



RESTRICTED DOCUMENT

SECTION 43 AGREEMENT

Services Contract

Contract number:	Contract number:
Service Provider:	Service Provider:
Services:	Services:
Date:	Date:

Big Lottery Fund
1 Plough Place
London EC4A 1DE
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We are committed to bringing real improvements to communities and to the lives of people most in need



INVESTOR IN PEOPLE

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Services Contract

THIS CONTRACT is made this

between

Name	Big Lottery Fund
Short form name	Fund
Notice details	1 Plough Place, London EC4A 1DE

and

Name	<Insert the name>
Company number	<Insert the number>
Short form name	Service Provider
Notice details	<Insert details>

BACKGROUND:

1. The Fund is a non-departmental public body that awards grants for charitable purposes and purposes connected with health, education and environment with the aim of making real improvements to communities and the lives of people most in need in the United Kingdom.
2. The Fund requires the supply of Services and the Service Provider has represented to the Fund that it has the skills and expertise necessary to supply those Services to the satisfaction of the Fund.
3. The Fund wishes to engage the Service Provider to provide the Services and, in consideration for the Charges, the Service Provider has agreed to supply the Services on the terms and conditions of this Contract.

IT IS AGREED THAT:

A. GENERAL PROVISIONS

A1. Definitions and interpretations

The definitions and interpretations for this Contract are set out in Schedule E.

A2. Term of this Contract

This Contract starts on the Start Date and ends on the Completion Date, unless the Contract is extended by the Fund under the Change Control Procedures, subject always to the termination, break and variation provisions in this Contract.

A3. Provision of Services

- A3.1 The Service Provider must make all reasonable enquiries of the Fund to ascertain its requirements and provide the Services:

- A3.1.1 with reasonable skill, care and diligence that would be reasonably expected from a prudent and experienced provider of services which are similar to the Services;
 - A3.1.2 in accordance with this Contract and all applicable laws, regulations, Standards and policies;
 - A3.1.3 in compliance with all reasonable directions and instructions provided by the Fund; and
 - A3.1.4 to the Fund's satisfaction.
- A3.2 The Service Provider must provide each Deliverable by the due date specified for that Deliverable in this Contract. If either party considers a Deliverable due date may not be met, the Service Provider must provide the Fund with a report identifying the nature of the delay, its cause and its anticipated duration. The report must also set out the procedures and resources the Service Provider proposes to apply to overcome and rectify the delay and to ensure the impact of the delay is minimised and future performance of the Contract is not adversely affected. The Service Provider acknowledges that a failure to meet any due date may result in the Fund suffering loss or damage.
- A3.3 The Service Provider warrants that:
- A3.3.1 it has full corporate power and lawful authority to execute this Contract and to perform its obligations under this Contract; and
 - A3.3.2 it will be available to perform the Services throughout the term specified in Clause A2 and will not owe obligations to a third party during the term that are likely to adversely affect its capacity to perform the Services.

A4. Relationship

The Service Provider, in carrying out the Services, is an independent service provider and not the Fund's servant or agent. The Service Provider can not make any promise, warranty or representation, or execute any contract or deal on the Fund's behalf.

A5. Severability

The parties agree that the provisions of this Contract are reasonable in all the circumstances. If any clause of this Contract, or part of a clause, is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Contract or that clause shall not be affected.

A6. Waiver

A failure by either party to enforce any part of this contract will not affect the rights of that party to require performance by the other party subsequently. Any waiver of a breach of this contract must be in writing signed by the party granting the waiver and will only be effective to the extent specifically set out in that waiver. The waiver of any breach will not be taken as a waiver of any subsequent breach.

A7. Intellectual Property Rights

- A7.1 All Intellectual Property Rights arising out of the performance of the Contract by the Service Provider (or its employees, agents or sub-contractors), including any Materials and any future Intellectual Property Rights, are assigned to the Fund on creation and will be owned by the Fund.
- A7.2 The Service Provider must procure the necessary rights from its employees, agents and sub-contractors to ensure their Intellectual Property Rights are assigned to the Fund under Clause A7.1.
- A7.3 The Service Provider grants the Fund a non-exclusive, worldwide, royalty free, perpetual, irrevocable licence (including the right to grant sub-licences) to use and disclose the Service Provider's Background IP to the extent necessary for the Fund to use and exploit the Materials.
- A7.4 Subject to Clause B5, the Fund grants the Service Provider a non-transferable, worldwide, revocable, royalty free, non-exclusive licence to use and reproduce all Materials, and the Fund's Background IP, solely for the purpose of complying with this Contract.
- A7.5 The Service Provider must obtain consent from the Fund before it publishes the results of any work undertaken in connection with this Contract, which the Fund may withhold in its absolute discretion or grant subject to conditions.
- A7.6 Each party will do all things reasonably necessary (including signing documents within a reasonable time) to comply with the provisions of this Clause A7, at the request and expense of the other party.
- A7.7 Nothing in this Contract prevents the Service Provider from contesting the validity of any patent(s) filed pursuant to this Contract in any legal proceedings and the Fund acknowledges that any patent application will not include any of the items or rights which fall within Clause A7.9.
- A7.8 The Service Provider will pay all royalties and fees on copyright, processes and registered designs of any equipment, systems and publications used, installed or incorporated by the Service Provider as part of a Deliverable under this Contract and shall defend, at its expense, any third party claim that any Deliverable provided as part of the Services infringes UK Intellectual Property Rights provided the Fund:
- A7.8.1 allows the Service Provider conduct of the defence of such claim, including any settlement;
- A7.8.2 makes no prejudicial admission or statement;
- A7.8.3 notifies the Service Provider promptly of any claim; and
- A7.8.4 actively co-operates and assists the Service Provider, at its expense, in the defence of the claim.

In the event that any damages are finally awarded against the Fund in respect of such a claim or agreed by the Service Provider in final settlement, these will be

paid by the Service Provider. This indemnity will not apply if the infringement is the result of:

A7.8.5 the Fund (or any other party) modifying or misusing the relevant Deliverable;

A7.8.6 the failure of the Fund to use enhancements or modifications offered by the Service Provider to avoid infringement; or

A7.8.7 the use of information, documents, facilities or items supplied by the Fund for the purposes of the Services.

The indemnity in this Clause A7.8 constitutes the Fund's sole and exclusive remedy and the Service Provider's entire liability with respect to any part of the Services infringing any third party Intellectual Property Rights of any kind.

A7.9 The Fund acknowledges that in the course of the delivery of the Services the Service Provider may:

A7.9.1 use products, materials or methodologies proprietary to the Service Provider or a third party; or

A7.9.2 produce proprietary material or methodologies that are not part of the Deliverables.

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.

A8. Sub-contracting

A8.1 The Fund acknowledges and agrees that the Service Provider may sub-contract part of this Contract to those parties set out in Item 19 of Schedule A, to the extent set out in that Item 19.

A8.2 Except as set out in Clause A8.1, the Service Provider will not assign or sub-contract any part of this Contract without the prior written consent of the Fund, which it may withhold (in its absolute discretion) or grant subject to conditions. In considering the Service Provider's request, the Fund may request details of any proposed sub-contractor and the personnel the sub-contractor proposes to use to perform the Services.

A8.3 If the Fund consents to the Service Provider sub-contracting any part of this Contract under Clause A8.1 or Clause 8.2:

A8.3.1 it does not relieve the Service Provider of any obligation or duty attributable to the Service Provider under this Contract; and

A8.3.2 the Service Provider must ensure that a term is included in the sub-contract which requires the Service Provider to pay all sums due to the sub-contractor within a specified period not exceeding 30 days from the date of receipt of a valid invoice (as defined by the terms of that sub-contract).

A9. Assignment

A9.1 Subject to Clause A9.2, the Fund may:

A9.1.1 assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to any contracting authority (as defined in Regulation 2(1) of the *Public Contracts Regulations 2015*) (a "**Contracting Authority**") provided that any such assignment, novation or other disposal shall not increase the burden of the Service Provider's obligations pursuant to this Contract; or

A9.1.2 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.

A9.2 If the Contract is novated to a body which is not a Contracting Authority pursuant to Clause A9.1.2 ("**Transferee**"):

A9.2.1 the rights of termination of the Fund in Clause F1 shall be available to the Service Provider in the event of the bankruptcy, insolvency or default of the Transferee; and

A9.2.2 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 previous consent in writing of the Service Provider.

