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Our Ref: LFC [MM/YY]/[COST CODE]/
[OTHER REF]

Date [INSERT DATE]

STRICTLY PRIVATE & CONFIDENTIAL

To be opened by the Addressee only

[INSERT NAME AND ADDRESS]

Dear [NAME]

Consultancy Agreement

I am writing to confirm details of the consultancy work that were discussed with [INSERT NAME OF WELLCOME STAFF].

Full terms of the agreement concerning the provision of your consultancy services to The Wellcome Trust Limited (as trustee of the Wellcome Trust) (**Wellcome**) are included in the pages that follow (the **Terms**).

If you have any queries about this letter or the Terms, in the first instance you should contact [INSERT NAME].

If you are happy to accept these Terms, please can you sign, date and return the enclosed copy to the person named below.

Yours sincerely,

[NAME]

[JOB TITLE]

For and on behalf of The Wellcome Trust Limited (as trustee of the Wellcome Trust)

[ENCS] [ENCLOSE ANY RELEVANT POLICIES FOR THE PURPOSES OF CLAUSE 2.6]

I acknowledge receipt and accept the terms of this Agreement.

Signed: Date:

Name:

Title:

National Insurance Number:

1 DOCUMENTS FORMING AGREEMENT

- 1.1 The agreement (**Agreement**) between you (**Supplier**) and Wellcome shall comprise:
- (i) these consultancy agreement Terms;
 - (ii) the letter accompanying these Terms; and
 - (iii) any schedule or appendix to these Terms.

2 PROVISION OF SERVICES AND TERM

- 2.1 You agree to provide the services [necessary to deliver the project (**Project**)]¹ set out in the Appendix to this Agreement (the **Services**) to Wellcome.
- 2.2 Your engagement shall commence on [DATE] and shall continue [until the Project is completed or] until [DATE] [whichever is earlier] unless terminated as provided by the terms of this Agreement or by either party giving to the other not less than [one/two/four]² weeks' prior written notice.
- 2.3 You shall:
- (i) provide the Services with all due care, skill and ability;
 - (ii) [unless you are prevented by ill health or accident, devote at least [NUMBER] [hours OR days] in each calendar month to the carrying out of the Services together with such additional time if any as may be necessary for their proper performance;]³
 - (iii) promptly give to Wellcome all such assistance, information and reports as it may reasonably require in connection with matters relating to the provision of the Services.
- 2.4 Save as otherwise set out in this Agreement, you shall be responsible for and bear all costs incurred in the provision of the Services.
- 2.5 You shall comply with all reasonable standards of safety and comply with Wellcome's health and safety procedures from time to time in force at the premises where the Services are provided and report to Wellcome any unsafe working conditions or practices.
- 2.6 You shall also comply with the following policies: IT and Communications Policy, Handling Information and Data Protection Policy, Bullying and Harassment Policy, and Whistleblowing Policy and any other policies relevant to independent contractors notified by Wellcome from time to time and as they are updated from time to time.
- 2.7 Where you are unable or unwilling to perform the Services, you shall notify [POSITION] as soon as reasonably practicable and you may appoint a suitably qualified and skilled substitute, who is equally qualified and skilled as you and has who passed appropriate verification and security checks as required by Wellcome (**Substitute**), to perform the Services instead of you. If Wellcome accepts the Substitute, we will continue to pay you the fee as provided in Clause 4.1 below and you shall be responsible for the remuneration of (and any expenses incurred by) the Substitute.
- 2.8 If a Substitute is appointed:
- (i) the provisions relating to sub-processor obligations in Appendix 2 will apply; and

¹ **Internal drafting note- delete before issuing contract:** Ideally, the Services to be provided by the consultant should be a specific task/project with defined deliverables.

² **Internal drafting note- delete before issuing contract:** Shorter periods of notice are more appropriate in a freelancer relationship. Do not agree to a notice period in excess of 4 weeks.

