

## 1. Grant of Licence

1.1 The Commission in exercise of the powers conferred on it by section 5 of the National Lottery Act hereby grants the Licensee this Licence subject to the terms and conditions attached hereto, to run the National Lottery and the Licensee agrees to run the National Lottery on the terms and conditions of the Licence.

1.2 The Licence shall have effect from 1 February 2009 and (unless extended, suspended or revoked pursuant to the terms of the National Lottery Act and/or this Licence (as the case may be)) shall have effect until 31 January 2019.

1.3 Pursuant to section 8(3)(b) of the National Lottery Act, and subject to this Condition 1, the following Conditions and Schedules may only be varied with the consent of the Licensee:

- (a) Conditions 1, 3, 5.1, 5.9, 5.22 – 5.25, 11, 14.1, 15.15 (except 15.15(f)), 15.18(c) and (d), 16, 18.1, 18.2 (except (a) – (c)), 18.3, 18.5, 18.6, 18.7-18.9, 18.11, 18.12, 18.15 – 18.19, 18.21 – 18.23, 18.25, 18.27, 18.28, 18.30 – 18.37, 23, 25, 27 – 29 and Schedules 2, 5, Schedule 8 Parts 2 and 3, Schedule 10 Parts 1 and 3, and Schedule 12 Part 3;
- (b) Schedule 1 and Schedule 8 Part 1 provided always that nothing in this Condition 1.3 shall prevent the Commission from varying Schedule 1 or Schedule 8 Part 1 where that variation arises as a result of:
  - (i) a permitted variation by the Commission to another Condition or Schedule; or
  - (ii) the grant of a licence under section 6 of the National Lottery Act;
- (c) Conditions 15.12, 15.15A, 15.16, 15.17, 15.18(a) and (b), 15.20 and 21.15 but only in respect of any of the following levels of endeavour imposed by those Conditions on the Licensee:
  - (i) a best endeavours obligation;
  - (ii) an all reasonable endeavours obligation; or
  - (iii) a reasonable endeavours obligation,and, in respect of Conditions 15.15A and 21.15 in respect of the exclusion provided for in respect of gaming software or any generally available business application software;
- (d) Condition 18.24, except that nothing in this Condition 1.3 shall prevent the Commission from varying the date on which the Successor Licensee takes possession of the Transferring Assets, provided that such date is no earlier than the date of the expiry or revocation of the Licence; and
- (e) Condition 21.13(g) but only in respect of the exclusion provided for in respect of gaming software or any generally available business application software.

1.4 If the Commission varies any of Conditions 18.4, 18.10, 18.13 or 18.14 and as a direct result of that variation the Licensee incurs costs or expenses over and above those that it would have incurred but for the variation then to the extent that such costs are:

- (a) reasonably and properly incurred; and
- (b) reasonably evidenced in writing by the Licensee on an open book basis, such evidence and further related information being provided to the Commission by the Licensee as may be requested,

the recovery of such costs and expenses shall be provided for under an arrangement then to be agreed as between the Commission and the Licensee.

1.5 If the parties cannot agree the sum to be provided in favour of the Licensee under Condition 1.4, or the mechanism under which such sums will be recovered by the Licensee, the parties agree to refer the matter to an Expert for determination in accordance with Schedule 14.



