP Rights and Resulting IP created by the Partner arising in connection with this Agreement, including existing and future rights, shall be, and is hereby, assigned full title and guarantee by the Partner to Mind (Mind having obtained all necessary rights from the Partner to do so) for all present and future rights.
   3. For the avoidance of doubt any IP Rights of Mind (including Programme Logo) used by the Partner in the course of such duties shall remain in the ownership of Mind.
   4. The Partner shall have a non-exclusive license to use the Works for the Project pursuant to this Agreement for the Term only.
   5. The rights and obligations under sub-clause 10.2 of these Terms and Conditions shall continue in force after the termination of this Agreement. If so requested, the Partner shall at Mind’s expense execute all documents and do all things necessary to effect sub-clause 10.2.
   6. Each Party shall give full disclosure of any Prior IP Rights owned or licensed from another party which is necessary for the Programme.
   7. Each Party hereby grants the other Party an irrevocable, royalty-free, non-exclusive, non-assignable license of the Prior IP Rights to the extent that the licensing party has the relevant rights in it, to use the works solely in the performance of the Programme, as necessary and as otherwise may be agreed in relation to the Programme.
   8. Where a Party sub-contracts, or sub-grants in relation to the Programme, that Party shall, as far as necessary to meet obligations under the agreement and /or for the integrity of the Programme, obtain a full assignment in any IP Rights created arising from the work of any sub-contractor or sub-grantee or where not possible to assign a license for use of the IP Rights in the Programme.

**Trade Marks:**

* 1. Subject to clause 10.10 of these Terms and Conditions, each Party grants to the other Party a non-exclusive, non-assignable, non-sublicensable, non-commercial license to use the respective Party’s Brand (including the Programme Logos) in relation to the Project and as part of the Programme only in accordance with the terms of this Agreement for the Term.
  2. The license granted in clause 10.9 shall be subject to the following conditions:
     1. Brand use is always in compliance with the granting Party’s (“Licensor”) Brand guidelines;
     2. Brands are owned by the Licensor and any goodwill derived from the other Party’s (“**Licensee’s**”) use shall inure to the benefit of the Licensor;
     3. The Licensee agrees not to obtain any right, titles or interest in Brand other than as a Licensee of the Brand;
     4. The Licensee shall not, either directly or indirectly, whether in any proceedings to enforce the provisions of this Agreement or in any independent action, contest or question the validity of Brand or Licensor’s right to own the Brand;
     5. The Licensee agrees to use the Brand only in accordance with the terms set out in this Agreement and not to use the Brand in any way which would tend to allow them to become generic, lose their distinctiveness, become liable to mislead the public, be liable to revocation or be detrimental to the good name, goodwill, reputation and image of the Licensor; and
     6. On the date of termination of this Agreement the licensee shall return or destroy any copies of the other’s Brand.
  3. Subject to clause 15 of these Terms and Conditions and where IP Rights are licensed or assigned arising from this Agreement and where any third party makes a claim or notifies of an intention to make a claim against a Licensee which may reasonably be considered likely to give rise to liability under this clause 10, the Licensor shall indemnify the Licensee against all direct damages, losses and expenses arising as a result of any action or claim of infringement of IP Rights of a third party.