A10. Conflicts of interest

The Service Provider must use its best endeavours to ensure that the Service Provider, its employees or sub-contractors are not placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of such persons and the duties owed to the Fund under the provisions of this Contract. Immediately on becoming aware or suspecting such a conflict, the Service Provider will disclose the particulars of the conflict to the Fund and co-operate with any reasonable measures implemented by the Fund to manage the conflict.

A11. Land or premises

Any land or premises made available to the Service Provider by the Fund in connection with the Services under the Contract will be made available to the Service Provider free of charge and shall be used by the Service Provider solely for the purpose of performing the Contract. The Service Provider will have the use of such land or premises as licensee and will vacate the land or premises on completion, termination or abandonment of the Services. The Service Provider and the Service Provider's employees, servants, agents, suppliers or sub-contractors must observe and comply with rules and regulations as may be in force at any time for the use of such premises determined by the Fund, and pay for the cost of making good any damage caused by the Service Provider, its employees, servants, agents, suppliers or sub-contractors 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.

A12. Property

- A12.1 Property issued or otherwise furnished in connection with this Contract will remain the property of the Fund and will be used by the Service Provider solely for the purpose of performing this Contract and for no other purposes whatsoever unless prior approval in writing of the Fund has been obtained.
- A12.2 All such property is deemed to be in good condition when received by or on behalf of the Service Provider unless it notifies the Fund to the contrary within fourteen days of receiving the property.
- A12.3 The Service Provider undertakes the safe custody of and the due return of all property and, subject always to the provisions of Clause E1.4, is responsible for all loss from whatever cause, and will indemnify the Fund against such loss. All property must be immediately returned to the Fund on or before the expiry or termination of this Contract.
- A12.4 The Service Provider is responsible for any deterioration in such property, except for any deterioration resulting from its normal and proper use in the execution of the Contract (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.
- A12.5 Neither the Service Provider nor any supplier or sub-contractor, nor any other person, shall have a lien on any such property for any sum due to the Service Provider, supplier, sub-contractor or other person, and the Service Provider shall take all reasonable steps to ensure that the title of the Fund and the exclusion of any such lien are brought to the notice of all suppliers and sub-contractors and any other persons dealing with any such property.
- A12.6 The indemnity contained in Clause A12.3 and Clause A12.4 survives the expiry or termination of this Contract.
- A12.7 Apart from any property (including equipment) provided by the Fund, the Service Provider will supply, at its own cost, all equipment required to perform the Services.

A13. Notices

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service to the address of the party as set out at the front of this Contract (marked for the attention of the relevant representative set out in Clause A16 or, in the case of the Service Provider, the "Company Secretary"), or to such other address as the party may by notice have advised the other party, shall be deemed effectively given, if served personally at the time of service and if served by post, 48 hours after it was posted provided such 48 hours expires on a working day (being Monday-Friday when the Banks in the City of London are open to the public for business) and if not, such 48 hours shall be extended until the next working day.

A14. Offers of employment

For the duration of the Contract and for a period of up to six months after the Completion Date or earlier termination of the Contract, neither party shall employ or offer employment to any of the staff of the other party who have been associated with the delivery of the Services without prior agreement in writing.

A15. Special Conditions

The parties agree to comply with the Special Conditions.

A16. Representatives

A16.1 The Fund's representatives for this Contract are set out in Item 4 of Schedule A.

A16.2 The Service Provider's representatives for this Contract are set out in Item 5 of Schedule A.

B. STATUTORY OBLIGATIONS AND REGULATIONS

B1. Audit

B1.1 The Service Provider must keep and maintain until six years after the Contract has been completed, or as long a period as may be agreed between the Service Provider and the Fund, all information produced in the course of this Contract or relating to the Contract and all records of all expenditures which are reimbursable by the Fund to the Service Provider or its employees and sub-contractors which are paid for by the Fund on a time charge basis, invoices and monthly progress reports. The Service Provider will on reasonable advance notice afford the Fund, or the Fund's Representatives, access to such records.

B1.2 The Service Provider (and any person acting on the Service Provider's behalf) must permit the Comptroller and Auditor General or appointed representatives, access at no cost but upon reasonable notice to such documents (including computerised records and data) and other information relating to the Contract or the Services provided under the Contract as the Comptroller and Auditor General may reasonably require for the purposes of the Comptroller and Auditor General's financial audit of the Fund and for carrying out examinations into the economy, efficiency and effectiveness with which the Fund has used its resources. The Service Provider shall furnish such explanations as are reasonably required for these purposes. This clause does not constitute a requirement or agreement for the examination, certification and inspection of the accounts of the Service Provider by the Comptroller and Auditor General under Section 6(3)(d) of the *National Audit Act of 1983*.

B1.3 The provisions of this clause survive the expiry or termination of this Contract.

B2. Prevention of corruption

B2.1 The Service Provider undertakes to abide and procure that the Service Provider's employees, servants, suppliers, sub-contractors and agents abide by the provisions of the *Bribery Act 2010* particularly in relation to the giving or offering of any gift, consideration or commission of any kind as an inducement or reward to any person employed by the Fund or acting on its behalf with the intention of influencing them in the discharge of any responsibilities associated with this or any other Contract with the Fund.

B2.2 Where the Service Provider or the Service Provider's employees, servants, suppliers, sub-contractors or agents commit such an offence in relation to this or

any other contract with the Fund, the Fund has the right to terminate this Contract and the Fund may elect not to award any further contracts to the Service Provider concerned and may recover any costs incurred by the termination from the Service Provider. Provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Fund and provided always that the Fund may recover from the Service Provider the amount or value of such gift, consideration or commission.

B2.3 The decision of the Fund will be final and conclusive in any dispute, difference or question arising in respect of:

B2.3.1 the amount of any such gift, consideration or commission; and

B2.3.2 the right of the Fund under this clause to terminate this Contract.

B3. Access to information

B3.1 The Service Provider's attention is hereby drawn to the *Data Protection Act 1998*.

B3.2 Both parties warrant that they will duly observe all their obligations under the *Data Protection Act 1998*.

B3.3 The parties shall comply with their respective obligations as the data controller and the data processor under the *Data Protection Act 1998* and any other applicable data protection laws and regulations (together, the "**Data Protection Laws**") in connection with this Contract.

B3.4 The parties agree that for all personal data (as defined in the Data Protection Laws) controlled by the Fund and processed in connection with this Contract:

B3.4.1 the Fund alone shall determine the purposes for which the personal data will be processed;

B3.4.2 the Fund shall be the data controller (as defined in the Data Protection Laws); and

B3.4.3 the Service Provider shall be the data processor (as defined in the Data Protection Laws).

B3.5 Where, in connection with this Contract, the Service Provider processes personal data on behalf of the Fund, the Service Provider shall:

B3.5.1 process the personal data only on written instructions of the Fund and to the extent reasonably necessary for the performance of this Contract;

B3.5.2 not disclose the personal data to any person except as required or permitted by this Contract or with the Fund's written consent; and

B3.5.3 implement appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and against all other unlawful forms of processing.

- B3.6 The Service Provider must make available at its own cost any information reasonably requested by the Fund in connection with the Service Provider's performance under this Contract and shall allow such access to its premises and contact with its employees 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 *Freedom of Information Act 2000*.
- B3.7 In particular, the Service Provider must, and must procure that its employees or sub-contractors will, 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 *Freedom of Information Act 2000*.
- B3.8 The Fund shall be responsible for determining in its absolute discretion whether any commercially sensitive information or other information is exempt from disclosure or may be disclosed either without consulting the Service Provider or following consultation with the Service Provider and having taken its views into consideration.
- B4. Compliance with discrimination legislation and public duties**
- B4.1 The Service Provider must not unlawfully discriminate against or treat unfairly anyone on the grounds of their sex, age, religion or belief, sexual orientation, gender identity, political opinion, marital or civil partnership, pregnancy or maternity status within the meaning and scope of the provisions of the *Equality Act 2010*, the *Sex Discrimination (NI) Order 1975*, the *Race Relations (NI) Order 1997*, the *Disability Discrimination Act 1995*, the *Fair Employment Act (Northern Ireland) Order 1970*, the *Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003* and the *Employment Equality (Age) Regulations (Northern Ireland) Act 2006*. In addition the Service Provider will meet its obligations under the public duties required by the *Equality Act 2010* (in Great Britain) and by Section 75 of the *Northern Ireland Act 1998* (in Northern Ireland). If the Services are delivered across the UK or only in Wales, the Service Provider will need to ensure that all services are delivered in line with the requirements of the Welsh Language Act 1993 and the Big Lottery Fund's Welsh Language Scheme. All communication will need to be available in both Welsh and English at all times and all publications, websites or any other materials produced on behalf of the Big Lottery Fund will need to be available bilingually.
- B4.2 The Service Provider will co-operate with any investigations or proceedings concerning any alleged contravention of any of the legislative requirements and public duties as specified in the provisions of Clause B4.1 and will indemnify the Fund in the case of any finding under the legislative requirements or public duties arising out of any acts or omissions by the Service Provider. This indemnity survives the expiry or termination of this Contract.
- B4.3 The Service Provider shall take all reasonable steps to ensure the observance of the provisions of Clauses B4.1 and B4.2 by all servants, employees or agents of the Service Provider and all sub-contractors and suppliers employed in the execution of the Contract. It will ensure that those involved in the provision of Services

under this Contract receive appropriate training on equal opportunities legislation and associated good practice.