## 2. Definitions and interpretation

### Interpretation

- 2.1 In this Licence expressions shall have the meanings set out in Schedule 1.
- 2.2 In this Licence, unless the context otherwise requires:
- (a) references to Conditions, Parts, Schedules and paragraphs in this Licence shall be construed as references to the Conditions of, Parts of, Schedules to and paragraphs of this Licence;
  - (b) references to persons includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
  - (c) the headings are inserted for convenience only and do not affect the construction of the Licence;
  - (d) references to one gender include all genders;
  - (e) words importing the plural include the singular and vice versa;
  - (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re enacted;
  - (g) any statement qualified by the expression to the best knowledge of the Licensee or so far as the Licensee is aware or any similar expression is deemed to include (and be limited to) an additional statement that it has been made after due and careful enquiry;
  - (h) any reference to a document in the agreed form is to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties);
  - (i) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term;
  - (j) references to the words “include”, “includes” or “including” are to be construed without limitation; and
  - (k) the giving of any approval or consent by the Commission shall not constitute any representation or acknowledgement that the subject matter of the approval or consent complies with Law.
- 2.3 A reference to this Licence includes all Schedules to this Licence.
- 2.4 Unless expressly stated, words or expressions used in this Licence to which a meaning is given for the purpose of Part I of the National Lottery Act shall have the same meaning as in the National Lottery Act and in every provision of this Licence which provides for or entitles the Commission to make any inspection or to have access to any premises or to require information or to take copies of any documents or other things, “the Commission” includes any representative of, or adviser to, the Commission as well as any member of its Staff who has been authorised by it (whether generally or specially) to make the inspection or have the access or take the copies referred to in this Licence.
- 2.5 Any consent, approval, agreement, determination, nomination or notification required under this Licence to be given by the Commission shall be effective only if in writing and where, pursuant to these Conditions the Commission agrees, specifies or allows anything, it shall do so in writing.
- 2.6 Any acceptance or approval by the Commission or by any Independent Person or other third party, of any Process, Procedure, test, audit, operation or equipment is no warranty as to its quality or whether such Process, Procedure, test, audit, operation or equipment is Fit for Purpose or as to any other thing. The Commission accepts no liability for any Loss suffered by the Licensee or any other person in placing reliance in such acceptance or approval or otherwise arising out of such acceptance or approval, whether or

not resulting from any negligent or wrongful act or omission or breach of statutory duty by or on behalf of the Commission.

2.7 All actions which are to be performed, or obligations which are to be discharged, by the Licensee in connection with this Licence shall be performed at the Licensee's own cost unless expressly specified to the contrary in the Licence.

### **3. Commencement**

3.1 If the Licensee does not have the facilities and/or games set out in Schedule 2 Part 1 in place:

- (a) on the date of the Licence; or
- (b) at any time within the first five weeks of the Licence,

it will constitute a breach of the Licence.

3.2 If the Licensee breaches Condition 3.1, the Commission may impose a financial penalty on the Licensee in accordance with:

- (a) the process in section 10A of the National Lottery Act; and taking into account as part of that process,
- (b) the matters set out in Schedule 2 Part 2.

The amount of any such financial penalty shall not, in any event, exceed the sum(s) referred to in Schedule 2 Part 2.

3.3 For the avoidance of doubt, no financial penalty in addition to that imposed under Condition 3.2 will be imposed on the Licensee in connection with a breach of Condition 3.1.

3.4 The Commission shall not revoke the Licence on the grounds of a breach of Condition 3.1.

## **4. Handover from the Previous Licensee**

4.1 Schedule 3 shall have effect in relation to handover from the Previous Licensee and arrangements in relation to matters outstanding from the Previous Licence.

## 5. Service requirements

### Fit for Purpose

5.1 The Licensee shall at all times ensure that its running of the National Lottery (including Licensee Assets and its Technology Operation) is Fit for Purpose. The rest of the provisions of this Condition 5 shall apply as appropriate.

### Compliance with Standards

5.2 The Licensee shall comply with and (where available and, if the Commission deems it appropriate) pursue certification (within such timescale as the Commission may specify) for the following standards and codes of practice in respect of its Technology Operation (**Standards**):

- (a) ISO 9001:2000 (Quality Management Systems – Requirements);
- (b) ISO 10005:2005 (Quality Management Systems – Guidelines for Quality Plans);
- (c) ISO 10006:2003 (Quality Management Systems – Guidelines for Quality Management in Projects);
- (d) ISO 10007:2003 (Quality Management Systems – Guidelines for Configuration Management);
- (e) ISO 20000-1:2005 (Information Technology – Service Management – Part 1: Specification);
- (f) ISO 20000-2:2005 (Information Technology – Service Management – Part 2: Code of Practice);
- (g) ISO 27001:2005 (Information Technology – Security Techniques – Information Security Management Systems – Requirements);
- (h) ISO 27002:2007 (Information Security Management);
- (i) ISO 19770 (Software Asset Management); and
- (j) BS25999 (Business Continuity Management).