1. **Publicity and Communications**
   1. Unless otherwise agreed by the Funder, neither Party shall use the Funder’s name or logos in any capacity.
   2. Subject this clause 11, any and all announcements relating to the Project shall be agreed in writing following the approval process including all marketing and branding of the Programme. All external communications shall use the Programme Logos where provided.
   3. The Party shall submit (email to be sufficient) to the other party for its approval all materials for publicity in any medium bearing the other party’s name and/ or Logos (IP Rights and subject to sub-clause 10.10 of these Terms and Conditions) prior to issuing such materials and shall not use such materials without the prior written approval of the other Party (not to be unreasonably withheld).
   4. If in respect of any material submitted to a Party whose approval is required under clause 11.3 (an “**Approving Party**”) the Approving Party has not notified within 5 Days of receipt of the materials the Party requiring approval under clause 8.3 of its approval or rejection of such material, the Approving Party shall be deemed to have given its approval for the purposes of clause 11.3 of these Terms and Conditions.
   5. Subject to approval by the other Party pursuant to clause 8.3 or 8.4 of these Terms and Conditions, the Party must comply with the other Party’s brand guidelines notified by the other party from time to time when using the other party’s name and logo and all other terms of the license set out in clause 10.10 of these Terms and Conditions.
   6. Neither Party shall bring the other Party into disrepute, nor engage in any conduct which in the reasonable opinion of the other will cause harm to the reputation of the other Party, the Project or its products or services.
   7. Breach of this clause 11 shall be deemed a material breach under clause 10 of these Terms and Conditions.
2. **Compliance**
   1. Each Party shall cooperate in good faith with the other Party in relation to all matters under this Agreement.
   2. Each Party shall comply with all applicable laws and regulations in England and Wales in the performance of its obligations under this Agreement.
   3. Neither Party shall commit or enable any employees, volunteers or contractors to engage in fraudulent activity, bribery or corruption as set out in the Bribery Act 2010.
   4. The Partner warrants that it has implemented all Policies and shall adhere to such Policies in relation to all activity under this Project, in particular:
      1. That all volunteers recruited by the Partner adhere to a confidentiality pledge for handling sensitive information prior to commencing any activity is commenced; and
      2. Where a Party receives a complaint it shall manage it within its own complaints policy and procedures. Where the Partner receives any complaint it shall notify the Mind Contact and [complaints@mind.org.uk](mailto:complaints@mind.org.uk) within 24 hours of receipt of a complaint, which Mind at its sole discretion shall determine if Mind wishes to manage to complaint.
3. **Force Majeure**
   1. Neither party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any Force Majeure Event while and to the extent that they are unable to perform due to any Force Majeure Event, PROVIDED THAT:
      1. The affected Party notifies the other in writing of the nature of the reason for the delay and the likely duration of the delay, the performance of the delaying party's obligations, to the extent affected by the delay;
      2. The affected party could not have avoided the effect of the Force Majeure Event by taking reasonable precautions; and
      3. The affected party has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable to resume the performance of its obligations as soon as reasonably possible.
   2. Provided that performance is not resumed within 60 Days after service of written notice the non-delaying party may by notice in writing terminate this Agreement.
4. **Warranties** 
   1. Each Party hereby warrants to the other Party that it:
      1. shall comply with all laws and regulations applicable under the laws of England and Wales, and the European Union where applicable, to this Agreement;
      2. it has the full right, power and authority to enter into this Agreement, to grant the licenses granted hereunder and perform the acts required of it hereunder;
      3. is not subject to any current or pending action that may impact the Party’s ability to perform under this Agreement;
      4. can meet their respective obligations and Deliverables set out in this Agreement and Schedules hereto;
      5. has insurance to cover all activity and related risk to the Project; and
      6. it may legally conduct business in the United Kingdom under this Agreement.
5. **Indemnities**
   1. The indemnities set out in this Agreement are subject to the following conditions:
      1. The party claiming the indemnity (“**Indemnified Party**”) shall promptly notify the other Party (“**Indemnifying Party**”) in writing of the claim;
      2. The Indemnified Party shall make no admissions or settlements without the Indemnifying Party’s prior written consent;
      3. The Indemnified Party shall give the Indemnifying Party all information and assistance that the Indemnifying Party may reasonably require;
      4. The Indemnified Party shall allow the Indemnifying Party complete control over the litigation and settlement of any action or claim; and
      5. The Indemnified Party shall mitigate loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.
   2. Where Mind is subject to a full indemnity to the Funder for the Project, the Partner shall fully indemnify Mind for any and all losses incurred as a result of the Partner’s acts or omissions that gives rise to a claim by the Funder against Mind including (but not limited to) any claw-back claim under the provisions of the Funder terms.
6. **Liability**
   1. Mind shall not be liable under this Agreement (howsoever arising) for any loss of profits, loss of revenue, loss of or damage to goodwill, loss of contracts, or any indirect, special or consequential loss, howsoever arising out of or in connection with this Agreement, in respect of one or more incidents or occurrences during the Term shall be limited to a sum equal to the Funding actually received by the Partner.
   2. Nothing in this Agreement shall limit or exclude either party’s liability: (a) for fraud or fraudulent misrepresentation, (b) for death or personal injury caused by either party’s negligence or that of its servants or agents or sub-contractors, or (c) in relation to any other liability which cannot be excluded or limited by applicable law.
7. **Dispute Resolution**
   1. If any Dispute arises then the Parties shall follow the dispute resolution procedure set out in this clause 3.9.
      1. Either Party shall give the other written notice (email to be sufficient) of the Dispute, setting out its nature and full particulars (“**Dispute Notice**”) together with supporting documentation. Such notice shall be given to the relevant contact set out in the Programme Terms;
