

NATIONAL INSTITUTE FOR HEALTH AND CARE EXCELENCE CONSULTANCY AGREEMENT FOR SPECIFIC PROJECT SERVICES

1. BASIC DETAILS

1.	NAME AND ADDRESS OF AGENCY (including Company Registration Number if relevant)	Four Communications Group The Hickman Building 2 Whitechapel Road London E1 1FX Company number: 05114815		
2.	DESCRIPTION OF AGENCY	Media agency		
3.	DESCRIPTION OF PROJECT SERVICES	Digital media planning and campaign management		
4.	NICE BUDGET HOLDER	[REDACTED] associate director, brand and marketing		
5.	NICE PROJECT MANAGER	[REDACTED] senior marketing communications manager, brand and marketing		
6.	NOMINATED MANAGER OF AGENCY	[REDACTED] managing director, health and wellbeing, Four Communications		
7.	AGENCY AUTHORISED SIGNATORY	[REDACTED] group managing director, Four Communications		
8.	DATE AGREEMENT SIGNED			
9.	DATE AGREEMENT COMES INTO EFFECT	15	02	2022
10.	DATE AGREEMENT ENDS (IF FIXED DATE)	14	02	2024
1.11.	CONTRACT NUMBER	[REDACTED]		
1.12	PROJECT NUMBER			

IT IS AGREED AS FOLLOWS

2. DEFINITIONS

"Agreement"	this Agreement and any Annexes attached to it.
"Controller"	means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law
"Data Subject Access Request"	Means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
"Data Protection Impact Assessment"	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
"Data Protection Legislation"	means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
"Data Subject, Data Protection Officer"	the meaning given in the GDPR, DAP 2018
"Data Loss Event"	Means any event that results, or may result, in unauthorised access to Personal Data held by the Agency under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
"DPA 2018"	means Data Protection Act 2018
"GDPR"	means the General Data Protection Regulation (Regulation (EU) 2016/679)
"LED"	means Law Enforcement Directive (Directive (EU) 2016/680)

"NICE"	The National Institute for Health and Care Excellence, Level 1A, City Tower, Piccadilly Plaza, Manchester. M1 4BT
"Personal Data"	means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person
"Personal Data Breach"	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed
"Processing"	means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction
"Processor"	means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller
"Protective Measures"	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
"Sub-processor"	means any third Party appointed to process Personal Data on behalf of the Agency related to this Agreement
"the Agency"	the person in 1.1 or any partner, employee, agent, sub-contractor or other lawful representative of the person in 1.1.

"the Milestones"	the milestones as set out in Annex 2.
"the Project Services"	the Project Services set out in 1.3 as more fully described in Annex 1.

3. AGREEMENT

- 3.1. In consideration of NICE making certain payments to the Agency, the Agency has agreed to provide the Project Services to NICE on the terms and conditions of this Agreement
- 3.2. The payments for the Project Services are fixed and no further payments shall be made by NICE.

4. OBLIGATIONS OF THE AGENCY

4.1. The Project Services

- 4.1.1. The Agency shall carry out the Project Services in accordance with Annex 1 and to a quality acceptable to NICE.
- 4.1.2. No material changes to the Project Services shall be permitted without the written consent of NICE Project Manager.
- 4.1.3. The Agency shall use its best endeavours to achieve the milestones set out in Annex 2 ("the Milestones").

4.2. Sub-Contractors

- 4.2.1. The Agency shall agree with NICE the use of any sub-contractor to carry out any part of the Project Services.
- 4.2.2. The Agency shall ensure that any sub-contractor it uses adheres to the obligations of this Agreement as if the sub-contractor were the Agency.

4.3. Instructions

- 4.3.1. The Agency shall comply fully with the instructions of the Project Manager and, if the Agency is working in NICE, with the office rules of NICE.

4.4. Financial Control

- 4.4.1. The Agency shall keep accurate books and accounts in respect of the Project Services and, if requested in writing by NICE, shall (at its own expense) have them certified by a professional firm of auditors.

- 4.4.2. The Agency shall permit NICE to inspect and take copies (at NICE's expense) of any financial information or records NICE requires which relate to this Agreement.

4.5. Communication

- 4.5.1. The Agency shall ensure that all communications with NICE concerning the Project Services shall only be between the nominated representatives of both Parties, that is, NICE Project Manager who shall be the Manager nominated by NICE from its own staff or such other person as NICE shall nominate in writing, and the nominated manager of the Agency.

