

**RESTRICTED DOCUMENT**

|  |  |
| --- | --- |
|  | Services Contract |
|  |  |  |
|  | Contract reference number: |  |
|  | Service Provider Name: |  |
|  | Services: |  |
|  | Signature Date: |  |
|  |  |  |
|  |  |  |

Big Lottery Fund

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procurement@biglotteryfund.org.uk

We are committed to bringing real improvements to communities and to the lives of people most in need



**SERVICES CONTRACT**

**BETWEEN:**

|  |  |
| --- | --- |
| (1) | **BIG LOTTERY FUND**, with its principal office at 1 Plough Place, London EC4A 1DE (the “**Fund**”) |
| (2) | **[insert company name of the Service Provider]**, a limited company [or a company limited by guarantee] registered in [England and Wales] with company number [insert company number], whose address is [insert registered office address] (the “**Service Provider**”) |

**FORM OF CONTRACT**

This Contract is made up of the following:

(a) the Contract Details;

(b) the Conditions; and

(c) the Schedules.

If there is any conflict or ambiguity between the terms of these documents, a term contained in the Contract Details shall have priority over one contained in the Conditions attached and a term contained in the Conditions shall have priority over one contained in the Schedules. This Contract has been entered into on the Signature Date which is the date of signature as noted below of the last individual to sign the Contract. Any work carried out by the Service Provider prior to the Signature Date is at the Service Provider’s risk.

Any capitalised terms for which a definition is given on this page or in the Contract Details will have the same meaning when used in the Conditions. Any capitalised terms for which a definition is given in the Conditions shall have the same meaning when used on this page or in the Contract Details.

Signed by the duly authorised representative(s) of **BIG LOTTERY FUND**

|  |  |  |  |
| --- | --- | --- | --- |
| Name: | ………………………………… | Signature: | ……………………………… |
| Position: | ………………………………… | Date: | ……………………………… |

|  |  |  |  |
| --- | --- | --- | --- |
| Name: | ………………………………… | Signature: | ……………………………… |
| Position: | ………………………………… | Date: | ……………………………… |

Signed by the duly authorised representative of **[INSERT NAME OF SERVICE PROVIDER]**

|  |  |  |  |
| --- | --- | --- | --- |
| Name: | ………………………………… | Signature: | ……………………………… |
| Position: | ………………………………… | Date: | ……………………………… |

**CONTRACT DETAILS**

1. Key Dates

|  |  |
| --- | --- |
| Start Date (if different from Signature Date): |  |
| Expiry Date: |  |
| Extension Period(s) (if any): |  |

1. Services

|  |  |
| --- | --- |
| Services Description (including Fund’s Requirements) [*if the Services Description is detailed, append to the Contract]*: |  |
| Deliverables and Acceptance Procedures: | Final Report (obligatory) |
| Timetable: |  |
| Standards: |  |
| Authorised Sub-contractors: |  |
| Fund Deliverables: |  |
| Sub-licence for use of the National Lottery logos required: | [yes/[no] |

1. Data Protection

|  |  |
| --- | --- |
| Nature/purpose of Processing: |  |
| Duration of Processing: |  |
| Type of Personal Data: |  |
| Special Category Data (if any): |  |
| Categories of Data Subjects: |  |
| Third Countries or International Organisations Personal Data will be transferred to: |  |
| Fund’s role (Controller/Processor/Joint Controller): |  |
| Service Provider’s role (Controller/Processor/Joint Controller) [*Where the Service Provider’s role is Controller or Joint Controller, please seek advice from the legal team*]: |  |
| Sub-Processors: |  |

1. Reporting requirements

|  |  |
| --- | --- |
| Progress Report due date(s): |  |
| Final report due date: |  |

1. Representatives

|  |  |
| --- | --- |
| Fund’s Representative and contact details including address, email and telephone number: |  |
| Service Provider’s Representative and contact details including address, email and telephone number: |  |
| Key Personnel: |  |

1. Fees and payment

|  |  |
| --- | --- |
| Fees: |  |
| Payment Profile:: |  |
| Method of payment: |  |
| Time of invoice (insert when the Fund will submit its invoices (e.g. monthly in arrears): |  |
| Invoice address: |  |

1. Liability and Insurance

|  |  |
| --- | --- |
| Service Provider’s limitation of liability (see Clause 25): |  |
| Service Providers Employers Liability (EL) Insurance:  |  |
| Service Provider’s Public Liability (PL) insurance: |  |
| Service Provider’s Professional Indemnity insurance: |  |

1. Obligations in respect of SMEs and VCSEs

|  |  |
| --- | --- |
| Inclusion of obligations set out in Clauses 15.5 to 15.11 in relation to SMEs and VCSEs (*only applicable if total contract value is greater than £5 million*) | [yes]/[no] (*delete as applicable)* |
| Minimum Threshold: | £[                      ] |

1. Termination

|  |  |
| --- | --- |
| Exit Management Plan specified in any tender process (yes/no): |  |
| TUPE (applies/doesn’t apply) [*note: if TUPE is to, or potentially may apply legal advice should be sought.]*: |  |

1. Notices

|  |  |
| --- | --- |
| Addressee for Fund: |  |
| Addressee for Service Provider: |  |

**CONDITIONS**

1. Definitions and interpretation
	1. In this Contract:

“**Acceptance Procedures**” means the procedures for acceptance of Deliverables as set out in Schedule 2;

“**Authorised Sub-contractors**” means the Service Provider’s sub-contractors as set out in section 2 (Services) of the Contract Details;

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are generally open for business in London;

“**Change Control Procedure**” means the process for requesting and making changes to this Contract or the Services as set out in Schedule 1;

“**Change Request**” means a request for a change to this Contract or the Services made in the format as set out in the annex to Schedule 1;

“**Confidential Information**” means any commercial, technical, financial and other information of whatever nature and in whatever form belonging to either Party, including, without limitation, information and documentation in or relating to requirements for goods or services, including IT systems, processes, software, data and hardware, pricing, business procedures, know-how, trade secrets, trading practices, assets, personnel, customers and suppliers, business or financial plans and financial projections, whether such content and information is disclosed or supplied by either Party or their directors, employees, representatives, officers, agents or advisors to the other (whether before or after the Start Date) or directly or indirectly comes to the attention of the other Party and whether or not marked as “Confidential”, “Proprietary” or otherwise and this definition expressly includes the existence and terms of this Contract;

“**Contract Details**” means the section of this Contract so titled;

“**Contracting Authority**” has the meaning given in Regulation 2(1) of the Public Contracts Regulations 2015;

“**Control**” means the ability to direct the affairs of another party whether by virtue of the ownership of shares, contract or otherwise (and “**Controlled**” shall be construed accordingly);

“**Controller**” means a “data controller” for the purposes of the DPA and a “controller” for the purposes of the GDPR (as such legislation is applicable);

“**Data Protection Legislation**” shall mean the DPA, or, from the date it comes into force in the UK, the GDPR (as applicable) and any other laws relating to the protection of personal data and the privacy of individuals;

“**Data Subject**” has the same meaning as in the Data Protection Legislation;

“**Deliverables**” means the deliverables as set out in section 2 (Services) of the Contract Details;

“**Delivery Plan**” has the meaning given in Clause 3.7;

“**DPA**” means the UK Data Protection Act 1998;

“**Equality Legislation**” means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in Great Britain and Northern Ireland (“**NI**”) from time to time including the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034), the Human Rights Act 1998, the Sex Discrimination (NI) Order 1975, the Race Relations (NI) Order 1997, the Fair Employment Act (NI) Order 1970, the Employment Equality (Sexual Orientation) Regulations (NI) 2003 and the Employment Equality (Age) Regulations (NI) 2006;

“**European Economic Area**” means all countries which are members of the European Union together with Iceland, Norway and Lichtenstein;

“**Exit Management Plan**” has the meaning given in Clause 14.1;

“**Exit Requirements**” means Fund’s requirements with which the Service Provider must comply in relation to any expiry or early termination of this Contract;

“**Expiry Date**” means as set out in section 1 (Key Dates) of the Contract Details and is the date on which the provision of the Services will end or be completed by the Service Provider and which may be stated as “completion of the Services”;

“**Extension Period**” means the period, if any, by which this Contract may be extended as set out in section 1 (key dates) of the Contract Details;

“**Fees**” means as set out in section 6 (Fees and payment) of the Contract Details;

“**Final Report**” means a report setting out:

1. an executive summary of the Services;
2. a copy of any products and resources produced as part of the Services;
3. any outcomes of the Services;
4. a copy of any media releases or coverage relating to the Services;
5. details of any problems encountered by the Service Provider in conducting the Services and solutions (including timeframes) identified to overcome those problems;
6. a review of any factors likely to affect the satisfactory completion of the delivery of the Services in accordance with the timetable or due dates; and
7. any other information reasonably requested by the Fund;

“**FOI Act**” means the Freedom of Information Act 2000;

“**Fund’s Background IP**” means all Intellectual Property Rights owned or licensed by the Fund, excluding the Logos, which are made available or which become known to the Service Provider or its Staff in performing the Services or in relation to this Contract;

“**Fund Deliverables**” means any assistance (in any form) to be provided by the Fund in relation to the Services, as set out in section 1 (Services) of the Contract Details;

“**Fund Property**” means any property or equipment issued or otherwise furnished by the Fund to the Service Provider under this Contract;

“**Fund’s Representative**” means as set out in section 5 (Representatives) of the Contract Details;

“**Fund’s Requirements**” means the requirements of the Fund in relation to the Services as set out within the Services Description;

“**GDPR**” means the General Data Protection Regulation (EU) 2016/679;

“**Good Industry Practice**” means the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at the time of relevant performance from a leading and expert supplier of services similar to the Services to a customer like the Fund, such supplier seeking to comply with its contractual obligations in full and complying with all applicable laws;

“**Intellectual Property** Rights” means any copyright and related rights, patents, rights to inventions, trademarks and service marks, trade names, business names and domain names, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual or industrial property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“**Joint Controller**” has the meaning set out in the Data Protection Legislation;

“**Key Personnel**” means, in relation to the Service Provider, the individuals or roles set out in section 5 (Representatives) of the Contract Details;

“**Logos**” has the same meaning as in the form of sub-licence set out in Schedule 3;

“**Materials**” means all materials created by the Service Provider or its Staff (including any material created jointly with the Fund) relating to or in the performance of the Services and includes software, data, reports, case studies, schedules, drawings, specifications, designs, inventions and other materials;

“**Minimum Threshold**” means the minimum value of a subcontract above which the provisions of Clauses 15.5 to 15.11 will apply as set out in section 8 (obligations in Respect of SMEs and VCSEs) of the Contract Details and if no value is stated, the Minimum Threshold shall be £25,000;

“**Payment Profile**” means the timing for payment of any invoices by the Fund;

“**Personal Data**” means “personal data” (as defined in the Data Protection Legislation) that are processed under the agreement;

“**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**” has the same meaning as in the Data Protection Legislation and “Process” and “Processed” shall be construed accordingly; and

“**Processor**” means a “data processor” for the purposes of the DPA and a “processor” for the purposes of the GDPR (as such legislation is applicable).