³ **Internal drafting note- delete before issuing contract:** Clause 2.3(ii) can be deleted for a project-based role where time commitment is not an issue, provided that the final product is delivered. If a consultant is required to work for less than a full time commitment (e.g. 2 days a week), and also works for other clients, this can point towards genuine self-employed status.

(ii) any terms in this Agreement which relate to you shall also be deemed to relate to the Substitute.

2.9 You have no authority (and shall not hold yourself out as having authority) to bind Wellcome, unless we have specifically permitted this in writing in advance.

2.10 You shall comply with the Bribery Act 2010. Failure to do so may result in the immediate termination of this Agreement.

3 SAFEGUARDING CHILDREN AND VULNERABLE ADULTS [- NOT USED]⁴

3.1 If you are registered with the Disclosure and Barring Service (“DBS”), you shall provide us with details of your registration number and confirm that you have no objections to us reviewing your details with the DBS. If you are not registered with the DBS, you agree to us passing on your details to a third party agency to carry out a relevant criminal record check. This may provide details of any relevant spent and unspent convictions you may have.

3.2 You warrant and undertake that at all times for the purposes of this Agreement:

(i) all individuals engaged by you in providing the Services are subject to a valid relevant criminal record check and you will provide evidence of this upon request; and

(ii) you have no reason to believe that any person who is or will be employed or engaged by you in the provision of the Services, is barred from working with or may otherwise present a risk to, children or vulnerable adults.

3.3 You shall immediately notify us of any information that we reasonably request to enable us to be satisfied that the obligations of this Clause have been met.

3.4 You shall refer information about any person carrying out the Services to the DBS where the DBS removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to children **and/or** vulnerable adults.

4 FEES AND EXPENSES

4.1 In consideration of your provision of the Services, Wellcome shall pay you a fee of £[AMOUNT] [exclusive OR inclusive] of VAT [upon completion of the Project] **OR** [in the instalments as set out in Schedule 1] [upon completion of the corresponding Project Condition to the reasonable satisfaction of Wellcome] **OR** [per [hour OR day (based on a day being a minimum of [7] hours) for providing the Services]⁵. [For the purposes of this Clause, “**Project Condition**” shall mean each of the conditions set out in Schedule 1 that are required to have been achieved in relation to the Project.]⁶

4.2 [On written confirmation by Wellcome of [the Project being completed] **OR** [a Project Condition being achieved] to its reasonable satisfaction [such confirmation not to be unreasonably withheld or delayed], you shall submit to Wellcome an invoice which gives details of the Services which have been provided [in relation to the Project] **OR** [in achieving the relevant Project Condition] and the amount payable (plus VAT, if applicable)].

OR [On the last working day of each month during your engagement you shall submit to Wellcome an invoice which gives details of the [hours OR days] which you or any Substitute

⁴ **Internal drafting note- delete before issuing contract:** Mark this Clause as ‘Not Used’ if not applicable.

⁵ **Internal drafting note- delete before issuing contract:** Select the appropriate fee option in Clause 4.1 depending on the agreed payment terms and delete the other option. Note: avoid hourly/day rates in favour of a fixed Project fee wherever possible as hourly/daily rates can be indicators of employment status.

⁶ **Internal drafting note- delete before issuing contract:** Delete definition of “Project Condition” if not applicable to agreement.

have worked, the Services provided and the amount of the fee payable (plus VAT, if applicable) for the Services during that month.].⁷

4.3 Wellcome shall pay an invoice submitted in accordance with Clause 4.2, within 30 days of receipt.

4.4 [You shall be responsible for all expenses incurred in the provision of the Services and no further payment is due to you in addition to the fee.]

OR

[Wellcome shall reimburse those expenses agreed in advance as necessary for the proper performance of the Services within 30 days of receipt of your invoice including the same and all relevant receipts. You will not be entitled to any other payment.]⁸

4.5 We are entitled to deduct from any sums payable to you any sums that you may owe Wellcome at any time.

5 OTHER ACTIVITIES

5.1 You may be engaged, employed or concerned in any other business, trade, profession or other activity which does not place you in a conflict of interest with Wellcome or conflict in any way with your provision of the Services to Wellcome.