4.6. Laws and Regulation

- 4.6.1. The Agency shall adhere to all laws and regulations relating to the provision of the Project Services.
- 4.6.2. The Agency shall comply in all material respects with applicable environmental laws and regulations in force from time to time in relation to the Services. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the Agency shall comply with such agreements or codes of practices as if they were incorporated into English law subject to those voluntary agreements being cited in tender documentation.
- 4.6.3. While at NICE's Offices, the Agency shall comply, and shall ensure that its employees comply with, the requirements of relevant Health and Safety and other relevant legislation, including regulations and codes of practice issued thereunder, and with NICE's and any Beneficiary's own policies and procedures.
- 4.6.4. The Agency shall at all times maintain a specific Health and Safety at Work policy relating to the employment of his own staff whilst carrying out their duties in relation to the Contract on the NICE's or any Beneficiary's premises. The Agency shall ensure the co-operation of its employees in all prevention measures designed against fire, or any other hazards, and shall notify NICE's of any change in the Agency's working practices or other occurrences likely to increase such risks or to cause new hazards.

4.7. Taxation

- 4.7.1. Where the Agency or Key Individuals supplied by the Agency are liable to be taxed in the UK in respect of consideration received under this contract, the Agency shall, and ensure that the Key Individuals shall, at all times comply with the Income Tax (Earnings and Pension) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 4.7.2. Where the Agency or Key Individuals are liable for National Insurance Contributions (NICs) in respect of consideration received under this contract, , the Agency shall, and ensure that the Key Individuals shall, at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 4.7.3. NICE may, at any time during the term of this contract, request the Agency to provide information which demonstrates:
- (a) how the Agency or the Key Individuals comply with clauses 4.7.1 and 4.7.2 above; or why
 - (b) Clauses 4.7.1 and 4.7.2 are not applicable to the Agency or the Key Individuals.
- 4.7.4. Where applicable, a request under clause 4.7.3 above may specify the information which the Agency or the Key Individuals must provide and the period within which that information must be provided.
- 4.7.5. NICE may terminate this Contract if:
- (a) in the case of a request mentioned in clause 4.7.3 above:-
 - (i) The Agency or the Key Individuals fails to provide information in response to the request within twenty [20] days, or
 - (ii) The Agency or the Key Individuals provides information which is inadequate to demonstrate either compliance with clauses 4.7.1 and 4.7.2 above or why these clauses do not apply to either the Agency or the Key Individuals;
 - (b) in the case of a request mentioned in clause 4.7.4 above the Agency fails to provide the specified information within twenty [20] days, or

- (c) it receives information which demonstrates that, at any time when clauses 4.7.1 and 4.7.2 apply to the Agency, the Agency is not complying with those clauses.

4.7.6. NICE may supply any information which it receives under Clause 4.7.3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

5. OBLIGATIONS OF NICE

5.1. Monitoring

5.1.1. NICE shall monitor the provision of the Project Services at its discretion. To assist in this, the Agency shall provide such written reports as NICE shall reasonably request.

6. TERM

6.1. Except for those clauses 10, 12 and 16 which shall continue after this Agreement terminates, this Agreement shall begin on the date set out in clauses 1.8 or 1.9 and end on the date set out in clause 1.10. If there is no date in clause 1.10 then this Agreement shall continue until the Project Services are completed to the satisfaction of NICE or such other time as shall be notified by NICE to the Agency.

7. PAYMENT

- 7.1. Subject to the due performance of the Agency's obligations, NICE will pay all invoices submitted by the Agency in accordance with Annex 4 within 30 days of their receipt.
- 7.2. The Agency shall send all invoices, clearly quoting the contract number, to [REDACTED], alternatively the Agency can register with [REDACTED] to send invoices electronically and have access to Tradeshift updates of the progress of invoices.
- 7.3. Invoices sent to NICE shall be accurate and correct in all respects.
- 7.4. NICE reserves the unconditional right to withhold payment of the final invoice or invoices until the Project Services are successfully concluded to the satisfaction of NICE and NICE receives a copy of any relevant work created as a result of the Project Services in a form acceptable to the NICE.