“**Progress Report**” means a report which sets out:

1. the progress of the provision of the Services in relation to any contractual programme or timetable;
2. the cost of the work carried out in relation to the Services during the period covered by the report;
3. details of any problems encountered by the Service Provider in conducting the Services and solutions (including timeframes) identified to overcome those problems;
4. a review of any factors likely to affect the satisfactory completion of the delivery of the Services in accordance with the timetable or due dates; and
5. any other information reasonably requested by the Fund;

“**Representatives**” means the Service Provider’s Representative and the Fund’s Representative;

“**Risk Report**” means a report evidencing the Service Provider’s compliance with Clause 3.4;

“**Service Provider’s Background IP**” means all Intellectual Property Rights used by the Service Provider or its Staff in performing the Services excluding the Intellectual Property Rights in the Materials created by the Service Provider or its Staff in performing the Services;

“**Service Provider’s Representative**” means as set out in the section 5 (Representatives) of the Contract Details;

“**Services**” means the services to be provided by the Service Provider as set out in section 2 (Services) of the Contract Details and includes the provision of any Deliverables;

“**Services Description**” means the description of the Services as set out in section 1 (Services) of the Contract Details and which includes the Fund’s Requirements;

“**Signature Date**” means the date on which the last individual to sign the Contract signed the Contract;

“**SME**” means an enterprise falling within the category of [micro, small and medium-sized enterprises](http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en) defined by the European Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

“**Special Category Data**” means the special categories of data as referred to in Article 9(1) of the GDPR;

“**Staff**” means all persons employed or engaged by the Service Provider to perform its obligations under this Contract including its key personnel and any sub-contractors and persons employed or engaged by such sub-contractors;

“**Standards**” means any professional, industry and/or technical standards which the Fund requires the Service Provider to meet in the provision of the Services;

“**Start Date**” means the date on which the Service Provider is to commence the Services as set out in section 1 (key dates) of the Contract Details and if no Start Date is given, the Start Date will be deemed to be the Signature Date;

“**Sub-processor**” means any third party processing data on behalf of the Processor;

“**Termination Sum**” means the amount to be paid by the Fund to the Service provider in the event of the Fund terminating this Contract under Clause 28.1 and which shall be calculated by means of the Termination Sum Calculation Process;

“**Termination Sum Calculation Process**” means the process for calculating the Termination Sum as set out in section 9 (Termination) of the Contract Details;

“**Third Country**” means any country outside of the European Economic Area;

“**Timetable**” means the timetable set out in section 2 (Services) of the Contract Details for performance of the Services and the provision of any Deliverables;

“**TUPE**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations or other legislation enacted for the purpose of implementing or transposing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law; and

“**VCSE**” means a voluntary, community and social enterprise, which is a non-governmental organisation that is value-drive and which principally reinvests its surpluses to further social, environmental or cultural objectives.

