

DRAFT TEARFUND CONSULTANT AGREEMENT
Consultancy Services - Research into Self-Help Groups and Covid 19

Parties:

(1) “**Tearfund**”: Tearfund, (a Company incorporated in England and registered under number 00994339) whose registered office is at 100 Church Road, Teddington, Middlesex TW11 8QE. For the purposes of this agreement, the member of staff representing Tearfund will be [REDACTED].

(2) The “**Consultant Organisation**”: [REDACTED], incorporated and registered in [England and Wales] with company number [REDACTED] whose registered office is at [REDACTED]. For the purposes of this agreement the member of staff representing [REDACTED] will be [REDACTED] (“the **Individual**”).

Terms:

1. Term

- 1.1. The commencement date of this agreement shall be [REDACTED] and it shall continue for a period of [REDACTED] unless this agreement is terminated by either party in accordance with clause 10.
- 1.2. Tearfund may extend this agreement by a further period of up to [REDACTED] by giving written notice to the Consultant Organisation of its wish to extend this agreement.

2. Commencement of Work

- 2.1. Neither party is obligated to conduct any activity until both parties have signed this agreement document. Upon the signing of this agreement by both parties, all of the obligations of both parties as specified in this agreement come into effect. Any work, that includes [details of the type of work the Consultant is performing], that is undertaken by the Consultant Organisation under this agreement (“**the Services**”) shall be as per the Terms of Reference (Schedule 1). The Consultant Organisation shall liaise with Tearfund Study Manager prior to commencing the Services.

3. Duties

- 3.1. Unless prevented by ill health or accident and subject to the terms of this agreement, the Consultant Organisation for the period of this agreement shall, and (where appropriate) shall procure that the Individual shall with all due skill and care provide or devote at least [NUMBER] [hours or days] in each month to providing for Tearfund the Services outlined in Terms of Reference at Schedules 1. In case of illness or accident preventing the Individual from delivering the Services, the Consultant Organisation shall promptly notify Tearfund of such illness or accident. The Consultant Organisation shall provide any equipment necessary for the provision of the Services.
- 3.2. With Tearfund’s prior written approval, the Consultant Organisation may appoint a suitably qualified substitute to perform the Services on the Consultant Organisation’s behalf, provided that the substitute shall be required to enter into direct undertakings with Tearfund, including with regard to confidentiality and will be bound by all the obligations of this agreement relating to the Individual. If Tearfund accepts the substitute, the Consultant Organisation shall continue to invoice Tearfund in accordance with Clause 4 below and the Consultant Organisation shall be responsible for the remuneration of (and any expenses incurred by) the substitute. For the avoidance of doubt, the Consultant Organisation will not be paid for any period during which neither the Individual nor any substitute provides the Services.

- 3.3. Neither the Consultant Organisation nor the Individual shall have any authority (or shall hold themselves out as having authority) to commit Tearfund to any legally binding commitments or contracts or to interfere with the running of Tearfund's affairs or business or without Tearfund's prior written permission incur any expenditure in the name of or on the account of Tearfund.

4. Fees and expenses

- 4.1. In consideration of the delivery of the Services by the Consultant Organisation, Tearfund will pay to the Consultant Organisation a consultancy fee of £[amount] per hour [OR day OR in total] [exclusive or inclusive] of VAT (the "Fee"). The Consultant Organisation shall present to Tearfund monthly invoices for the Fee, together with an expense claim form (if applicable).
- 4.2. The monthly invoice for the Fee shall detail the hours [OR days] which the Individual or any approved substitute has worked for Tearfund during the preceding month and any VAT payable (if applicable). The expense claim form shall detail those expenses agreed in advance as necessary for the proper performance of the Services and only such expenses shall be reimbursed by Tearfund. Any expense claim form should be accompanied by any relevant receipts.
- 4.3. Payment of the Fee will be made within 30 days following receipt of a valid invoice and expense claim form (if applicable) submitted by the Consultant Organisation
- 4.4. Subject to clause 12.2, if the Individual is required to travel abroad then the Consultant Organisation shall be responsible for any necessary insurances, inoculations and immigration requirements.
- 4.5. Where the outputs delivered are of a standard below that which Tearfund considers acceptable, or where the Consultant Organisation fails to fully observe the Terms of Reference in Schedule 1 or contractual obligations, Tearfund reserves the right to make an appropriate reduction in the Fee paid following discussion with the Consultant Organisation.
- 4.6. Tearfund shall be entitled to deduct from the Fee (and any other sums) due to the Consultant Organisation any sums which the Consultant Organisation or the Individual owe to Tearfund at any time.