6 CONFIDENTIAL INFORMATION AND WELLCOME PROPERTY

6.1 During the term of your engagement under this Agreement and following its termination, you shall not use or disclose to any person any Confidential Information. For the purposes of this Clause, “**Confidential Information**” means any information or matter which is not in the public domain and which relates to the business or affairs of Wellcome or any of its business contacts or to any other confidential matters which may come to your knowledge when providing the Services.

6.2 The restriction in Clause 6.1 does not apply to:

- (i) any use or disclosure authorised by Wellcome or as required by law;
- (ii) any information which is already in, or comes into, the public domain otherwise than through your unauthorised disclosure;
- (iii) a disclosure which amounts to a protected disclosure within the meaning of section 43A of the Employment Rights Act 1996;
- (iv) a disclosure in order to report an offence to a law enforcement agency or to co-operate with a criminal investigation or prosecution;
- (v) a disclosure for the purposes of reporting misconduct, or a serious breach of regulatory requirements, to any body responsible for supervising or regulating the matters in question; or
- (vi) a disclosure to the Equality and Human Rights Commission.

6.3 All data, documents, books, manual, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the business or affairs of Wellcome or any group company or its or their customers and business contacts and any keys, hardware, software and equipment that may come into your possession when providing the Services and all Wellcome Data remain the property of Wellcome (“**Wellcome Property**”). For the purposes of this Clause, “**Wellcome Data**” means any and all data in any format to which you obtain access in the course of providing the Services, including all information

⁷ **Internal drafting note- delete before issuing contract:** Select the appropriate option in Clause 4.2 depending on the agreed payment terms and delete the other option.

⁸ **Internal drafting note- delete before issuing contract:** Select the appropriate option here and delete the other option. It is preferable from an employment status perspective for the consultant to bear all expenses.

derived from such data which is in your possession or under your control outside Wellcome's premises.

7 DATA PROTECTION

- 7.1 In the course of providing the Services, where you are handling and/or using Personal Data (as defined in Appendix 2), provided by or on behalf of Wellcome or otherwise accessed or obtained in the course of providing the Services, the terms of the Data Protection Schedule attached at Appendix 2 shall apply. **[DELETE CLAUSE 7.1 IF NOT APPLICABLE]**
- 7.2 For the purposes of business operations, the administration and management of your engagement and legal compliance, Wellcome and its duly authorised agents will need to process your Personal Data, both electronically and manually. A more detailed explanation of this processing will be provided to you separately in a data privacy notice.
- 7.3 **[To ensure compliance with relevant laws and to protect its workers and business, Wellcome may monitor, intercept, review and access your use of its communication facilities, as applicable]**⁹. Communications and activities on Wellcome equipment and premises cannot be presumed to be private.

8 INTELLECTUAL PROPERTY

[USE EITHER:

- 8.1 On entering into this Agreement you assign to Wellcome all existing and future intellectual property rights (including, without limitation, patents, copyright and related rights) and inventions arising from the Services. You agree promptly to execute all documents and do all acts as may, in Wellcome's opinion, be necessary to give effect to this Clause 8.
- 8.2 On entering into this Agreement you irrevocably waive all moral rights under the Copyright, Designs and Patents Act 1988 (and all similar rights in other jurisdictions) which you have or will have in any existing or future works.]

[OR:

- [8.1 The intellectual property rights (including, without limitation, copyright arising from the Services) (**IP Rights**) shall belong to you (unless otherwise indicated by Wellcome), and you hereby grant Wellcome a worldwide, perpetual, non-exclusive, irrevocable, royalty-free licence to use the IP Rights in any manner whatsoever, with a right to sub-license.
- 8.2 Any presentation or publication of material relating to the Services in which you own the copyright, shall carry the following mark © [Your name].]