B5. Confidentiality

B5.1 Each party (**Receiving Party**) must:

B5.1.1 keep secret and not disclose (and shall procure that its employees, affiliates and subcontractors keep secret and do not disclose) any Confidential Information of the other party (**Disclosing Party**) to any third party except:

B5.1.1.1 for disclosures permitted under Clause B5.2; and

B5.1.1.2 to the extent the Receiving Party is required by law to disclose the Confidential Information of the Disclosing Party; and

B5.1.2 only use the Confidential Information of the Disclosing Party for the purposes of this Contract.

B5.2 The Receiving Party may disclose Confidential Information of the Disclosing Party to the Receiving Party's officers, employees and professional advisors who have a need to know (and only to the extent that they need to know) provided that before disclosure they have been directed to keep the Confidential Information confidential.

B5.3 On the expiry or termination of this Contract the Receiving Party must deliver up to the Disclosing Party (or, at the Disclosing Party's written election, securely destroy) all Confidential Information of the Disclosing Party which is in its possession or control.

B5.4 The Service Provider must clearly identify to the Fund any business or trade secret which would prejudice the commercial interests of the Service Provider if disclosed pursuant to a Freedom of Information request.

B5.5 The Fund is entitled to disclose to any Contracting Authority or Transferee any Confidential Information of the Service Provider which relates to the performance of the Services by the Service Provider. In such circumstances, the Fund shall authorise the Contracting Authority or Transferee to use such Confidential Information only for purposes relating to the performance of the Services and for no other purposes and shall take all reasonable steps to ensure that such body accepts an obligation of confidence.

B5.6 The Service Provider must not provide any information regarding the delivery of the Services under this Contract, or permit photography or film in connection with the Services or this Contract, without the prior written permission of the Fund. Any press, media or other enquiry about the Services or this Contract must be referred to the Fund's Representatives.

B6. Value Added Tax

B6.1 The Fund shall pay the Value Added Tax on the Contract price at the rate and in the manner prescribed by law, from time to time.

B6.2 Any invoice or other request for payment of monies due to the Service Provider under the Contract, shall, if he is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the *Value Added Tax Act 1994*.

B6.3 The Service Provider shall, if so requested by the Fund, furnish such information as may reasonably be required by the Fund as to the amount of Value Added Tax chargeable on the value of the services supplied in accordance with the Contract and payable by the Fund to the Service Provider in addition to the Contract price. Any overpayments by the Fund to the Service Provider shall be a sum of money recoverable from the Service Provider for the purposes of the Conditions in the Contract regulating the recovery of sums due to the Fund.

B7. Publicity

B7.1 The Service Provider (including its sub-contractor(s), agents, servants, suppliers and employees) must not, without the prior written consent of the Fund (which shall not be withheld unreasonably), advertise or publicly make any announcement regarding this Contract or that the Service Provider is undertaking work for the Fund.

B7.2 In the event of any enquiries including media, Parliamentary or official enquiries being received by the Service Provider, its sub-contractor(s), agents, servants, suppliers or employees about this Contract, the delivery of the Services or any other matter relating to the Contract, the Service Provider or its sub-contractor(s), agents, servants, suppliers or employees shall immediately refer the matter to the Fund's Representative. Except for such referral, the Service Provider shall make no other formal or informal response without the prior written approval of the Fund.

B7.3 The Service Provider (including its sub-contractor(s), agents, servants, suppliers and employees) must not commit any act, or omit to do any act, or do anything which attracts public or media attention that is prejudicial or otherwise detrimental to the Fund's name, messages or reputation. If such an event does occur, the Service Provider must immediately notify the Fund's Representative.

B8. Rights of third parties

A person who is not a party to this Contract shall have no right under the *Contract (Rights of Third Parties) Act 1999* to enforce any of its terms.

C. THE SERVICES

C1. Service Provider's personnel

C.1.1 The Fund shall act reasonably and in good faith in making any decision or request of the Service Provider, its employees, agents, suppliers or subcontractors under or pursuant to this Contract.

C.1.2 The Service Provider shall take the steps reasonably required by the Fund to prevent unauthorised persons being admitted to the Fund's premises.

- C1.3 The Service Provider, its employees or agents whilst on the premises of the Fund in connection with the Contract shall, in all respects, conform to and comply with any requirements, rules, regulations and instructions that may be given by an employee or agent of the Fund or on its behalf, as to the Fund's employment and equality policies, the work environment, site and safety precautions and the conduct of the Service Provider, its employees or agents whilst engaged thereof.
- C1.4 If the Fund gives the Service Provider notice that any person must not:
- C1.4.1 be admitted to or is to be removed from the Fund's premises; or
- C1.4.2 become involved in or is to be removed from involvement in the delivery of the Services,
- the Service Provider shall take all reasonable steps to comply with such notice.
- C.1.5 In the event that through any default of the Service Provider, data transmitted or processed in connection with the delivery of the Services is either lost or sufficiently degraded to be unusable, the Service Provider shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any Charge levied for its transmission. Payment of cost or provision of any credit by the Service Provider in accordance with this clause shall not prejudice or affect any other right of action or remedy which shall have accrued or shall thereafter accrue to the Fund.
- C.1.6 The Service Provider shall bear the cost of any notice, instruction or decision of the Fund under this Cause C1 provided the Fund gives the Service Provider reasonable prior notice.
- C.1.7 In the event that the Fund is dissatisfied with the work of a Service Provider employee or subcontractor or wishes to remove them from the Services, the Fund shall request a meeting with the Service Provider to discuss such performance issues and provide evidence wherever possible. Without restricting the Fund's rights under Clause C1.4, the parties will seek to agree a plan to resolve such issues or if necessary the replacement of such personnel.
- C2. Key Personnel**
- C.2.1 The Service Provider's Key Personnel for the provision of the Services are set out in Item 6 of Schedule A. The delivery of the Services shall be undertaken or directly overseen by the Key Personnel.
- C.2.2 The Service Provider shall not without the prior written approval of the Fund make any changes to the Key Personnel for a particular phase of the Services.
- C.2.3 The Service Provider shall undertake all reasonable steps to ensure that the Key Personnel will remain for the full period of the relevant phase of the Services for which they are appointed. In the event of a Key Personnel's sickness or other emergencies, the Service Provider must 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.
- C2.4 If, for any other reasons, changes in the Key Personnel become necessary:

- C2.4.1 in the reasonable opinion of the Fund due to such person's misconduct or repeatedly substandard work, then the Service Provider will provide replacement Key Personnel at the earliest opportunity (or at least within the reasonable time period specified by the Fund) and at no additional cost to the Fund; or
- C2.4.2 at the Service Provider's request, then such changes shall be subject to a minimum of ten working days written notice by the Service Provider to the Fund in the first twenty elapsed working days of the Contract and twenty working days written notice any time thereafter and the Key Personnel must be provided at no additional cost to the Fund.
- C2.5 Subject always to the provisions of Clause C1.1, in the event that the Service Provider having provided the Fund with a number of alternatives is unable to provide replacement Key Personnel with the appropriate skills who are acceptable to the Fund within sufficient time to enable the Service Provider to complete the delivery of the Services on time then the Fund following consultation with the Service Provider may obtain replacement personnel from other sources or terminate the Contract at its discretion. In event of termination the Fund shall only be liable for work completed by the Service Provider up to the date of the termination and any committed costs which can not be mitigated by the Service Provider on receiving the notice of termination. Such termination does not restrict any other rights the Fund may have under this Contract or by law.
- C2.6 The parties shall discuss and agree whether a handover period is required and if so for how long (but for no greater than ten (10) working days), whereupon the Service Provider shall provide both the Key Personnel and the replacement personnel during this period at no extra charge.
- C3. Standard of work**
- The Service Provider warrants that all staff assigned to the performance of the Services shall possess and exercise such skill and experience as necessary for the proper performance in the delivery of the Services and any training of staff to achieve or maintain this standard is at no cost to the Fund.
- C4. Security of Confidential Information**
- C4.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Contract ("**Contract Data**"), the Service Provider undertakes to maintain the security systems approved by the Fund.
- C4.2 Each party will immediately notify the other party of any breach of security in relation to Confidential Information and any Contract Data and will keep a record of such breaches. Each party will use its best endeavours to recover such Confidential Information or Contract Data however it may be recorded. Each party will co-operate with the other party in any investigation that such party considers necessary to undertake as a result of any breach of security in relation to Confidential Information or Contract Data.
- C4.3 The Fund may issue a Change Request under the Change Control Procedure to request the Service Provider to alter any security systems at any time during the

Contract period, and the Service Provider must not unreasonably withhold its agreement to such a request.