      2. within ten (10) Days of service of the Dispute Notice, the Parties shall meet in a good faith effort to resolve the Dispute;
      3. in the event that the Parties fail to resolve the Dispute within 15 Days of service of the Dispute Notice, the Dispute shall be referred to the Senior Representatives of each Party who shall attempt in good faith to resolve it; and
      4. if the Senior Representatives reach agreement on the resolution of the relevant Dispute, the Parties will each procure that the agreement is within ten (10) Days reduced to writing and signed by their duly authorised representative at which time it shall be and remain binding on the parties; or
      5. the Senior Representatives are unable to resolve the Dispute within 15 Days of the relevant meeting or, for whatever reason the meeting does not take place, then a Party may by written notice to the other require that the Dispute be resolved by escalation to the Directors who shall meet within 10 Days of the Senior Representatives meeting to resolve the Dispute;
      6. if the Directors cannot reach agreement on the resolution of the Dispute at that Director meeting, either party may by written notice to other require that the Dispute be resolved by mediation in accordance with the CEDR Model mediation Procedure. The Party serving that notice shall as soon as reasonably practicable apply to CEDR for a mediation of the Dispute. If neither party serves a notice requiring mediation of the Dispute within 20 Days of the expiry of the period referred to herein or, if a Part foes but fails to apply to CEDR as soon as reasonably practicable, negotiation will be deemed to have failed. Referral to mediation shall not prevent the Parties commencing or continuing court proceedings.
      7. The representatives (including Directors) are and will remain authorised to settle a Dispute on behalf of the Party they represent. A Party may change its representative by giving written notice to the other. If a representative is unable to attend a meeting held pursuant to either these sub-clauses 17.1.2 or 17.1.3 or 17.1.6, the Party they represent may by prior written notice to the other nominate a substitute to attend provided the substitute has at least the same status or level of responsibility as the person they are replacing and is authorised to settle the relevant Dispute on behalf of the Party they represent.
      8. All negotiations pursuant to this clause 17 between Senior Representatives and Directors shall be conducted in strict confidence and on a "without prejudice" basis.
   2. In the event that the Dispute arises due to the Funder’s enquiries the above time periods for Dispute may be amended to meet any Funder requirements and information or documentation required by the Funder a core requirement of any resolution to the Dispute.
8. **Notices**
   1. Any notices and approvals to be served under this Agreement shall be served by email or by pre-paid or registered post and shall be served upon the Contact at the relevant party at the addresses set out in the Deal Terms. Such notices shall be deemed served: (a) via mail within (i) forty eight (48) hours after registered mail within a UK destination or (ii) seventy two (72) hours after registered mail to a non-UK destination; and (b) via email with delivery receipt within twenty-four (24) hours after sending the email. This clause 18 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
   2. Either Party may change its Contact or Senior Representative by providing written notice to the other Party (email to be sufficient) at any time.
9. **Relationship of the Parties**
   1. Nothing in this Agreement shall be deemed to constitute a partnership or joint venture between the Parties, nor constitute either party the agent of the other party for any purpose, nor enter into any commitments for or on behalf of any other Party. The use of ‘partner’ in this agreement is not any legal partnership.
10. **Severance**
    1. If any provisions or portions of this Agreement shall be deemed to be held invalid, illegal or unenforceable or shall be required to be modified, it shall be modified to the minimum extent necessary to make it valid, legal and enforceable and the remaining portions, provisions or part-provisions of this Agreement shall not be affected or impaired.
11. **Variation**
    1. No variation to this Agreement shall be effective unless in writing signed by a duly authorised representative of each Party.
    2. Any variation to any Partner Deliverables or delivery dates shall be subject to prior agreement by the Funder.
12. **Entire Agreement**
    1. This Agreement and any documents referred to in it constitute the entire agreement between the Parties and supersedes and extinguishes all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to its subject matter.
    2. Each Party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. Nothing in this sub-clause 22.2 limits or excludes any liability for fraud.
13. **Costs**
    1. Each party shall pay the costs and expenses incurred by it in connection with entering into and the execution of this Agreement.
14. **Contracts (Rights of Third Parties) Act 1999** 
    1. Except as expressly provided elsewhere in this Agreement, this Agreement is not intended to, and does not give, any person (whether natural or legal) who is not a party to it, any rights under the Contracts (Rights of Third Parties) Act 1999, to enforce any of its provisions.
15. **Assignment and sub-contracting**
    1. Subject to the further provisions of this clause, the Partner shall not assign, sub‑license, transfer or otherwise dispose of any or all of its rights or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of Mind EXCEPT that when the Partner delegates performance of any (but not all) of its obligations to any third party (“**Delegating Party**”) the Partner shall:
       1. Procure the Delegating Party complies with all provisions of this Agreement; and
       2. Remain liable for all the Partner’s obligations under this Agreement notwithstanding such delegation.
    2. Mind may assign, sub‑license, transfer or otherwise dispose of any or all of its rights or deal in any other manner with any or all of its rights and obligations under this Agreement.
    3. Each Party confirms it is acting on its own behalf and not for the benefit of any other Party.
16. **Waiver**
    1. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
17. **Counterparts**
    1. This Agreement may be executed in any number of counterparts, each of which shall, when executed and delivered, be an original and all counterparts shall together constitute one and the same agreement. No counterpart is effective until each Party has executed at least one counterpart.
18. **Governing law & Jurisdiction** 
    1. Subject to clause 14 of these Terms and Conditions, this Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
    2. The Parties agree to submit all disputes or claims arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) to the exclusive jurisdiction of a Court of England and Wales.