9 FILMING AND PHOTOGRAPHY **[- NOT APPLICABLE]**¹⁰

You hereby agree to obtain any consents necessary in relation to filming and/or photography of participants in **[name of workshop/the Project/the Services]**. You shall ensure that such consents are in line with Wellcome's standard filming/photography requests (available on request) and include permission for Wellcome to use any footage and/or images for **[INSERT DETAILS]**.

10 INSURANCE AND LIABILITY

You shall have personal liability for and shall indemnify Wellcome for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by you, or any Substitute engaged by you, of the Terms including any negligent or reckless act, omission

⁹ **Internal drafting note- delete before issuing contract:** Ideally the Individual would not have access to Wellcome communication facilities. Delete wording in square brackets if this is the case.

¹⁰ **Internal drafting note- delete before issuing contract:** If not applicable, remove square brackets around 'NOT APPLICABLE'.

or default in the provision of the Services and shall maintain in force adequate insurance cover with reputable insurers. You shall provide Wellcome with evidence of such insurance cover on reasonable request.

11 TERMINATION

11.1 Wellcome may at any time terminate your engagement under this Agreement with immediate effect with no liability to make any further payment to you (other than for any accrued fees or expenses at the date of termination) if:

- (i) you are in material or repeated breach of any of your obligations under this Agreement; or
- (ii) other than as a result of illness or accident, after notice in writing, you wilfully neglect to provide or fail to remedy any default in providing the Services.

11.2 Any delay by Wellcome in exercising its rights to terminate shall not constitute a waiver of those rights.

12 OBLIGATIONS ON TERMINATION

Any Wellcome Property, as defined in Clause 6.3, that is in your possession shall be returned to Wellcome at any time on request and in any event on or before the termination or expiration of this Agreement. Any Wellcome Data (as defined in Clause 6.3) that is in your possession shall, at Wellcome's option, be either returned to Wellcome or irretrievably deleted.

13 STATUS

13.1 You will be an independent contractor and nothing in this Agreement shall render you an employee, worker, agent or partner of Wellcome and you shall not hold yourself out as such.

13.2 You shall be fully responsible for and indemnify Wellcome against any liability, assessment or claim for:

- (i) all income tax or National Insurance or similar contributions arising in consequence of all payments made in connection with the Services together with any penalty, tax, interest, expense, cost or charge incurred or payable by Wellcome in connection with such liabilities for the avoidance of doubt excluding any VAT payable on the fee (to the extent that such recovery is not prohibited by law); and
- (ii) any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by you or any Substitute against Wellcome arising out of or in connection with the provision of the Services.

13.3 Wellcome may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to you.

13.4 The terms of this Agreement are subject to us receiving the following and such other information as we may reasonably require (unless you have previously provided these to us): (i) your National Insurance number for verification of self-employment status¹¹; (ii) a copy of your VAT registration certificate (where applicable). If you are not subject to UK taxes and resident outside of the UK you do not need to provide your National Insurance number or tax details from the country where you are resident. It is your responsibility to account for any applicable taxes in your country of residence in respect of any fees and/or expenses received under this Agreement.

14 VARIATION AND THIRD PARTY RIGHTS

14.1 This Agreement may only be varied by a document signed by both you and Wellcome.

¹¹ **Internal drafting note- delete before issuing contract:** This Agreement assumes the individual has been assessed as property self-employed so no deductions need to be made from the fee, although a tax indemnity is included.

14.2 No term of the Agreement may be enforced by a third party solely by virtue of the Contracts (Rights of Third Parties) Act 1999.

15 GOVERNING LAW AND JURISDICTION

15.1 The construction, validity and performance of this Agreement shall be exclusively governed by the laws of England and Wales and you submit to the exclusive jurisdiction of the Courts of England and Wales to settle any dispute or claim arising out of this Agreement or its subject matter or formation (including non-contractual disputes or claims).