* 1. In this Contract, unless otherwise indicated:
		1. a reference to a Clause or Schedule is a reference to a Clause in or Schedule to this Contract; and
		2. a reference in a Schedule to a clause is a reference to a clause in that Schedule.
	2. Headings are for reference only and do not affect interpretation of the associated provision.
	3. Where the words “**include(s)**” or “**including**”, or words of a similar nature, are used in this Contract, they are deemed to have the words “**without limitation**” following them, and are illustrative and shall not limit the sense of the words preceding them.
	4. A reference to “**writing**” or “**written**” includes email (unless the context requires otherwise).
	5. Unless otherwise stated, a reference in this Contract to a statute or statutory provision is a reference to the relevant UK statute or statutory provision as it is in force during the Term, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation made under such statute or statutory provision and in force during the Term.
1. Duration
	1. This Contract shall come into effect on the Signature Date in accordance with the instructions on the first page after the front sheet of this Contract and shall continue until the Expiry Date unless terminated earlier in accordance with the terms of this Contract.
	2. The Fund may extend the duration of this Contract in accordance with any Extension Periods and the end of any, and each further, Extension Period shall be deemed the Expiry Date.
	3. Any work carried out by the Service Provider prior to the Signature Date or, if a Start Date is indicated in section 1 (key dates) of the Contract Details), prior to the Start Date is at the Service Provider’s own risk.
2. Provision of Services
	1. The Service Provider shall commence provision of the Services on the Start Date.
	2. It is the Service Provider’s responsibility to make all reasonable enquiries of the Fund to ascertain the Fund’s Requirements.
	3. The Service Provider shall supply the Services with all reasonable skill, care and diligence, to the satisfaction of the Fund and in accordance with:
		1. the Fund’s Requirements and this Contract including the Timetable and Standards and other information set out in the Contract Details;
		2. all applicable law and Good Industry Practice; and
		3. the Delivery Plan, if any, and any reasonable directions and instructions provided by the Fund.
	4. It is the Service Provider’s responsibility to assess the risk of not being able to provide the Services including the delivery of the Deliverables for any reason in accordance with this Contract and apply appropriate risk mitigation strategies, and whatever resources are necessary, to ensure the Services are provided in accordance with this Contract. The Service Provider shall prepare a Risk Report for submission to the Fund within three (3) months after the Start Date. Prior to preparation of the Risk Report, the Service Provider shall discuss and agree the content and format of the Risk Report with the Fund.
	5. If either Party is of the reasonable opinion that a Deliverable may not be provided by the date set out in the Timetable, the Service Provider shall provide the Fund with a report identifying the nature of the delay, its cause and its anticipated duration. The report must also set out the procedures and resources the Service Provider proposes to apply to overcome and rectify the delay and to ensure the impact of the delay is minimised and future performance of the Contract is not adversely affected. The Service Provider acknowledges that a failure to meet any due date may result in the Fund suffering loss or damage.
	6. The Service Provider warrants that:
		1. it has all rights, consents, authorisations, licences and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;
		2. it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Contract and/or under law and shall at all times comply with such quality controls and processes;
		3. receipt of the Services by or on behalf of the Fund and use of the Deliverables or of any other item or information supplied or made available to the Fund as part of the Services will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
		4. it shall fulfil all requirements of this Contract using appropriately skilled, trained and experienced staff and, if provided for, using the Key Personnel set out in section 5 (Representatives) of the Contract Details and any Authorised Sub-contractor set out in section 1 (Services) of the Contract Details;
		5. unless otherwise agreed with the Fund, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;
		6. any equipment it uses in the provision of the Services shall comply with all relevant law, be fit for its intended purpose and maintained fully in accordance with the manufacturer’s specification and shall remain the Service Provider’s risk and responsibility at all times;
		7. it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Contract, the provision of the Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Fund from time to time (acting reasonably);
		8. it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;
		9. there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Service Provider; and
		10. it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.
	7. If requested to do so by the Fund, the Service Provider shall produce a plan setting out details of how it intends to deliver the Services including any details as to timings which are not set out in the Timetable (“**Delivery Plan**”). The Service Provider shall provide the Fund with a copy of its Delivery Plan and make any reasonable adjustments to the Delivery Plan as required by the Fund.
	8. Where it is indicated in Section 2 (Services) of the Contract Details that:
		1. the Acceptance Procedures are to apply to any Deliverables, the parties shall comply with the provisions of Schedule 2; and
		2. the Service Provider is required as part of the Services to use the Logos, the Service Provider shall enter into an agreement in the form set out in Schedule 3 in order to license such use.
	9. The parties do not intend that TUPE will apply to the provisions of the Services upon the commencement or during the term of this Contract or upon its expiry or termination (whether in whole or in part). Consequently, the Service Provider shall ensure that its personnel who comprise the Staff are organised in a manner such that in the provision of its Services and performance of its obligations, the Service Provider does not in any way or for any reason provide the Fund with any dedicated personnel.
3. Land or premises and equipment
	1. Any land or premises made available to the Service Provider by the Fund in connection with the Services shall be made available free of charge to be used by the Service Provider solely for the purpose of performing the Services. The Service Provider will have the use of such land or premises as licensee and will vacate the land or premises on completion, termination or abandonment of the Services. The Service Provider shall, and shall ensure that its Staff shall, observe and comply with rules and regulations as may be in force at any time for the use of such premises determined by the Fund, and pay for the cost of making good any damage caused by the Service Provider or its Staff other than fair wear and tear. For the avoidance of doubt damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
	2. All Fund Property will remain in the ownership of the Fund and the Service Provider shall, and shall ensure that Staff use the Fund Property solely for the purpose of performing this Contract unless prior approval of the Fund has been obtained in writing. All Fund Property is deemed to be in good condition when provided to the Service Provider and its Staff unless the Service Provider notifies the Fund to the contrary within ten Business Days of receiving the Fund Property.
	3. The Service Provider undertakes the safe custody of and the due return of all Fund Property and, subject always to the provisions of Clause 25.1, is responsible for all loss from whatever cause, and will indemnify the Fund against such loss. All Fund Property must be immediately returned to the Fund on or before the expiry or termination of this Contract.
	4. The Service Provider is responsible for any deterioration in the Fund Property, except for any deterioration resulting from its normal and proper use in the execution of the Services (but not insofar as the deterioration is contributed to by any want of due maintenance or repair), and will indemnify the Fund against such loss.
	5. Neither the Service Provider nor any supplier or sub-contractor, nor any other person, shall have a lien on the Fund Property for any sum due to the Service Provider, supplier, sub-contractor or other person, and the Service Provider shall take all reasonable steps to ensure that the title of the Fund and the exclusion of any such lien are brought to the notice of all suppliers and sub-contractors and any other persons dealing with Fund Property.
	6. Apart from the Fund Property, the Service Provider will supply, at its own cost, all equipment required to perform the Services.
4. Standard of work
	1. The Service Provider warrants that all Staff assigned to the performance of the Services shall possess and exercise such skill and experience as necessary for the proper performance in the delivery of the Services and any training of Staff to achieve or maintain this standard shall be at no cost to the Fund.
5. Continuous improvement
	1. The Service Provider will at all times during the term of this Contract seek to improve value for money as set in the remainder of this Clause 6.
	2. The Service Provider shall adopt a policy of continuous improvement in relation to the method and manner of Services’ provision with a view to reducing the Fund’s costs and/or improving the quality and efficiency of the Services which it will regularly review with the Fund. The Service Provider and the Fund will provide to each other any information which may be relevant in assisting with improving the quality and efficiency of the Services.
	3. Without limiting the generality of Clause 6.2, the Service Provider shall produce within 90 days of the Start Date, or such other period as may be specified in the Fund’s Requirements, and on each subsequent anniversary of the Start Date, a plan for improving the provision of Services and/or reducing the costs during forthcoming year ("**Continuous Improvement Plan**") for the approval of the Fund. The Continuous Improvement Plan shall include and proposals in respect of the following:
		1. identifying the emergence of new and evolving technologies which could improve the Services;
		2. identifying changes in behaviour at the Fund that result in a cost saving and a reduction in the costs;
		3. identifying and implementing efficiencies in the Service Provider’s internal processes and administration and in the way the Fund interacts with the Service Provider that may lead to reductions in the costs of the Services;
		4. baselining the quality of the Services and its cost structure and demonstrating the efficacy of the Continuous Improvement Plan on each element of the Services during the Term; and
		5. measuring and reducing the sustainability impacts of the Service Provider’s operations pertaining to the Services, and to identify opportunities to assist the Fund in meeting their sustainability objectives.
	4. The Fund shall notify the Service Provider of its approval or rejection of the proposed Continuous Improvement Plan or any updates to it within 30 days of receipt. Within 10 days of receipt of the Fund’s notice of rejection and of the deficiencies of the proposed Continuous Improvement Plan, the Service Provider shall submit to the Fund a revised Continuous Improvement Plan reflecting the changes required. Once approved by the Fund, the programme shall constitute the Continuous Improvement Plan for the purposes of this Contract.
	5. Once the first Continuous Improvement Plan has been approved in accordance with Clause 6.4, the Service Provider shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan, and the Parties shall meet in accordance with timings to be specified by the Fund to review the Service Provider's progress against the Continuous Improvement Plan.
	6. The Service Provider shall update the Continuous Improvement Plan as and when required but at least once every year (after the first 12 months of the Term) in accordance with the procedure and timescales set out in Clause 6.3.
	7. The Service Provider shall be responsible for all costs relating to the compilation or updating of the Continuous Improvement Plan and in relation to any improvement or its implementation and such costs shall not affect the level of the Fees.
	8. If the Service Provider's costs in providing the Services to the Fund be reduced as a result of any changes implemented by the Fund, all of the cost savings shall be passed on to the Fund by way of a consequential and immediate reduction in the Fees.
6. Representatives
	1. The details of Service Provider’s Representative and the Fund’s Representative are set out in section 5 (Representatives) of the Contract Details. Each party shall notify the other as soon as reasonably practicable in the event of any change to either of the Representatives.
7. Monitoring of performance
	1. The Fund shall be permitted to monitor the performance of the Service Provider in its provision of the Services and the Service Provider shall assist the Fund in any monitoring request including:
		1. by ensuring appropriate attendance at regular meetings, of nominated Key Personnel and other Staff at working and director levels to confirm there is a clear understanding of the scope of the work involved in the Services (including the delivery of any Deliverables), the interpretation of information, the Timetable, including the deadlines and timings for submissions of reports;
		2. by ensuring the security and availability for inspection of all documentation that may be relevant to monitoring of the Services; and
		3. the provision of such written reports and timesheets as the Fund may reasonably request from time to time.
	2. The Fund will use reasonable endeavours to provide the Fund Deliverables to the Service Provider. The Service Provider agrees that no other assistance other than the Fund Deliverables is required from the Fund to enable the Service Provider to provide the Services. If the Service Provider has any reason to believe the Fund will not provide the Fund Deliverables, or the Fund does not provide the Fund Deliverables, the Service Provider must give the Fund notice of the lack of provision of the Fund Deliverables. The Service Provider accepts responsibility for, and will mitigate, the consequences of the lack of the Fund Deliverables assistance until such notice is given.
8. Reports
	1. All reports to be provided by the Service Provider under this Clause 9 shall be presented in a format as reasonably required, and notified to the Service Provider, by the Fund.
	2. The Service Provider shall provide to the Fund:
		1. a Progress Report on the dates specified in section 4 (reporting requirements) of the Contract Details, or at any time as the Fund may require whether as a Deliverable or otherwise; and
		2. a Final Report on or before the date specified in section 4 (reporting requirements) of the Contract Details.
	3. If the Fund requests additional information in respect of any reports provided under this Clause 9, the Service Provider shall provide such additional information or updates within 10 Business Days of the request.
9. Surveys
	1. The Service Provider shall not carry out any survey for the Fund (whether or not such survey forms part of the Services) which includes any interviews or the circulation of questionnaires or similar documents without the prior written agreement of the Fund as to the form, conduct and content of such interviews, questionnaires or other documents.
10. Intellectual Property Rights
	1. The Service Provider shall assign to the Fund upon their creation all Intellectual Property Rights arising out of the performance of the Services or the provision of the Deliverables by the Service Provider or its Staff, including any Materials and any future Intellectual Property Rights.
	2. The Service Provider shall procure the necessary rights from its Staff to ensure any Intellectual Property Rights in the Materials to which they hold title are assigned to the Fund under Clause 11.1.
	3. The Service Provider grants the Fund a non-exclusive, worldwide, royalty free, perpetual, irrevocable licence (including the right to grant sub-licences) to use and disclose the Service Provider’s Background IP to the extent necessary for the Fund to use and exploit the Deliverables and the Materials.
	4. Subject to Clause 23 (Confidentiality), the Fund grants the Service Provider a non-transferable, worldwide, revocable, royalty free, non-exclusive licence to use and reproduce all Materials, and the Fund’s Background IP, solely for the purpose of the complying with the Service Provider’s obligations under this Contract.
	5. The Service Provider shall not publish the results of any work undertaken in connection with this Contract, without the prior written consent of the Fund, which the Fund may withhold in its absolute discretion or grant subject to conditions.
	6. Each party shall do all things reasonably necessary (including signing documents within a reasonable time) to comply with the provisions of this Clause 11, at the request and expense of the other party.
	7. Nothing in this Contract prevents the Service Provider from contesting the validity of any patent(s) filed pursuant to this Contract in any legal proceedings and the Fund acknowledges that any patent application will not include any of the items or rights which fall within Clause 11.9.
	8. The Service Provider will pay all royalties and fees on copyright, processes and registered designs of any equipment, systems and publications used, installed or incorporated by the Service Provider as part of a Deliverable under this Contract and shall indemnify the Fund, and keep the Fund indemnified, together with its officers, directors, employees and agents, against all actions, claims, proceedings and all damages, losses, costs and expenses arising out of or in connection any infringement of any third party’s Intellectual Property Rights, occurring as a result of or in the course of or in connection with the performance of the Services, except to the extent that such claims arise directly from the use in accordance with the Fund’s instructions of any of the Fund’s Background IP, data, information or other resources provided by the Fund to the Service Provider, provided the Fund:
		1. allows the Service Provider conduct of the defence of such claim, including any settlement;
		2. makes no prejudicial admission or statement;
		3. notifies the Service Provider promptly of any claim; and
		4. actively co-operates and assists the Service Provider, at its expense, in the defence of the claim,

and in the event that any damages are finally awarded against the Fund in respect of such a claim or agreed by the Service Provider in final settlement, these will be paid by the Service Provider. This indemnity will not apply if the infringement is the result of the Fund (or any other party) modifying or misusing the relevant Deliverable, the failure of the Fund to use enhancements or modifications offered by the Service Provider to avoid infringement; or the use of information, documents, facilities or items supplied by the Fund for the purposes of the Services.

* 1. The Fund acknowledges that in the course of the delivery of the Services the Service Provider may:
		1. use products, materials or methodologies proprietary to the Service Provider or a third party; or
		2. produce proprietary material or methodologies that are not part of the Deliverables,

and the Fund agrees that it will not have, and will not obtain, rights to such proprietary products, methods and methodologies except pursuant to a separate written agreement on terms to be agreed.