C5. Monitoring of performance

C5.1 The Fund will monitor the performance of the Service Provider under this Contract. The Service Provider agrees to assist the Fund with its request in monitoring the performance, which may include (without limitation):

C5.1.1 regular meetings at working level and director level to confirm there is a clear understanding of scope of work, the interpretation of information, timetables, deadlines and timing of reports;

C5.1.2 security (and availability for inspection) of all relevant documentation; and

C5.1.3 the delivery of such written reports in such format as the Fund may reasonably require from time to time and, if appropriate, time sheets as may reasonably be required.

C5.2 The Fund will provide the Service Provider the assistance specified in Item 8 of Schedule A. The Service Provider agrees that no other assistance is required from the Fund for the Service Provider to provide the Services. If the Service Provider has any reason to believe the Fund will not provide the assistance, or the Fund does not provide the assistance, the Service Provider must give the Fund notice of that and accepts responsibility for, and will mitigate, the consequences of non provision of the assistance until such notice is given.

C6. Reports

C6.1 The Service Provider shall provide a Progress Report to the Fund on the dates specified in Item 9 of Schedule A, or at any time as the Fund may require.

C6.2 The Service Provider will provide a Final Report to the Fund on or before the date specified in Item 10 of Schedule A.

C6.3 The Service Provider must provide the Fund with a Risk Report on the Fund's reasonable request and, if the Fund requires, maintain a Risk Register with the Fund.

C6.4 The Service Provider shall provide reports in the format as reasonably required by the Fund.

C6.5 If the Fund requests additional information in respect of such reports, the Service Provider agrees to provide such additional information or updates within 10 days of the request.

C7. Surveys

The Service Provider shall not carry out any survey for the Fund (whether or not such survey forms part of the Services) which includes any interviews or the circulation of questionnaires or similar documents without the agreement of the Fund to the form and content of such interviews, questionnaires or other documents.

C8. Environmental requirements

C8.1 The Service Provider will:

C8.1.1 comply in all material respects with all applicable environmental laws and regulations in force from time to time in connection with the Services;

C8.1.2 promptly provide all information regarding the environmental impact of the Services as may reasonably be requested by the Fund; and

C8.2 The Service Provider will meet all reasonable requests by the Fund for information evidencing compliance with this Clause C8.

C9. Risk

The Service Provider must assess the risk of not being able to provide the Services 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.

C10. Variation of requirement

In the event that the Fund wishes to amend any requirements of this Contract, the Service Provider agrees to negotiate the terms of the change in good faith and any payment as a result of the variation of the 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.

C11. Amendment of Contract

C11.1 This Contract (including its Schedules) and the Services may only be varied in writing under the Change Control Procedure via a Change Request signed by both parties.

C11.2 If a change in legislation has an impact on the Services, or increases the Service Provider's cost of providing the Services, either party may raise the matter under the Change Control Procedure.

C11.3 Neither party will claim any cost of expense from the other party in connection with any Change Request including but not limited to reviewing, negotiating or discussing any Change Request.

C12. Continuous Improvement

C12.1 The Service Provider will at all times during the term of this Contract seek to improve value for money as set in the Clauses below.

C12.2 The Service Provider shall adopt a policy of continuous improvement in relation to the Services pursuant to which it will regularly review with the Fund the Services and the manner in which it is providing the Services with a view to reducing the Fund's costs and/or improving the quality and efficiency of the Services. The Service Provider and the Fund will provide to each other any information which may be relevant to assisting the objectives of continuous improvement and in particular improving the quality and efficiency of the Services.

- C12.3 Without limiting Clause 12.2, the Service Provider shall produce at the start of each Year a plan for improving the provision of Services under this Contract and/or reducing the costs during that Year ("Continuous Improvement Plan") for the approval of the Fund. The Continuous Improvement Plan shall include and proposals in respect of the following:
- a) identifying the emergence of new and evolving technologies which could improve the Services;
 - b) identifying changes in behaviour at the Fund that result in a cost saving and a reduction in the costs;
 - c) identifying and implement efficiencies in the Service Provider's internal processes and administration that may lead to cost savings and reductions in the costs;
 - d) identifying and implement efficiencies in the way the Fund interacts with the Service Provider that may lead to cost savings and reductions in the costs;
 - e) baselining the quality of the Service Provider's Services and its cost structure and demonstrating the efficacy of its Continuous Improvement Plan on each element during the Term; and
 - f) measuring and reducing the sustainability impacts of the Service Provider's operations pertaining to the Services, and to identify opportunities to assist the Fund in meeting their sustainability objectives.
- C12.4 The initial Continuous Improvement Plan for the first Year shall be submitted by the Service Provider to the Fund for approval within 180 days of the Commencement Date.
- C12.5 The Fund shall notify the Service Provider of its approval or rejection of the proposed Continuous Improvement Plan or any updates to it within 30 days of receipt. Within 10 days of receipt of the Fund's notice of rejection and of the deficiencies of the proposed Continuous Improvement Plan, the Service Provider shall submit to the Fund a revised Continuous Improvement Plan reflecting the changes required. Once approved by the Fund, the programme shall constitute the Continuous Improvement Plan for the purposes of this Contract.
- C12.6 Once the first Continuous Improvement Plan has been approved in accordance with the Clause 12.5:
- a) the Service Provider shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
 - b) the Parties agree to meet as soon as reasonably possible following the start of each Quarter (or as otherwise agreed between the Fund and the Service Provider) to review the Service Provider's progress against the Continuous Improvement Plan.
- C12.7 The Service Provider shall update the Continuous Improvement Plan as and when required but at least once every Year (after the First Year) in accordance with the procedure and timescales set out in clause 12.5.
- C12.8 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the fees of the Service Provider.
- C12.9 Should the Service Provider's costs in providing the Services to the Fund be reduced as a result of any changes implemented by the Fund, all of the cost savings shall be passed on to the Fund by way of a consequential and immediate reduction in the fees for the Services under this Contract.

D. PAYMENT

D1. Fees and expenses

D1.1 Subject to Clause D4, the Fund will pay to the Service Provider the fees and expenses specified in Item 1 of Schedule D (except to the extent the invoice is in dispute) at the times set out in Item 2 of Schedule D and in the manner set out in Item 3 of Schedule D.

D1.2 The Service Provider will invoice the Fund at the time set out in Item 4 of Schedule D. All invoices must:

D1.2.1 be correctly rendered;

D1.2.2 include the contract number (set out on the front page of this Contract);

D1.2.3 clearly identify and detail the Services provided during the period of the invoice; and

D1.2.4 be submitted in hard copy and electronic formats to the Fund at the addresses set out in Item 5 of Schedule D.

D1.3 Where the Services are provided on a time and materials daily rate basis, the Service Provider must only invoice for the time actually worked by its personnel 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 it has received written approval from the Fund in respect of those additional hours.

D1.4 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

D2. Recovery of sums due

Wherever under this Contract any sum of money is recoverable from or payable by the Service Provider, that sum may be deducted from any sum then due, or which at any later time may become due, to the Service Provider under this Contract or under any other agreement or contract with the Fund.

D3. Final payment

The Service Provider shall submit a final invoice to the Fund within six weeks of the delivery of the final Services (or of termination of the Contract if that is earlier).