5.3 The Licensee shall ensure that its Technology Operation is consistent with:

- (a) W3C/WAI Web Content Accessibility Guidelines;
- (b) Best Industry Practice;
- (c) its own established policies and practices; and
- (d) any other generally accepted international, European Union or British standards determined by the Commission.

5.4 A reference to any of the Standards shall include any equivalent Standard which, in the Commission's opinion, updates, replaces or supersedes it. The Licensee shall keep the Commission fully informed about changes to, replacements of, or development to, the Standards.

5.5 The Licensee shall comply with any directions the Commission may make from time to time concerning the application of Standards and practices as set out in Conditions 5.2 and 5.3.

5.6 In connection with Conditions 5.1, 5.2 and 5.3, the Licensee shall provide the Commission with:

- (a) information concerning the scope and implementation of the relevant measures in the form and within the timescale specified by the Commission and shall implement any changes to these measures as directed by the Commission;
- (b) copies of any certification reports prepared by external bodies in respect of the Standards as soon as these reports become available;

- (c) the Licensee's own assessment of any adverse comments contained in a certification report prepared by an external body and the Licensee's plans to rectify the areas of concern in the form and within the timescale specified by the Commission; and
- (d) information concerning any other issue specified by the Commission in the form and within the timescale specified by the Commission.

5.7 The Licensee shall discuss with the Commission any conflict that the Licensee reasonably believes that there is or will be between any Standards, or between any Standard and any other provision of this Licence and shall comply with the Commission's decision on the resolution of that conflict.

5.8 If the United Kingdom elects to join the European Monetary Union, the Licensee shall ensure that the Technology Solution is Euro-Compliant.

#### **Maintenance of Licensee Assets**

5.9 The Licensee shall maintain all Licensee Assets in reasonably good condition and shall ensure that Licensee Assets:

- (a) are Fit for Purpose;
- (b) are adequately supported;
- (c) are not sold or otherwise disposed of during the term of the Licence unless this is done in the ordinary course of business; and
- (d) have a life expectancy of two years from the end of the Licence in accordance with the requirements in this Condition 5.9.

#### **Testing, Processes and Procedures**

5.10 The Licensee shall:

- (a) identify all Processes from time to time, and promptly document them in one or more Procedures;
- (b) ensure that all Processes and Procedures are Fit for Purpose; and
- (c) establish a register of Processes and Procedures (in accordance with Condition 10.4).

5.11 Each Procedure shall:

- (a) have a unique title, statement of purpose and reference number;
- (b) nominate the Licensee's representative(s) having responsibility for creating and amending it, and for ensuring that it conforms with the Process to which it relates;
- (c) identify the key controls that contribute to the integrity and security of the National Lottery; and
- (d) contain relevant version control information and a comprehensive list of cross-references to supporting documents and any related Procedures.

5.12 As directed by the Commission from time to time, the Licensee shall:

- (a) submit a proposed or existing Procedure, or prepare and submit a new Procedure, to the Commission for approval;
- (b) submit a Process to testing by the Licensee or an Independent Person to determine whether the Process conforms to the relevant Procedure;
- (c) procure the audit by an Independent Person of the functionality of a Process;

- (d) in relation to the testing of a Process in Condition 5.12(b), adopt, or procure the adoption by the Independent Person of a testing methodology, testing scope, acceptance criteria and a form of testing report and certificate approved in advance by the Commission;
- (e) in relation to the audit of a Process in Condition 5.12(c), procure the adoption by the Independent Person of audit terms of reference, an audit methodology and a form of audit report and certificate approved in advance by the Commission;
- (f) not, pending approval of a Procedure by the Commission or the issue of a testing or audit certificate in relation to a Process satisfactory to the Commission:
  - (i) carry out that Process or any other related Process (whether in whole or part); or
  - (ii) perform any National Lottery service to the extent that the Process or any other related Process is a necessary part of that service,

in either case, except in accordance with any conditions determined by the Commission;

- (g) amend a Procedure or Process (whether or not previously submitted for approval, testing or audit), and submit the amended Procedure or Process for approval, testing or audit in Condition 5.12(a), 5.12(b) or 5.12(c); and
- (h) ensure all Processes are conducted in conformity with Procedures and/or with any testing or audit certificate, in each case approved by the Commission.