* 1. If section 2 (Services) of the Contract Details states that there is to be a sub-licence for use of the Logos, the Service Provider shall enter into a sub-licence agreement in the form set out in Schedule 3.
1. Service Provider’s Staff
	1. The Fund shall act reasonably and in good faith in making any decision or request of the Service Provider and its Staff under or pursuant to this Contract.
	2. The Service Provider shall take any steps reasonably required by the Fund to prevent unauthorised persons being admitted to the Fund’s premises.
	3. The Service Provider shall, and shall ensure that its Staff shall, while on any of the Fund’s premises, in all respects, conform to and comply with any requirements, rules, regulations and instructions that may be provided by the Fund, its employees or agents or otherwise on its behalf, as to the Fund’s employment and equality policies, the work environment, site and safety precautions and the conduct of the Service Provider and its Staff.
	4. If the Fund gives the Service Provider notice that any person must not be admitted to or is to be removed from the Fund’s premises or must not become involved in or is to be removed from involvement in the delivery of the Services, the Service Provider shall immediately take all reasonable steps to comply with such notice.
	5. Notwithstanding the Service Provider’s obligations in relation to the protection of Personal Data under Clause 24, if, through any default of the Service Provider, data transmitted or processed in connection with the delivery of the Services is either lost or sufficiently degraded to be unusable, the Service Provider shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any Charge levied for its transmission. Payment of cost or provision of any credit by the Service Provider in accordance with this clause shall not prejudice or affect any other right of action or remedy which shall have accrued or shall thereafter accrue to the Fund.
	6. In the event that the Fund is dissatisfied with the work of any member of the Service Provider’s Staff or wishes to remove them from the Services, the Fund shall request a meeting with the Service Provider to discuss such performance issues and provide evidence wherever possible. Without restricting the Fund’s rights under Clause 12.4, the parties will seek to agree a plan to resolve such issues or if necessary the replacement of such member of Staff.
	7. The Service Provider shall bear the cost of any notice, instruction or decision of the Fund under this Clause 12 provided the Fund gives the Service Provider reasonable prior notice.
2. Key Personnel
	1. The Service Provider shall ensure the performance and delivery of the Services shall be undertaken or directly overseen by the Key Personnel and shall not without the prior written approval of the Fund make any changes to the Key Personnel in relation to the totality or any part of the Services.
	2. The Service Provider shall use all reasonable endeavours to ensure that the Key Personnel remain for the full period of the relevant phase of the Services for which they are appointed. In the event of a Key Personnel’s sickness or other emergency, the Service Provider shall consult with the Fund, and if required, provide suitably qualified and experienced replacement personnel who are acceptable to the Fund without additional charge or expense at the earliest possible opportunity.
	3. If, for any other reasons, changes in the Key Personnel become necessary:
		1. due, in the reasonable opinion of the Fund, to such person’s misconduct or repeatedly substandard work, then the Service Provider will provide replacement Key Personnel at the earliest opportunity (or at least within the reasonable time period specified by the Fund) and at no additional cost to the Fund; or
		2. at the Service Provider’s request, then such changes shall be subject to a minimum of ten Business Days’ written notice by the Service Provider to the Fund in the first twenty elapsed Business Days of the Contract and twenty Business Days’ written notice any time thereafter and the replacement Key Personnel must be provided at no additional cost to the Fund.
	4. Subject always to the provisions of Clause 12.1, in the event that the Service Provider having provided the Fund with a number of alternatives is unable to provide replacement Key Personnel acceptable to the Fund within sufficient time to enable the Service Provider to complete the delivery of the Services in accordance with the Timetable, the Fund, following consultation with the Service Provider, may obtain replacement personnel from other sources or terminate the Contract at its discretion on a notice period of its choosing. In event of termination the Fund shall only be liable to pay the Fees in relation to Services provided by the Service Provider up to the date of such termination and any committed costs which cannot be mitigated by the Service Provider on receiving the notice of termination. Such termination does not restrict any other rights the Fund may have under this Contract or law.
	5. If any change to the Key Personnel is agreed by the Fund, the parties shall discuss and, acting reasonably and in good faith, agree whether a handover period is required and if so for how long (but for no greater than ten (10) Business Days), whereupon the Service Provider shall provide both the Key Personnel and the replacement Staff or Key Personnel during this period at no extra charge.
3. Exit Management Plan
	1. If included as part of any tender process leading to the award of this Contract, within three months of the Start Date or if there has been no tender process and the Fund so requests, within three (3) months of such request, the Service Provider shall develop and agree an exit plan with the Fund, consistent with any Exit Requirements notified to the Service Provider from time to time, which shall ensure continuity of the Services on expiry or earlier termination of this Contract. The Service Provider shall provide the Fund with the first draft of an exit plan within one (1) month of the request. If the parties cannot agree an exit plan in accordance with the timescales set out in this Clause 14.1 (such agreement not to be unreasonably withheld or delayed), such failure to agree shall be deemed a dispute to be resolved in accordance with the dispute resolution procedure set out in Clause 45. Once agreed such exit plan shall be the “**Exit Management Plan**”. The parties shall review and, as appropriate, update the Exit Management Plan on each anniversary of the Start Date of this Contract.
4. Sub-contracting and SME and VCSE opportunities
	1. The Service Provider may not sub-contract the provision of any material part of the Services, save to any Authorised Sub-contractor, without the prior written consent of the Fund. The Fund may withhold such consent at its entire discretion or grant consent subject to conditions. The Service Provider will provide promptly any information requested by the Fund to enable it to consider the suitability of any proposed sub-contractor.
	2. Notwithstanding any sub-contracting permitted under Clause 15.1, the Service Provider shall remain wholly liable and responsible for all acts and omissions of its Authorised Sub-contractors in the performance of the Services. The Fund reserves the right to request the replacement of any Authorised Sub-contractor on reasonable grounds.
	3. The Service Provider shall ensure that provisions are included in any Sub-contract requiring the Service Provider to pay all undisputed sums due from the Service Provider under the Sub-contract within a specified period not exceeding 30 days from the date of receipt of a valid invoice (as defined by the terms of the relevant Sub-contract).
	4. For the purposes of Clause 15.5 to 15.11 the following terms shall have the following definitions:

“**Contracts Finder**” means the Government’s publishing portal for public sector procurement opportunities; and

“**MI Reporting Template**” means the management information reporting template to be completed by the Service Provider in relation to SME and VCSE management information set out in Schedule 4.