8. STAFF AND RESOURCES

- 8.1. The Agency shall be fully responsible in every way for all its staff and all consultants (whether part-time or full-time).
- 8.2. The Agency shall ensure that it complies with all current employment legislation and in particular, does not unlawfully discriminate within the meaning of the Equality Act 2010 (as amended) the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, or any other relevant legislation relating to discrimination in the employment of employees for the purpose of providing the Services. The Agency shall take all reasonable steps (at its own expense) to ensure that any employees employed in the provision of the Services do not unlawfully discriminate within the meaning of this Clause 8.2 and shall impose on any sub-contractor obligations substantially similar to those imposed on the Agency by this Clause 8.2; and
- 8.3. in the management of its affairs and the development of its equality and diversity policies, the Agency shall co-operate with NICE in respect of NICE's obligations to comply with statutory equality duties. The Agency shall take such steps as NICE considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age in the provision of the Services.
- 8.4. The Agency shall notify NICE immediately of any investigation of or proceedings against the Agency under the Equality Act 2010 and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.
- 8.5. The Agency shall indemnify NICE against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by NICE arising out of or in connection with any investigation conducted or any proceedings brought under the Equality Act 2010 due directly or indirectly to any act or omission by the Agency, its agents, employees or sub-contractors.
- 8.6. The Agency shall impose on any sub-contractor obligations substantially similar to those imposed on the Agency by this Clause 8.
- 8.7. NICE shall have the right to be consulted on what staff will be appointed to provide the Project Services.
- 8.8. The Agency undertakes to NICE that any person assigned to NICE to supply the Project Services is a full-time employee of the Agency and

that employee shall not be transferred from this assignment without the prior written consent of NICE.

9. INSURANCE

- 9.1. The Agency shall maintain an appropriate insurance policy to cover its liabilities to NICE under this Agreement.
- 9.2. The Agency shall supply a copy of any relevant insurance policy to NICE together with proof of payments of all premiums if required.

10. INTELLECTUAL PROPERTY AND COPYRIGHT

- 10.1. The Agency recognises that the Intellectual Property and Copyright in any work which is created as a result of the Project Services by the Agency or its servants, agents, consultants or independent contractors shall belong to NICE (Foreground IP).
- 10.2. To avoid confusion, Foreground IP is the finished product, as well as drafts, notes, materials, mockups, hardware, designs, inventions, patents, code, and anything else that the Agency works on—that is, conceives, creates, designs, develops, invents, works on, or reduces to practice—as part of this project, whether before the date of this Contract or after.
- 10.3. This means the Agency is giving the NICE all of its present and future right, title, and interest in and to the work product (including intellectual property rights), and the NICE will be the sole owner of it. The NICE can use the work product however it wants or it can decide not to use the work product at all. The NICE, for example, can modify, destroy, or sell it, as it sees fit. Accordingly, the Agency should not register or attempt to register any intellectual property rights in the work product unless requested to do so by the NICE. The Agency will have no interest in the Product upon the conclusion and payment in full of the work for the NICE.
- 10.4. Agency's Use Of Work Produced. The work product for the NICE, the Agency does not have any rights to it, except those that the NICE explicitly gives the Agency here. The NICE gives the Agency permission to use the work product as part of the Agency's portfolio and websites, in galleries, and in other media, so long as it is to showcase the Agency's work and not for any other purpose. The Agency is not allowed to sell or otherwise use the work product to make money or for any other commercial use. The NICE is not allowed to take back this license, even after the Contract ends
- 10.5. Agency's Background IP. During the course of this project, the Agency might use intellectual property that the Agency owns or has licensed from a third party, "Background IP." and the parties shall agree during

the project what intellectual property constitutes “Foreground IP” and what intellectual property constitutes “Background IP”. The Agency is not giving the NICE this background IP. As part of the Contract, the Agency is giving the NICE a right to use and license (with the right to sublicense) the background IP to develop, market, sell, and support the NICE’s products and services. The NICE may use this background IP worldwide and free of charge. The NICE cannot sell or license the background IP separately from its products or services. The Agency cannot take back this grant, and this grant does not end when the Contract is over.

