

RESTRICTED DOCUMENT

# Goods/Services Contract

<b>Contract Title</b>	
<b>Contract Reference Number:</b>	
<b>Supplier Name:</b>	

.....  
Big Lottery Fund (operating as The National Lottery  
Community Fund)

1st Floor Peel Building, 2 Marsham Street, London,  
SW1P 4DF

[www.tnlcommunityfund.org.uk](http://www.tnlcommunityfund.org.uk)  
[procurement@tnlcommunityfund.org.uk](mailto:procurement@tnlcommunityfund.org.uk)  
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## GOODS/SERVICES CONTRACT

### BETWEEN:

- (1) **BIG LOTTERY FUND** (operating as **THE NATIONAL LOTTERY COMMUNITY FUND**), with its principal office at 1st Floor Peel Building, 2 Marsham Street, London, SW1P 4DF (the “Fund”)
- (2) **[NAME OF ORGANISATION]** (operating as **[NAME]**), a **[CLASSIFICATION OF COMPANY]** registered in **[COUNTRY]** with company number **[COMPANY NUMBER]**, whose address is **[ADDRESS]** (the “Supplier”)

### 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 Supplier prior to the Signature Date is at the Supplier’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 the **BIG LOTTERY FUND (operating as THE NATIONAL LOTTERY COMMUNITY FUND)**

Name:		Signature:	
Position:		Date:	

Name:		Signature:	
Position:		Date:	

Signed by the duly authorised representative of **[NAME OF COMPANY]**

Name:		Signature:	
Position:		Date:	

## CONTRACT DETAILS

### 1 Key Dates

Start Date:	
Contract End Date:	
Extension Period(s) (if any):	

### 2 Goods and/or Services

<p>Short Description of Goods and/or Services, including Deliverables.</p> <p><i>Specifications/Scope of requirements are to be supplied as enclosed in Schedule 1.</i></p> <p><i>Please note that the contents of Schedule 1 shall have the same importance as any detail contained in this section 2 (Goods and/or Services) of the Contract Details.</i></p>	
Fund Deliverables	
Timetable	
<p>Sub-licence for use of the National Lottery logos required:</p> <p><i>Form of sub-licence set out in Schedule 4</i></p>	[yes]/[no] (delete as applicable)
Authorised Sub-contractors	[List all those authorised prior to the contract start date]

### 3 Contract Value

Total Contract Value excluding VAT in pounds sterling	£
Contract Value for Extension Period excluding VAT (if applicable)	£

### 4 Representatives

Fund's Representative and contact details including address, email, and telephone number:	
Supplier's Representative and contact details including address, email, and telephone number:	

**5 Data Protection**

Supplier's role (Controller/Processor/Joint Controller) <i>Where the Supplier's role is Joint Controller, please seek advice from the Information Governance Team</i>	
Is the Supplier processing any Personal Data on behalf of the Fund in connection with the Services? <i>If yes, separate Data Processing Agreement to be entered into.</i>	[yes]/[no] <i>(delete as applicable)</i>
Data Processing Agreement entered into:	[Yes]/[Not applicable] <i>(delete as applicable)</i>

**6 Fees and Payment**

Payment Profile <i>Payment Profile to be linked to the total Contract Value.</i> <i>Please provide details of timings for payment of invoices, and milestone payments.</i>	
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**7 Reporting requirements**

Progress Report due date(s):	<i>Please refer to Schedule 1.</i>
Final Report due date:	

**8 Liability and Insurance**

Supplier's limitation of liability (see Clause 27):	
Supplier's Employers Liability (EL) Insurance:	
Supplier's Public Liability (PL) insurance:	
Supplier's Professional Indemnity (PI) insurance:	

**9 Obligations in respect of SMEs and VCSEs**

Inclusion of obligations set out in Clauses 16.5 to 16.11 in relation to SMEs and VCSEs	[yes]/[no] <i>(delete as applicable)</i>
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<i>(only applicable if total contract value is greater than £5 million)</i>	
Minimum Threshold:	£

**10** Notices

Addressee for Fund:	
Addressee for Supplier:	

## CONDITIONS

### 1 Definitions and interpretation

#### 1.1 In this Contract:

“**Acceptance Procedures**” means the procedures for acceptance of Deliverables as set out in Schedule 3;

“**Authorised Sub-contractors**” means the Supplier’s sub-contractors as set out in section 2 (Goods and/or Services) of the Contract Details, together with any sub-contractors approved by the Fund from time to time in accordance with Clause 16.1;

“**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 2;

“**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 2;

“**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;

“**Continuous Improvement Plan**” has the meaning given in Clause 7.3;

“**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” as defined in the Data Protection Legislation;

“**Data Processing Agreement**” has the meaning given in Clause 25;

“**Data Protection Legislation**” shall mean, for the periods in which they are in force and to the extent applicable to a Party, the UK GDPR, the EU GDPR, the DPA, Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or other regulatory authority, in each case as amended or substituted from time to time;

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

“**Delivery Date**” has the meaning given to it in the Specification;

“**Delivery Location**” has the meaning given to it in the Specification;

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

“**DPA**” means the UK Data Protection Act 2018;

“**Discloser**” has the meaning given in Clause 24.1;

“**EIRs**” means the Environmental Information Regulations 2004 (SI 2004/3391) (or in Scotland, the Environmental Information (Scotland) Regulations 2004) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“**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;

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

“**Exit Management Plan**” has the meaning given in Clause 15.1;

“**Exit Requirements**” means Fund’s requirements with which the Supplier must comply in relation to any expiry or early termination of this Contract including the provision of an Exit Management Plan as defined in Clause 15.1;

“**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 Goods and/or Services (as applicable) will end or be completed by the Supplier, and which may be stated as “completion of the Goods and/or 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:

- (a) an executive summary of the Goods and/or Services;
- (b) a copy of any products and resources produced as part of the Goods and/or Services;
- (c) any outcomes of the Goods and/or Services;
- (d) a copy of any media releases or coverage relating to the Goods and/or Services;
- (e) details of any problems encountered by the Supplier in conducting the Services and using the Goods and solutions (including timeframes) identified to overcome those problems;
- (f) a review of any factors likely to affect the satisfactory completion of the delivery of the Goods and/or Services in accordance with the Timetable or due dates; and
- (g) any other information reasonably requested by the Fund;

**“FOI Act”** means the Freedom of Information Act 2000 (or in Scotland, the Freedom of Information (Scotland) Act 2002) together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

**“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 Supplier 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 Goods and/or the Services (as applicable), as set out in section 2 (Goods and/or Services) of the Contract Details;

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

**“Fund’s Representative”** means as set out in section 4 (Representatives) of the Contract Details;

**“Fund’s Requirements”** means the requirements of the Fund in relation to the Goods and Services (as applicable) as set out in Schedule 1; **“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 goods and/or services (as applicable) similar to the Goods and/or the Services (as applicable) to a customer like the Fund, such supplier seeking to comply with its contractual obligations in full and complying with all applicable laws;

**“Goods”** means the goods (including any instalment, component, part of or raw materials used in such goods) to be supplied by the Supplier as require set out in section 2 (Goods and/or Services) of the Contract Details and includes the provision of any Deliverables;

**“Goods and Services Description”** means the description of the Goods and/or Services as set out in section 2 (Goods and/or Services) of the Contract Details as complies with the Fund’s Requirements;

**“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;

**“Key Personnel”** means, in relation to the Supplier, the individuals or roles set out in section 4 (Representatives) of the Contract Details;

**“Logos”** has the same meaning as in the form of sub-licence set out in Schedule 4;

**“Materials”** means all materials created by the Supplier or its Staff (including any material created jointly with the Fund) relating to or in the provision of the Goods or performance of the Services (as applicable) 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 16.5 to 16.11 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;

**“National Lottery”** means the National Lottery as defined in 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;

**“Payment Profile”** means the timing for payment of any invoices by the Fund as set out in section 6 of the Contract Details;

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

**“Processor”** means a “data processor” as defined in the Data Protection Legislation;

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

- (a) the progress of the provision of the Services in relation to any contractual programme or Timetable, to be delivered by the Supplier to the Fund within two (2) weeks of the Contract being executed;
- (b) the cost of the work carried out in relation to the Services during the period covered by the report;
- (c) details of any problems encountered by the Supplier in conducting the Services and solutions (including timeframes) identified to overcome those problems;
- (d) 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
- (e) any other information reasonably requested by the Fund;

**“Recipient”** has the meaning given in Clause 24.1;

**“Replacement Services”** means any services that are identical or substantially similar to any of the Services and which the Fund receives in substitution for any of the Services following the termination or expiry of this Contract, whether those services are provided by the Fund internally or by any Replacement Supplier.