* 1. The Service Provider shall:
		1. subject to Clause 15.7, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Services above the Minimum Threshold that arise during the Term;
		2. within 90 days of awarding a subcontract advertised in accordance with Clause 15.5.1 to a subcontractor, update the notice on Contracts Finder with details of the successful subcontractor;
		3. monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
		4. provide reports on the information at Clause 15.5.3 to the Fund in the format and frequency as reasonably specified by the Fund; and
		5. promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
	2. Each advert referred to in Clause 15.5 shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Service Provider.
	3. The obligation in Clause 15.5 shall only apply in respect of subcontract opportunities arising after the date on which the Fund awarded the Contract to the Service Provider.
	4. Notwithstanding Clause 15.5, the Contracting Authority may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.
	5. In addition to any other management information requirements set out in this Contract, the Service Provider agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME and VCSE management information reports to the Fund which incorporate the data described in the MI Reporting Template which is:
		1. the total contract revenue received directly on this Contract;
		2. the total value of sub-contracted revenues under the Contract (including revenues for non-SMEs/non-VCSEs); and
		3. the total value of any sub-contracted revenues to SMEs and VCSEs.
	6. The reports to be provided under Clause 15.9 shall be provided in the correct format as required by the MI Reporting Template and any guidance issued by the Fund from time to time. The Service Provider shall use the initial MI Reporting Template and which may be changed from time to time (including the data required and/or format) by the Fund by issuing a replacement version. The Fund shall give at least thirty (30) days’ notice in writing of any such change and shall specify the date from which it must be used.
	7. The Service Provider further agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of the Fund.
1. Relationship
	1. The Service Provider acknowledges that, in entering into this Contract and carrying out the Services, it is an independent service provider and not the Fund’s servant or agent. The Service Provider shall not make any promise, warranty or representation, or execute any contract or deal on the Fund’s behalf.
2. Fees and expenses
	1. Subject to Clause 17.6, the Fund shall pay to the Service Provider the Fees and any expenses agreed in writing (except to the extent the associated invoice is in dispute) in accordance with the Payment Profile and payment methods set out in section 6 (Fees and payment) of the Contract Details.
	2. The Service Provider shall invoice the Fund in accordance with the timings set out in section 6 (Fees and payment) Contract Details and shall ensure that all invoices:
		1. are correctly rendered;
		2. include the Contract reference number as set out on the front page of this Contract;
		3. clearly identify and detail the Services (including the Deliverables) and/or Payment Profile to which the invoice refers including any relevant time period;
		4. where applicable, show value added tax separately and as a net tax charge; and
		5. are submitted in hard copy and electronic formats to the Fund at the addresses set out in section 6 (Fees and payment) of the Contract Details.
	3. Where the Services are provided on a time and materials daily rate basis, the Service Provider must only invoice for the time spent working by its Staff and must not invoice for travel time, any leave entitlements or for more than eight hours per day or the agreed maximum daily rate unless such additional hours are otherwise approved in advance by the Fund in writing.
	4. If, under this Contract, any sum of money is due from Service Provider to the Fund, such sum may be deducted from any sum then due, or which at any later time may become due, to the Service Provider under this Contract or under any other agreement or contract which the Service Provider has entered into with the Fund.
	5. The Service Provider shall submit a final invoice to the Fund within six weeks after the Expiry Date or completion of the delivery or performance of the Services (including the Deliverables, if any) or immediately upon termination of the Contract, whichever event is earlier.
	6. The Fund shall not be required to make any payment under Clause 17.1 if the Service Provider has failed to comply with Clause 17.2 or if the Services (including the Deliverables, if any) have not been delivered to the satisfaction of the Fund or have not been accepted under the Acceptance Procedures, if applicable.
	7. If the Fund agrees to pay any expenses in connection with this Contract, the Fund is not required to pay if:
		1. it is not satisfied that the expense was incurred by the Service Provider directly in relation to the provision of the Services;
		2. the Fund does not receive a copy of a tax invoice from the applicable third party evidencing that the Service Provider incurred the expense;
		3. in the Fund’s opinion, the expense is not reasonable as against the Fund’s policy on out of pocket expenses.
	8. The Fund may withhold or vary any of the Fees set out in this Contract or terminate any part of the Services (in which case the Fees for those Services will no longer be payable) and/or require all or part of the Fees to be repaid if, in its reasonable opinion, any of the events in Clause 28.1 occur, or if the Service Provider or any of its Staff breaches the State Aid Rules as set out in sub-clause 28.1.12.
3. Fee and invoice disputes
	1. Any dispute concerning the Fees or any expenses under or in relation to this Contract, or any invoice issued under this Contract shall be dealt with under the dispute resolution procedure set out in clause 45.
4. Variation of Fund’s Requirements
	1. If the Fund wishes to amend any of the Fund’s Requirements, the Service Provider agrees to negotiate the terms of such amendment in good faith and any payment as a result of the variation of the Fund’s Requirement is subject only to a fair and reasonable adjustment to reflect the work to be done under the change. The variation will be subject to the Change Control Procedure.
5. Amendment of Contract
	1. Where in the opinion of either party a material change is required to the Contract and the Services, the Parties shall comply with the Change Control Procedure and the variation implemented via a Change Request signed by both parties. The Fund has discretion as to whether any change proposed by the Service Provider is to be considered material. All non-material changes must be made in accordance with Clause 40.1.
	2. If a change in legislation has an impact on the Services, or increases the Service Provider’s cost of providing the Services, either party may raise the matter under the Change Control Procedure.
	3. Neither party may claim any cost or expense from the other party in connection with any Change Request including but not limited to reviewing, negotiating or discussing any Change Request save as expressly stated in the relevant Change Request.
6. Audit
	1. The Service Provider shall maintain complete and accurate records of the time spent and materials used by the Service Provider in providing the Services including records of all expenditures which are reimbursable by the Fund to the Service Provider or its Staff which are paid for by the Fund on a time charge basis, invoices and monthly progress reports, in a form approved by the Fund until six years after the completion or termination of the provision of the Services. The Service Provider shall permit the Fund and its agents and advisors to inspect and audit such records at all reasonable time upon request.
	2. The Service Provider shall permit the Comptroller and Auditor General to examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Service Provider and may require the Service Provider to provide such oral and/or written explanations as they consider necessary. This Clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Service Provider under sections 6(3)(d) and 6(5) of the National Audit Act 1983.
7. Access to information
	1. The Service Provider shall make available at its own cost any information reasonably requested by the Fund in connection with the Service Provider’s performance under this Contract and shall allow and arrange such access to its premises and contact with its Staff as is necessary for these purposes. The Fund may share information about this Contract with other funders, other Lottery distributors, Government departments, organisations providing matching funding and other organisations with a legitimate interest in Lottery applications as well as with members of the public who make a valid request for information under the FOI Act.
8. Confidentiality and Freedom of Information
	1. In respect of any Confidential Information it may receive directly or indirectly from the other party (“**Discloser**”) and subject always to the remainder of this Clause 23, each party receiving Confidential Information (“**Recipien**t”) 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 the provisions of this Clause 23 shall not apply to any Confidential Information:
		1. which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
		2. which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality; or
		3. which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser.
	2. A Recipient may disclose Confidential Information to the Recipient’s officers, employees and professional advisors who have a need to know (and only to such extent) provided that prior to disclosure such individuals have been directed in writing by the Recipient to maintain the confidentiality of the Confidential Information.
	3. On the expiry or termination of this Contract the Recipient shall deliver up to the Discloser (or, at the Discloser’s written election, securely destroy) all Confidential Information of the Discloser which is in its possession or control subject to the exception set out in Clause 30.1.2.(ii).
	4. The Service Provider must not disclose to any third party, save as permitted under this Clause 23, any information in any form or on any media whatsoever regarding the delivery of the Services under this Contract, or permit photography or film in connection with the Services or this Contract, without the prior written permission of the Fund. Any press, media or other enquiry about the Services or this Contract must be referred to the Fund’s Representatives.
	5. The Fund is entitled to disclose to any Contracting Authority or Transferee any Confidential Information of the Service Provider which relates to the performance of the Services by the Service Provider. In such circumstances, the Fund shall authorise the Contracting Authority or Transferee to use such Confidential Information only for purposes relating to the performance of the Services and for no other purposes and shall take all reasonable steps to ensure that such body accepts an obligation of confidence.
	6. The Service Provider must clearly identify to the Fund any business or trade secret which would prejudice the commercial interests of the Service Provider if disclosed pursuant to a request under the FOI Act or the Environmental Information Regulations 2004. However, the Fund shall be responsible for determining in its absolute discretion whether any commercially sensitive information or other information is exempt from disclosure or may be disclosed either without consulting the Service Provider or following consultation with the Service Provider and having taken its views into consideration.
	7. Without prejudice to the generality of Clause 22, the Service Provider shall, and shall ensure that its employees or sub-contractors shall, provide all necessary information and assistance as reasonably requested by the Fund to enable the Fund to respond to any request for information it receives and in compliance with the provisions of the FOI Act.
	8. Nothing in this Clause 23 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, including the FOI Act or the Environmental Information Regulations 2004.
9. Protection of Personal Data
	1. The parties shall comply with their respective obligations under the Data Protection Legislation and acknowledge that if the role of the Service Provider is indicated in section 3 (Data protection) of the Contract Details as ‘Processor’, the Service Provider is a Processor acting on behalf of the Fund and that, for the purposes of this Contract, the type of Personal Data and categories of Data Subjects, the nature/purpose of the Processing and the duration of the Processing shall be as set out in section 3 (Data Protection) of the Contract Details. If the Service Provider is required to process any Personal Data as a Data Controller in the course of providing the Services, the Service Provider shall notify the Fund and the parties shall enter into a separate data sharing agreement in respect of such processing.
	2. The Service Provider shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with its obligations.
	3. Without prejudice to the generality of Clause 24.1, the Fund will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Service Provider for the duration and purposes of the Contract.
	4. Without prejudice to the generality of Clause 24.1, the Service Provider shall, in relation to any Personal Data processed in connection with the performance by the Service Provider of its obligations under this Contract:
		1. Process Personal Data only to the extent, and in such manner, as is necessary for the purpose of carrying out its obligations under this Contract and in accordance with the written instructions of the Fund and this Clause 24;
		2. ensure that it has in place and maintains appropriate technical and organisational measures, reviewed and approved by the Fund, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures, the nature, scope, context and purposes of the Processing and the likelihood and severity of risk in relation to the rights and freedoms of the Data Subjects. Those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it;
		3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
		4. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Fund has been obtained and the following conditions are fulfilled:
			1. the Fund or the Service Provider has provided appropriate safeguards in relation to the transfer;
			2. the Data Subject has enforceable rights and effective legal remedies;
			3. the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
			4. the Service Provider complies with reasonable instructions notified to it in advance by the Fund with respect to the processing of the Personal Data;
		5. notify the Fund in writing to the Addressee set out in Section 10 (Notices) of the Contract Details, as soon as reasonably practicable, about any request or complaint received from Data Subjects without responding to that request (unless authorised to do so by the Fund) and assist the Fund by technical and organisational measures, insofar as possible, for the fulfilment of the Fund's obligations in respect of such requests and complaints;
		6. notify the Fund without undue delay on becoming aware of a Personal Data breach;
		7. at the written direction of the Fund, delete or return Personal Data and copies thereof to the Fund on termination of the Contract unless required by applicable laws to store the Personal Data; and
		8. maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Fund or the Fund’s designated auditor.
	5. The Service Provider shall, on request from the Fund, assist the Fund in consultations with the relevant supervisory authority with respect to data protection impact assessments in accordance with Articles 35 and 36 of the GDPR.
	6. The Fund acknowledges that clause 24.4.1 shall not apply to the extent that the Service Provider is required by law to Process the Personal Data other than in accordance with the Fund’s instructions and the Service Provider acknowledges that, in such a case, it must promptly inform the Fund of the relevant legal requirement prior to Processing (unless the law prohibits the provision of such information on important grounds of public interest).
	7. The Fund consents to the Service Provider appointing third party processors of Personal Data under this Contract provided always that the Service Provider has obtained the Fund’s prior written consent for each third party processor and complied with any other provisions of this Contract in relation to subcontractors. The Service Provider confirms that it has entered or (as the case may be) will enter with each approved third party processor into a written agreement incorporating terms which are substantially similar to those set out in this Clause 24. As between the Fund and the Service Provider, the Service Provider shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this Clause 24.7.
10. Liability
	1. Without prejudice to any rights or remedies of the Fund and subject to the provisions of Clauses 25.2 to 25.4, the Service Provider indemnifies the Fund, and agrees to keep the Fund indemnified, against all actions, suits, claims, demands, losses, charges, costs and expenses made against the Fund (or any of its employees, officers or agents) by any third party (including any current or former employee, servant, agent, supplier or sub-contractor) arising out of or in connection with this Contract or the relationship established by it and:
		1. loss of or damage to any property;
		2. personal injury (whether fatal or otherwise) to any person;
		3. any fraudulent, unlawful or negligent act or omission of the Service Provider in connection with this Contract; or
		4. termination of this Contract for material breach under Clause 28.2.2.
	2. The indemnity contained in Clause 25.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Fund, or any employee, servant, agent, supplier or sub-contractor of the Fund.
	3. In no event shall either party be liable to the other for any loss (howsoever arising) of profits, business, contracts, revenues, goodwill or reputation or any indirect, incidental, punitive or consequential loss, damage, cost or expense whatsoever.
	4. Subject to Clause 25.5:
		1. the Service Provider’s liability under or in connection with the Services (whether in contract, tort or otherwise) will be limited to the maximum amount set out in section 7 (liability and insurance) of the Contract Details in respect of each incident or series of connected incidents; and
		2. the Fund’s liability under or in connection with the Services and this Contract (whether in contract, tort or otherwise) shall be the lower of £250,000 or the total amount of the Fees due under the Contract.
	5. Nothing in this Contract shall limit either party’s liability for death or personal injury resulting from its negligence or for fraud or fraudulent misrepresentation or, additionally in the case of the Service Provider, for any breach or claimed breach of a third party’s intellectual property rights.
11. Insurance
	1. Subject to Clause 26.2, the Service Provider shall take out and maintain policies in respect of the insurance cover listed in section 7 (liability and insurance) of the Contract Details with a reputable insurance company for the term of this Contract and for six years after its termination or expiry to cover the liabilities that may arise under or in connection with this Contract and shall produce to the Fund on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
	2. If no details of insurance cover are included in section 7 (liability and insurance) of the Contract Details, the Service Provider shall take out and maintain policies in respect of the following types of insurance and cover:
		1. employers liability insurance - £10 million;
		2. Public liability - £5 million; and
		3. Professional indemnity - £2 million.
12. Remedies cumulative
	1. Except as otherwise expressly provided by the Contract, all remedies available to either party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
13. Termination
	1. The Fund may terminate this Contract at any time on at least ninety days’ written notice. Such notice shall not be served such that termination occurs within one (1) year of the Start Date. Where the Fund terminates the Contract under this Clause 28.1, the Fund:
		1. shall at any time before the expiration of the notice be entitled to exercise and shall as soon as may be reasonably practicable within that period exercise such of the following powers as it considers expedient:
			1. to direct the Service Provider, where work has not been commenced, to refrain from commencing work; or
			2. to direct the Service Provider to complete in accordance with this Contract all or any of the delivery of the Services (including any Deliverables), or any part or component thereof, which shall be paid for at the agreed Contract fee;
		2. shall pay the Service Provider’s reasonable costs in relation to any commitments, liabilities or expenditure which are reasonably and property chargeable by the Service Provider directly in connection with this Contract to the extent to which those commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Service Provider by reason of the termination of this Contract;
		3. shall not in any case by liable to pay under the provisions of this Clause 28.1 any sum which, when taken together with any sums paid or due or becoming due to the Service Provider under this Contract, shall exceed the total Fees due; and
		4. shall pay the Service Provider in full for all work satisfactorily carried out by the Service Provider and its Staff up to the date of termination.
	2. The Fund may terminate this Contract immediately by notice in writing if:
		1. upon the occurrence of any of the events listed in Clause 28.3;
		2. the Service Provider materially breaches this Contract and (if such breach is capable of remedy) fails to remedy such breach within 30 days of being required to do so in writing by the Fund;
		3. the Service Provider does not comply with any of the terms, conditions and provisions of this Contract (including any Timetable or Delivery Plan) and fails to remedy that breach (if that breach is capable of remedy) within 10 Business Days or such other period as the Fund may specify of receiving a request to do so from the Fund;
		4. the Service Provider makes a material change in the nature, scale, costs, funding, ownership or timing of the Services;
		5. the Service Provider makes a substantial modification to the Services affecting their nature or implementation conditions, or such that the Services provide any firm, public body or person any undue advantage;
		6. the Service Provider has provided information in the Delivery Plan or in supporting or subsequent correspondence that is found to be incorrect, misleading or incomplete;
		7. the Service Provider does not refund to the Fund any overpayment of money within 14 days of notice by the Fund under Clause 17.8;
		8. the Service Provider does not make satisfactory progress (as reasonably determined by the Fund) towards completing the Services or meeting the requirements of the Timetable or Delivery Plan;
		9. there is a change in government policy, direction or law which, in the opinion of the Fund, affects the Fund’s ability to perform its obligations under this Contract or which, in the opinion of the Fund, makes the Fees under this Contract unviable, inappropriate or otherwise unsuitable or unnecessary;
		10. the European Commission decides that the Fund should not be procuring the Services or if a decision of a court in the UK or European Court of Justice requires payment of the Services to be withheld, reduced, cancelled or recovered; or
		11. funds from the National Lottery are no longer available to the Fund for the Services and/or the Fund ceases to operate; or
		12. if either the Fund considers or the European Commission finds that the provision of the Fees under this Contract constitutes unlawful State Aid.
	3. The Service Provider shall notify the Fund in writing immediately upon the occurrence of any of the following events:
		1. where the Service Provider is an individual and if a petition is presented for the Service Provider’s bankruptcy or a criminal bankruptcy order is made against the Service Provider, or the Service Provider makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Service Provider’s affairs; or
		2. where the Service Provider is not an individual but is a firm, or a number of persons acting together in any capacity, if Clause 28.3.1 occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Service Provider to be wound up as an unregistered company;
		3. where the Service Provider is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under a fixed or floating charge (but excluding for the purposes of this Clause 28.3.3 any bona fide company reconstruction);
		4. there is a change of “control” as defined by Section 416 (2) of the Income and Corporation Taxes Act 1988 in the Service Provider; or
		5. where the Service Provider is a firm or partnership and there is a change in the identity of any of the partners in the firm and/or a change in the extent to which any partner is able to exercise or entitled to acquire direct or indirect control over the firm’s affairs.
14. Survival
	1. Termination under clause 28.1 shall not prejudice or affect any right of action or remedy that shall have accrued or shall thereupon accrue to the Fund and shall not affect the continued operation of Clauses 1, 4.3, 11, 18, 21, 23, 30, 37, 45.
15. Consequences of termination and end of Contract assistance
	1. On termination of this Contract for any reason:
		1. the parties shall comply with their respective obligations set out in the Exit Management Plan;
		2. the Service Provider shall immediately delete or return to the Fund, at the Fund’s request, all documents, materials, information and other resources provided to the Service Provider for the purposes of or in connection with this Contract, including any Confidential Information and any Personal Data, except that:
			1. where expressly agreed in writing by the Fund, the Service Provider shall be entitled to retain one copy of such documents, materials, information and other resources for audit purposes only;
			2. the Service Provider shall not be required to return or destroy any such documents, materials, information and other resources stored in its automatically archived electronic files, provided that such files are accessible only to those person engaged by the Service Provider to be responsible for the safe and secure storage of such files,