D4. Limitations on payment

D4.1 The Fund is not required to pay the fees or expenses under Clause D1.1 if it has not received an invoice that complies with Clause D1.2 or if the Services have not been delivered to the satisfaction of the Fund or have not been accepted under the Acceptance Procedures.

D4.2 Where the Fund agrees to pay any expenses in connection with this Contract, the Fund is not required to pay if:

D4.2.1 it is not satisfied that the expense was incurred by the Service Provider directly for the provision of the Services;

D4.2.2 the Fund does not receive a copy of a tax invoice from the applicable third party indicating that the Service Provider paid for the expense;

D4.2.3 in the Fund's opinion, the expense is not reasonable as against the Fund's policy on out of pocket expenses.

D4.3 The Fund may withhold or vary any of the Fees set out in this Contract or terminate any part of the Services (in which case the Fees for those Services will no longer be payable) and/or require all or part of the Fees to be repaid if, in its reasonable opinion, any of the events in clause F1.1.3-F1.1.10 occur, or if the Service Provider or any of its sub-contractors breaches the State Aid Rules.

D5. Fee and invoice disputes

Any dispute about the fees or expenses under this Contract, or any invoice issued under this Contract, will be subject to the dispute resolution procedure set out in Clause G1.

E. LIABILITY AND INSURANCE

E1. Liability

E1.1 Without prejudice to any rights or remedies of the Fund and subject to the provisions of Clauses E1.2, E1.3 and E1.4, the Service Provider indemnifies the Fund, and agrees to keep the Fund indemnified, against all actions, suits, claims, demands, losses, charges, costs and expenses made against the Fund (or any of its employees, officers or agents) by any third party (including any current or former employee, servant, agent, supplier or sub-contractor) arising out of or in connection with this Contract or the relationship established by it and:

E1.1.1 loss of or damage to any property;

E1.1.2 personal injury (whether fatal or otherwise) to any person;

E1.1.3 any fraudulent, unlawful or negligent act or omission of the Service Provider in connection with this Contract; or

E1.1.4 termination of this Contract for material breach under Clause F1.1.2.

E1.2 The indemnity contained in Clause E1.1 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.

E1.3 In no event shall either party be liable to the other for any loss (howsoever arising) of profits, business, contracts, revenues, goodwill or reputation or any indirect, incidental, punitive or consequential loss, damage, cost or expense whatsoever.

E1.4 The Service Provider's liability under or in connection with the Services (whether in contract, tort or otherwise) will be limited to the maximum amount set out in Item 11 of Schedule A in respect of each incident or series of connected incidents. For the avoidance of doubt, nothing in this Contract shall limit the Service

Provider's liability for death or personal injury due to the negligence of the Service Provider or its employees or for any breach or claimed breach of a third party's intellectual property rights.

E1.5 The Fund's liability under or in connection with the Services and this Contract (whether in contract, tort or otherwise) will be limited to the maximum amount set out in Item 12 of Schedule A.

E2. Insurance

E2.1 The Service Provider shall have in force, and shall require any sub-contractor to have in force, for the period set out in Item 13 of Schedule A:

E2.1.1 employer's liability insurance in accordance with any legal requirement for the time being in force;

E2.1.2 public liability insurance for the sum of not less than the amount set out in Item 14 of Schedule A; and

E2.1.3 professional indemnity cover for the sum of not less than the amount set out in Item 15 of Schedule A.

E2.2 The Service Provider will provide confirmation from its insurance brokers that it has in place the insurance cover referred to in Clause E2.1 on request together with satisfactory evidence of payment of premium or premiums.

F. END OF CONTRACT AND BREACH

F1. Termination

F1.1 The Fund may terminate this Contract immediately by notice in writing if:

F1.1.1 any of the events described in Clause F1.3 happen;

F1.1.2 the Service Provider commits a material breach of this Contract and (if such breach is capable of remedy) fails to remedy such breach within 30 days of being required by the Fund in writing to do so;

F1.1.3 the Service Provider does not comply with any of the terms, conditions and provisions of this Contract (including the Delivery Plan) and fails to remedy that breach (if that breach is capable of remedy) within 10 days of receiving a request from the Fund to do so;

F1.1.4 the Service Provider makes a material change in the nature, scale, costs, funding, ownership or timing of the Services;

F1.1.5 the Service Provider makes a substantial modification to the Services affecting its nature or its implementation conditions, or giving to a firm or a public body or a person any undue advantage;

F1.1.6 the Service Provider has provided any information in the Delivery Plan or in supporting or subsequent correspondence that is found to be incorrect, misleading or incomplete;

F1.1.7 the Service Provider does not refund to the Fund any overpayment of money within 14 days of notice by the Fund under clause D4.3;

F1.1.8 the Service Provider does not make satisfactory progress (as reasonably determined by the Fund) towards completing the Services or meeting the requirements of the Delivery Plan (such as not achieving the Key Milestones on or before the relevant Key Milestone Date, or not achieving the Key Performance Indicators;

F1.1.9 Change in government policy, direction or law: The Fund may terminate this Contract immediately by notice in writing if:

- (a) 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;
- (b) the European Commission decides that the Fund should not be procuring the Services or if a decision of the court in the UK or European Court of Justice requires payment of the Services to be withheld, reduced, cancelled or recovered; or
- (c) funds from the National Lottery are no longer available to the Fund for the Services and/or the Fund ceases to operate.

F1.1.10 Unlawful State Aid: The Fund may terminate this Contract immediately by notice in writing if either the Fund considers or the European Commission finds that the provision of the Fees under this Contract constitutes unlawful State Aid.

F1.2 If the Fund terminates this Contract under Clause F1.1:

F1.2.1 the Service Provider will hand over to the Fund all Materials in which the Fund owns the Intellectual Property Rights including all work in progress;

F1.2.2 the Fund may, without prejudice to any other of the Fund's rights, complete the delivery of the services or have it completed by a third party;

F1.2.3 the Fund shall not be liable to make any further payment to the Service Provider until the delivery of the Services has been completed in accordance with the requirements of the Contract;

F1.2.4 the Fund may deduct from any amount due to the Service Provider the costs and expenses incurred by the Fund (including the Fund's own costs) in connection with the termination and procuring or performing similar services. If the total cost to the Fund exceeds the amount (if any) due to the Service Provider, the Service Provider must pay to the Fund the difference within 30 days of the Fund's request;

F1.2.5 In the event this Contract is terminated by the Fund due to a breach of the State Aid Rules by the Service Provider or any of its third parties (as

determined by the Big Lottery Fund) the Service Provider will repay all Charges to the Fund paid under this Contract (or the amount of Charges requested by the Fund) if required by the Fund.

F1.3 The Service Provider shall notify the Fund in writing immediately upon the occurrence of any of the following events:

F1.3.1 where the Service Provider is an individual and if a petition is presented for the Service Provider's bankruptcy or a criminal bankruptcy order is made against the Service Provider, or the Service Provider makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Service Provider's affairs; or

F1.3.2 where the Service Provider is not an individual but is a firm, or a number of persons acting together in any capacity, if Clause F1.3.1 occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Service Provider to be wound up as an unregistered company;

F1.3.3 where the Service Provider is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under a fixed or floating charge (but excluding for the purposes of this Clause any bona fide company reconstruction);

F1.3.4 there is a change of "control" as defined by Section 416 (2) of the *Income and Corporation Taxes Act 1988* in the Service Provider; or

F1.3.5 where the Service Provider is a firm or partnership and there is a change in the identity of any of the partners in the firm and/or a change in the extent to which any partner is able to exercise or entitled to acquire direct or indirect control over the firm's affairs.

F1.4 Termination under Clause F1.1 shall not prejudice or affect any right of action or remedy that shall have accrued or shall thereupon accrue to the Fund and shall not affect the continued operation of Clauses A7, A10, A12.3, B1 and B5.

F2. Remedies cumulative

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.

F3. Survival

Clauses A1, A7, B1, B3, B7, D2, E1, E2 and F5 and any other provision of this Contract (including its Schedules) that by its nature is intended to survive expiry or termination or that is necessary for its interpretation or enforcement shall survive the expiry or termination of this Contract.

F4. Break

F4.1 The Fund shall in addition to its powers under any other Clause of this Contract have power to determine this Contract at any time by giving to the Service Provider written notice, to expire at the end of the period set out in Item 16 of Schedule A, and upon the expiration of the notice this Contract shall be determined without prejudice to the rights of the parties accrued to the date of determination.