**“Replacement Supplier”** means any third-party supplier of Replacement Services appointed by the Fund from time to time.

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

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

**“Supplier’s Background IP”** means all Intellectual Property Rights used by the Supplier or its Staff in providing the Goods or performing the Services (as applicable) excluding the Intellectual Property Rights in the Materials created by the Supplier or its Staff in providing the Goods or performing the Services (as applicable);

**“Supplier’s Representative”** means as set out in the section 4 (Representatives) of the Contract Details;

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

**“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 defined by the European Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

**“Staff”** means all persons employed or engaged by the Supplier 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 Supplier to meet in the provision of the Goods and Services (as applicable);

**“Start Date”** means the date on which the Supplier is to commence the provision of the Goods or Services (as applicable) 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;

**“Subsidy Control Rules”** means:

(a) the Subsidy Control Act 2022 and all regulations and guidance issued by the Department for Business, Energy, and Industrial Strategy (or any subsequent department that carries out the same functions in respect of subsidy control); and/or

(b) any other legislation and/or regulatory guidance which is in force and/or applies in the United Kingdom from time to time which regulates any financial assistance, or any other aid, funding, assets, or advantage granted or directed by a public body in the United Kingdom;

**“Termination Assistance”** means the activities to be performed by the Supplier pursuant to the Exit Management Plan, and other assistance required by the Fund pursuant to the Termination Assistance Notice;

**“Termination Assistance Notice”** has the meaning given to it in Clause 29.5;

**“Termination Assistance Period”** means the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Clause 29.6;

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

**“Transferee”** has the meaning given in Clause 36.3;

**“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;

**“UK GDPR”** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; and

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

1.2 In this Contract, unless otherwise indicated:

1.2.1 a reference to a Clause or Schedule is a reference to a Clause in or Schedule to this Contract; and

- 1.2.2 a reference in a Schedule to a clause is a reference to a clause in that Schedule.
- 1.3 Headings are for reference only and do not affect interpretation of the associated provision.
- 1.4 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.
- 1.5 A reference to “**writing**” or “**written**” includes email (unless the context requires otherwise).
- 1.6 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.

## **2 Duration**

- 2.1 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.
- 2.2 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.
- 2.3 Any work carried out by the Supplier 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 Supplier’s own risk.

## **3 Provision of Services**

- 3.1 The Supplier shall commence provision of the Services on the Start Date.
- 3.2 It is the Supplier’s responsibility to make all reasonable enquiries of the Fund to ascertain the Fund’s Requirements.
- 3.3 The Supplier shall supply the Services with all reasonable skill, care, and diligence, to the satisfaction of the Fund and in accordance with:
- 3.3.1 the Fund’s Requirements and this Contract including the Timetable and Standards and other information set out in the Contract Details;
  - 3.3.2 all applicable law and Good Industry Practice; and
  - 3.3.3 the Delivery Plan, if any, and any reasonable directions and instructions provided by the Fund.
- 3.4 It is the Supplier’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 Supplier shall prepare a Risk Report for submission to the Fund within one (1) month after the Start Date. Prior to preparation of the Risk Report, the Supplier shall discuss and agree the content and format of the Risk Report with the Fund.
- 3.5 If either Party is of the reasonable opinion that a Deliverable may not be provided by the date set out in the Timetable, the Supplier 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 Supplier 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 Supplier acknowledges that a failure to meet any due date may result in the Fund suffering loss or damage.

3.6 The Supplier warrants that:

- 3.6.1 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;
- 3.6.2 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;
- 3.6.3 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;
- 3.6.4 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 4 (Representatives) of the Contract Details and any Authorised Sub-contractor set out in section 2 (Goods and/or Services) of the Contract Details;
- 3.6.5 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;
- 3.6.6 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 Supplier's risk and responsibility at all times;
- 3.6.7 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);
- 3.6.8 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;
- 3.6.9 there is 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 Supplier; and
- 3.6.10 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.

- 3.7 If requested to do so by the Fund, the Supplier 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 Supplier shall provide the Fund with a copy of its Delivery Plan within one (1) month of a request being made by the Fund and make any reasonable adjustments to the Delivery Plan as required by the Fund.
- 3.8 Where it is indicated in Section 2 (Goods and/or Services) of the Contract Details that:
- 3.8.1 the Acceptance Procedures are to apply to any Deliverables, the parties shall comply with the provisions of Schedule 3; and
  - 3.8.2 the Supplier is required as part of the Services to use the Logos, the Supplier shall enter into an agreement in the form set out in Schedule 4 in order to license such use.
- 3.9 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 Supplier 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 Supplier does not in any way or for any reason provide the Fund with any dedicated personnel.
- 4 Supply of Goods**
- 4.1 The Supplier shall ensure that the Goods shall:
- 4.1.1 correspond with their description and the Specification;
  - 4.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Fund, expressly or by implication, and in this respect the Fund relies on the Supplier's skill and judgement;
  - 4.1.3 where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
  - 4.1.4 comply with all applicable laws relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 4.2 The Supplier shall obtain and maintain in force for the term of the Contract all licences, permissions, authorisations, consents and permits needed to supply the Goods in accordance with the terms of this Contract.
- 4.3 The Supplier shall ensure that:
- 4.3.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
  - 4.3.2 each delivery of the Goods is accompanied by a delivery note which shows the type and quantity of the Goods, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.4 The Supplier shall deliver the Goods specified in each order to the Delivery Location by the Delivery Date.
- 4.5 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

- 4.6 If the Supplier:
- 4.6.1 delivers less than [95]% of the quantity of Goods ordered, the Fund may reject the Goods; or
  - 4.6.2 delivers more than [105]% of the quantity of Goods ordered, the Fund may at its sole discretion reject the Goods or the excess Goods;
  - 4.6.3 and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Fund accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.
- 4.7 The Supplier shall not deliver the Goods in instalments without the Fund's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Fund to the remedies set out in Clause 4.9.
- 4.8 Title and risk in the Goods shall pass to the Fund on completion of delivery.
- 4.9 If the Goods are not delivered on the specified Delivery Date, then, without limiting any other right or remedy the Fund may have, the Fund may:
- 4.9.1 refuse to take any subsequent attempted delivery of the relevant Goods;
  - 4.9.2 terminate this Contract with immediate effect;
  - 4.9.3 obtain substitute goods from another supplier and recover from the Supplier any costs and expenses reasonably incurred by the Fund in obtaining such substitute goods; and
  - 4.9.4 subject to Clause 26, claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Goods on the Delivery Date, provided that the Supplier shall have no liability for any failure or delay in delivering the relevant Goods to the extent that such failure or delay is caused by the Fund's failure to comply with its obligations under this Contract.
- 4.10 If the Supplier requires the Fund to return any packaging materials to the Supplier, that fact must be clearly stated on the delivery note accompanying the relevant Goods, and any such returns shall be at the Supplier's expense.

#### Acceptance and Defective Goods

- 4.11 The Fund shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following completion of delivery in accordance with Clause 4.5, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.
- 4.12 If any Goods delivered to the Fund do not comply with Clause 4.1 or are otherwise not in conformity with the terms of this Contract, then, without limiting any other right or remedy that the Fund may have, the Fund may reject those Goods and:
- 4.12.1 require the Supplier to repair or replace the rejected Goods at the Supplier's risk and expense within [five (5)] Business Days of being requested to do so; or
  - 4.12.2 require the Supplier to repay the price of the rejected Goods in full (whether or not the Fund has previously required the Supplier to repair or replace the rejected Goods); and

- 4.12.3 claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Goods that do not conform with the terms of this Contract.
- 4.13 The Fund's rights and remedies under this Clause 4 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this Contract by the Sale of Goods Act 1979.
- 4.14 The terms of this Contract shall apply to any repaired or replacement Goods supplied by the Supplier.
- 4.15 If the Supplier fails to promptly repair or replace rejected Goods in accordance with Clause 4.12.2, the Fund may, without affecting its rights under Clause 4.12.3, obtain substitute goods from a third party supplier, or have the rejected Goods repaired by a third party, and the Supplier shall reimburse the Fund for the costs it incurs in doing so.