- 10.6. Agency's Right, under license, To Use NICE IP. The Agency may need to use the NICE’s intellectual property to do its job. For example, if the NICE is hiring the Agency to create ads, the Agency may have to use the NICE’s logo. The NICE agrees to let the Agency use the NICE’s intellectual property and other intellectual property that the NICE controls to the extent reasonably necessary to do the Agency's job. Beyond that, the NICE is not giving any authority, under this license in this clause, to the Agency for any intellectual property rights, unless specifically stated otherwise in this Contract
- 10.7. In consideration of NICE paying for the Project Services the Agency with full title guarantee assigns or agrees to procure the assignment to NICE of all vested contingent and future Intellectual Property rights and Copyright in any work created as a result of the Project Services to hold to NICE its successors and assigns absolutely throughout the world for the full period of those rights.
- 10.8. The Agency warrants to NICE that in relation to any work created by itself, its servants, agents, consultants or independent contractors, as a result of the Project Services, that:-
 - 10.8.1. such work is not a violation of any existing copyright anywhere;
 - 10.8.2. such work does not contain anything objectionable, obscene or libellous;
 - 10.8.3. all statements contained in any such work which purport to be facts are true.
- 10.9. If the Agency incorporates any copyrightable work in any work it produces or has produced on its behalf then it shall ensure that appropriate permissions to use that work are obtained in writing. The NICE Project Manager shall have the right to see such permissions.
- 10.10. The Agency shall procure that any independent author or part-author of any copyrightable material created as a result of the Project Services,

assigns the copyright with full title guarantee to NICE and waives any moral rights under the Copyright, Designs and Patents Acts 1988. Any assignment and/or waiver under this sub-clause shall be on NICE's standard terms set out in Annex 3. The Agency shall do this as soon as reasonably possible after the creation of any such work.

10.11. It is the policy of NICE to associate authors with their works. However, there may be exceptional circumstances where this would be to the detriment of NICE. In an exceptional circumstance NICE, as copyright owner, would reserve the right to disassociate the author from the work.

10.12. 2.1. NICE Owns All Work Produced. As part of this job, the Agency is creating "work product" for the NICE.

10.13. 2.2.

11. PUBLIC REPUTATION OF THE PARTIES

11.1. Both Parties recognise the other Party's public reputation and legal responsibilities. Each Party shall use all reasonable endeavours not to harm or compromise these.

11.2. The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA and/or the DPA, the content of this Contract is not Confidential Information. NICE shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA and/or the DPA.

11.3. Notwithstanding any other term of this Contract, the Agency hereby gives his consent for NICE to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public. And agrees to the public re-use of the documents provided that such reuse cites the source and do not misuse or deliberately mislead.

12. CONFIDENTIALITY

12.1. In respect of any Confidential Information it may receive from the other party ("the Discloser") and subject always to the remainder of this clause 12, each party ("the Recipient") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:

12.2. the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Contract;

- 12.3. the provisions of this clause 12 shall not apply to any Confidential Information which:
- (a) is in or enters the public domain other than by breach of the Contract or other act or omissions of the Recipient;
 - (b) is obtained by a third party who is lawfully authorised to disclose such information; or
 - (c) is authorised for release by the prior written consent of the Discloser; or
 - (d) the disclosure of which is required to ensure the compliance of NICE with the Freedom of Information Act 2000 (the FOIA).
- 12.4. Nothing in this clause 12 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, where the Agency is the Recipient, to the Agency's immediate or ultimate holding company provided that the Agency procures that such holding company complies with this clause 12 as if any reference to the Agency in this clause 12 were a reference to such holding company.
- 12.5. The Agency authorises NICE to disclose the Confidential Information to such person(s) as may be notified to the Agency in writing by NICE from time to time to the extent only as is necessary for the purposes of auditing and collating information so as to ascertain a realistic market price for the goods supplied in accordance with the Contract, such exercise being commonly referred to as "benchmarking". NICE shall use all reasonable endeavours to ensure that such person(s) keeps the Confidential Information confidential and does not make use of the Confidential Information except for the purpose for which the disclosure is made. NICE shall not without good reason claim that the lowest price available in the market is the realistic market price.
- 12.6. The Agency acknowledges that NICE is or may be subject to the FOIA. The Agency notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004 as may be amended, updated or replaced from time to time. The Agency will act in accordance with the FOIA, these Codes of Practice and these Regulations (and any other applicable codes of practice or guidance notified to the Agency from time to time) to the extent that they apply to the Agency's performance under the Contract.
- 12.7. The Agency agrees that:

- 12.7.1. Without prejudice to the generality of clause 12.2, the provisions of this clause 12 are subject to the respective obligations and commitments of NICE under the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004;
 - 12.7.2. subject to clause 12.7.3, the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for NICE;
 - 12.7.3. where NICE is managing a request as referred to in clause 12.7.2, the Agency shall co-operate with NICE and shall respond within five (5) working days of any request by it for assistance in determining how to respond to a request for disclosure.
- 12.8. The Agency shall and shall procure that its sub-contractors shall:
- 12.8.1. transfer any request for information, as defined under section 8 of the FOIA, to NICE as soon as practicable after receipt and in any event within five (5) working days of receiving a request for information;
 - 12.8.2. provide NICE with a copy of all information in its possession or power in the form that NICE requires within five (5) working days (or such other period as NICE or a Beneficiary may specify) of NICE or a Beneficiary requesting that Information; and
 - 12.8.3. provide all necessary assistance as reasonably requested by NICE to enable NICE to respond to a request for information within the time for compliance set out in section 10 of the FOIA.
- 12.9. NICE may consult the Agency in relation to any request for disclosure of the Agency's Confidential Information in accordance with all applicable guidance.
- 12.10. This clause 12 shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data or which relates to a patient, his or her treatment and/or medical records. Save as aforesaid and unless otherwise expressly set out in the Contract, this clause 12 shall remain in force for a period of 3 years after the termination or expiry of this Contract.

12.11. In the event that the Agency fails to comply with this clause 12, NICE reserves the right to terminate the Contract by notice in writing with immediate effect.

13. Data Protection

13.1. The Agency shall comply with the Data Protection Legislation. In particular the Agency agrees to comply with the obligations placed on NICE as set out in Data Protection Legislation, namely:

13.1.1. to maintain technical and organisational security measures sufficient to comply with the obligations imposed on NICE and the Contactor by the Data Protection Legislation.

13.1.2. only to process Personal Data for and on behalf of NICE, in accordance with the instructions of NICE as describe in Annex 5 and for the purpose of performing the Services in accordance with the Contract and to ensure compliance with the Data Protection Legislation.

13.2. The Parties acknowledge that for the purposes of the Data Protection Legislation, NICE is the Controller and the Agency is the Processor.

13.3. The Agency shall only process Personal Data as authorised by NICE and described in Annex 5 and shall not process or use the Personal Data for any other purpose. The details in Annex 5 may not be determined by the Agency.

13.4. The Agency shall notify NICE immediately if it considers that any of NICE instructions infringe the Data Protection Legislation.

13.5. The Agency shall provide all reasonable assistance to NICE in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of NICE, include:

13.5.1. a systematic description of the envisaged processing operations and the purpose of the processing;

13.5.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;

13.5.3. an assessment of the risks to the rights and freedoms of Data Subjects; and

13.5.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

- 13.6. The Agency shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 13.6.1. process that Personal Data only in accordance with Annex 5, unless the Agency is required to do otherwise by Law. If it is so required the Agency shall promptly notify NICE before processing the Personal Data unless prohibited by Law;
 - 13.6.2. ensure that it has in place Protective Measures, which have been reviewed and approved by NICE as appropriate to protect against a Data Loss Event having taken account of the:
 - a) nature of the data to be protected;
 - b) harm that might result from a Data Loss Event;
 - c) state of technological development; and
 - d) cost of implementing any measures;
 - 13.6.3. ensure that:
 - a) the Agency Personnel do not process Personal Data except in accordance with this Agreement (and in particular Annex 5);
 - b) it takes all reasonable steps to ensure the reliability and integrity of any Agency Personnel who have access to the Personal Data and
 - c) ensure that they:
 - i. are aware of and comply with the Agency's duties under this clause;
 - ii. are subject to appropriate confidentiality undertakings with the Agency or any Sub-processor;
 - iii. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by NICE or as otherwise permitted by this Agreement; and
 - iv. have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - d) not transfer Personal Data outside of the EU unless the prior written consent of NICE has been obtained and the following conditions are fulfilled:

- i. NICE or the Agency has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the NICE;
 - ii. the Data Subject has enforceable rights and effective legal remedies;
 - iii. the Agency complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist NICE in meeting its obligations); and
 - iv. the Agency complies with any reasonable instructions notified to it in advance by NICE with respect to the processing of the Personal Data;
- e) at the written direction of the NICE, delete or return Personal Data (and any copies of it) to NICE on termination of the Agreement unless the Agency is required by Law to retain the Personal Data.

13.7. Subject to clause 13.8, the Agency shall notify NICE immediately if it:

- a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - b) receives a request to rectify, block or erase any Personal Data;
 - c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- or
- f) becomes aware of a Data Loss Event.

13.8. The Agency's obligation to notify under clause 13.7 shall include the provision of further information to NICE in phases, as details become available.