F4.2 In the event of notice being given by the Fund under Clause F4.1, the Fund shall at any time before the expiration of the notice be entitled to exercise and shall as soon as may be reasonably practicable within that period exercise such of the following powers as it considers expedient:

F4.2.1 to direct the Service Provider, where work has not been commenced, to refrain from commencing work; or

F4.2.2 to direct the Service Provider to complete in accordance with this Contract all or any of the delivery of the Services, or any part or component thereof, which shall be paid for at the agreed Contract fee.

F4.3 The Fund shall indemnify the Service Provider against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Service Provider directly in connection with this Contract to the extent to which those commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Service Provider by reason of the determination of this Contract.

F4.4 The Fund shall not in any case be liable to pay under the provisions of this Clause F4 any sum which, when taken together with any sums paid or due or becoming due to the Service Provider under this Contract, shall exceed the total Contract price.

F4.5 The Fund shall pay the Service Provider in full for all work satisfactorily carried out by the Service Provider, its employees and subcontractors up to the date of termination.

F5. End of Contract assistance

F5.1 For the term of the End Phase, the Service Provider must comply with the Fund's reasonable exit management requirements and provide to the Fund any assistance reasonably requested, including the assistance set out in Item 20 of Schedule A.

F5.2 If the Fund requires any such assistance after the termination date of this Contract or which requires the Service Provider to use additional resources to that needed to supply the Services then:

F5.2.1 if this Contract was terminated otherwise than due to the Service Provider's breach or insolvency, the Fund must pay at the Service Provider's time and materials rates as agreed by the parties; or

F5.2.2 if this Contract was terminated due to the Service Provider's breach or insolvency, the Fund must pay the Service Provider on a cost of services recovery basis only.

F5.3 Before performing any Services in respect of which the Service Provider may make a charge of the Fund under this Clause F5, the Service Provider must notify the Fund of the fact that such a charge may be made and the likely amount of the charge. The Service Provider must only perform those Services to the extent approved and agreed by the Fund under the Change Control Procedures set out in Schedule C.

G. LAW AND DISPUTE RESOLUTION

G1. Dispute resolution

G1.1 The parties' representatives set out in Clause A16 (or any other person nominated by the party) shall attempt in good faith to negotiate a settlement to any dispute, including escalating the dispute to senior management as required.

G1.2 If the dispute cannot be resolved by the parties pursuant to Clause G1.1 within 28 days (unless otherwise agreed), the dispute may be referred by either party to mediation pursuant to Clause G1.4.

G1.3 The performance of the Services shall not be suspended, cease or be delayed by the reference of a dispute to mediation pursuant to Clause G1.2 and each party shall (and shall procure that its employee, servant, agent, supplier or sub-contractor shall) comply fully with the requirements of the Contract at all times.

G1.4 The procedure for mediation and consequential provisions relating to mediation are as follows:

G1.4.1 A neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within 14 days after a request by one party to the other, or if the Mediator agreed upon is unable or unwilling to act, either party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days notice to either party that they are unable or unwilling to act, apply to the Centre for Dispute Resolution ("CEDR") to appoint a Mediator.

G1.4.2 The parties shall within 14 days of the appointment of the Mediator meet with them in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

G1.4.3 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 rights of the parties in any future proceedings.

G1.4.4 If the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by their duly authorised representatives.

G1.4.5 Failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in

any proceedings relating to the Contract without the prior written consent of both parties.

G1.4.6 If the parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

G1.5 Each party must pay its own costs of complying with this clause G1. The parties must equally pay the costs of any Mediator.

G1.6 This dispute resolution procedure does not prevent a party from applying to a court for urgent interlocutory or other relief to protect Intellectual Property Rights.

G2. Contract is not exclusive

The Service Provider will provide the Services on a non-exclusive basis. Nothing in this Contract prevents the Fund from obtaining services which are the same as or similar to the Services from any third party or from itself performing services which are the same as or similar to the Services.

G3. Governing law

This Contract shall be governed by and construed in accordance with English Law and the parties hereby irrevocably submit to the jurisdiction of the English Courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of either party to take proceedings against the other in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

G4. Entirety

This Contract and the related Schedules shall constitute the entire Contract between the Fund and the Service Provider and shall supersede all previous Contracts, regulations, correspondence and representations whether written or oral in respect of the delivery of the Services.

G5. Pre-contractual documents and other terms and conditions

G5.1 In the event of any conflict in the interpretation of the terms and conditions of this Contract, the parties must refer to the relevant interpretation in the pre-contractual documents in the following order of precedence:

G5.1.1 the Invitation to Tender; and

G5.1.2 if the Invitation to Tender does not provide the interpretation, the Tender Response.

G5.3 This Contract takes precedence over any other terms and conditions (including the Service Provider's terms and conditions whether provided as part of the Tender Response, with an invoice, or at any time) in connection with the subject matter.

Schedule A - Contract details

Item	Details
Item 1	Start Date <i>(Clause A2)</i> <insert>
Item 2	Completion Date <i>(Clause A2)</i> <insert>
Item 3	Tender information <i>(Clause G5.1)</i> <insert title of the Fund's ITT and procurement reference number>
Item 4	<p>Fund's representatives <i>(Clause A16.1)</i></p> <p>For the purpose of dealing with the Service Provider on all matters relating to the provision and performance of the Services, the Fund's Representative and contract owner is:</p> <p>Name: <insert> Title: <insert> Telephone: <insert> Email: <insert></p> <p>The Fund's Representative's line manager is:</p> <p>Name: <insert> Title: <insert></p> <p>For the purpose of dealing with the Service Provider on all matters relating to this Contract, other than performance of the Services, the Fund's Representative is Head of Legal Services, currently:</p> <p>Name: Clare Goodman Telephone: 020 7211 1812 Email: Clare.goodman@biglotteryfund.org.uk</p>
Item 5	<p>Service Provider's representatives <i>(Clause A16.2)</i></p> <p>The Service Provider's representative is:</p> <p>Name: <insert> Title: <insert> Telephone: <insert> Email: <insert></p>
Item 6	<p>Key Personnel <i>(Clause C2.1)</i></p> <p>The Key Personnel for this Contract are:</p> <p>(a) <insert name>, <insert title>; and</p> <p>(b) <insert name>, <insert title>.</p>

Item	Details	
Item 7	Standards (Clause A3.1.2)	<insert specific standards> The Service Provider will use the best applicable techniques and standards and execute the Contract with all reasonable care, skill and diligence.
Item 8	Assistance of the Fund (Clause C5.2)	<insert any assistance the Fund must give the Service Provider for the Service Provider to provide the Services>
Item 9	Progress reports due date (Clause C6.1)	<insert dates>
Item 10	Final report due date (Clause C6.2)	<insert date>
Item 11	Service Provider's liability limitation (Clause E1.4)	<£250,000> [NB! Subject to consideration depending on the value of the contract]
Item 12	Fund's liability limitation (Clause E1.5)	The Fund's liability is limited to an amount equal to the total charges payable under this Contract.
Item 13	Insurance period (Clause E2)	The Service Provider must take out and maintain insurance <for the term of this Contract and for six years after its termination or expiry>
Item 14	Public liability (Clause E2)	<£1,000,000 (one million pounds)> for any one incident
Item 15	Professional indemnity (Clause E2)	<£1,000,000 (one million pounds)> for any one incident
Item 16	Break notice period (Clause F4.1)	90 days
Item 17	Services description	The services are specified in the Statement of Work, set out in the Annexure to this Schedule A. <OR: insert Services (including Deliverables and any KPIs) description here>
Item 18	Timetable	The timetable is specified in the Statement of Work, set out in the Annexure to this Schedule A. <OR: insert timetable here>

Item	Details
Item 19 Authorised sub-contractors (Clause A8.1)	<"There are no authorised sub-contractors at the date of this Contract" or insert: name of sub-contract, company registration number, and the services the sub-contract will perform>
Item 20 Exit assistance (Clause F5)	<Not applicable, or insert exit requirements, or "any exit assistance is to be agreed by the parties during the term of this Contract">
Item 21 Special Conditions (Clause A15)	<p>The parties do not intend for TUPE to apply upon the commencement or during the term of this Contract or upon its expiry or termination (whether in whole or in part). Consequently, the Service Provider shall ensure that its personnel are organised in a manner such that in the provision of its Services and performance of its obligations, the Service Provider does not in any way or for any reason provide the Fund with any dedicated personnel. <NB! To be updated if TUPE applies></p> <p><If applicable insert other special conditions such as option to extend, technology update, escalation procedures, complaints handling, etc</p>