## **5 Land or premises and equipment**

- 5.1 Any land or premises made available to the Supplier by the Fund in connection with the Services shall be made available free of charge to be used by the Supplier solely for the purpose of performing the Services. The Supplier 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 Supplier 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 Supplier 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.
- 5.2 All Fund Property will remain in the ownership of the Fund and the Supplier shall ensure that Staff use the Fund's 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 Supplier and its Staff unless the Supplier notifies the Fund to the contrary within ten (10) Business Days of receiving the Fund Property.
- 5.3 The Supplier undertakes the safe custody of and the due return of all Fund Property and, subject always to the provisions of Clause 26.1, 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.
- 5.4 The Supplier 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.
- 5.5 Neither the Supplier nor any supplier or sub-contractor, nor any other person, shall have a lien on the Fund Property for any sum due to the Supplier, supplier, sub-contractor or other person, and the Supplier 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.
- 5.6 Apart from the Fund Property, the Supplier will supply, at its own cost, all equipment required to perform the Services.

## **6 Standard of work**

- 6.1 The Supplier 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.

## **7 Continuous improvement**

- 7.1 The Supplier will at all times during the term of this Contract seek to improve value for money as set in the remainder of this Clause 7.
- 7.2 The Supplier 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 Supplier 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.
- 7.3 Without limiting the generality of Clause 7.2, the Supplier 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:
- 7.3.1 identifying the emergence of new and evolving technologies which could improve the Services;
  - 7.3.2 identifying changes in behaviour at the Fund that result in a cost saving and a reduction in the costs;
  - 7.3.3 identifying and implementing efficiencies in the Supplier's internal processes and administration and in the way the Fund interacts with the Supplier that may lead to reductions in the costs of the Services;
  - 7.3.4 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
  - 7.3.5 measuring and reducing the sustainability impacts of the Supplier's operations pertaining to the Services, and to identify opportunities to assist the Fund in meeting their sustainability objectives.
- 7.4 The Fund shall notify the Supplier 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 Supplier 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.
- 7.5 Once the first Continuous Improvement Plan has been approved in accordance with Clause 7.4, the Supplier 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 Supplier's progress against the Continuous Improvement Plan.
- 7.6 The Supplier 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 7.3.

7.7 The Supplier 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.

7.8 If the Supplier'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.

## **8 Representatives**

8.1 The details of Supplier's Representative and the Fund's Representative are set out in section 4 (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.

## **9 Monitoring of performance**

9.1 The Fund shall be permitted to monitor the performance of the Supplier in its provision of the Services and the Supplier shall assist the Fund in any monitoring request including:

9.1.1 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;

9.1.2 by ensuring the security and availability for inspection of all documentation that may be relevant to monitoring of the Services; and

9.1.3 the provision of such written reports and timesheets as the Fund may reasonably request from time to time.

9.2 The Fund will use reasonable endeavours to provide the Fund Deliverables to the Supplier. The Supplier agrees that no other assistance other than the Fund Deliverables is required from the Fund to enable the Supplier to provide the Services. If the Supplier has any reason to believe the Fund will not provide the Fund Deliverables, or the Fund does not provide the Fund Deliverables, the Supplier must give the Fund notice of the lack of provision of the Fund Deliverables. The Supplier accepts responsibility for, and will mitigate, the consequences of the lack of the Fund Deliverables assistance until such notice is given.

## **10 Reports**

10.1 All reports to be provided by the Supplier under this Clause 10 shall be presented in a format as reasonably required, and notified to the Supplier, by the Fund.

10.2 The Supplier shall provide to the Fund:

10.2.1 a Progress Report on the dates specified in section 6 (reporting requirements) of the Contract Details, or at any time as the Fund may require whether as a Deliverable or otherwise; and

10.2.2 a Final Report on or before the date specified in section 6 (reporting requirements) of the Contract Details.

10.3 If the Fund requests additional information in respect of any reports provided under this Clause 10, the Supplier shall provide such additional information or updates within ten (10) Business Days of the request.

## **11 Surveys**

11.1 The Supplier 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.

## **12 Intellectual Property Rights**

12.1 The Supplier shall assign to the Fund upon their creation all Intellectual Property Rights arising out of the supply of Goods and/or performance of the Services or the provision of the Deliverables by the Supplier or its Staff, including any Materials and any future Intellectual Property Rights.

12.2 The Supplier 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 12.1.

12.3 The Supplier grants the Fund a non-exclusive, worldwide, royalty free, perpetual, irrevocable licence (including the right to grant sub-licences) to use and disclose the Supplier's Background IP to the extent necessary for the Fund to use and exploit the Deliverables and the Materials.

12.4 Subject to Clause 24 (Confidentiality), the Fund grants the Supplier 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 Supplier's obligations under this Contract.

12.5 The Supplier 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.

12.6 Each party shall do all things reasonably necessary (including signing documents within a reasonable time) to comply with the provisions of this Clause 12, at the request and expense of the other party.

12.7 Nothing in this Contract prevents the Supplier 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 12.9.

12.8 The Supplier will pay all royalties and fees on copyright, processes and registered designs of any equipment, systems and publications used, installed or incorporated by the Supplier 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 Supplier, provided the Fund:

12.8.1 allows the Supplier conduct of the defence of such claim, including any settlement;

12.8.2 makes no prejudicial admission or statement;

12.8.3 notifies the Supplier promptly of any claim; and

- 12.8.4 actively co-operates and assists the Supplier, 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 Supplier in final settlement, these will be paid by the Supplier. 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 Supplier to avoid infringement; or the use of information, documents, facilities, or items supplied by the Fund for the purposes of the Goods and/or the Services.

- 12.9 The Fund acknowledges that in the course of the delivery of the Goods and/or the Services the Supplier may:

12.9.1 use products, materials, or methodologies proprietary to the Supplier or a third party; or

12.9.2 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.

- 12.10 If section 2 (Goods and/or Services) of the Contract Details states that there is to be a sub-licence for use of the Logos, the Supplier shall enter into a sub-licence agreement in the form set out in Schedule 4.

### **13 Supplier's Staff**

- 13.1 The Fund shall act reasonably and in good faith in making any decision or request of the Supplier and its Staff under or pursuant to this Contract.

- 13.2 The Supplier shall take any steps reasonably required by the Fund to prevent unauthorised persons being admitted to the Fund's premises.

- 13.3 The Supplier 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 Supplier and its Staff.

- 13.4 If the Fund gives the Supplier 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 Goods and/or the Services, the Supplier shall immediately take all reasonable steps to comply with such notice.

- 13.5 Notwithstanding the Supplier's obligations in relation to the protection of Personal Data under Clause 25, if, through any default of the Supplier, data transmitted or processed in connection with the delivery of the Goods and/or the Services is either lost or sufficiently degraded to be unusable, the Supplier 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 Supplier 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.

- 13.6 In the event that the Fund is dissatisfied with the work of any member of the Supplier's Staff or wishes to remove them from the delivery of the Goods and/or provision of the Services, the Fund shall request a meeting with the Supplier to discuss such performance issues and provide evidence wherever possible. Without

restricting the Fund's rights under Clause 13.4, the parties will seek to agree a plan to resolve such issues, or if necessary, the replacement of such member of Staff.

- 13.7 The Supplier shall bear the cost of any notice, instruction, or decision of the Fund under this Clause 13 provided the Fund gives the Supplier reasonable prior notice.

#### **14 Key Personnel**

- 14.1 The Supplier shall ensure the performance and delivery of the Goods and/or 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 Goods and/or the Services.

- 14.2 The Supplier shall use all reasonable endeavours to ensure that the Key Personnel remain for the full period of the relevant phase of the delivery of the Goods and/or provision of the Services for which they are appointed. In the event of a Key Personnel's sickness or other emergency, the Supplier 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.