5. Consultant Organisation obligations

- 5.1. The Consultant Organisation shall, and shall procure that the Individual shall:
- 5.1.1. carry out the Services in an expert and diligent manner and to the best of his ability and promptly and faithfully comply with and observe all lawful and proper requests which may be made by Tearfund and in particular throughout the term of this agreement, the Consultant Organisation or the Individual will, when required, give to Tearfund such written or verbal advice or information regarding the delivery of any of the Services as Tearfund may require.
- 5.1.2. make every effort to adhere to the Terms of Reference as laid down in the documents at Schedule 1.
- 5.1.3. behave in a manner consistent with Tearfund's ethos and comply with the following policy areas of Tearfund:
- 5.1.4. **Safeguarding**

5.1.4.1. The Consultant Organisation and Individual must ensure that their behaviour promotes and allows all people, with particular emphasis on children and vulnerable adults/adults at risk, to live free from:

- Harm and Abuse, (Physical, sexual (including sexual harassment) and emotional (including the abuse of power / trust and coercion)
- Exploitation - (physical & sexual)
- Neglect
- Discrimination
- Human Trafficking

5.1.4.2. All adults who are beneficiaries of Tearfund are included within the terms “vulnerable adults/adults at risk”.

5.1.4.3. Any substantiated incident or any allegation (historical or current) of a breach of the safeguarding standards above by representatives of the Consultant Organisation or Tearfund staff, volunteers or representatives, or partner staff or volunteers, must be notified immediately (and at least within 24 hours of becoming aware) to Tearfund. Any report will be treated as highly confidential.

5.1.5. **Fraud, Loss and Bribery**

5.1.5.1. Tearfund considers that fraud is knowingly making an untrue or misleading representation with the intention of making a gain for oneself or another or causing a loss, or risk of loss, to another. Bribery is defined as giving, requesting or accepting a financial or other advantage to encourage or reward another person for improper behaviour. Bribery is a form of corruption which is defined as 'any abuse of a position of trust in order to gain an unfair advantage'.

5.1.5.2. The Consultant Organisation and Individual shall commit to conducting all aspects of its work fairly, openly and honestly and in accordance with the highest ethical and legal standards. This includes a commitment to implementing and enforcing effective systems to counter fraud, bribery and corruption.

5.1.5.3. The Consultant Organisation and Individual shall always try to minimise fraudulent and non-fraudulent losses that affect Tearfund.

5.1.5.4. The Consultant Organisation and Individual shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010.

5.1.6. **Whistleblowing**

5.1.6.1. If the Consultant Organisation or Individual discovers information which they believe shows serious malpractice, unacceptable practices or wrongdoing by Tearfund employees or anyone associated with work provided under this agreement, with no fear of reprisal the Consultant Organisation or Individual has the right to report serious legitimate concerns of a whistleblowing nature to Tearfund anonymously. This should be done by using the following email address whistleblowing@tearfund.org which is monitored by the Whistleblowing Officer and the Legal Team at Tearfund.

Other activities

5.2. Nothing in this agreement shall prevent the Consultant Organisation nor the Individual from being engaged, concerned or having any financial interest in any other business, trade, profession or occupation during the period of this agreement provided that:

- 5.2.1. such activity does not cause a breach of any of the Consultant Organisation or the Individual's obligations under this agreement or in the reasonable opinion of Tearfund conflict with or materially impact upon the ability to deliver the Services.
- 5.2.2. the Individual shall give priority to the provision of the Services to Tearfund over any other business activities undertaken by the Individual during the course of this agreement.
- 5.2.3. where the cost of travel for the Individual to work away from their home country is paid by Tearfund under the terms of this agreement the Individual may not perform other engagements during the period of travel without prior permission from Tearfund.