and the provisions of Clause 23 (Confidentiality) shall continue to apply to any documents, materials, information and other resources retained under Clauses 30.1.2(i) and (ii).

* 1. On termination of this Contract for any reason, the Fund may deduct from any amount due to the Service Provider, the costs and expenses incurred by the Fund (including the Fund’s own reasonable costs) in connection with the termination and procuring or performing similar services. If the total cost to the Fund exceeds the amount (if any) due to the Service Provider, the Service Provider must pay to the Fund the difference within 30 days of the Fund’s request;
	2. In the event this Contract is terminated by the Fund due to a breach of the State Aid Rules by the Service Provider or any of its third parties (as determined by the Fund), if required to do so by the Fund, the Service Provider will repay to the Fund all Fees and other expenses paid by the Fund under this Contract (or the amount of the Fees and expenses as otherwise requested by the Fund).
1. Prevention of corruption
	1. The Service Provider warrants and represents that:
		1. it has not committed any offence under the Bribery Act 2010 or done any of the following (“**Prohibited Acts**”):
			1. offered, given or agreed to give any officer or employee of the Fund any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Fund or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Fund; or
			2. in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Fund; and
		2. it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.
	2. If the Fund or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Service Provider in relation to this or any other agreement with the Fund:
		1. the Fund shall be entitled:
			1. to terminate this Contract and recover from the Service Provider the amount of any loss resulting from the termination;
			2. to recover from the Service Provider the amount or value of any gift, consideration or commission concerned; and
			3. to recover from the Service Provider any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;
		2. any termination under clause 31.2.1 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Fund; and
		3. notwithstanding the dispute resolution procedure set out in clause 45, any dispute relating to:
			1. the interpretation of this clause 31; or
			2. the amount or value of any gift, consideration or commission,

shall be determined by the Fund, acting reasonably, and the decision shall be final and conclusive.