- 14.3 If, for any other reasons, changes in the Key Personnel become necessary:

14.3.1 due, in the reasonable opinion of the Fund, to such person's misconduct or repeatedly substandard work, then the Supplier 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

14.3.2 at the Supplier's request, then such changes shall be subject to a minimum of ten (10) Business Days' written notice by the Supplier to the Fund in the first twenty (20) elapsed Business Days of the Contract and twenty (20) Business Days' written notice any time thereafter and the replacement Key Personnel must be provided at no additional cost to the Fund.

- 14.4 Subject always to the provisions of Clause 13.1, in the event that the Supplier 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 Supplier to complete the delivery of the Goods and/or the Services in accordance with the Timetable, the Fund, following consultation with the Supplier, 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 Goods and/or Services provided by the Supplier up to the date of such termination and any committed costs which cannot be mitigated by the Supplier on receiving the notice of termination. Such termination does not restrict any other rights the Fund may have under this Contract or applicable law.

- 14.5 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 Supplier shall provide both the Key Personnel and the replacement Staff or Key Personnel during this period at no extra charge.

#### **15 Exit Management Plan**

- 15.1 Within three (3) months of the Start Date, the Supplier shall develop and agree an exit plan with the Fund, consistent with any Exit Requirements notified to the Supplier from time to time, which shall ensure continuity of the Services on expiry

or earlier termination of this Contract. If the parties cannot agree an exit plan in accordance with the timescales set out in this Clause 15.1 (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 46. 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.

## **16 Sub-contracting and SME and VCSE opportunities**

16.1 The Supplier may not sub-contract the provision of any material part of the provision of the Goods and/or the Services, save to any Authorised Sub-contractor, without the prior written consent of the Fund to be provided by the Fund’s Representative. The Fund may withhold such consent at its entire discretion or grant consent subject to conditions. The Supplier will provide promptly any information requested by the Fund to enable it to consider the suitability of any proposed sub-contractor.

16.2 Notwithstanding any sub-contracting permitted under Clause 16.1, the Supplier shall remain wholly liable and responsible for all acts and omissions of its Authorised Sub-contractors in the provision of the Goods and/or the performance of the Services. The Fund reserves the right to request the replacement of any Authorised Sub-contractor on reasonable grounds.

16.3 The Supplier shall ensure that provisions are included in any sub-contract requiring the Supplier to pay all undisputed sums due from the Supplier 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).

16.4 For the purposes of Clause 16.5 to 16.11 (inclusive), 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 Supplier in relation to SME and VCSE management information set out in Schedule 5.

16.5 The Supplier shall:

16.5.1 subject to Clause 16.7, 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;

16.5.2 within 90 days of awarding a subcontract advertised in accordance with Clause 16.5.1 to a subcontractor, update the notice on Contracts Finder with details of the successful subcontractor;

16.5.3 monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;

16.5.4 provide reports on the information at Clause 16.5.3 to the Fund in the format and frequency as reasonably specified by the Fund; and

16.5.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

- 16.6 Each advert referred to in Clause 16.5 shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 16.7 The obligation in Clause 16.5 shall only apply in respect of subcontract opportunities arising after the date on which the Fund awarded the Contract to the Supplier.
- 16.8 Notwithstanding Clause 16.5, the Contracting Authority may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.
- 16.9 In addition to any other management information requirements set out in this Contract, the Supplier 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:
- 16.9.1 the total contract revenue received directly on this Contract;
  - 16.9.2 the total value of sub-contracted revenues under the Contract (including revenues for non-SMEs/non-VCSEs); and
  - 16.9.3 the total value of any sub-contracted revenues to SMEs and VCSEs.
- 16.10 The reports to be provided under Clause 16.9 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 Supplier shall use the initial MI Reporting Template, 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.
- 16.11 The Supplier 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.

## **17 Relationship**

- 17.1 The Supplier acknowledges that, in entering into this Contract and providing the Goods and/or carrying out the Services, it is an independent Supplier and not the Fund's servant or agent. The Supplier shall not make any promise, warranty, or representation, or execute any contract or deal on the Fund's behalf.

## **18 Fees and expenses**

- 18.1 Subject to Clause 18.6, the Fund shall pay to the Supplier 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.
- 18.2 The Supplier shall invoice the Fund in accordance with the timings set out in section 6 (Fees and payment) of the Contract Details and shall ensure that all invoices:
- 18.2.1 are correctly rendered;
  - 18.2.2 include the Contract reference number as set out on the front page of this Contract;
  - 18.2.3 clearly identify and detail the Services (including the Deliverables) and/or Payment Profile to which the invoice refers including any relevant time period;
  - 18.2.4 where applicable, show value added tax separately and as a net tax charge; and

- 18.2.5 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].
- 18.3 Where the Services are provided on a time and materials daily rate basis, the Supplier:
- 18.3.1 shall submit timesheets to the Fund in a form provided by the Fund, evidencing the Services provided, and the Fund shall not be obliged to make any payment until the Fund has received such properly completed timesheet(s);
- 18.3.2 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.
- 18.4 If, under this Contract, any sum of money is due from Supplier to the Fund, such sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under this Contract or under any other agreement or contract which the Supplier has entered into with the Fund.
- 18.5 The Supplier shall submit a final invoice to the Fund within six (6) weeks after the Expiry Date or completion of the delivery or performance of the Goods and/or Services (including the Deliverables, if any) or immediately upon termination of the Contract, whichever event is earlier.
- 18.6 The Fund shall not be required to make any payment under Clause 18.1 if the Supplier has failed to comply with Clause 18.2 or if the Goods and/or 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.
- 18.7 If the Fund agrees to pay any expenses in connection with this Contract, the Fund is not required to pay if:
- 18.7.1 it is not satisfied that the expense was incurred by the Supplier directly in relation to the provision of the Goods and/or the Services;
- 18.7.2 the Fund does not receive a copy of a tax invoice from the applicable third-party evidencing that the Supplier incurred the expense;
- 18.7.3 in the Fund's opinion, the expense is not reasonable as against the Fund's policy on out-of-pocket expenses.
- 18.8 The Fund may withhold or vary any of the Fees set out in this Contract or terminate any part of the provision of the Goods and/or the Services (in which case the Fees for those Goods and/or 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 29.1 occur.

## **19 Fee and invoice disputes**

- 19.1 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 46.

## **20 Variation of Fund's Requirements**

- 20.1 If the Fund wishes to amend any of the Fund's Requirements, the Supplier 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.

## **21 Amendment of Contract**

- 21.1 Where in the opinion of either party a material change is required to the Contract and the Goods and/or the Services, the Parties shall comply with the Change Control Procedure and the variation implemented via a Change Request shall be signed by both parties. The Fund has discretion as to whether any change proposed by the Supplier is to be considered material. All non-material changes must be made in accordance with Clause 41.1.
- 21.2 If a change in legislation has an impact on the provision of the Goods and/or the Services or increases the Supplier's cost of providing the Goods and/or the Services, either party may raise the matter under the Change Control Procedure.
- 21.3 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.

## **22 Audit**

- 22.1 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Goods and/or the Services including records of all expenditures which are reimbursable by the Fund to the Supplier 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 (6) years after the completion or termination of the provision of the Services. The Supplier shall permit the Fund and its agents and advisors to inspect and audit such records at all reasonable times upon request.
- 22.2 The Supplier 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 Supplier and may require the Supplier 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 Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.
- 22.3 The Supplier shall allow the Fund (acting by itself or through its third party representative's) to access any of the Supplier's premises, systems, personnel, and relevant records as may reasonably be required to fulfil any legally enforceable request by any regulatory body, verify the accuracy of Fees or identify suspected fraud, review the integrity, confidentiality and security of any data relating to the Fund or any service users; review the Supplier's compliance with any legislation applicable to the Goods and/or the Services; or verify that the Services are being provided and all obligations of the Supplier are being performed in accordance with this Contract.
- 22.4 Except where an audit is imposed on the Fund by a regulatory body or where the Fund has reasonable grounds for believing that the Supplier has not complied with its obligations under this Contract, the Fund may not conduct an audit under this clause no more than once in any calendar year. The Fund shall endeavour to (but is not obliged to) provide at least ten (10) Business Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.
- 22.5 Subject to the Fund's obligations of confidentiality, the Supplier shall on demand provide the Authority and any relevant regulatory body (and/or their agents or

representatives) with all reasonable co-operation and assistance in relation to each audit.