APPENDIX 1 - [PROJECT AND] SERVICES

[THIS SHOULD INCLUDE THE FOLLOWING MATTERS:]

- DETAILS OF THE PROJECT/WORK TO BE CARRIED OUT¹²;
- THE LOCATION(S) WHERE THE SERVICES ARE TO BE PERFORMED IF RELEVANT;
- ANY NECESSARY REPORTING PROCEDURE¹³;
- ANY MILESTONES FOR COMPLETION OF PARTICULAR PROJECTS;
- WHETHER THE SERVICES WILL NEED TO BE PROVIDED TO ANY OTHER GROUP COMPANIES
- DETAILS OF ANY PROJECT CONDITIONS/DELIVERY DATES/PHASED PAYMENTS]

¹² **Internal drafting note- delete before issuing contract:** Ideally, this should be a specific task/project focussed list, focusing more on required deliverables than *how* the work is done. Avoid phrases like – the Individual must follow the reasonable instructions of Wellcome.

¹³ **Internal drafting note- delete before issuing contract:** Avoid suggestions of “line managers” or similar. Refer to Wellcome contacts to report to on progress on Services being delivered.

APPENDIX 2 - DATA PROTECTION SCHEDULE [- NOT APPLICABLE]¹⁴**1. DEFINITIONS**

1.1 In this Appendix, the following terms shall have the applicable meanings given to them.

“**Controller**” (or “**data controller**”), “**Processor**” (or “**data processor**”), “**Data Subject**”, “**international organisation**”, “**Personal Data**” and “**processing**” all have the meanings given to those terms in DP Laws (and related terms such as “**process**” shall have corresponding meanings);

“**DP Laws**” means any law, enactment, regulation, regulatory policy, by law, ordinance or subordinate legislation relating to the processing, privacy, and use of Personal Data, including: (i) the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any laws or regulations implementing Council Directive 2002/58/EC (ePrivacy Directive); and (ii) the General Data Protection Regulation of the European Parliament repealing Directive 95/46/EC (“**GDPR**”), once applicable, and/or any corresponding or equivalent national laws or regulations, once in force and applicable;

“**Protected Data**” means any Personal Data provided by or on behalf of Wellcome or otherwise accessed or obtained in the course of providing the Services that is processed by the Supplier on behalf of Wellcome;

“**Services**” means any and all services to be provided by the Supplier under this Agreement;

“**Supervisory Authority**” means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering DP Laws; and

To the extent that a term of this Appendix requires the performance by a party of an obligation ‘in accordance with DP Laws’ (or similar), this requires performance in accordance with such DP Laws as are in force and applicable at the time of performance and, if the relevant obligation is not then a requirement under applicable DP Laws, it shall not apply until such time as it is so required.

2. OBLIGATIONS OF THE PARTIES

2.1 For Protected Data, Wellcome shall be the Controller and the Supplier shall be the Processor. Each party shall comply with DP Laws and its relevant obligations under this Appendix.

2.2 Where the Supplier processes Protected Data on behalf of Wellcome, the Supplier shall:

2.2.1 (and shall procure that any person acting under its authority who has access to Protected Data shall) process the Protected Data only on and in accordance with Wellcome’s documented instructions (“**Processing Instructions**”); and

2.2.2 immediately inform Wellcome of any legal requirement under applicable law that would require the Supplier to process the Protected Data otherwise than only on the Processing Instructions; and

2.2.3 immediately inform Wellcome if any Processing Instructions infringe DP Laws.

2.3 The Supplier shall implement and maintain appropriate technical and organisational measures in relation to the processing of Protected Data by or on behalf of the Supplier:

2.3.1 such that the processing of the Protected Data will meet the requirements of DP Laws and ensure the protection of the rights of Data Subjects; and

¹⁴ **Internal drafting note- delete before issuing contract:** If Personal Data is not being processed by the consultant in the course of providing the Services, mark this schedule as ‘Not Applicable’. This Schedule is drafted on the basis that Wellcome is the Controller – it should be amended if the consultant is the Controller or a Joint Controller.