Annexure to Schedule A - Statement of work

Statement of Work

1. Scope of Services

1.1 <insert high-level description of services scope>

2. Inception Meeting and Delivery Plan

2.1 <insert details relating to any Inception Meeting and Delivery Plan - note: if not using this paragraph delete the definitions in Schedule E>

3. Description of Services

3.1 The Service Provider will provide the following services to the Fund:

(a) <insert detailed description>

(b) <insert detailed description>

4. Meeting and reporting

4.1 <insert details relating to any meeting or reporting requirements>

5. Deliverables

5.1 The Service Provider will provide the following deliverables to the Fund:

Deliverable	Due date	Format / media
<insert>		

6. Acceptance

6.1 The procedure described in Schedule B of the Contract will apply to the Deliverables, subject to the following clarifications:

<insert details, if applicable>

7. Timetable for performance

7.1 The Service Provider will provide the Services in accordance with the following timetable:

Activity / Deliverable	Start date	End date
<insert>		

8. Key performance indicators

- 8.1 The Service Provider must meet or exceed the following key performance indicators (KPIs):

KPI	Measure
<insert if applicable>	

9. Location of performance

- 9.1 The location for provision of the Services is: <insert>

Schedule B - Acceptance Procedures

1. The Fund will within 10 working days following receipt of any Deliverable:
 - (a) accept the Deliverable by providing the Service Provider with a Milestone Certificate;
 - (b) not accept the Deliverable by notifying the Service Provider of the nature, extent, and identity of any errors, defects, or omissions in the Deliverable which cause the Fund to not accept the Deliverable; or
 - (c) provide the Service Provider with written notice that additional time is required to review the Deliverable, in which case the Fund must specify the time before which it must complete its review and make a decision under (a) or (b) within that time.
2. If the Fund fails to notify the Service Provider as set out in paragraph 1, then the Service Provider may request the Fund notify it of its determination under paragraph 1 within five working days. If the Fund fails to notify the Service Provider of its determination within five working days of the Service Provider's request, the Deliverable is deemed accepted.
3. If the Fund uses a Deliverable before acceptance under this Schedule other than for testing and reviewing the Deliverable in accordance with paragraph 1, then such Deliverable shall be deemed to be accepted by the Fund.
4. If the Fund does notify the Service Provider of defects or want of information in the Deliverable under paragraph 1(b), then the Service Provider shall, as soon as is reasonably practical (but within 5 working days, unless otherwise agreed), remedy such defects or work out a plan to do so. The Fund shall have 10 working days to accept any Deliverable revised by the Service Provider under this paragraph and to notify the Service Provider of any further defects. If the Fund requires extra time to test or review the Deliverable, the period for acceptance is extended to a date reasonably specified by the Fund.
5. If following three remedial periods set out in paragraph 4 above 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 fees previously paid in relation to such Deliverable. If the Fund and the Service Provider fail to agree on the reasonableness of the Fund's grounds for rejection then either party may raise the dispute under the dispute resolution procedures of Clause G1 of the Contract.

Schedule C – Change Control Procedures

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

1. The party requesting the change will:
 - (a) if the Fund is requesting the change, deliver a “Change Request” (in the form attached in the Annexure to this Schedule C) to the Service Provider which describes the nature of the requested change, the reason for the requested change, and the effect the requested change will have on the scope of work. On receipt of the Change Request, the Service Provider will review the effect on the scope of work and update the Change Request with any changes to the contract price or the time for the delivery of the Services. The Service Provider will also make any changes or add information it requires for the Change Request to be agreed. The Service Provider will deliver the updated Change Request back to the Fund within three working days of its receipt.
 - (b) if the Service Provider is requesting the change, deliver to the Fund a Change Request which describes the nature of the requested change, the reason for the requested change, and the effect the requested change will have on the scope of work, which may include changes to the Services, the contract price or the time for the delivery of the Services.
2. The authorised representative of the requesting party will review the proposed change with his/her counterpart within five working days of making the request (unless otherwise agreed by the parties). The parties will evaluate the Change Request and negotiate in good faith the changes to the Services and the additional charges, if any, required to implement the proposed Change Request. If additional changes to the Change Request are required, the Fund will provide the Service Provider with a timeline for the parties to make and discuss the additional changes.
3. If both parties agree to implement the Change Request, the appropriate authorised representatives of the parties will sign the Change Request, indicating the acceptance of the changes by the parties. Upon execution of the Change Request it will be incorporated into, and made a part of, this Contract.
4. Neither party is under any obligation to proceed with a Change Request that is proposed by the other party.
5. If there is a conflict between the terms and conditions set out in the Contract and the terms and conditions set out in any fully executed Change Request, then the most recent fully executed Change Request shall prevail.

Annexure to Schedule C - Change Request Form

Change Request Form

Service Provider:

Services:

Contract Ref:

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

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

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

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

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

Signed on behalf of the
Service Provider by:

<template agreement: do not sign>

Signature of authorised representative

Signed on behalf of the
Fund by:

<template agreement: do not sign>

Signature of authorised representative

Name of authorised representative

Name of authorised representative

Title of authorised representative

Title of authorised representative

Date

Date

Schedule D - Financial obligations

Item	Details
Item 1	Service Provider's VAT registration number <insert>
Item 2	Fees (Clause D1.1) The total fixed price will not exceed <insert> inclusive of VAT <and inclusive of expenses and all costs> to be incurred as follows: <insert table of costs> <insert table of agreed expenses, if applicable>
Item 3	Time of payment (Clause D1.1) <insert payment schedule or time for payment, e.g. 30 days after the Fund's receipt of a valid invoice>
Item 4	Method of payment (Clause D1.1) <Cheque or electronic funds transfer>
Item 5	Time of invoice (Clause D1.2) <After completion of all the Services>
Item 6	Invoice address (Clause D1.2.4) All Invoices must comply with clause D1.2 of this Contract and must: a) be addressed to and be submitted in hard copy to: ATTENTION: Finance Big Lottery Fund Apex House 3 Embassy Drive Edgbaston Birmingham B15 1TR b) be submitted electronically to: finance.payables@biglotteryfund.org.uk

Schedule E - Definitions and interpretation

1. Definitions

In this Contract:

Acceptance Procedures means the procedures set out in Schedule B;

CEDR has the meaning given in Clause G1.4.1;

Change Control Procedures are the procedures set out in Schedule C;

Change Request has the meaning given to it in Schedule C;

Completion Date is the date set out in Item 2 of Schedule A (or, if the Contract is extended by the Fund, the date set out in the extension notice) on or before which the Service Provider is required to have completed the Services (unless otherwise agreed by the parties);

Confidential Information means all information a commercially confidential nature relating to the business or trade secrets of the Fund or the Service Provider obtained by it by reason of this Contract, and includes the terms of this Contract, information relating to any client or employee of the Fund and any information relating to the financial position, assets or liabilities of the Fund. Confidential Information does not include information that is public knowledge (otherwise than as a result of breach of this Contract by the Receiving Party);

Contract means this contract between the Fund and the Service Provider consisting of the terms and conditions of this contract and the schedules and any other documents (or parts of documents) agreed by both parties;

Contract Data has the meaning given in Clause C4.1;

Contracting Authority has the meaning given to it in Clause A9.1;

Data Protection Laws has the meaning given to it in Clause B3.3;

Deliverables means the deliverables specified in this Contract, including in Items 9, 10, 17 and 18 of Schedule A;

<Delivery Plan means the Service Provider's plan detailing how it will deliver the Services to the Fund during the term of the Contract;>

Disclosing Party has the meaning given in Clause B5.1.1;

End Phase means the period commencing on the date:

- (a) three months before the Completion Date; or
- (b) that this Contract terminates under any other provision of this Contract,

and ending on:

- (c) if the End Phase commenced under paragraph (a) of this definition, the Completion Date; and
- (d) in any other case, the first to occur of:
 - (i) three months elapsing from the commencement of the Exit Phase under paragraph (b) of this definition; and
 - (ii) the date notified by the Fund to the Service Provider for the purpose of this definition within one month of the commencement of the End Phase;

Final Report means a report which sets out:

- (a) an executive summary of the Services;
- (b) a copy of any products and resources produced as part of the Services;
- (c) any outcomes of the Services;
- (d) a copy of any media releases or coverage relating to the Services;
- (e) details of any problems encountered by the Service Provider in conducting the Services 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 Services in accordance with the timetable or due dates; and
- (g) any other information reasonably requested by the Fund;