- 22.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure by the Supplier to perform its obligations under this Contract in any material manner in which case the Supplier shall reimburse the Fund for all the Fund's reasonable costs incurred in the course of the audit.
- 22.7 If an audit identifies that:
- 22.7.1 the Fund has overpaid any Fees, the Supplier shall pay to the Fund the amount overpaid within 30 days from the date of receipt of an invoice or notice to do so. The Fund may deduct the relevant amount from the Fees if the Supplier fails to make this payment; and
  - 22.7.2 the Fund has underpaid any Fees, the Fund shall pay to the Supplier the amount of the underpayment within 30 days from the date of receipt of an invoice for such amount.

### **23 Access to information**

- 23.1 The Supplier shall make available at its own cost any information reasonably requested by the Fund in connection with the Supplier'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 or EIRs.

### **24 Confidentiality and Freedom of Information**

- 24.1 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 24, each party receiving Confidential Information ("**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that the provisions of this Clause 24 shall not apply to any Confidential Information:
- 24.1.1 which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
  - 24.1.2 which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality; or
  - 24.1.3 which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser.
- 24.2 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.
- 24.3 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 or delete) all

Confidential Information of the Discloser which is in its possession or control subject to the exception set out in Clause 31.1.2.(ii).

- 24.4 The Supplier must not disclose to any third party, save as permitted under this Clause 24, any information in any form or on any media whatsoever regarding the delivery of the Goods and/or the Services under this Contract, or permit photography or film in connection with the Goods and/or the Services or this Contract, without the prior written permission of the Fund. Any press, media, or other enquiry about the Goods and/or the Services or this Contract must be referred to the Fund's Representatives.
- 24.5 The Fund is entitled to disclose to any Contracting Authority or Transferee any Confidential Information of the Supplier which relates to the provision of the Goods and/or the performance of the Services by the Supplier. In such circumstances, the Fund shall authorise the Contracting Authority or Transferee to use such Confidential Information only for purposes relating to the provision of the Goods and/or 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.
- 24.6 The Supplier must clearly identify to the Fund any business or trade secret which would prejudice the commercial interests of the Supplier if disclosed pursuant to a request under the FOI Act or the EIRs. However, the Supplier acknowledges that the Fund shall be responsible for determining in its absolute discretion whether any commercially sensitive information or other information is exempt from disclosure. The Supplier acknowledges that the Fund may be required under the FOIA and EIRs to disclose Information (including commercially sensitive information) without consulting the Supplier or following consultation with the Supplier and having taken its views into consideration.
- 24.7 Without prejudice to the generality of Clause 23, the Supplier shall, and shall ensure that its employees or sub-contractors shall:
- 24.7.1 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 or EIRs in accordance with the statutory timeframes;
  - 24.7.2 transfer to the Fund all FOI Act or EIRs requests for information relating to this Contract that it receives as soon as practicable and in any event within two (2) Business Days of receipt;
  - 24.7.3 provide the Fund with a copy of all Information belonging to the Authority requested in the request for information which is in its possession or control in the form that the Fund requires within five (5) Business Days (or such other period as the Fund may reasonably specify) of the Fund's request for such information; and
  - 24.7.4 not respond directly to a FOI Act or EIRs request for information unless authorised in writing to do so by the Fund.
- 24.8 Nothing in this Clause 24 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 EIRs.

## **25 Protection of Personal Data and Security of Data**

- 25.1 The parties shall comply with their respective obligations under the Data Protection Legislation and acknowledge and agree that if the role of the Supplier is indicated in section 5 (Data protection) of the Contract Details as 'Processor', the Supplier is a Processor acting on behalf of the Fund and that, the parties shall, on the Signature

Date or as soon as reasonably practicable thereafter and in any event prior to the Start Date for the Services, enter into a separate data processing agreement to the extent that any Personal Data is processed in the course of providing the Services (the “**Data Processing Agreement**”).

- 25.2 The parties agree that to the extent each party is a separate and independent Controller of any Personal Data exchanged in relation to this Contract, it shall each comply with the obligations imposed on Controllers under Data Protection Legislation. This Clause 25.2 is in addition to, and does not relieve, remove, or replace, a party's obligations or rights under Data Protection Legislation. Nothing in this Contract shall prohibit or otherwise restrict a party from complying with such obligations and neither party shall take any action which puts another party in breach of Data Protection Legislation.
- 25.3 The Supplier shall at all times ensure that its IT systems are fit for the purpose of securing all data or records of whatever nature in whatever form relating to the Fund, its operations, facilities, assets, employees, or otherwise (“**Fund Data**”) in accordance with Good Industry Practice, all applicable laws, and any other requirements reasonably required by the Fund. The Supplier shall ensure that its IT systems are regularly maintained, tested, assessed, evaluated and, if necessary, upgraded to ensure this and to ensure the effectiveness of technical and organisational measures for ensuring security of all processing of the Fund Data. The Supplier shall keep such technical and organisational measures under review and shall carry out such updates as they agree are appropriate throughout the term of this Contract. The Supplier shall at all times comply with Good Industry Practice and any other reasonable requirements of the Fund relating to data protection, data security and implementation and maintenance of back-up systems.

## **26 Liability**

- 26.1 Without prejudice to any rights or remedies of the Fund and subject to the provisions of Clauses 26.2 to 26.5 (inclusive), the Supplier 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:
- 26.1.1 loss of or damage to any property;
  - 26.1.2 personal injury (whether fatal or otherwise) to any person;
  - 26.1.3 any fraudulent, unlawful, or negligent act, breach, delay, non-performance or omission of the Supplier or its Staff in connection with this Contract; or
  - 26.1.4 termination of this Contract for material breach under Clause 29.2.2.
- 26.2 The indemnity contained in Clause 26.1 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.
- 26.3 Subject to Clause 26.5, in no event shall either party be liable to the other for:
- 26.3.1 any indirect, special, incidental, punitive or consequential loss;
  - 26.3.2 pure economic loss or damage;
  - 26.3.3 any:

- (i) loss of profits;
- (ii) loss of business opportunity;
- (iii) loss of contracts;
- (iv) loss of revenue;
- (v) damage to goodwill or reputation

(in each case arising as a direct or indirect result of the applicable claim).

26.4 Subject to Clause 26.5:

- 26.4.1 the Supplier's liability under or in connection with the Goods and/or 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
- 26.4.2 the Fund's liability under or in connection with the Goods and/or 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.

26.5 Nothing in this Contract shall limit either Party's liability for:

- 26.5.1 death or personal injury resulting from its negligence;
- 26.5.2 fraud or fraudulent misrepresentation;
- 26.5.3 any other act or omission, liability for which may not be limited under applicable law;
- 26.5.4 in the case of the Supplier, any breach or claimed breach of a third party's intellectual property rights; or
- 26.5.5 the case of the Supplier, any breach of its obligations under any Data Processing Agreement.

**27 Insurance**

- 27.1 Subject to Clause 27.2, the Supplier 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.
- 27.2 If no details of insurance cover are included in section 7 (liability and insurance) of the Contract Details, the Supplier shall take out and maintain policies in respect of the following types of insurance and cover:
  - 27.2.1 employer's liability insurance - £10 million per claim;
  - 27.2.2 public liability insurance - £5 million per claim; and
  - 27.2.3 professional indemnity insurance - £2 million per claim.

**28 Remedies cumulative**

- 28.1 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.