**Schedule 1: Project Overview**

(A) **Strategic Purpose of Project**

The Project is part of the Royal Borough of Kingston Time to Change Hub partnership funding agreement. This agreement relates specifically to the following payments to be made by Time to Change to the named Partner in this agreement in relation to;

1. A £15,000 contribution from Time to Change to the Partner towards the costs of administering and supporting the Royal Borough of Kingston Hub Partnership. Unless otherwise agreed with Time to Change, the full amount of which is to be used as a contribution towards the Partner’s staff time required to support and administrate the Royal Borough of Kingston Hub partnership
2. A £10,000 contribution from Time to Change towards the Royal Borough of Kingston Hub’s Time to Change Champions Fund, to be managed and administered by the Partner. However the funds will be held in a named wallet by a third party service provider supplying a pre-paid service

**(B) Delivery Plan & Timeline**

The Project shall fund the delivery of two core functions in relation to the Royal Borough of Kingston Hub;

1. Contribution towards partnership support costs

These are expected to be used as continuous, ongoing staffing costs. As such Mind will pay the Partner 50% of the £15,000 contribution towards staffing costs at the start of this agreement and 50% following receipt of the report due to Time to Change on 10 November 2019.

1. Time to Change Champion’s Fund

The £10,000 Champions Fund may be used to support the campaigning activity of local Time to Change Champions at any point during the lifetime of this agreement, but is expected to be mainly utilised around World Mental Health Day (10 October 2019) and Time to Talk Day (6 February 2020) and Mental Health Awareness week (May 2020). Payments from the Champions Fund must only be made to Community Champions registered with Time to Change. People with lived experience of mental health problems and new to the campaign can sign up as Champions at any time prior to receiving funds.

Mind will pay the first 50% of the Champions Fund (£5,000) to the Partner via the third party provider of pre-payment card service in Q2 (July 2019) to provide funding for activity around World Mental Health Day 2019. As soon as possible after World Mental Health Day 2019 Time to Change and the Royal Borough of Kingston Hub Partnership will review the performance of the Time to Change Champions Fund to date. Should a substantial amount of the first payment of the Time to Change Champions Fund remain unspent, and there be legitimate concerns as to the Royal Borough of Kingston Hub Partnership’s ability to effectively utilise the full £10,000 within their area before the end of this agreement, Time to Change may choose to deduct some or all of the remaining balance from the second payment of £5,000. The remaining 50% or agreed amount of the outstanding Champions Fund balance will be paid following receipt of the report due to Time to Change from the Royal Borough of Kingston Hub Partnership by 10 October 2019, subject to this review having been completed.