6. Data protection

- 6.1. The Consultant Organisation shall ensure that the Individual consents to Tearfund and/or any third party nominated by Tearfund and bound by a duty of confidentiality processing (which includes but is not limited to obtaining, recording, using and holding) all or any personal data relating to the Individual (in manual, electronic or any other form) for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" as defined in Data Protection Legislation.
- 6.2. The Consultant Organisation consents to Tearfund making such information available to regulatory authorities, governmental or quasi-governmental organisations and consents to the transfer of such information to any country whether within or outside the European Economic Area.
- 6.3. Tearfund and the Consultant Organisation hereby agrees to comply in full with all applicable data protection legislation (including the General Data Protection Regulation, Regulation 2016/679/EU ("the **GDPR**") on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, or any national UK legislation substantively implementing such Regulation in the event that the Regulation is not directly applicable in the UK including the Data Protection Act 2018 and any subsequent legislation and other applicable data protection rules, regulations or otherwise whether pursuant to applicable law) ("**Data Protection Legislation**").
- 6.4. For the purposes of this clause 6, defined terms have the meaning prescribed under this agreement or pursuant to the Data Protection Legislation.
- 6.5. **Shared Personal Data** means the Personal Data shared by Tearfund with the Consultant Organisation for the purposes of the Consultant Organisation discharging its obligations under this agreement, which shall include but shall not be limited to:
 - 6.5.1. Name;
 - 6.5.2. Address;
 - 6.5.3. Email Address;
 - 6.5.4. Telephone number;
 - 6.5.5. Photographs;
 - 6.5.6. Date of birth;
 - 6.5.7. Job Title;
 - 6.5.8. Social media identifier

in relation to the following categories of Data Subject

- 6.5.9. Employees/Former Employees
- 6.5.10. Volunteers
- 6.5.11. Contractors/Consultants

- 6.5.12. Partners
- 6.5.13. Beneficiaries

- 6.6. The Parties hereby agree to enter into such further agreements as may be reasonably necessary for either or both Parties to comply with applicable Data Protection Legislation.
- 6.7. Tearfund will act in the capacity of Data Controller of any Shared Personal Data Processed by the Consultant Organisation in the performance of the agreement. The Consultant Organisation shall act as a Data Processor.
- 6.8. The Consultant Organisation acknowledges that this applies to all forms of processing (electronic, manual, database etc) and the purpose of processing such personal data is:

- 6.8.1. Administration:
 - 6.8.1.1 Business/Charitable purposes
 - 6.8.1.2 Employees (incl. applicants, volunteers, and freelancers)
- 6.8.2. Data Matching
- 6.8.3. Provision of Services (eg sending emails, fulfilling mail-orders)

- 6.9. The Consultant Organisation agrees that it shall:
 - 6.9.1. process such personal data only on and subject to the instructions of Tearfund;
 - 6.9.2. implement such technical and organisational security measures as are reasonably necessary to comply with all the security obligations of the Data Protection Legislation;
 - 6.9.3. notify Tearfund of the Consultant Organisation's intention to appoint any sub-processor pursuant to Clause 6 of this agreement provided that, if Tearfund does not object to the appointment of the proposed sub-processor, the sub-processor is engaged pursuant to a written agreement which contains the same obligations of processors in respect of personal data as are set out in this Clause 6;
 - 6.9.4. take appropriate technical and organisational measures to enable Tearfund to respond to any request for the exercise of an individual right;
 - 6.9.5. not cause or permit the Shared Personal Data to be transferred outside the EEA without the prior written consent of and on the basis of documented instructions from Tearfund;
 - 6.9.6. assist Tearfund to comply with Tearfund's obligations under the GDPR to process personal data securely, to respond to a personal data breach, to undertake data protection impact assessments and to engage in any mandatory consultation with a supervisory authority;
 - 6.9.7. only process personal data for the duration of the agreement and at the election of Tearfund, return or destroy all personal data held or processed by or on behalf of the Consultant Organisation upon request, including each copy of such data unless retention of a copy is required by applicable law or regulation;
 - 6.9.8. inform Tearfund without undue delay by email to databreach@tearfund.org and with a telephone call to confirm receipt, and, in any event, within 24 hours, of the occurrence of a personal data breach; and
 - 6.9.9. without prejudice to the foregoing, comply with any obligation directly applicable to a processor under the GDPR.