5.13 Without limiting the generality of Condition 5.10, the Licensee shall:

- (a) ensure that no Draw takes place unless the relevant elements of the Technology Solution used in connection with the Draw have been approved by an Independent Person and the Commission has had an opportunity to review the scope of the periodic testing of the relevant elements of the Technology Solution and the results of the testing and the Licensee has altered the testing if required to comply with the Commission's specifications;
- (b) ensure that no Draw in a Constituent Lottery takes place unless the Commission has had an opportunity to review the scope of the periodic testing of all relevant elements of the Technology Solution and the results of that testing and the Licensee has altered the testing if required to comply with the Commission's specifications;
- (c) if directed by the Commission, procure that an Independent Person conducts System Function Proving Tests in relation to all or any part of the Technology Solution; and
- (d) demonstrate to the Commission's satisfaction that the integrity of the Technology Operation has been maintained at all times, including in relation to:
  - (i) the operation of all games in conformance with the published rules for those games;
  - (ii) the accurate recording of wagers placed, production of National Lottery tickets, identification of winning wagers, validation of winning tickets, calculation and payment of prizes, management of Player, Distributor and other financial information, transfer of funds;
  - (iii) the accurate recording of all interactive plays; and
  - (iv) the prevention of the placement of new wagers after a Draw has closed, or the placement of wagers for which payment was required and has not been received, or the double placement of wagers, the double payment or non-payment of prizes, or the unauthorised disclosure of Confidential Information.

### **Independent Verification System**

5.14 The Licensee shall:

- (a) establish, operate and maintain in pursuance of its obligations under Conditions 5.10(b) and 5.14(e) an Independent Verification System which possesses the functionality specified by the Commission;
- (b) establish, operate and maintain a separate copy of the Independent Verification System for the use of the Commission, which possesses the functionality specified by the Commission and which is maintained independently of the system referred to in Condition 5.14(a);
- (c) provide the hardware, communications links, other infrastructure, materials, facilities and support to allow the Commission to operate the system referred to in Condition 5.14(b) in the manner it considers necessary;
- (d) ensure that the Commission and its representatives and advisers and the Trustees have such access to the Independent Verification System as the Commission may specify;
- (e) ensure that the Independent Verification Systems referred to in Conditions 5.14(a) and 5.14(b) are capable of performing end-of-day financial auto-balancing between the gaming systems and the Independent Verification Systems for the categories of data specified by the Commission, including:
  - (i) ticket sales by game and day;
  - (ii) Subscriptions paid, by game, day and Subscriber;
  - (iii) prizes to be paid by game, tier and day;
  - (iv) prizes paid by game, tier and day;
  - (v) Player account closing balances by day and Player; and
  - (vi) any other categories of data as may be specified by the Commission;
- (f) establish and operate an automated interface which will extract from its gaming systems and deliver in real time to the Commission all transaction records containing data relating to the categories referred to in Condition 5.14(e) in a format, and subject to security arrangements approved by the Commission from time to time;
- (g) ensure that the Independent Verification Systems referred to in Condition 5.14(a) and 5.14(b) are independently tested in such manner and frequency as the Commission may specify;
- (h) ensure that the test reports for the Independent Verification Systems referred to in Condition 5.14(a) and 5.14(b) are submitted to the Commission in such format and timescale as it may specify;
- (i) ensure that the Independent Verification Systems referred to in Condition 5.14(a) and 5.14(b) are modified in such manner and timescale as the Commission may specify; and
- (j) provide assistance required by the Commission to enable it to process the data referred to in Condition 5.14(e) using the Independent Verification System referred to in Condition 5.14(b) or to enable the Commission to operate its own Independent Verification System in such manner as the Commission may specify.