## 29 Termination

- 29.1 The Fund may terminate this Contract at any time on at least ninety (90) days' written notice. Where the Fund terminates the Contract under this clause 29.1, the Fund:
- 29.1.1 may at any time before the expiration of the notice to terminate exercise, at its sole discretion, such of the following powers:
    - (i) to direct the Supplier, where work has not been commenced, to refrain from commencing work; or
    - (ii) to direct the Supplier to complete in accordance with this Contract all or any of the delivery of the Goods and/or the Services (including any Deliverables), or any part or component thereof, which shall be paid for at the agreed Contract fee;
  - 29.1.2 shall pay the Supplier's reasonable costs in relation to any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Supplier directly in connection with this Contract to the extent to which those commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Contract;
  - 29.1.3 shall not in any case be liable to pay under the provisions of this Clause 29.1 any sum which, when taken together with any sums paid or due or becoming due to the Supplier under this Contract, shall exceed the total Fees due; and
  - 29.1.4 shall pay the Supplier in full for all work satisfactorily carried out by the Supplier and its Staff up to the date of termination.
- 29.2 The Fund may terminate this Contract immediately by notice in writing if:
- 29.2.1 upon the occurrence of any of the events listed in Clause 29.3;
  - 29.2.2 the Supplier 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;
  - 29.2.3 the Supplier 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 ten (10) Business Days or such other period as the Fund may specify of receiving a request to do so from the Fund;
  - 29.2.4 the Supplier makes a material change in the nature, scale, costs, funding, ownership, or timing of the Goods and/or the Services;
  - 29.2.5 the Supplier makes a substantial modification to the Goods and/or the Services affecting their nature or implementation conditions, or such that the Goods and/or the Services provide any firm, public body, or person any undue advantage;
  - 29.2.6 the Supplier has provided information in the Delivery Plan or in supporting or subsequent correspondence that is found to be incorrect, misleading, or incomplete;
  - 29.2.7 the Supplier does not refund to the Fund any overpayment of money within fourteen (14) days of notice by the Fund under Clause 18.8;

- 29.2.8 the Supplier does not make satisfactory progress (as reasonably determined by the Fund) towards completing the delivery of the Goods and/or the Services or meeting the requirements of the Timetable or Delivery Plan;
  - 29.2.9 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;
  - 29.2.10 proceedings have been issued against the Fund under the Public Contracts Regulations 2015 (or any successor legislation including, without limitation, legislation resulting from the royal assent of the Procurement Bill introduced to the House of Lords on 11 May 2022) in relation to this Contract;
  - 29.2.11 funds from the National Lottery are no longer available to the Fund for the Goods and/or the Services and/or the Fund ceases to operate;
  - 29.2.12 if either the Fund considers that the provision of Fees under this Contract cannot lawfully be provided under the Subsidy Control Rules, or a court or tribunal makes a recovery order under section 74 of the Subsidy Control Act 2022 or any other order following: (i) an interested party making an application to the Competition Appeal Tribunal under Section 70 of the Subsidy Control Act 2022 for a review of the Fund's decision to award any financial assistance which might amount to a subsidy within the Subsidy Control Rules; or (ii) judicial review proceedings being issued, against the Fund in respect of the Fund's decision to award the any financial assistance which might amount to a subsidy within the Subsidy Control Rules which could have a material adverse effect on the Fund's ability lawfully to provide the relevant financial assistance; or
  - 29.2.13 any of the circumstances set out in Regulation 57 of the Public Contracts Regulations (or such equivalent grounds in any successor legislation) justifying exclusion from participation in the procurement apply to the Supplier at the time the Contract was awarded.
- 29.3 The Supplier shall notify the Fund in writing immediately upon the occurrence of any of the following events:
- 29.3.1 where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or a criminal bankruptcy order is made against the Supplier, or the Supplier 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 Supplier's affairs; or
  - 29.3.2 where the Supplier is not an individual but is a firm, or a number of persons acting together in any capacity, if Clause 29.3.1 occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company;
  - 29.3.3 where the Supplier 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 29.3.3 any bona fide company reconstruction);
- 29.3.4 there is a change of “control” as defined by Section 416 (2) of the Income and Corporation Taxes Act 1988 in the Supplier; or
- 29.3.5 where the Supplier 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.
- 29.4 This Contract shall terminate automatically in the event that a declaration of ineffectiveness is made following proceedings that have been issued against the Fund under the Public Contracts Regulations 2015 (or equivalent remedy in any successor legislation including, without limitation, legislation resulting from the royal assent of the Procurement Bill introduced to the House of Lords on 11 May 2022) in relation to this Contract.

### **Termination Assistance**

- 29.5 The Fund shall be entitled to require the provision of Termination Assistance at any time during the term of this Contract by giving written notice to the Supplier (a “**Termination Assistance Notice**”) at least four (4) months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by the Fund of a notice to terminate pursuant to Clause 29.1. The Termination Assistance Notice shall specify:
- 29.5.1 the nature of the Termination Assistance required; and
- 29.5.2 the start date and period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) months after the date that the Supplier ceases to provide the Goods and/or the Services.
- 29.6 The Fund shall have an option to extend the Termination Assistance Period beyond the Termination Assistance Notice period provided that such extension shall not extend for more than six (6) months beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier of such extension no later than twenty (20) Business Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Fund shall have the right to terminate its requirement for Termination Assistance by serving not less than twenty (20) Business Days’ written notice upon the Supplier.
- 29.7 In the event that Termination Assistance is required by the Fund but at the relevant time the Parties are still agreeing an update to the Exit Management Plan pursuant to Clause 15.1, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Contract and the last Fund approved version of the Exit Management Plan (insofar as it still applies).

### **Termination Assistance Period**

- 29.8 Throughout the Termination Assistance Period the Supplier shall:

- 29.8.1 continue to provide the Goods and/or the Services (as applicable) and otherwise perform its obligations under this Contract and, if required by the Fund, provide the Termination Assistance;
  - 29.8.2 provide to the Fund and/or its Replacement Supplier any reasonable assistance and/or access requested by the Fund and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the provision of the Goods and/or the Services to the Fund and/or its Replacement Supplier;
  - 29.8.3 use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Fund;
  - 29.8.4 provide the Services and the Termination Assistance at no detriment to the provision of any reports nor to any other of the Supplier's obligations under this Contract;
  - 29.8.5 seek the Fund's prior written consent to access any of the Fund's premises from which the de-installation or removal of Supplier Assets is required.
- 29.9 If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Clause 29.8.2 without additional costs to the Fund, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Change Control Procedure.

### **30 Survival**

- 30.1 Termination under Clause 29 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, 5.3, 12, 19, 22, 24, 31, 38, 46.

### **31 Consequences of termination and end of Contract assistance**

- 31.1 On termination of this Contract for any reason:

31.1.1 the parties shall comply with their respective obligations set out in the Exit Management Plan and the Supplier shall comply with its obligations in Clauses 29.7 and 29.8 where a Termination Assistance Notice has been served;

31.1.2 the Supplier shall immediately delete or return to the Fund, at the Fund's request, all documents, materials, information, and other resources provided to the Supplier for the purposes of or in connection with this Contract, including any Confidential Information and any Personal Data, except that:

- (i) where expressly agreed in writing by the Fund, the Supplier shall be entitled to retain one copy of such documents, materials, information, and other resources for audit purposes only;
- (ii) the Supplier 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 persons engaged by the Supplier to be responsible for the safe and secure storage of such files,

and the provisions of Clause 24 (Confidentiality) shall continue to apply to any documents, materials, information and other resources retained under Clauses 31.1.2(i) and (ii).

- 31.2 On termination of this Contract for any reason, the Fund may deduct from any amount due to the Supplier, 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 Supplier, the Supplier must pay to the Fund the difference within thirty (30) days of the Fund's request;
- 31.3 In the event this Contract is terminated by the Fund due to a breach of the Subsidy Control Rules by the Supplier or any of its third parties (as determined by the Fund), if required to do so by the Fund, the Supplier 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).

## 32 Prevention of corruption

### 32.1 The Supplier warrants and represents that:

32.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):

- (i) 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 Contract 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
- (ii) 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

32.1.2 it shall comply with all applicable law relating to anti-bribery including without limitation the Bribery Act 2010;

32.1.3 it shall not engage in any activity, practice, or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice, or conduct had been carried out in England and Wales;

32.1.4 it has in place and shall maintain in place throughout the term of this Contract adequate policies and procedures, including without limitation adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010, to ensure compliance with the provisions of this Clause 32.1, and enforce them where appropriate.