- 6.10. Tearfund shall have the right but not the obligation, subject to the provision of reasonable notice, to audit the Consultant Organisation's compliance with this agreement and in particular its compliance with this Clause 6. The Parties shall provide all reasonable assistance to each other, including access to, and the assistance of, all relevant employees. Each of the Parties shall pay its own costs in connection with any such audit.
- 6.11. In this Clause 6, the terms "data processor" or "processor", "data controller" or "controller", "personal data", "personal data breach", "supervisory authority" and "data protection impact assessment" shall have the meaning set out in the GDPR, or any national UK legislation implementing such Regulation, as applicable.

7. Status

- 7.1. The Consultant Organisation warrants and represents to Tearfund that the relationship is one of an independent contractor and client. Nothing in this agreement shall render the Consultant Organisation or the Individual an employee, agent or partner of Tearfund and the Consultant Organisation will not hold itself and shall ensure that the Individual shall not hold himself out as such.
- 7.2. This agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Consultant Organisation shall be fully responsible for and indemnify Tearfund against any liability, assessment or claim for taxation whatsoever arising from or made in connection with the performance of the Services (where such recovery is not prohibited by law) and any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Consultant Organisation, the Individual or any substitute against Tearfund arising out of or in connection with provision of the Services. Tearfund may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to the Consultant Organisation.
- 7.3. The Consultant Organisation warrants that it is not, nor will it prior to the cessation of this agreement, become a managed service organisation, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

8. Confidential information and Tearfund Property

- 8.1. The Consultant Organisation will not, and shall procure that the Individual will not, at any time during the existence of this agreement or at any time thereafter use or disclose to any person or cause to be so used or disclosed any confidential information about the business or affairs of Tearfund or any of its business contacts or about any other confidential matters which may come to the Consultant Organisation or the Individual's knowledge in the course of providing the Services, except as is necessary to properly perform the Services or with the consent of Tearfund or as required by a court of competent jurisdiction. 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 affairs of Tearfund or any of its business contacts.
- 8.2. All documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the business or affairs of Tearfund or its business contacts and any equipment, keys, hardware or software provided for the Consultant Organisation or Individual's use by Tearfund and any data or documents (including copies) produced, maintained or stored by the Consultant Organisation or the Individual on Tearfund's or the Consultant Organisation or the Individual's computer systems or other electronic equipment (including mobile phones if provided by Tearfund) remain the property of Tearfund ("**Tearfund Property**").
- 8.3. At any time during the course of this agreement, the Consultant Organisation and the Individual will promptly on request return all and any Tearfund Property in their possession

to Tearfund.

9. Intellectual Property

- 9.1. The Consultant Organisation warrants to Tearfund that it has obtained from the Individual a written and valid assignment of all existing and future intellectual property rights (including, without limitation, patents, copyright and related rights) and inventions arising from providing the Services to Tearfund. The Consultant Organisation agrees promptly to execute all documents and do all acts as may, in the opinion of Tearfund, be necessary to give effect to this clause.
- 9.2. The Consultant Organisation hereby irrevocably waives all moral rights under the Copyright, Designs and Patents Act 1988 (and all similar rights in other jurisdictions) which it has or will have in any existing or future works.
- 9.3. The Consultant Organisation or the Individual may at the absolute discretion of and with the written permission of Tearfund make use of any visual images created by the Consultant Organisation or the Individual for Tearfund in the course of the provision of the Services provided that the Consultant Organisation and the Individual shall continue to comply with Tearfund's image use policy with regards to content and taste whether or not this agreement has expired or been terminated.