## **Security**

5.15 Without limiting its obligation under Condition 5.1, the Licensee shall:

- (a) ensure the security of all equipment, systems, data, ticket materials and other consumables used in connection with the National Lottery and any Constituent Lottery and all proceeds arising from any Constituent Lottery and Ancillary Activity so as to minimise opportunities for theft, fraud or misuse; and

- (b) maintain a register of any security breaches as part of the log of Incidents referred to in Condition 10.7(e) and record all breaches in it within 14 days of becoming aware of them and make this register available to the Commission for inspection at all times. A copy of the register of security breaches in a format acceptable to the Commission shall be delivered to the Commission on the expiry or revocation of the Licence.

5.16 The Licensee's obligation under Condition 5.15 shall include:

- (a) measures to ensure that the supply, repair and maintenance of equipment installed and the supply of spare parts for such equipment is at all times under the control of the Licensee;
- (b) segregation of computer system development and operational environments to prevent access to live systems by development personnel;
- (c) the management, control, monitoring and logging of changes to live systems both current and historical from the start of development;
- (d) the production and distribution of all National Lottery tickets and other items which could be used to produce forged National Lottery tickets;
- (e) tested procedures for recovery of lottery operations in the event of unscheduled occurrences and disasters; and
- (f) measures to ensure the physical security of the Licensee's premises.

5.17 The Licensee shall ensure that any data and other information relating to any Constituent Lottery cannot be accessed, read, added to, removed or altered by unauthorised persons.

5.18 The Licensee shall ensure that the arrangements for central recording of the production, activation or validation of National Lottery tickets are such that no equipment is installed which may be used to produce, activate or validate a National Lottery ticket if the production, activation or validation of the National Lottery ticket is not recorded in accordance with such arrangements.

#### **Business continuity and disaster recovery**

5.19 Without limiting its obligations under Conditions 5 or 10, the Licensee shall:

- (a) develop, maintain, test and implement the BC and DR Plans in accordance with their terms and, on request, submit the BC and DR Plans to the Commission for review and amend or update the BC and DR Plans as directed by the Commission from time to time; and
- (b) test the BC and DR Plans on an annual basis and, on request, submit the results of these tests to the Commission for review.

#### **Secure Areas**

5.20 Without limiting its obligation under Condition 5.1, the Licensee shall:

- (a) in relation to an area in premises occupied by the Licensee or some other person, which is necessary to be kept secure to maintain the security of the National Lottery or any Constituent Lottery, designate that area as a secure area (**Secure Area**); and
- (b) ensure that an appropriate level of security is maintained in or over Secure Areas and that no person gains access to or enters or leaves a Secure Area unless it is a person whose name is on the register for the Secure Area kept under Condition 5.21(c) or is supervised by such a person.

5.21 The Licensee shall:

- (a) maintain a register of Secure Areas together with a description of each Secure Area and make the register and description available to the Commission for inspection at all times. The Licensee shall notify the Commission of any changes to the register of Secure Areas within 14 days after the end of the month in which the change occurs;

- (b) ensure that the right to access a Secure Area is only granted to persons who should be entitled to such access;
- (c) keep a register of persons who have been granted the right of access to each Secure Area;
- (d) notify the Commission each month of any changes to the register of persons who may enter each Secure Area; and
- (e) remove any person from the register whom the Commission determines should be removed, keep a record of all persons who enter each Secure Area together with the times and dates on which each person enters and leaves the Secure Area and maintain a record of cases where a person whose name is not on the register referred to above enters a Secure Area without supervision and shall make such record available to the Commission at any time.

**Player access**

5.22 In this Condition 5.22:

- (a) any reference to a date is a reference to one of the dates specified in the table below; and
- (b) “the minimum” for each date means the minimum number of Retail Outlets at which Draw-based Facilities are available specified in the table in relation to that date.

Year of Licence (End of Financial Year)	Minimum Number of Outlets <i>Details to be published at the end of December 2007</i>
1	26,500
2	27,000
3	27,500
4	27,500
5	27,500
6	27,000
7	26,500
8	26,000
9	25,500
10	25,000

5.23 The Licensee shall ensure that the minimum number of Retail Outlets at which Draw-based Facilities are available on each period end date is at least equal to the number specified in the table set out in Condition 5.22. The Commission and the Licensee shall review the Licensee’s provision of the number of Retail Outlets from time to time, the scope and objectives of any review to have been agreed by the parties in advance.