32.2 If the Supplier 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 Supplier in relation to this Contract or any other agreement with the Fund:

32.2.1 the Fund shall be entitled:

- (i) to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
- (ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and

(iii) to recover from the Supplier 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;

32.2.2 any termination under Clause 32.2.1 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Fund; and

32.2.3 notwithstanding the dispute resolution procedure set out in Clause 46, any dispute relating to:

(i) the interpretation of this Clause 32; or

(ii) 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.

### **33 Compliance with Equality Legislation and public duties**

33.1 The Supplier shall:

33.1.1 ensure that (a) it does not, whether as employer or as provider of the Goods and/or the Services (as applicable), 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;

33.1.2 in relation to the Equality Act 2010, comply with the public duties required by the Equality Act 2010 (if the Supplier is located in Great Britain) and by Section 75 of the Northern Ireland Act 1998 (if located in Northern Ireland);

33.1.3 cooperate with any investigations or proceedings concerning any breach or alleged breach of the Supplier's obligations under Clauses 33.1.1 and 33.1.2 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 33.1.1 and 33.1.2;

33.1.4 use all reasonable endeavours to ensure compliance with this Clause 33 by its Staff and the Supplier shall impose on all its sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by this Clause 33; and

33.1.5 meet all reasonable requests by the Fund for information evidencing the Supplier's compliance with the provisions of this Clause 33.

33.2 Where the Goods and/or the Services are to be provided partly or totally in Wales, the Supplier shall ensure:

33.2.1 all Goods and/or 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 Supplier should request details from the Fund; and

33.2.2 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.

### **34 Anti-Slavery and human trafficking**

34.1 The Supplier shall:

- 34.1.1 ensure that slavery and human trafficking is not taking place in any part of its business or in any part of its supply chain;
  - 34.1.2 comply with all applicable law relating to anti-slavery including without limitation the Modern Slavery Act 2015;
  - 34.1.3 maintain in place throughout the term of this Contract adequate policies and procedures to prevent slavery and human trafficking and enforce them where appropriate; and
  - 34.1.4 notify the Fund immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains.
- 34.2 Breach of Clause 34.1 shall be considered an irremediable material breach for the purposes of Clause 29.2.2.

**35 Environmental/Sustainability requirements**

- 35.1 The Supplier shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in connection with the Goods and Services (as applicable), promptly provide all information regarding the environmental impact of the Goods and Services (as applicable) 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 35.1.

**36 Assignment**

- 36.1 The Supplier 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 Contract.
- 36.2 Subject to Clause 36.3, 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 Supplier'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.
- 36.3 If the Contract is novated to a body which is not a Contracting Authority pursuant to Clause 36.2 ("Transferee"):
- 36.3.1 the rights of termination of the Fund in Clause 29 shall be available to the Supplier in the event of the bankruptcy, insolvency, or default of the Transferee; and
  - 36.3.2 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 Supplier's previous written consent (such consent not to be unreasonably withheld or delayed).

**37 Non-exclusivity**

- 37.1 The Supplier will provide the Goods and/or 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 Goods and/or the Services from any third party or from itself performing services which are the same as or similar to the Goods and/or Services.

### **38 Conflicts of interest**

- 38.1 The Supplier shall use its best endeavours to ensure that the Supplier 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 Supplier 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.

### **39 Offers of employment**

- 39.1 The Supplier 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 Supplier shall not be in breach of this Clause 39.1 if it hires an employee of the Fund as a result of a recruitment campaign not specifically targeted to any employees of the Fund. The Parties agree that reasonable compensation referred to in this Clause shall be 6 months' salary of the relevant individual who is or has been engaged as an employee of the Fund, or such other amount of compensation as otherwise agreed in writing between the Parties.

### **40 Severability**

- 40.1 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.
- 40.2 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.

### **41 Variation**

- 41.1 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.

### **42 Waiver**

- 42.1 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.
- 42.2 A failure or delay by a party to exercise any right or remedy shall not be a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### **43 Notices**

- 43.1 Notice given under this Contract shall be in writing, sent for the attention of the addressee given in section 4 (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.

#### **44 Publicity and media enquiries**

- 44.1 The Supplier shall not, and shall ensure that its Staff and suppliers shall not, without the prior written consent of the Fund, advertise or make any public or press announcement regarding the existence or the content of this Contract in any way or that the Supplier is providing any goods and/or services to the Fund, or use the Fund's name in any promotion material, marketing material, similar material, or announcement.
- 44.2 In the event of receipt by the Supplier, its Staff or suppliers of any enquiries including press, other media, Parliamentary or official enquiries concerning this Contract, the Goods, the Services, or any other matter relating to the Contract, the Supplier shall, or shall ensure that its Staff or suppliers, refer the matter to the Fund's Representative. Except for such referral, the Supplier shall take no further action, whether formal or informal, concerning the enquiry without the prior written approval of the Fund.
- 44.3 The Supplier 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 Supplier must immediately notify the Fund's Representative.

#### **45 Rights of third parties**

- 45.1 This Contract does not create any rights or benefits enforceable by any person not a party to it.

#### **46 Dispute resolution**

- 46.1 The Representatives (or any other person nominated by the party) shall attempt in good faith to negotiate a settlement to any dispute. Where the Representatives are not able to resolve the dispute within [ten (10)] days (unless otherwise agreed), the dispute shall be escalated to director of each Party (or someone with appropriate authority delegated by a director to receive and action such escalations) who shall attempt in good faith to negotiate a settlement to any dispute.
- 46.2 If the dispute cannot be resolved by the parties pursuant to Clause 46.1 within twenty-eight (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 46.4.
- 46.3 The provision of the Goods or the performance of the Services (as applicable) shall not be suspended, cease or be delayed by the reference of a dispute to mediation pursuant to Clause 46.2 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.
- 46.4 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 46.4.1 unless otherwise agreed by the parties within fourteen (14) days after a request by one party to refer the dispute to mediation under Clause 46.2, either party shall apply within a further 14 days to the Centre for Dispute Resolution ("CEDR") to appoint a Mediator;
  - 46.4.2 the parties shall, within fourteen (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;

46.4.3 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;

46.4.4 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;

46.4.5 if the parties fail to reach agreement within sixty (60) days of the appointment of a mediator (or such longer period as agreed by the parties):

(i) the dispute may be referred to the courts; and

(ii) 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.

46.5 Each party shall pay its own costs of complying with this Clause 46 and the costs of any Mediator shall be shared equally between the parties.

46.6 The dispute resolution procedure set out in this Clause 46 does not prevent a party from applying for urgent interlocutory or other relief to protect Intellectual Property Rights.

#### **47 Governing law**

47.1 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 England and Wales, and the parties agree irrevocably to submit to the exclusive jurisdiction of the courts of England and Wales.

#### **48 Entirety**

48.1 This Contract, together with, if applicable, the sub-licence agreement entered into between the parties (the form of which is set out in Schedule 4) and any Data Processing Agreement, 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. Each party agrees that in entering into this Contract it does not rely on any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in this Contract. However, nothing in this Clause 48 shall operate to limit or exclude either party's liability for fraud or fraudulent misrepresentation.

#### **49 Counterparts**

49.1 This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute a single agreement.

**Schedule 1**

**Part A - Specifications/Scope of Requirements**

[Part B - Supplier's Response]

[Note that the Supplier's Response document should only be included where the Supplier is proposing to provide value added services. Where included the drafting in square brackets below should be added at the start of Part B - Supplier's Response]

[The Supplier acknowledges and agrees that where there is a conflict between the Supplier's Response at Part B of this Schedule 1 and the Specification/Scope of Requirements set out in Part A of this Schedule 1, the Specification/Scope of Requirements at Part A takes precedence]

## Schedule 2

### Change Control Procedure

#### 1 Process

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

- 1.1 The party requesting the change will:
  - 1.1.1 if the Fund is requesting the change, deliver a Change Request to the Supplier 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 Supplier 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 Supplier will also make any changes or add information it requires for the Change Request to be agreed. The Supplier will deliver the updated Change Request back to the Fund within three (3) Business Days of its receipt.
  - 1.1.2 if the Supplier 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.
- 1.2 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 Supplier) within five (5) 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 Supplier with a timeline for the parties to make and discuss such additional changes.
- 1.3 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.
- 1.4 Neither party is under any obligation to proceed with a Change Request that is proposed by the other party.
- 1.5 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.