Any unspent balance remaining on the Champion’s Fund by the end of this agreement will be returnable to Time to Change unless an alternative use in relation to continuing Hub activity is agreed in writing between Time to Change and the Royal Borough of Kingston Hub Partnership prior to that date.

Overall plan of Project with timeframes and outputs/milestones for that period:

|  |  |  |
| --- | --- | --- |
| **What is being delivered?** Royal Borough of Kingston | Royal Borough of Kingston **Hub Time to Change Champion’s Fund** | **Administration support to the** Royal Borough of Kingston **Hub Partnership** |
| **When is it being delivered?** | Between the start date of this agreement and 31 August 2020, with the majority of activity expected to take place around;  World Mental Health Day  10 October 2019  Time to Talk Day  February 2020  Mental Health Awareness Week  May 2020 | For the duration of this agreement |
| **Party leading delivery** | Healthwatch Kingston upon Thames | Healthwatch Kingston upon Thames |
| **End Users Targeted** | Local Time to Change Champions within the Healthwatch Kingston upon Thames Hub defined area. | n/a |
| **What Engagement?** | Promotion of the Time to Change Champions Fund to local Time to Change registered Champions.  Provision of support and guidance to local Champion’s applying to the Time to Change Champion’s Fund.  Monitoring and reporting to the Royal Borough of Kingston Hub Partnership and Time to Change on the delivery of the Time to Change Champions Fund. | n/a |
| **Target numbers?** | A £10,000 would be expected to fund 20 local events if all Champions apply for the maximum award of £500.  These Champion events and activities will be monitored and reported by Healthwatch Kingston upon Thames | n/a |
|  |  |  |

(C) **Sustainability and Learning of Project Obligations**

1. The Partner will work with the Royal Borough of Kingston Hub Partnership and Time to Change, including Time to Change’s appointed evaluators, to support the evaluation of the impact of local activity.
2. Wherever possible, both Mind and the Royal Borough of Kingston Hub Partnership will seek to share best practice and learning with the other party and the wider Hubs Network.

**Schedule 2: Mind Deliverables**

1. Time to Change shall during the Term:
2. Provide a dedicated local representative (Regional Community Equalities Coordinator) to act as the first point of call for the partner for to any Hubs related issues.
3. Provide a Senior Officer for the Project duration to directly support the Partner with the delivery and monitoring of the Time to Change Champion’s Fund.
4. Provide the Partner with all necessary reporting tools and systems required to meet their obligations under this agreement
5. Endeavour to pay the Partner promptly and on time subject to receipt of the agreed monitoring reports

**Schedule 3: Partner Deliverables**

1. Partner shall provide the following services during the Term:
   1. Work in collaboration with Time to Change and the Royal Borough of Kingston Hub Partnership to develop the Project drawing on Partner’s knowledge of its local community assets and resources, including referrals and exit pathways for the Project.
   2. Provide sufficient staff time, either through the recruitment of a part-time Project co-ordinator or extension of an existing post, to provide effective support and administration for both the Royal Borough of KingstonHub Partnership and the delivery of the Time to Change Champions Fund up to 31 August 2020 as required. Please inform Time to Change of any staff changes as soon as possible, including plans for recruiting replacement staff and how work will continue during this period.
   3. Report to Time to Change on the delivery of the Time to Change Champions Fund.
   4. The Partner agrees to use the online ‘pre-loaded’ card service provided by Time to Change to distribute Champions Fund grants and monitor spend against them. Time to Change will be able to access the running total of spend against the Royal Borough of Kingston Hub’s Champions Fund, but will not have access to personal details relating to any spend. Should the system be unavailable for any reason, the Partner will be responsible for monitoring spend against the Champions Fund pot and recording receipts as appropriate for all activities funded through it.
   5. Ensure that the Royal Borough of Kingston Hub Partnership fulfils its reporting obligations to Time to Change as set out under the separate Hub Partnership Agreement.
   6. Assist and collect data in accordance with the projected outcomes of beneficiaries through the Programme;
   7. Promote the Champions Fund through the local communications channels used by the Partner and the Royal Borough of Kingston Hub Partnership;
   8. Partner will provide a named contact point (phone and e-mail) that will be responsible for reporting, monitoring and raising any issues and any troubleshooting support required by Mind.
   9. The Partner will provide the name of each applicant to their allocated Regional Community Equalities Coordinator and Champions Fund contact (based within Mind) upon receipt of each application and prior to the relevant Hub assessment panel meeting, in order to verify Champion registration status via the Time To Change central Champions database.
   10. The Partner must share examples of good practice, learnings and other relevant information with Time to Change and other Time to Change Hubs outside of Royal Borough of Kingston Hub to enable wider sharing, collaboration and support.
   11. The Partner must provide a contact name/s for involvement in monitoring and evaluation activities (e.g. focus groups and interviews).
2. The parties agree that the above list of services is not an exhaustive list and Mind may from time to time acting in consultation with Partner amend the list of services to be provided by Partner in order to fulfil its commitments to the Funder.
3. The Partner shall work with Mind to support the Programme to ensure the outcomes, indicators and timescales set are met.
4. Partner Key Performance Indicators (“**Partner KPIs**”)