5.24 Save where the Commission agrees with the Licensee that it is not practical so to do, the Licensee shall ensure that at all times during the Licence there is at least one Retail Outlet at which Draw-based Facilities are available in each Postcode District.

5.25 For the purpose of Condition 5.24, Draw-based Facilities shall be treated as being available at a Retail Outlet on any date if:

- (a) they have been installed at that Retail Outlet and are capable of being used to produce or activate tickets online on that date; or if
- (b) they are installed at that Retail Outlet and were capable of being used to produce or activate tickets online at some time during the period of two weeks before that date but are not capable of being used on that date, either:
  - (i) because they were being repaired or tested on that date; or
  - (ii) because the Retail Outlet was not normally open for business on that date,but are capable of being used thereafter; or
- (c) they are installed at that Retail Outlet but are not capable of being used on that date solely because of:
  - (i) the failure of the equipment located on a satellite; or
  - (ii) the loss of the hub site due to any act of God, war, fire, flood, riot, industrial action, strike, tempest or other event outside the reasonable control of the Licensee or the operator of the hub site (but excluding a failure wholly or partly due to the non-repair of or failure to maintain the hub site),

but are capable of being used (whether by means of a satellite link or otherwise) within six weeks of the date of such failure.

### **Property**

5.26 Unless the Commission otherwise agrees, the Licensee shall not occupy any operational premises without the approval of the Commission.

### **Compliance with Law**

5.27 The Licensee shall comply with all relevant Laws to the extent they impose obligations or restrictions on the Licensee and this Condition shall survive the expiry or revocation of the Licence in relation to any continuing obligations of the Licensee for so long as such obligations remain unperformed..

5.28 The Licensee shall do all things which in the opinion of the Commission are necessary or appropriate to assist and enable the Commission to comply with Laws which impose obligations or restrictions on the Commission in relation to the National Lottery and this Condition shall survive the expiry or revocation of the Licence in relation to any continuing obligations on the Commission relating to this Licence and in relation to any continuing obligations of the Licensee for so long as such obligations remain unperformed.

### **Technology maintenance and improvement**

5.29 In complying with Condition 5.9, the Licensee shall:

- (a) develop and update the Technology Maintenance Plan for the purpose of ensuring that all components of the Technology Operation remain Fit for Purpose and that the Licensee can continue to meet its obligations under the Licence;
- (b) implement the Technology Maintenance Plan on its terms;
- (c) on request, submit the Technology Maintenance Plan for review by the Commission, and update the Technology Maintenance Plan and implement the amended plan as directed by the Commission; and
- (d) on an ongoing basis, review and update the Technology Maintenance Plan to ensure its suitability.

- 5.30 The Licensee shall:
- (a) on an ongoing basis:
    - (i) review the Technology Operation to determine the Licensee's ongoing compliance with its obligations under the Licence; and
    - (ii) identify new or potential improvements in its Technology Operation, including in relation to new business opportunities such as new sales channels and performance mechanisms;
  - (b) as part of its obligation under Condition 5.30(a) identify and report to the Commission at least annually (or such shorter period as the Commission may specify) on:
    - (i) the emergence of new and evolving relevant technologies which could improve the Technology Operation in whole or part and of any technological advances available to the Licensee which the Licensee and/or the Commission may wish to adopt;
    - (ii) any proposed changes to the Licensee's strategy for its Technology Operation; and
    - (iii) changes in interfaces, business processes and ways of working that would result in increased contributions to good causes, or improve the efficiency of the delivery of the National Lottery, or result in productivity gains or the reduction of operational risk;
  - (c) ensure that it provides sufficient information under Condition 5.30(b) for the Commission to decide whether it is desirable that any improvements should be implemented by the Licensee; and
  - (d) change any element of its Technology Operation which the Commission determines is inconsistent with the Licensee's obligations under the Licence.

## **6. Prohibition of activities not related to the National Lottery**

6.1 The Licensee shall not without the Commission's prior written approval undertake any activity (for the avoidance of doubt "activity" in this context includes investments in shares and securities) other than the running of the National Lottery.