Annex to Schedule 2 - Change Request

<b>Change Request Number:</b>	
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<b>Contract Reference Number:</b>	
<b>Name of Supplier:</b>	
<b>Brief Description of Services Being Provided:</b>	

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.

<b>Effective Date:</b>	
<b>Brief Description of Reason for Change Request:</b>	
<b>Changes to Contract or Schedules:</b>	
<b>Cost Impact:</b>	

	Costs	Expenses	Total
Original value of the Contract			
Value of this Change Request			
<b>New total value of Contract</b>			

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 by the duly authorised representative(s) of the **BIG LOTTERY FUND (operating as THE NATIONAL LOTTERY COMMUNITY FUND)**

Name:		Signature:	
Position:		Date:	

Name:		Signature:	
Position:		Date:	

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

Name:		Signature:	
Position:		Date:	

### Schedule 3

#### Acceptance Procedures

#### **1 Review of Deliverable**

- 1.1 The Fund will within ten (10) Business Days following receipt of any Deliverable:
- 1.1.1 accept the Deliverable by providing the Supplier with a milestone certificate;
  - 1.1.2 not accept the Deliverable by notifying the Supplier 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
  - 1.1.3 provide the Supplier 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.

#### **2 Deemed Acceptance**

- 2.1 If the Fund fails to notify the Supplier as set out in paragraph 1.1, then the Supplier may request the Fund notify it of its decision under paragraph 1 within five (5) Business Days. If the Fund fails to so notify the Supplier within five (5) Business Days of the Supplier's request, the Deliverable is deemed accepted.
- 2.2 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.

#### **3 Remediation of defects**

- 3.1 If the Fund does notify the Supplier of defects or want of information in the Deliverable under paragraph 1.1.2, then the Supplier shall, as soon as is reasonably practical (but within five (5) Business Days, unless otherwise agreed), remedy such defects or work out a plan to do so. The Fund shall have ten (10) Business Days to accept any Deliverable revised by the Supplier under this paragraph and to notify the Supplier 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.
- 3.2 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 Supplier 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 46.

Schedule 4  
Sub-licence Agreement

DATED

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BIG LOTTERY FUND (operating as THE NATIONAL LOTTERY COMMUNITY FUND) (1)

AND

[INSERT NAME OF SUPPLIER] (2)

---

AGREEMENT

Sub-licence Agreement

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THIS AGREEMENT is made on [DATE]

**BETWEEN:**

- (1) **BIG LOTTERY FUND (operating as THE NATIONAL LOTTERY COMMUNITY FUND)** of 1 Plough Place, London EC4A 1DE (“Fund”);
- (2) **[INSERT NAME AND COMPANY DETAILS OF SUPPLIER]** (“Supplier”).

**BACKGROUND**

- (A) 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”.
- (B) The Fund now wishes the Supplier 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 Supplier under a contract for services that the Supplier 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:

“**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;

“**Authorised Sub-contractor**” shall have the same meaning as in the Services Contract;

“**Guidelines**” means the guidelines set out in the Fund document titled “How to use our logo” published in January 2019 and which can be found at: <https://www.tnlcommunityfund.org.uk/media/documents/BrandGuidelines2019.pdf>;

“**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;

“**Logos**” means the logos which are the Intellectual Property of the Commission, and which are set out in the appendix to this Agreement;

“**National Lottery**” means the National Lottery as defined in the Act;

“**Services**” means the services to be performed under the Services Contract;

“**Services Contract**” means the contract for services made between the Fund and the Supplier on [insert date]; and

“**Territory**” means the United Kingdom of Great Britain and Northern Ireland (UK).

## **2 Commencement**

- 2.1 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.

## **3 Grant of sub-licence**

In consideration of the payment of the sum of £1 now paid by the Supplier to the Fund, the receipt whereof the Fund hereby acknowledges, the Fund hereby grants to the Supplier 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.

## **4 The Supplier's Undertakings**

The Supplier undertakes to the Fund:

- 4.1 that all uses and applications of the Logos under this Agreement and the Services Contract by the Supplier and its Authorised Sub-contractors shall:
- 4.1.1 comply with the Guidelines; and
  - 4.1.2 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 Supplier from time to time;
- 4.2 to permit the Fund and the Camelot and/or their respective duly authorised representatives at all reasonable times on notice to enter the Supplier's premises for the purposes of inspecting and copying any materials to which the Logos have been applied;
- 4.3 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;
- 4.4 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 Supplier from time to time;
- 4.5 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;
- 4.6 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;
- 4.7 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;
- 4.8 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;

- 4.9 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 Supplier, 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;
- 4.10 it shall ensure that any Authorised Sub-contractor who uses the Logo is made aware of the terms of this Agreement and the Supplier acknowledges that the Supplier 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 Supplier.

## **5 Assignment**

This Agreement is personal to the Supplier and the Supplier 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.

## **6 Acknowledgements**

The Supplier hereby acknowledges and agrees that:

- 6.1 nothing contained in this Agreement gives the Supplier any right, title, or interest in or to the Logos other than as set out in this Agreement; and
- 6.2 the Commission is the sole proprietor of the Logos and any copyright and goodwill (including any goodwill which accrues as a result of the Supplier's use of the Logos) subsisting therein.

## **7 Warranties**

- 7.1 The Fund warrants that it has the consent of the Camelot to grant this sub-licence hereunder.
- 7.2 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.

## **8 Termination**

- 8.1 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.
- 8.2 The Fund shall be entitled to terminate this Agreement forthwith by written notice if the Supplier 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 Supplier is irremediable, the Fund shall be entitled to terminate both this Agreement and the Services Contract.
- 8.3 The Fund shall be entitled to terminate this Agreement at any time and for any reason.
- 8.4 Termination of this Agreement however caused shall be without prejudice to any rights or liabilities accrued to either party at the date of termination.
- 8.5 Following termination of this Agreement under clauses 8.1, 8.2 or 8.3 hereof, the Supplier 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 Supplier's or any of its Authorised Sub-contractors' possession, custody or control, together with a certificate of destruction or delivery.

- 8.6 The Supplier acknowledges that following termination of the Agreement all rights in the Logos granted under this Agreement will cease.

## **9 Infringements**

- 9.1 If that the Supplier becomes aware of:

9.1.1 any unauthorised use (or suspected unauthorised use) of the Logos by a third party,

9.1.2 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

9.1.3 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.

- 9.2 If the Supplier 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

## **10 General**

- 10.1 Any notice required to be given under this Agreement shall be in writing, sent for the attention of the addressee given in the Services Contract as set out under section 4 (Representatives) of the Contract Details (as defined in the Service Contract) 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 shall be deemed served on signature of a delivery receipt by an individual at the correct address for notices.

- 10.2 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. A failure or delay by a party to exercise any right or remedy shall not be a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 10.3 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 England, and the parties agree irrevocably that any Claim shall be subject to the exclusive jurisdiction of the courts of England.

- 10.4 No variation of this Agreement shall be effective unless made in writing and signed by both parties.

- 10.5 This Agreement, together with the Services 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. Each party agrees that in entering into this Agreement it does not rely on

any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in this Agreement. However, nothing in this clause shall operate to limit or exclude either party's liability for fraud or fraudulent misrepresentation.

- 10.6 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute a single agreement.
- 10.7 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable, or illegal, the other provisions shall remain in force. 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.
- 10.8 This Agreement does not create any rights or benefits enforceable by any person not a party to it.

**EXECUTED** as an agreement

Signed by the duly authorised representative(s) of the **BIG LOTTERY FUND (operating as THE NATIONAL LOTTERY COMMUNITY FUND)**

Name:		Signature:	
Position:		Date:	

Name:		Signature:	
Position:		Date:	

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

Name:		Signature:	
Position:		Date:	

## APPENDIX 1

### Regulated Intellectual Property

1. The National Lottery logo, UK Trade Mark registration number UK00003076782:



2. The Crossed Fingers Logo, UK Trade Mark registration number UK00003077376, incorporated with the Community Fund logo in English and in Welsh as follows:



Schedule 5

MI Reporting Template

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