13.9. Taking into account the nature of the processing, the Agency shall provide NICE with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or

request made under clause 13.7 (and insofar as possible within the timescales reasonably required by the NICE) including by promptly providing:

- 13.9.1. NICE with full details and copies of the complaint, communication or request;
 - 13.9.2. such assistance as is reasonably requested by NICE to enable NICE to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 13.9.3. NICE, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 13.9.4. assistance as requested by NICE following any Data Loss Event;
 - 13.9.5. assistance as requested by NICE with respect to any request from the Information Commissioner's Office, or any consultation by NICE with the Information Commissioner's Office.
- 13.10. The Agency shall maintain complete and accurate records and information to allow NICE to audit the Agency's compliance with the requirements of this Clause 13 on reasonable notice and/or to provide NICE with evidence of its compliance with the obligations set out in this Clause 16 and to demonstrate its compliance with this clause.
- 13.11. The Agency shall allow for audits of its Data Processing activity by NICE or NICE's designated auditor.
- 13.12. The Agency shall designate a data protection officer if required by the Data Protection Legislation.
- 13.13. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Agency must:
- 13.13.1. notify NICE in writing of the intended Sub-processor and processing;
 - 13.13.1.1. obtain the written consent of NICE;
 - 13.13.1.2. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 13 such that they apply to the Sub-processor; and

- 13.13.1.3. provide NICE with such information regarding the Sub-processor as NICE may reasonably require.
- 13.14. The Agency shall remain fully liable for all acts or omissions of any Sub-processor.
- 13.15. NICE may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 13.16. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. NICE may on not less than 30 Working Days' notice to the Agency amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 13.17. The Agency agrees to indemnify and keep indemnified NICE against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by NICE and any Beneficiary as a result of any claim made or brought by any individual or other legal person in respect of any loss, damage or distress caused to that individual or other legal person as a result of the Agency's unauthorised processing, unlawful processing, destruction of and/or damage to any Personal Data processed by the Agency, its employees or agents in the Agency's performance of the Contract or as otherwise agreed between the Parties.

14. GIFTS AND PAYMENTS OF COMMISSION

- 14.1. The Agency shall not offer or give to any member of staff of NICE or a member of their family any gift or consideration of any kind (including the payment of commission) as an inducement or reward for doing something or not doing something or for having done something or having not done something in relation to the obtaining of or execution of this Agreement or any Agreement with NICE. This prohibition specifically includes the payment of any fee or other consideration for any work in respect of or in connection with the Project Services carried out by a member of staff of NICE to that member of staff or to a member of their family.
- 14.2. Any breach of this condition by the Agency or anyone employed by the Agency (with or without the knowledge of the Agency) or the commission of any offence under the Bribery Act 2010 shall entitle NICE to terminate this Agreement immediately and/or to recover from the Agency any payment made to the Agency.

15. INDEMNITY

15.1. If the Agency shall breach this Agreement in any way then it shall fully indemnify NICE from any losses, costs, damages or expenses of any kind, whether direct or indirect, which arise out of or are connected with that breach.

16. LIMITATION OF LIABILITY

- 16.1. NICE shall not be liable to the Agency for any indirect or consequent loss, damage, injury or costs whatsoever which arise out of or are connected with NICE's adherence or non-adherence to the terms and conditions of this Agreement. Except in the case of death or personal injury caused by negligence, and fraudulent misrepresentation or in other circumstances where liability may not be so limited under any applicable law.
- 16.2. The Contractors liability in connection with this Agreement shall in no event exceed 200% of the fees payable by the NICE to the Contractor. This limit shall exclude any liabilities in clause 13.17.

17. TERMINATION

This Agreement shall terminate in the following circumstances -

17.1. Breach

- 17.1.1. In the event that either Party fails to observe or perform any of its obligations under this Agreement in any way then the other Party may end this Agreement on 30 days written notice; but
- 17.1.2. If the breach complained of by a Party, cannot be remedied to the satisfaction of that Party, then this Agreement shall end immediately on the service of such notice on the other Party;
- 17.1.3. In every other case if the breach complained of is remedied to the satisfaction of a Party within the notice period this Agreement shall not end;

17.2. Repeat of Breach

- 17.2.1. Either Party reserves the right to end this Agreement immediately by written notice if a Party repeats any breach of this Agreement after receiving a written notice from the other Party warning that repetition of the breach shall or may lead to termination (whether or not the repeated breach is remedied within 30 days);

17.3. Insolvency

- 17.3.1. This Agreement shall end immediately if the Agency goes into liquidation or suffers a receiver or administrator to be appointed to it or to any of its assets or makes a composition with any of its creditors, or is in any other way unable to pay its debts;

17.4. Change of Management Control

- 17.4.1. NICE reserves the right to immediately end this Agreement upon any change of the Agency's management or control within 28 days of NICE finding out of such change. The Agency shall promptly notify NICE of any such change of management or control.

