

Confidentiality and consultancy agreement

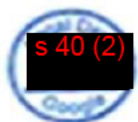
Google is offering to provide support free of charge to assist [NHS/NHSX/PHE?] with its efforts to tackle COVID-19. Google is providing support purely as a service to the public during the COVID-19-related public health emergency, and not as a gift to any individual government official. In consideration of £1, receipt and sufficiency of which Google acknowledges, NHS England (the NHS Commissioning Board) and NHS Improvement (Monitor and the Trust Development Authority) and the Department of Health and Social Care, together acting as "NHSX" accepts Google's offer of support on the terms set out below and on the understanding that Google expects nothing further in return for these services.

1. **Project.** Google will provide technical, advisory and other support (the "Support") to NHSX regarding efforts to tackle COVID-19 (the "Project").
2. **Term.** This agreement will be effective from 1 March 2020 and will continue until terminated by either party giving at least 1 weeks' written notice to the other. Following termination the parties shall work together in good faith to undertake all activities reasonably necessary to support a smooth transition / migration of artefacts and know how associated with the Support to NHSX.
3. **Confidentiality.** Each party acknowledges that it may have access to information relating to the other party which is confidential and/or commercially sensitive, including, without limitation, technical information, data and know-how ("Confidential Information"). If either party discloses any Confidential Information to the other, the recipient will (a) protect the information and prevent any unauthorised use or disclosure of it; (b) only use the information as necessary in connection with the proper course of its activities in relation to the Project, (c) only share the information with those who need to know it in connection with the Project; and (d) ensure that any such persons are subject to a duty of confidentiality on terms which provide safeguards equivalent to those set out in this paragraph 3. Either party may disclose Confidential Information when compelled to do so by law, provided that in each case that it gives prior notice of any such required disclosure to the other party (unless prohibited to do so by law). Each party's duty to protect Confidential Information expires five years from disclosure. This paragraph 3 (Confidentiality) will survive termination of this agreement.
4. **Freedom of information.** Google will provide all necessary cooperation to NHSX to assist NHSX in complying with any requests for information made under applicable freedom of information laws to which it is subject, or HM Government policy relating to contracting information. Subject to the foregoing, neither party may make any proactive public statement regarding the nature of this agreement or the Support without the other's prior written approval. Either party may however make a reactive public statement regarding the nature of this agreement or the Support (a "Statement") in response to an enquiry, provided (a) that the party making the Statement considers it reasonable to do so in order to protect its reputation, and (b) either (i) the Statement is substantially in a form that has previously been agreed between the parties or (ii) the party making the statement has given notice to the other party of its intention to make a Statement, made reasonable attempts to agree the contents of it with the other



party, and prepare the content taking due account of any adverse impact the statement may have on the interests of the other party.