Fund's Background IP means all Intellectual Property Rights owned or licensed by the Fund which is made available or which becomes known to the Service Provider in connection with the provision of the Services or this Contract;

Fund's Representatives are the persons detailed in Item 4 of Schedule A;

<Inception Meeting means the first meeting between the Fund and the Service Provider in relation to the Services;>

Intellectual Property Rights means all intellectual property rights whether or not such rights are capable of registration including trademarks, designs, patents, copyright (and any applications for such);

Invitation to Tender means the Fund's invitation to the tender for the Services, the details of which are set out in Item 3 of Schedule A;

Key Personnel means the persons detailed in Item 6 of Schedule A;

Materials means all materials created by the Service Provider, its personnel or sub-contractors (including any material created jointly with the Fund) relating to or in

performing the Services and includes software, data, reports, case studies, schedules, drawings, specifications, designs, inventions or other material;

Mediator has the meaning given in Clause G1.4.1;

Milestone Certificate means written notice that the Fund accepts a deliverable or that a milestone in the provision of the Services has been completed or achieved to the Fund's satisfaction;

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;
- (b) the cost of the work during the period covered by the report;
- (c) details of any problems encountered by the Service Provider 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.

Receiving Party has the meaning given in Clause B5.1;

Risk Report means a report which sets out the Service Provider's compliance with Clause C9;

Risk Register means a document in a format agreed with the Fund that sets out the risks of the Service Provider in not being able to provide the Services or comply with any term of this Contract and the strategies to mitigate those risks.

Service Provider's Background IP means all Intellectual Property Rights used by the Service Provider or its personnel in performing the Services but not the Intellectual Property Rights in the Materials created by the Service Provider, its personnel or sub-contractors in performing the Services;

Services means the services or work to be provided as specified in Item 17 of Schedule A;

Special Conditions means the terms and conditions set out in Item 21 of Schedule A;

Standards means the standards set out in Item 7 of Schedule A;

Start Date is the date set out in Item 1 of Schedule A;

Statement of Work means the document set out in the Annexure to Schedule A;

Tender Response means the Service Provider's response to the Invitation to Tender. A copy of the Tender Response is set out in Exhibit 1 to this Contract; and

Transferee has the meaning given to it in Clause A9.2.

2. Interpretation

The interpretation and construction of this contract is subject to the following provisions:

- 2.1 reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
- 2.2 a reference to a Clause or Schedule is a reference to a clause or schedule of this Contract (unless specified otherwise);
- 2.3 reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument;
- 2.4 headings are for reference only and do not affect their interpretation;
- 2.5 the meaning of general words is not limited to specific examples introduced by "including", "for example" or similar expressions; and
- 2.6 this Contract is not to be construed adversely to a party on the basis that such party prepared it.

Signing page

EXECUTED as an agreement

Signed on behalf of the
Big Lottery Fund by:

Signature

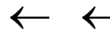


Name

Title

Date

Signed on behalf of the <Name of
Service Provider> by:



Signature of director

Name of director

Title

Date

Exhibit 1 - Sub Licence Agreement

Sub-licence Agreement

Contract number: <insert number>

Service Provider: <insert company name>

Services: <insert services description>

Sub-licence Agreement

THIS AGREEMENT is made this

between

Name	Big Lottery Fund
Short form name	Fund
Notice details	1 Plough Place, London EC4A 1DE

and

Name	
Company number	<insert number>
Short form name	<insert company name>
Notice details	<insert services description>

BACKGROUND:

- A. The Fund was granted a non-exclusive, royalty free licence on 10th September 2007 (the **Fund's Licence**) by The National Lottery Commission (the **NLC**) to use the NLC's "Crossed Fingers" logo and the words "The National Lottery" including the Logos and the Beneficiary Logo more particularly described therein.
- B. The Fund now wishes the Service Provider to use the Logos to highlight the use of National Lottery funds in relation to the services provided by the Service Provider under the provisions of the Services Contract.

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 etc 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;

Common Branding Guidelines means the NLC's guidelines which regulate the use of the Logos (including without limitation, any guidelines which are specific to any of the individual National Lottery Common Brand Marks), which guidelines may be revised and amended from time to time;

Logos means the Common Brand Logo referred to in the Common Branding Guidelines as the "master logo" and the "core distributor endorsement logos" and as shown in the Schedule to the Fund's Licence;

National Lottery means the National Lottery as defined in the Act; and

Services Contract means the contract for services made between the Fund and the Service Provider on even date herewith;

Territory means the UK.

2. Grant of sub-licence

In consideration of the payment of the sum of £1 now paid by the Service Provider to the Fund, the receipt whereof the Fund hereby acknowledges, the Fund hereby grants to the Service Provider 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 provisions of the services carried out under the Services Contract.

3. The Service Provider's Undertakings

The Service Provider undertakes to the Fund:

- 3.1 that all uses and applications of the Logos under this Agreement shall:
 - (a) comply with the Common Branding Guidelines; and
 - (b) accord with all relevant advertising codes and legislation and other guidelines, instructions and restrictions relating to the Logos as may be supplied by the Fund to the Service Provider from time to time;
- 3.2 to permit the Fund and the NLC and/or their respective duly authorised representatives at all reasonable times on notice to enter the Service Provider's premises for the purposes of inspecting and copying any materials to which the Logos have been applied;
- 3.3 if and when called upon by the Fund or by the NLC and/or their respective duly authorised representatives to submit samples of any materials to which the Logos have been applied;
- 3.4 that it will not alter, modify or add to in any way to (including without limitation by the addition of any straplines, slogans or words) the Logos and shall only use the Logos in such style and in such form and with such acknowledgement of proprietorship and/or registration as provided by the Fund to the Service Provider from time to time;
- 3.5 that it will not use, apply to register or register any mark or name which incorporates or is confusingly similar to the Logos;
- 3.6 that it will not do any act or thing liable to damage the reputation or distinctiveness of the Logos; and
- 3.7 that it will not use the Logo as part of any corporate, business or trading name or style except as permitted under this Agreement.

4. Assignment

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

5. Acknowledgements

The Service Provider hereby acknowledges and agrees that:

- 5.1 it shall have no rights in the Logos under this Agreement other than as set out in clause 2; and
- 5.2 the NLC is the sole proprietor of the Logos and any copyright and goodwill (including any goodwill which accrues as a result of the Service Provider's use of the Logos) subsisting therein.

6. Warranties

- 6.1 The Fund warrants that it has the consent of the NLC to grant this sub-licence hereunder.
- 6.2 Save as provided in clause 6.1 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.

7. Termination

- 7.1 This sub-licence is co-terminous with the Services Contract and will terminate automatically on the date that the Services Contract expires or is otherwise terminated.
- 7.2 The Fund shall be entitled to terminate this Agreement forthwith by written notice if the Service Provider 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.
- 7.3 The Fund shall be entitled to terminate this Agreement at any time and for any reason.
- 7.4 Termination of this Agreement however caused shall be without prejudice to any rights or liabilities accrued to either party at the date of termination.
- 7.5 Following termination of this Agreement under clauses 7.1, 7.2 or 7.3 hereof, the Service Provider will not make any use of the Logos and shall forthwith destroy or deliver to the Fund all and any materials to which the Logos have been applied pursuant to this Agreement and which are in the Service Provider's possession, custody or control, together with a certificate of destruction or delivery.
- 7.6 The Service Provider acknowledges that following termination of the Agreement all rights in the Logos granted under this Agreement will cease.

8. Infringements

In the event that the Service Provider becomes aware of any unauthorised use (or suspected unauthorised use) of the Logos by a third party, it must immediately provide the Fund with full details of such unauthorised use.

9. General

- 9.1 Any notice required to be given under this Agreement shall be deemed duly served if left at or sent by registered or recorded delivery post to the registered office of the relevant Party.
- 9.2 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.

- 9.3 This Agreement shall be governed by and construed in accordance with English Law and the parties hereby irrevocably submit to the jurisdiction of the English Courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of either party to take proceedings against the other in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.
- 9.4 No variation of this Agreement shall be effective unless made in writing and signed by both parties.

Signing page

EXECUTED as an agreement

Signed on behalf of the
Service Provider by:

Signature ←

Name

Chief Executive Officer

Title

Date

Signed on behalf of the
by:

Signature of director ← ←

Name of director

Title

Date

Exhibit 2 - Tender Response

To be attached