17.5. Unsatisfactory Evaluation of the Project Services

- 17.5.1. In the event that the outcome of any evaluation of the Project Services carried out by NICE under this Agreement is unsatisfactory NICE may terminate this Agreement on 30 days' written notice.
- 17.6. In addition to its rights under any other provision of the contract NICE may terminate the contract at any time by giving the Agency three months' written notice

18. MISCELLANEOUS

It is further agreed between the Parties:

18.1. Waiver

- 18.1.1. No waiver or delay in acting upon or by NICE of any of the requirements of this Agreement shall release the Agency from full performance of its remaining obligations in this Agreement.

18.2. Whole Agreement

- 18.2.1. The Parties acknowledge that this Agreement contains the whole Agreement between the Parties and supersedes all previous agreements whether express or implied.











18.3. Variation

- 18.3.1. This Agreement cannot be varied except in writing and signed by the lawful representatives of both Parties.






18.4. Governing Law

- 18.4.1. This Agreement shall be governed in all respects by English Law.

Signed for and on behalf
of NICE

	Signature	Name and title	Date
Procurement		 , Procurement Manager	16 Feb 2022
Contract Manager		   	
Budget Holder		 , Communications Director	16 Feb 2022
			

Signed for and on behalf
of the Provider

	Signature	Name and title	Date
Project Supervisor			16 Feb 2022
Authorised Signatory		 , Group Managing Director, Four Communications	16 Feb 2022
			

This contract is not valid until all Signatures have been completed

ANNEX 1

The Project Services

Digital marketing strategy – working collaboratively to develop and deliver NICE's digital marketing strategy:

- Capturing and understanding our needs and those of our audiences, including users of NICE guidance (e.g. frontline health and care practitioners and NHS commissioners/procurers of health and care products and services) and the life sciences industry (e.g. pharmaceutical companies, medical or digital health technology developers).
- Sharing relevant audience insight/primary research as appropriate, to inform strategic planning, and campaign scoping and development.
- Provision of recommendations with a clear rationale, to ensure cost-effectiveness of paid digital marketing.
- Supporting NICE in the development of an 'always-on', insight-led approach to digital marketing, scheduling and continuously optimising activity (within the limitations of our budget).
- Developing a strategic approach to evaluating paid media activity and understanding audience sentiment.

Campaign planning and delivery

- Planning and delivering paid digital advertising, ensuring effective tracking of campaign objectives and associated goals, thorough analysis and evaluation of campaign performance data.
- Working closely with NICE's brand communications agency who will lead on the creative development of content for use within campaigns e.g. animations, infographics etc.
- Production of static campaign assets (e.g. images, carousels) as required.
- Ensure any assets created for use within digital content marketing campaigns meet WCAG 2.1 AA accessibility standards.

The following project has been pre-agreed and costed as follows:

Pilot brand campaign

Four will undertake all overarching management and delivery of the pilot brand campaign including on boarding and insight mapping, audience identification and targeting, creative proofing for quality control, and reporting and data insight.

Specific deliverables and scope of work will include:

- On boarding by all required stakeholders and assigning a dedicated NICE Four team using a single email contact address

- [REDACTED]

Agency management fees, including:

- Planning – digital planning services to all audiences
- Execution – implementation of agreed channels and audiences (4 weeks), A/B testing campaign assets, continual campaign monitoring and optimisation
- Management – set up, optimisation, management and reporting
- Reporting will be in an excel format/PowerPoint. Further dashboards will be charged an additional fee after discussion on requirements

[REDACTED]

Media budget [REDACTED]

Additional work will be briefed separately and costed per project based on several factors including by not exclusive to:

- [REDACTED]

ANNEX 2

Project milestones for each meeting for tasks to be undertaken by the Agency

Milestone	Date to be completed
Proposal developed	Week commencing 07/02
Amends and comments actioned	Week commencing 07/02
Proposal and reporting structure agreed	Week commencing 07/02
Regular campaign reporting scheduled	Week commencing 07/02
Quote shared	Week commencing 14/02
PO raised	Week commencing 14/02
Audiences developed	Week commencing 14/02
Audiences approved	Week commencing 21/02
Creatives received	Week commencing 07/03
Mockups produced	Week commencing 07/03
Mockups signed off	Week commencing 07/03
Campaign activated	Week commencing 14/03
Reporting reviewed	Week commencing 21/03
End of Campaign review scheduled	Week commencing 25/04
End of Campaign review completed	Week commencing 25/04
Additional project milestones to be discussed and agreed prior to work commencing on further projects within the remaining contract period	