- 2.3.2 so as to ensure a level of security in respect of Protected Data processed by it is appropriate to the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Protected Data transmitted, stored or otherwise processed.
- 2.4 The Supplier shall not engage another Processor to perform processing activities in respect of the Protected Data on behalf of Wellcome without Wellcome’s prior written consent and, if Wellcome gives its consent, the Supplier shall appoint the sub-Processor under a binding written contract (“**Processor Contract**”) which imposes the same data protection obligations as are contained in this Appendix on the sub-Processor. The Supplier shall, where that sub-Processor fails to fulfil its data protection obligations in accordance with the Processor Contract, remain fully liable to Wellcome for the performance of that sub-Processor’s obligations.
- 2.5 The Supplier shall ensure that Supplier personnel processing Protected Data have signed agreements requiring them to keep Protected Data confidential, and take all reasonable steps to ensure the reliability of Supplier personnel processing Protected Data, and that Supplier personnel processing Protected Data receive adequate training on compliance with this Appendix and DP Laws applicable to the processing.
- 2.6 The Supplier shall implement and maintain appropriate technical and organisational measures to assist Wellcome in the fulfilment of Wellcome’s obligations to respond to any Data Subject requests relating to Protected Data.
- 2.7 The Supplier shall provide reasonable assistance, information and cooperation to Wellcome to ensure compliance with Wellcome’s obligations under DP Laws with respect to: (i) security of processing; (ii) notification by Wellcome of breaches to a Supervisory Authority or Data Subjects; and (iii) data protection impact assessments and prior consultation with a Supervisory Authority regarding high-risk processing.
- 2.8 The Supplier shall not transfer any Protected Data to any country outside the European Economic Area or to any international organisation without Wellcome’s prior written consent and appropriate safeguards being in place in accordance with DP Laws.
- 2.9 In accordance with DP Laws, the Supplier shall allow for and contribute to audits, including inspections, conducted by Wellcome or another auditor mandated by Wellcome for the purpose of demonstrating the Supplier’s compliance with its obligations under DP Laws and this Appendix.
- 2.10 The Supplier shall notify Wellcome of any Personal Data Breach (actual or suspected) without undue delay (but in any event within twenty four (24) hours after becoming aware of the breach) and with such details relating to the breach as Wellcome reasonably requires. “**Personal Data Breach**” means a breach of security or other action or inaction leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Protected Data.
- 2.11 The Supplier shall, without delay and on Wellcome’s written request, either securely delete or return all the Protected Data to Wellcome after the end of the provision of the relevant Services related to processing.
- 2.12 The Supplier shall indemnify and keep indemnified Wellcome in respect of all DP Losses suffered or incurred by, awarded against or agreed to be paid by Wellcome, arising from or in connection with the Supplier acting outside or contrary to Wellcome’s lawful instructions or any breach by the Supplier of its obligations under this Appendix. “**DP Losses**” means all liabilities, including:
- (i) costs (including legal costs), claims, demands, actions, settlements, charges, procedures, expenses, losses and damages; and to the extent permitted by applicable law;
 - (ii) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority or any other relevant regulatory authority;
 - (iii) compensation to a Data Subject ordered by a Supervisory Authority, court or other tribunal of competent jurisdiction; and
 - (iv) the costs of compliance with investigations by a Supervisory Authority or any other relevant regulatory authority.

3. DATA PROCESSING DETAILS

3.1 Subject-matter of processing:

[e.g. “[providing analytics in relation to][providing reporting in relation to] the data [accessing Wellcome systems and data] as part of the Services under the Agreement.”]

3.2 **Duration of the processing:**

[e.g. “For the Term of the Agreement”]

3.3 **Nature and purpose of the processing:**

[e.g. “For the purposes of providing the Services under the Agreement”.]

3.4 **Type of personal data:**

[e.g: - delete or add as relevant:

[contact details]

[financial payment details]

[health information]

[transaction records]

[cookie data in respect of online activity]

[correspondence]

[opinions]

3.5 **Categories of data subjects:**

[e.g – delete or add as relevant:]

[employees][contractors][candidates]

[suppliers]

[clients and potential customers or clients]

[persons making grant applications]

3.6 **Additional Instructions**

[Eg: Details of any approved international transfers; specific technical and organisational security measures that the Supplier needs to maintain]