10. Termination

- 10.1. Tearfund may terminate this agreement at any time by giving four (4) weeks' written notice to the Consultant Organisation.
- 10.2. Tearfund may by written notice summarily terminate this agreement with immediate effect without liability to make any further payment to the Consultant Organisation (other than in respect of any accrued fees or expenses at the date of termination) in the event that:
 - 10.2.1. The Individual is declared bankrupt or compounds with their creditors or is convicted of any criminal offence either in the UK or any other country (other than road traffic offences);
 - 10.2.2. The Individual conducts themselves in any manner which in the reasonable opinion of Tearfund brings or is likely to bring him and / or Tearfund into disrepute or which in Tearfund's reasonable opinion is prejudicial to its interests;
 - 10.2.3. The Individual is incapacitated (including by reason of illness or accident) from providing the Services for an aggregate period of twelve (12) working days during the term of this agreement;
 - 10.2.4. The Consultant Organisation provides false information in its registration documentation;
 - 10.2.5. The Consultant Organisation or the Individual is in material breach of any of its obligations under this agreement or any agreement supplemental to it or the Consultant Organisation or the Individual wilfully neglects after notice in writing served on him by Tearfund to provide or remedy any default in providing the Services;
 - 10.2.6. The Consultant Organisation makes a resolution for its winding up, makes an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or winding-up order is made or an administrator or receiver is appointed in relation to the Consultant Organisation;

10.3. The expiration or earlier termination of this agreement shall not affect such of its provisions as are expressed to operate or have effect afterwards or any right of legal action which has accrued to either party in respect of any breach of this agreement by the other party.

10.4. Any delay by Tearfund in exercising its rights to terminate this agreement shall not constitute a waiver of those rights.

11. Obligations on termination

11.1. Upon the expiration or earlier termination of this agreement the Consultant Organisation shall, and shall procure that the Individual shall immediately deliver to Tearfund any original or copy documents obtained by themselves in the course of providing the Services together with all Tearfund Property in their possession or under their control. The Consultant Organisation and the Individual shall also irretrievably delete any information relating to Tearfund's business stored on any IT device or other storage device and all matter derived from such sources which is in their possession or under their control outside Tearfund's premises.

12. Insurance and liability

12.1. The Consultant Organisation shall have liability for and shall indemnify Tearfund for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Consultant Organisation or the Individual, or any substitute engaged by the Consultant Organisation, of the terms of this agreement, including any negligent or reckless act, omission or default in the provision of the Services and shall maintain in force during the period of this agreement adequate insurance cover with reputable insurers acceptable to Tearfund. The Consultant Organisation shall ensure in addition if so required by Tearfund that the level of cover and other terms of insurance are acceptable to and agreed by Tearfund.

12.2. If the Individual is required to travel abroad Tearfund shall provide personal accident and business travel insurance for the Individual in the provision of the Services on such terms as Tearfund shall from time to time decide and subject always to the terms and conditions of any such insurance scheme. Any travel abroad will be subject to appropriate safeguarding and security clearance.

13. Notices

13.1. Any notice to be given by one party to the other shall be in writing and shall be validly given if:

13.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service to the address at the start of this agreement; or

13.1.2 sent to the correct email address of the party to be served and the sender has a copy of email receipt notification to prove safe receipt by the party to be served.

13.2. Any notice shall be deemed to have been received:

13.2.1 if delivered by hand, on signature of a delivery receipt;

13.2.2 if sent by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; or

13.2.3 if sent by email, on the next Business Day after transmission.

13.3. The details of the main contact at the Consultant Organisation are [insert name, email address, phone number]

13.4. The details of the main contact at Tearfund are [Thomas Giblin, thomas.giblin@tearfund.org, phone number]

14. Third Party Rights

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement and no person other than the Consultant Organisation and Tearfund shall have any rights under it. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any person that is not a party to this agreement.

15. Variation

No variation of this agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

16. Definitions

In this agreement “Tearfund” includes any company which for the time being is the holding company of Tearfund or a subsidiary of such company or of Tearfund (“subsidiary” and “holding company” having the same meaning as in section 1159 of the Companies Act 2006).

17. Entire Agreement

This agreement supersedes any previous agreement between the parties in relation to the matters dealt with in it and represents the entire understanding between the parties. The Consultant Organisation acknowledges and agrees that it has not entered into this agreement in reliance on any representation, warranty or undertaking which is not set out or referred to in this agreement.

18. Governing Law and Jurisdiction

This agreement and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with the law of England and Wales. The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of this agreement.

Signed

Date

[Name of Contract Owner]

For and on behalf of Tearfund

Signed

Date

[], Director

[COMPANY]

Schedule 1 - Terms of Reference

(To be copied over from procurement documents)