1. Compliance with Equality Legislation and public duties
	1. The Service Provider shall:
		1. ensure that (a) it does not, whether as employer or as provider of the Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer or provider of the Services as set out in the Equality Legislation;
		2. in relation to the Equality Act, comply with the public duties required by the Equality Act 2010 (if the Service Provider is located in Great Britain) and by Section 75 of the Northern Ireland Act 1998 (if located in Northern Ireland);
		3. cooperate with any investigations or proceedings concerning any breach or alleged breach of the Service Provider’s obligations under clauses 32.1.1 and 32.1.2 and shall indemnify and keep the Fund indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any breach of clauses 32.1.1 and 32.1.2;
		4. use all reasonable endeavours to ensure compliance with this clause 32 by its Staff and the Service Provider shall impose on all its sub-contractors and suppliers, obligations substantially similar to those imposed on the Service provider by this clause 32; and
		5. meet all reasonable requests by the Fund for information evidencing the Service Provider’s compliance with the provisions of this clause 32.
	2. Where the Services are to be provided partly or totally in Wales, the Service Provider shall ensure:
		1. all Services are delivered so as to comply with the requirements of the Welsh Language Measure 2011 and the Fund’s Welsh Language Standards in relation to which the Service Provider should request details from the Fund; and
		2. all communications, publications, websites or any other materials issued, produced or published on behalf of the Fund as part of the Services are available in Welsh and English.
2. Anti-Slavery and human trafficking
	1. The Service Provider shall ensure that slavery and human trafficking is not taking place in any part of its business or in any part of its supply chain and shall notify the Fund immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains.
	2. Breach of Clause 33.1 shall be considered an irremediable material breach for the purposes of Clause 28.2.2.
3. Environmental/Sustainability requirements
	1. The Service Provider shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in connection with the Services, promptly provide all information regarding the environmental impact of the Services as may reasonably be requested by the Fund from time to time, and meet all reasonable requests by the Fund for information evidencing compliance with this clause 34.1.
4. Assignment
	1. The Service Provider shall not, without the prior written consent of the Fund, assign, novate, transfer, charge or deal in any other manner with all or any of its rights or obligations under this Agreement.
	2. Subject to Clause 35.3, the Fund may assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to any Contracting Authority provided that any such assignment, novation or other disposal shall not increase the burden of the Service Provider’s obligations pursuant to this Contract or novate this Contract to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by any Contracting Authority.
	3. If the Contract is novated to a body which is not a Contracting Authority pursuant to clause 35.2 (“**Transferee**”):
		1. the rights of termination of the Fund in Clause 28 shall be available to the Service Provider in the event of the bankruptcy, insolvency or default of the Transferee; and
		2. the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the Service Provider’s previous written consent.
5. Non-exclusivity
	1. The Service Provider will provide the Services on a non-exclusive basis. Nothing in this Contract prevents the Fund from obtaining services which are the same as or similar to the Services from any third party or from itself performing services which are the same as or similar to the Services.
6. Conflicts of interest
	1. The Service Provider shall use its best endeavours to ensure that the Service Provider and its Staff are not placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of such persons and the duties owed to the Fund under the provisions of this Contract. Immediately on becoming aware or suspecting such a conflict, the Service Provider will disclose the particulars of the conflict to the Fund in writing to the Fund’s Representative and co-operate with any reasonable measures implemented by the Fund to manage the conflict.
7. Offers of employment
	1. The Service Provider shall not, without the prior written consent of the Fund and payment to the Fund of reasonable compensation, at any time from the Signature Date to the expiry of 6 months after the end of the Term, solicit or entice away from the Fund or employ or attempt to employ any individual who is, or has been, engaged as an employee of the Fund, except that the Service Provider shall not be in breach of this clause 38.1 if it hires an employee of the Fund as a result of a recruitment campaign not specifically targeted to any employees of the Fund.
8. Severability
	1. If any provision (or part of a provision) of this Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
	2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
9. Variation
	1. No variation of this Contract shall be effective unless it is in writing and signed by a duly authorised representative from each party who has the authority to legally bind that party.
10. Waiver
	1. A waiver of any right under this Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
11. Notices
	1. Notice given under this Contract shall be in writing, sent for the attention of the addressee given in section 5 (Representatives) of the Contract Details at the registered address of the relevant party (or such other addressee or address as the relevant party may notify to the other party from time to time) and shall be delivered either personally, by courier, or by recorded delivery. A notice is deemed to have been received on signature of a delivery receipt by an individual at the correct address for notices.
12. Publicity and media enquiries
	1. The Service Provider shall not, and shall ensure that its Staff and suppliers shall not, without the prior written consent of the Fund (which shall not be unreasonably withheld), advertise or make any public announcement regarding the existence or the content of this Contract or that the Service Provider is providing any services to the Fund.
	2. In the event of receipt by the Service Provider, its Staff or suppliers of any enquiries including press, other media, Parliamentary or official enquiries concerning this Contract, the Services or any other matter relating to the Contract, the Service Provider shall, or shall ensure that its Staff or suppliers, refer the matter to the Fund’s Representative. Except for such referral, the Service Provider shall take no further action, whether formal or informal, concerning the enquiry without the prior written approval of the Fund.
	3. The Service Provider shall not, and shall ensure that its Staff and suppliers shall not commit any act, or omit to do any act, or do anything which attracts public or media attention that is prejudicial or otherwise detrimental to the Fund’s name, messages or reputation. If such an event does occur, the Service Provider must immediately notify the Fund’s Representative.
13. Rights of third parties
	1. This Contract does not create any rights or benefits enforceable by any person not a party to it.
14. Dispute resolution
	1. The Representatives (or any other person nominated by the party) shall attempt in good faith to negotiate a settlement to any dispute, including escalating the dispute to senior management as required.
	2. If the dispute cannot be resolved by the parties pursuant to clause 45.1 within 28 days (unless otherwise agreed) of the first day of such negotiations, the dispute may be referred by either party to mediation pursuant to clause 45.4.
	3. The performance of the Services shall not be suspended, cease or be delayed by the reference of a dispute to mediation pursuant to clause 45.2 and each party shall (and shall procure that its employees, agents, suppliers and sub-contractors shall) comply fully with the requirements of this Contract at all times.
	4. The procedure for mediation and consequential provisions relating to mediation are as follows:
		1. unless otherwise agreed by the parties within 14 days after a request by one party to refer the dispute to mediation under clause 45.2, either party shall apply within a further 14 days to the Centre for Dispute Resolution (“CEDR”) to appoint a Mediator;
		2. the parties shall, within 14 days of the appointment of the Mediator meet with the Mediator to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If considered appropriate by either party at any stage, the parties shall seek assistance from CEDR to provide guidance on a suitable procedure;
		3. unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the parties’ rights of in any future proceedings;
		4. if the parties reach agreement on the resolution of the dispute, the agreement shall be made in writing and shall be binding on the parties once it is signed by their duly authorised representatives;
		5. if the parties fail to reach agreement within 60 days of the appointment of a mediator (or such longer period as agreed by the parties):
			1. the dispute may be referred to the courts; and
			2. either party may invite the Mediator to provide a non-binding but informative opinion in writing, such opinion to be provided on a without prejudice basis and not to be used in evidence in any proceedings relating to the Contract without the prior written consent of both parties.
	5. Each party shall pay its own costs of complying with this clause 45 and the costs of any Mediator shall be shared equally between the parties.
	6. The dispute resolution procedure set out in this clause 45 does not prevent a party from applying for urgent interlocutory or other relief to protect Intellectual Property Rights.
15. Governing law
	1. This Contract and any dispute or claim (including any non-contractual dispute or claim) arising out of or in connection with it or its subject matter (a “**Claim**”) shall be governed by, and construed in accordance with, the laws of the region of the United Kingdom in which the office of the Fund which is procuring the Services is located, and the parties agree irrevocably to submit to the exclusive jurisdiction of the courts of such region of the United Kingdom.
16. Entirety
	1. This Contract contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. However, nothing in this clause 47 shall operate to limit or exclude either party’s liability for fraudulent misrepresentation.
17. 1. Change Control Procedure
18. Process

In the event either party desires to change the terms of the Contract, the following procedures shall apply:

* 1. The party requesting the change will:
		1. if the Fund is requesting the change, deliver a Change Request to the Service Provider which describes the nature of the requested change, the reason for the requested change, and the effect the requested change will have, or is likely to have, on the scope of the Services. On receipt of the Change Request, the Service Provider will review the effect on the scope of the Services and update the Change Request with any reasonable changes to the Fees or the time for the delivery of the Services. The Service Provider will also make any changes or add information it requires for the Change Request to be agreed. The Service Provider will deliver the updated Change Request back to the Fund within three Business Days of its receipt.
		2. if the Service Provider is requesting the change, deliver to the Fund a Change Request which describes the nature of the requested change, the reason for the requested change, and the effect the requested change will have, or is likely to have, on the scope of Services, which may include changes to the Services, the Fees or the time for the delivery of the Services.
	2. The Representatives of each party will review the updated Change Request (where the change is requested by the Fund) or the Change Request (where the change is requested by the Service Provider) within five Business Days of receipt by the relevant party. The parties will evaluate the Change Request and negotiate in good faith the changes to the Services and Fees, if any, required to implement the proposed Change Request. If changes additional to those set out in the Change Request are required, the Fund will provide the Service Provider with a timeline for the parties to make and discuss such additional changes.
	3. If both parties agree to implement the Change Request, the appropriate authorised representatives of the parties will sign the Change Request, indicating the acceptance of the changes by the parties. Upon execution of the Change Request it will be incorporated into, and made a part of, this Contract.
	4. Neither party is under any obligation to proceed with a Change Request that is proposed by the other party.
	5. If there is a conflict between the terms and conditions set out in the Contract and the terms and conditions set out in any fully executed Change Request, then the most recent fully executed Change Request shall prevail.
	6. Annex to Schedule 1 – Change Request

**Service Provider:**

**Services:**

**Contract Ref:**

Both parties hereby certify, by the signature of an authorised representative, that this Change Request will amend and be fully incorporated into the existing Contract from the Effective Date.

1. **Change Request Number:**
2. **Effective Date:**
3. **Brief Description of Reason for Change Request:**
4. **Changes to Contract or Schedules:**
5. **Cost Impact:**

|  |  |  |  |
| --- | --- | --- | --- |
|  | Costs | Expenses | Total |
| Original value of the Contract |  |  |  |
| Value of this Change Request |  |  |  |
| **New total value of Contract** |  |  |  |

Except as changed herein, all terms and conditions of the Contract remain in full force and effect.

IN WITNESS THEREOF, the duly authorised representatives of the parties have caused this Change Request to be fully executed.

|  |  |  |  |
| --- | --- | --- | --- |
| Signed on behalf of the Service Provider by: |  | Signed on behalf of the Fund by: |  |
| <template agreement: do not sign> | ← | <template agreement: do not sign> | ← |
| Signature of authorised representative |  | Signature of authorised representative |  |
|  |  |  |  |
| Name of authorised representative |  | Name of authorised representative |  |
|  |  |  |  |
| Title of authorised representative |  | Title of authorised representative |  |
|  |  |  |  |
| Date |  | Date |  |

1. 1. Acceptance Procedures
2. Review of Deliverable
	1. The Fund will within 10 Business Days following receipt of any Deliverable:
		1. accept the Deliverable by providing the Service Provider with a Milestone Certificate;
		2. not accept the Deliverable by notifying the Service Provider of the nature, extent, and identity of any errors, defects, or omissions in the Deliverable which cause the Fund to not accept the Deliverable; or
		3. provide the Service Provider with written notice that additional time is required to review the Deliverable, in which case the Fund must specify the time before which it must complete its review and make a decision under paragraphs 1.1.1 or 1.1.2 above within that time.
3. Deemed Acceptance
	1. If the Fund fails to notify the Service Provider as set out in paragraph 1.1, then the Service Provider may request the Fund notify it of its decision under paragraph 1 within five Business Days. If the Fund fails to so notify the Service Provider within five Business Days of the Service Provider’s request, the Deliverable is deemed accepted.
	2. If the Fund uses a Deliverable before acceptance under this Schedule other than for testing and reviewing the Deliverable in accordance with paragraph 1, then such Deliverable shall be deemed to be accepted by the Fund.
4. Remediation of defects
	1. If the Fund does notify the Service Provider of defects or want of information in the Deliverable under paragraph 1.1.2, then the Service Provider shall, as soon as is reasonably practical (but within 5 Business Days, unless otherwise agreed), remedy such defects or work out a plan to do so. The Fund shall have 10 Business Days to accept any Deliverable revised by the Service Provider under this paragraph and to notify the Service Provider of any further defects. If the Fund requires extra time to test or review the Deliverable, the period for acceptance is extended to a date reasonably specified by the Fund.
	2. If following three remedial periods set out in paragraph 3.1, the revised Deliverables still fail to meet the standard required by the Fund, the Fund shall retain the right to reject such Deliverable and reasonably to recover the Fees previously paid in relation to such Deliverable. If the Fund and the Service Provider fail to agree on the reasonableness of the Fund’s grounds for rejection then either party may raise the dispute under the dispute resolution procedures in Clause 45.
5. 1. Sub-licence Agreement

|  |
| --- |
|  |
|  | **DATED** | **2018** |  |
|  |
|  | **BIG LOTTERY FUND****AND****[ ]** | **(1)****(2)** |
|  | **AGREEMENT****Sub-licence agreement** |  |

**THIS AGREEMENT** is made on                                                    2018

**BETWEEN:**

1. **BIG LOTTERY FUND** of 1 Plough Place, London EC4A 1DE (“**Fund**”);
2. **[INSERT NAME AND COMPANY DETAILS OF SERVICE PROVIDER]** (“**Service Provider** )”.