6.2 The Licensee shall not without the Commission's prior written approval use or permit the use of any Lottery IP, Licensee Assets or Licensee Subcontract, Series Subcontract or Sub Series Subcontract for any purpose other than the running of the National Lottery.

6.3 The Licensee shall not without the Commission's prior written approval undertake any Ancillary Activity. The Commission may give or withhold consent to any Ancillary Activity subject to such conditions as it may specify.

6.4 The Commission hereby consents to the Ancillary Activities listed in Schedule 4 Part 1 subject to the conditions set out in this Condition 6 and to the further conditions set out in Schedule 4 Part 2.

6.5 The Licensee shall ensure that the operations of the National Lottery or of the Licensee shall not be prejudiced by any Ancillary Activity or any combination of Ancillary Activities. If at any time in the opinion of the Commission any Ancillary Activity jeopardises or may jeopardise any aspect of the operations of the National Lottery or of the Licensee it may require the Licensee to suspend or cease such Ancillary Activity forthwith by notice to the Licensee.

6.6 The Licensee shall ensure that any agreement relating to an Ancillary Activity is on terms that to the extent permitted by Law the Commission shall not be liable to any third party for any Loss and the Licensee shall indemnify the Commission, its Staff and agents against any Loss arising from any Ancillary Activity.

6.7 The Licensee shall ensure (unless the Commission has agreed in writing otherwise) that any agreement relating to an Ancillary Activity is on terms that it shall discontinue with immediate effect on the expiry or earlier revocation of the Licence for whatever reason and that no compensation will be payable by the Commission or by any Successor Licensee as a result of such discontinuance.

6.8 The Licensee shall ensure that any agreement relating to an Ancillary Activity is on an arm's length commercial basis.

6.9 The Licensee shall ensure that any Ancillary Activity (including for the avoidance of doubt any promotional activities associated with such Ancillary Activity) are appropriate and in accordance with the reputation and image of the National Lottery.

6.10 Without prejudice to the requirement for the Commission's prior written approval of any Ancillary Activity the Licensee shall notify the Commission prior to the commencement of any Ancillary Activity.

6.11 The Licensee shall notify the Commission of the suspension or termination of any Ancillary Activity in advance where reasonably practicable and in any other case as soon as reasonably practicable following such suspension or termination. Where the suspension or termination is unplanned the notification shall explain the reasons for the suspension or termination. Where the Ancillary Activity is suspended and is planned or expected to resume the notification shall include details of the planned or expected resumption of the Ancillary Activity including its timing.

6.12 For the purpose of seeking the Commission's consent for any Ancillary Activity the Licensee shall provide the Commission with such information as the Commission shall require including:

- (a) information to allow the Commission to satisfy itself that any agreements relating to the Ancillary Activity and the arrangements for the Ancillary Activity when taken as a whole will comply with the Licence;
- (b) information as to the costs and revenues of the Ancillary Activity and any share of such costs or revenues which is to be paid or received by the Licensee;
- (c) information as to the projected impact of the Ancillary Activity on the financial position and resources of the Licensee; and

(d) information about any party other than the Licensee which is to have any interest in the Ancillary Activity including information as to the standing and reputation of that party.

6.13 The Licensee shall provide to the Commission within three months after the end of the Financial Year a report on the Ancillary Activities undertaken in that Financial Year which shall include:

- (a) a list of all such Ancillary Activities;
- (b) confirmation that all such Ancillary Activities are in compliance with the Licence; and
- (c) such other information as the Commission may specify from time to time.

6.14 The Licensee shall provide to the Commission on at least an annual basis or more frequently, as may be required by the Commission, a statement containing details of the income and expenditure incurred in relation to Ancillary Activities and the amounts due to the NLDF and OLDF arising from Ancillary Activities. The statement shall:

- (a) be in writing; and
- (b) contain a certificate signed by the chief executive and one other director (if at the time of such signature there shall be no such appointee as chief executive then such certificate shall be signed by two directors) that, having taken all reasonable steps to verify the statement, the statement gives a true and fair view of the income and expenditure incurred in relation to Ancillary Activities and the amounts due to the NLDF and OLDF arising from Ancillary Activities.