ANNEX 3

Waiver of Moral Rights and Assignment of Copyright

This Deed is made the

1. PARTIES

- 1.1. The National Institute for Health and Care Excellence, Level 1A, City Tower, Piccadilly Plaza, Manchester. M1 4BT ("NICE").
- 1.2. [REDACTED] ("the Author").

2. WAIVER AND ASSIGNMENT

- 2.1. The Author agrees in relation to any work created by the Author in connection with the Agreement of INSERT DATE ("the Work") and made between NICE and [REDACTED] to waive his/her moral rights under Sections 77 to 89 of the Copyright Designs and Patent Act 1988.
- 2.2. The Author further agrees to assign with full title guarantee the present and future copyright in the Work of which it is the author or part-author to NICE to hold to NICE its successors and assigns absolutely anywhere for the length of the copyright in the Work.
- 2.3. The Author warrants to NICE that in relation to the Work:-
 - 2.3.1. it is not a violation of any existing copyright anywhere;
 - 2.3.2. it does not contain anything objectionable, obscene or libellous;
 - 2.3.3. all statements contained in the Work which purport to be facts are true.

SIGNED AND DELIVERED
as a Deed by the Author
Witnessed

SIGNED AND DELIVERED
as a Deed by an authorised
signatory of NICE
Witnessed

Signature	Name	Date
[REDACTED]	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
	[REDACTED]	

ANNEX 4

Payment

Schedule for payment for the Services, timing and method of payment.

Date of meeting and amount of funding		Financial Year	Date(s) for Submission of Invoice(s)
Net	██████	21/22	March 2022
VAT (if applicable)	██████	21/22	
TOTAL	██████	21/22	March 2022
Net	██████	22/23	April 2022
VAT (if applicable)	██████	22/23	
TOTAL	██████	22/23	April 2022
Net	£		
VAT (if applicable)	£		
TOTAL	£		
Net	£		
VAT (if applicable)	£		
TOTAL	£		
Remainder of contract value	██████		Additional payments to be scheduled prior to work commencing on further projects within the remaining contract period
GRAND TOTAL	£86,000 (inc VAT)		Total contract value

ANNEX 5

Processing of Personal Data

Subject matter of the processing	NICE-owned stakeholder data
Duration of the processing	07/02/2022-06/02/2024 N.B. NICE is due to update its privacy policy in early 2022 to cover data sharing with third parties. <i>NICE will not share any stakeholder data with Four Communications until these updates have been actioned and communicated to users.</i>
Purposes of the processing	To inform audience targeting for digital campaigns planned and delivered by Four Communications for NICE.
Nature of the processing	Data sharing to enable audience targeting for digital campaigns planned and delivered by Four Communications for NICE – the data will be shared with Four (via secure FTP) and uploaded to social platforms and other media owners such as Google where it will be hashed and made unrecognisable to the media owner. Four Communications will comply with their own privacy policy, ensuring data is held in a secure location and is not kept for longer than it is needed.
Type of Personal Data	Names, email addresses, job titles and organisations.
Categories of Data Subject	NICE stakeholders including but not limited to health and care practitioners, patients, public, life sciences companies and system partners.
Plan for return and destruction of the data once the processing is complete	Four Communications will destroy any personal data within 7 days after it is uploaded to the relevant platforms.



Issuer National Institute for Health and Care Excellence

Document generated Tue, 15th Feb 2022 15:28:45 UTC

Document fingerprint [REDACTED]

Parties involved with this document

Document processed	Party + Fingerprint
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Wed, 16th Feb 2022 17:37:04 UTC	[REDACTED] - Signer ([REDACTED])
Wed, 16th Feb 2022 20:24:55 UTC	[REDACTED] - Signer ([REDACTED])
Wed, 16th Feb 2022 20:44:58 UTC	[REDACTED] - Signer ([REDACTED])
Wed, 16th Feb 2022 21:15:30 UTC	[REDACTED] - Signer ([REDACTED])
Thu, 17th Feb 2022 9:04:46 UTC	[REDACTED] - Signer ([REDACTED])

Audit history log

Date	Action
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