**BACKGROUND**

1. The Fund was granted a non-exclusive, royalty free licence on 1 August 2016 (“**Fund’s Licence**”) by Camelot UK Lotteries Limited (“**Camelot**”) to use certain intellectual property rights belonging to the Gambling Commission (“**Commission**”) including the “Crossed Fingers” logo and the words “The National Lottery”.
2. The Fund now wishes the Service Provider to use these intellectual property rights as described under this Agreement to highlight the use of National Lottery funds in relation to the services provided by the Service Provider under a contract for services that the Service Provider has entered into with the Fund.

**IT IS AGREED THAT:**

1. Definitions

In this Agreement the following words and expressions shall, unless the context requires otherwise, have the following meanings:

1. “**Act**” means the National Lottery Act 1993 as amended by the National Lottery Act 1998, the National Lottery Act 2006 and any other statute, regulation or statutory instrument which amends, extends, consolidates or replaces the same;
2. “**Authorised Sub-contractor**” shall have the same meaning as in the Services Contract;
3. “**Guidelines**” means the guidelines set out in the Fund document titled “How to use our logo” published in January 2018 and which can be found at: https://media.biglotteryfund.org.uk/media/documents/logo-guidance.pdf ;
4. “**Intellectual Property**” means patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, copyright (including rights in computer software) and moral rights, database rights, semi-conductor topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered, and all rights or forms of protection having equivalent or similar effect anywhere in the world and registered includes registration and applications for registration;
5. “**Logos**” means the logos which are the Intellectual Property of the Commission and which are set out in the appendix to this Agreement;
6. “**National Lottery**” means the National Lottery as defined in the Act;
7. “**Services**” means the services to be performed under the Services Contract;
8. “**Services Contract**” means the contract for services made between the Fund and the Service Provider on [*insert date*]; and
9. “**Territory**” means the UK.
10. **Commencement**
	1. This Agreement shall come into force on the date when it is signed by the last of the signatories to sign this Agreement and shall remain in force until its expiry or termination in accordance with Clause 8.1.
11. **Grant of sub-licence**

In consideration of the payment of the sum of £1 now paid by the Service Provider to the Fund, the receipt whereof the Fund hereby acknowledges, the Fund hereby grants to the Service Provider and its Authorised Sub-contractors if relevant a non-exclusive, non-transferrable, and royalty-free sub-licence to use the Logos in the Territory in consideration for and in connection exclusively with the provision of the Services including any part of the Services which is to be provided by Authorised Sub-contractors..

1. **The Service Provider's Undertakings**

The Service Provider undertakes to the Fund:

* 1. that all uses and applications of the Logos under this Agreement and the Services Contract by the Service Provider and its Authorised Sub-contractors shall:
		1. comply with the Guidelines; and
		2. accord with all relevant advertising codes and legislation and other guidelines, instructions and restrictions relating to the Logos as may be supplied by the Fund to the Service Provider from time to time;
	2. to permit the Fund and the Camelot and/or their respective duly authorised representatives at all reasonable times on notice to enter the Service Provider's premises for the purposes of inspecting and copying any materials to which the Logos have been applied;
	3. if and when called upon by the Fund or by the Camelot and/or their respective duly authorised representatives to submit samples of any materials to which the Logos have been applied;
	4. that it will not, and shall ensure that its Authorised Sub-contractors do not, alter, modify or add to in any way to (including without limitation by the addition of any straplines, slogans or words) the Logos and shall only use the Logos in such style and in such form and with such acknowledgement of proprietorship and/or registration as provided by the Fund to the Service Provider from time to time;
	5. that it will not use, and shall ensure that its Authorised Sub-contractors do not, apply to register or register any mark or name which incorporates or is confusingly similar to the Logos;
	6. that it will not, and shall ensure that its Authorised Sub-contractors do not, do any act or thing liable to damage the reputation or distinctiveness of the Logos;
	7. that it will not, and shall ensure that its Authorised Sub-contractors do not, use the Logos in relation to goods or services in any way which, in the Fund’s reasonable opinion, denigrates or is detrimental to the image or reputation of the National Lottery or in conflict with the interests of the National Lottery or could objectively be regarded, or which the Commission or the Fund would reasonably be expected to regard, as distasteful or improper for association with the National Lottery;
	8. that it will not, and shall ensure that its Authorised Sub-contractors do not, use the Logo as part of any corporate, business or trading name or style except as permitted under this Agreement;
	9. that it will not, and shall ensure that its Authorised Sub-contractors do not, make any representation or do anything or omit to do anything which may be taken as an indication that the Service Provider, or Authorised Sub-contract as relevant, has any right, title or interest in or to the ownership or use of any of the Logos or the goodwill attaching to the Logos except as under this Agreement;
	10. it shall ensure that any Authorised Sub-contractor who uses the Logo is made aware of the terms of this Agreement and the Service Provider acknowledges that the Service Provider shall be liable for any breach of the terms of this Agreement by any Authorised Sub-contractor as if such term had been breached by the Service Provider.
1. **Assignment**

This Agreement is personal to the Service Provider and the Service Provider shall not assign, charge, licence, transfer, part with possession or otherwise dispose of or deal with this Agreement or any of the rights or obligations hereunder except as expressly set out in this Agreement.

1. **Acknowledgements**

The Service Provider hereby acknowledges and agrees that:

* 1. nothing contained in this Agreement gives the Service Provider any right, title or interest in or to the Logos other than as set out in this Agreement; and
	2. the Commission is the sole proprietor of the Logos and any copyright and goodwill (including any goodwill which accrues as a result of the Service Provider's use of the Logos) subsisting therein.
1. **Warranties**
	1. The Fund warrants that it has the consent of the Camelot to grant this sub-licence hereunder.
	2. Save as provided in clause 7.1 the Fund provides no warranty, express or implied, in relation to the Logos and expressly excludes without limitation any warranty as to ownership, validity or non-infringement of the intellectual property rights of any third party.
2. **Termination**
	1. This Agreement is co-terminus with the Services Contract and will terminate automatically on the date that the Services Contract expires or is otherwise terminated.
	2. The Fund shall be entitled to terminate this Agreement forthwith by written notice if the Service Provider or any of its Authorised Sub-contractors commits any breach of the terms of this Agreement and (if such breach is capable of remedy) fails to remedy any such breach within fourteen days of written notice being given by the Fund specifying the breach and requiring its remedy. Where any breach by the Service Provider is irremediable, the Fund shall be entitled to terminate both this Agreement and the Services Contract.
	3. The Fund shall be entitled to terminate this Agreement at any time and for any reason.
	4. Termination of this Agreement however caused shall be without prejudice to any rights or liabilities accrued to either party at the date of termination.
	5. Following termination of this Agreement under clauses 8.1, 8.2 or 8.3 hereof, the Service Provider will not, and shall ensure that any relevant Authorised Sub-contractors do not, make any use of the Logos and shall forthwith destroy or deliver to the Fund all and any materials to which the Logos have been applied pursuant to this Agreement and which are in the Service Provider's or any of its Authorised Sub-contractors’ possession, custody or control, together with a certificate of destruction or delivery.
	6. The Service Provider acknowledges that following termination of the Agreement all rights in the Logos granted under this Agreement will cease.
3. **Infringements**
	1. If that the Service Provider becomes aware of:
		1. any unauthorised use (or suspected unauthorised use) of the Logos by a third party,
		2. any allegation or complaint made by any third party that any of the Logos are invalid, that use of the Logos infringes any third party rights or that use of the Logos may cause deception or confusion to the public; and
		3. any other form of attach on or claim to the Logos,

it must immediately provide the Fund with full details of such unauthorised use or allegation as relevant.

* 1. If the Service Provider does become aware of any of the events listed in Clause 9.1, it shall not respond to any such allegations or complaints or take any action in relation to any unauthorised third party use unless at the Fund’s written request
1. **General**
	1. Any notice required to be given under this Agreement shall be deemed duly served if left at or sent by registered or recorded delivery post to the registered office of the relevant Party.
	2. No delay, omission or forbearance by the Fund to exercise or enforce any right, power or remedy under this Agreement shall operate as a waiver of that right, power or remedy and any single or partial exercise or enforcement of any right, power or remedy shall not preclude any other or further exercise or enforcement of any such right, power or remedy.
	3. This Agreement and any dispute or claim (including any non-contractual dispute or claim) arising out of or in connection with it or its subject matter (a “**Claim**”) shall be governed by, and construed in accordance with, the laws of the region of the United Kingdom in which the office of the Fund which is procuring the Services is located, and the parties agree irrevocably to submit to the exclusive jurisdiction of the courts of such region of the United Kingdom.
	4. No variation of this Agreement shall be effective unless made in writing and signed by both parties.

**EXECUTED** as an agreement

Signed by the duly authorised representative(s) of **BIG LOTTERY FUND**

|  |  |  |  |
| --- | --- | --- | --- |
| Name: | ………………………………… | Signature: | ……………………………… |
| Position: | ………………………………… | Date: | ……………………………… |

|  |  |  |  |
| --- | --- | --- | --- |
| Name: | ………………………………… | Signature: | ……………………………… |
| Position: | ………………………………… | Date: | ……………………………… |

Signed by the duly authorised representative of **[INSERT NAME OF SERVICE PROVIDER]**

|  |  |  |  |
| --- | --- | --- | --- |
| Name: | ………………………………… | Signature: | ……………………………… |
| Position: | ………………………………… | Date: | ……………………………… |

Appendix

[*insert the content of Appendix 1 to the Fund’s licence with Camelot*]

1. 1. MI Reporting Template

*[Either insert template from PPN 01/18 dated 10 April 2018 or a version specifically adapted for this Agreement*]