|  |  |  |  |
| --- | --- | --- | --- |
| **Outcome/ Indicator** | **Proposed Measure/ Targets** | **Data Source(s)/ How measure** | **Timescale/ Due Date** |
| Number of Champion lead events supported | 20 | Healthwatch Kingston upon Thames records of Champions Fund grants made and activities delivered | 10 events (50%) by 31 October 2019  20 events (100% total) by 28 February 2020 |
| Successful engagement of priority groups with the Champions Fund | In-line with local population levels of priority groups | Healthwatch Kingston upon Thames analysis of applications made to and approved by the Time to Change Champions Fund by Champions from priority groups | 31 October 2019  28t February 2020 |
| Level of Champions Fund awarded by World Mental Health Day 2020 | Assessed on a case by case basis. £3,000 minimum of awards made as a guideline by the due date | Healthwatch Kingston upon Thames records of Champion’s Fund grants made and activities delivered | 31 October 2020 |

**Schedule 4: Partner Budget**

The Partner shall receive the Funding for the following agreed budget for the Programme as approved by the Funder and agreed with Mind:

|  |  |  |  |
| --- | --- | --- | --- |
| **Delivery Partner** **Budget** | **Yr 1** | **Yr2** | **Total** |
| Contribution towards Hub overhead costs | £15,000 | - | £15,000 |
| Time to Change Champion’s Fund | £10,000 | - | £10,000 |

**It is prudent that the Partner ensures from the overhead costs a reserve of £2,000 to facilitate involvement and participation of people with lived experience in the governance of the Hub and £1,000 to cover costs for key events during the life cycle of the Hub partnership.**

**Schedule 5: Reporting & Monitoring**

**(A) Reporting**

The Partner will be responsible for ensuring that the Royal Borough of Kingston upon Thames Hub Partnership submits interim reports to Time to Change by the following dates;

|  |  |
| --- | --- |
| Report due date | Period covered in report |
| 5 July 2019 | 1 March 2019 – 30 June 2019 |
| 5 October 2019 | 1 July 2019 – 30 September 2019 |
| 5 January 2020 | 1 October 2019 – 31 December 2019 |
| 5 April 2020 | 1 January 2020– 31 March 2020 |
| 5 July 2020 | 1 April 2020 – 30 June 2020 |
| 5 September 2020 | 1 July – 31 August 2020 |

The report due on 10 September 2020 will act as a final report for the Royal Borough of Kingston upon Thames Hub Partnership to Time to Change due under this agreement, but will take the same format as the interim reports.

Information should be provided to Time to Change using a standardised form and process prescribed by Time to Change and should include an overview of;

1. An overview of activity delivered by the Royal Borough of Kingston upon Thames Hub Partnership in the reporting period against their local action plan, including any successes, issues encountered and learning
2. The activities supported by the Time to Change Champion’s Fund during the reporting period, broken down by;
   1. The number and types of activities supported
   2. The name of each successful Champions Fund applicant
   3. The number of Champions both applying to and receiving Time to Change Champions Fund awards by ethnicity and other priority communities (LGBT, etc.)
   4. The total estimated number of people reached through individual conversations by events and activities supported by the Time to Change Champions Fund
3. Case studies of activity delivered through the Time to Change Champions Fund
4. A financial report on the use and remaining balance of the Time to Change Champions Fund
5. Any available evaluation data or feedback relating to the impact of local events on those attending them
6. An overview of planned activity for the next reporting period

**Schedule 6: GDPR Compliance Statement**

Please see addendum within the Memorandum of Understanding