5. **Data protection.** Subject to paragraph 6 (Use of Google products and services), NHSX will not provide Google with any personal data. The parties acknowledge and agree that it is not their intention to collect, access, share, use or otherwise process any personal data (including Service User Data) in respect of which the other party is a controller or processor (as defined in the General Data Protection Regulation (“GDPR”)) in order to perform their obligations under this agreement. If NHSX becomes aware that any such processing of personal data is required, or otherwise likely to take place, it shall immediately notify Google and the parties shall discuss in good faith the additional governance controls (including contractual controls) to be implemented between them to ensure that such processing is carried out at all times in accordance with the GDPR. “Service User Data” means personal data (as defined under the GDPR) of users of Google or NHS services.
6. **Use of Google products and services.** Nothing in this agreement is intended to affect the rights and/or responsibilities of the parties in respect of any publicly available Google products and services which NHSX may use from time to time. Such use shall be subject to the applicable terms of such products and services and if there is a conflict between this agreement and those terms, those terms will prevail.
7. **Anti-bribery.** Each party will comply with all applicable anti-bribery laws, including the UK Bribery Act of 2010, which prohibit corrupt offers of anything of value, either directly or indirectly to anyone, including government officials, to obtain or keep business or to secure any other improper commercial advantage.
8. **Fees and expenses.** Google will not charge NHSX for provision of the Support. For the avoidance of doubt, Google shall bear its own expenses.
9. **Personnel.** Nothing in this agreement shall render personnel of NHSX or Google an employee, worker or agent of the other, and NHSX and Google shall each procure that they shall not hold themselves out as such. Each of NHSX and Google’s personnel remains the respective party’s employee and terms of employment between such parties and their personnel will remain in force during the term of this agreement. Google personnel providing Support at NHSX’s facilities will comply with appropriate NHSX policies and procedures (as made known to Google and/or such personnel in advance by NHSX).
10. **Scope of expertise and limited warranty.** Google will provide the Support in a professional manner, but on an “as is” basis with no warranties or guarantees. NHSX accepts that it shall be responsible for assessing the adequacy and appropriateness of the Support as provided and for any final decision as to whether to rely on, implement or act on such Support, and NHSX shall not rely on any or seek to claim any warranties, guarantees, or representations from Google in that respect.
11. **Limitation of liability.** Nothing in this agreement excludes or limits either party’s liability for (a) death or personal injury resulting from its negligence or the



negligence of its employees or agents; or (b) its fraud or fraudulent misrepresentation. Otherwise, to the extent permitted by applicable law, each party's total aggregate liability for damages arising out of or relating to this agreement is limited to (i) £500,000 in respect of the matters set out in paragraph 3 (Confidentiality), paragraph 5 (Data protection) or paragraph 13 (Intellectual property rights), or (ii) in respect of all other matters in this agreement, £50,000.

12. **Intellectual property rights.** Subject to paragraph 6 (Use of Google products and services) and except as specified in the remainder of this paragraph 12, neither party shall either provide nor acquire any intellectual property ("IP") rights in any work product created or used under this agreement. The parties do however acknowledge and agree that work product provided by Google to NHSX in providing the Support may incidentally include Google or third party IP ("Incidental IP") and Google hereby grants NHSX a sublicensable, perpetual, royalty-free, non-transferable, worldwide, non-exclusive licence to use Incidental IP in such work product. If NHSX becomes aware that any work product is, or is likely to be, created or used by Google on a basis which is not merely incidental to the provision of Support, NHSX shall immediately notify Google and the parties shall discuss in good faith the additional ownership and/or licensing arrangements to be implemented between them to ensure that such non-incidental IP is properly regulated under the terms of this agreement. Google owns all rights, title, and interest in (a) Google's background IP, (b) all IP and know-how applicable to Google products and services, and (c) all IP arising in connection with the Support that has general application to Google's other customers, including derivatives of and improvements to Google's background IP. Google warrants that it has all rights and interests in any IP made available to NHSX under this agreement, sufficient to grant the licences set out in this paragraph 12 and further warrants that use of the Incidental IP in accordance with such terms shall not cause infringement of the rights of any third party.
13. **Miscellaneous.** This agreement does not create any agency or partnership relationship. This agreement does not confer any benefits on any third party unless it expressly states that it does. Any amendment to this agreement must be in writing and signed by both parties. The expiry or termination of this Agreement for whatsoever reason will not affect such of the provisions of it as are expressed to operate or have effect after its termination and will be without prejudice to any right of action already accrued to either party in respect of any breach of this Agreement by the other party. Subject to paragraph 6 (Use of Google products and services), this agreement states all terms agreed between the parties and supersedes all other agreements between the parties relating to its subject matter. This Agreement and any disputes arising out of it (including non-contractual disputes) shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

Signed for and on behalf of NHS Commissioning Board (known as NHS England), the Trust Development Authority and Monitor (together known as NHS Improvement) and the Department of Health and Social Care:



Signed: 

Date:30 March 2020.....

Acknowledged and agreed to by Google UK Limited.

Signed: 

Date: 4/1/2020