6.15 The Licensee shall make Ancillary Activity Payments in accordance with Schedule 5.

## **7. Consumer protection**

### **Player protection strategies**

7.1 The Licensee shall adopt, maintain and implement a strategy to prevent play on the National Lottery by persons aged under 16. Such strategy shall first have been approved by the Commission and shall in particular deal with game research and design, marketing, public information and education, accessibility, staff and Distributor training, monitoring and support for the treatment of problem gamblers aged under 16. The Licensee shall publish the strategy, as approved by the Commission, on the National Lottery website ([www.national-lottery.co.uk](http://www.national-lottery.co.uk) (or such website address as the Licensee shall use from time to time)).

7.2 Schedule 7 shall apply in relation to the approval, monitoring, review and amendment of the strategy referred to in Condition 7.1.

7.3 The Licensee shall adopt, maintain and implement a strategy to prevent excessive play on the National Lottery. Such strategy shall first have been approved by the Commission and shall in particular deal with game research and design, marketing, public information and education, accessibility, staff and Distributor training, monitoring and support for the treatment of problem gamblers. The Licensee shall publish the strategy, as approved by the Commission, on the National Lottery website ([www.national-lottery.co.uk](http://www.national-lottery.co.uk) (or such website address as the Licensee shall use from time to time)).

7.4 Schedule 7 shall apply in relation to the approval, monitoring, review and amendment of the strategy referred to in Condition 7.3.

7.5 If, following the launch of any Constituent Lottery, the promotion of that Constituent Lottery has, in the opinion of the Commission, alone or together with any other factor (including the promotion of any other Constituent Lottery) resulted in or is likely to result in:

- (a) excessive participation in Constituent Lotteries by any person or group of persons;
- (b) excessive participation in Constituent Lotteries generally; or
- (c) play on the National Lottery by persons aged under 16,

the Commission may require the Licensee to suspend the promotion of or sale of tickets or Subscriptions for that Constituent Lottery (from such date and for such period as the Commission may specify or indefinitely).

### **Access to games**

7.6 The Licensee shall ensure that at all times at least one active Draw-based Game is promoted in which:

- (a) tickets can be purchased at every Retail Outlet in the United Kingdom and the Isle of Man and such other countries as the Commission in its absolute discretion may specify at which Draw-based Facilities are available; and
- (b) persons may participate by purchasing tickets other than at a Retail Outlet.

7.7 Save with the consent of the Commission:

- (a) the Licensee shall ensure that no tickets in a Constituent Lottery are given away free or sold for less than the full price applicable in accordance with the rules of the relevant Constituent Lottery (whether in connection with the advertisement or the marketing of the National Lottery or any Constituent Lottery or otherwise) unless:
  - (i) a payment reflecting the full price of the relevant ticket has been made to the Licensee, or to the relevant Independent Section 6 Licensee or to the Distributor who sells the ticket either in cash or by means of a cheque or charge card, debit card or credit card or such other payment method as may be approved by the Commission from time to time; or if such payment is not made;

- (ii) the price of the ticket applicable in accordance with the rules of the relevant Constituent Lottery is counted in full in the aggregate value of sales when calculating the Licensee's Primary Contribution in accordance with the provisions of Schedule 8; and
- (b) the Licensee shall not, and shall ensure that no Independent Section 6 Licensee or any Distributor shall, lend any monies to any person for the purpose (or which he has any reason to believe may be used for the purpose) of making any payment for any ticket, whether by the person to whom any money is lent or any other person.

7.8 Save to the extent and in the circumstances otherwise agreed by the Commission, the Licensee shall ensure that no Distributor shall, in effecting such sale or issue, act as the agent of the purchaser of such ticket or entry or Player in any Constituent Lottery, but each such Distributor shall act as the agent of the Licensee or the relevant Independent Section 6 Licensee in effecting any such sale and receiving any sale proceeds therefor.

7.9 Where the Licensee operates a registration scheme it shall not make any charge to a Player for registering unless the proposed charge has been approved by the Commission. A "registration scheme" means a scheme whereby:

- (a) a Player may register his name and address, with or without details of his bank account; and
- (b) where the player has provided details of his bank account (and therefore in principle will be able to purchase tickets via the scheme), when any ticket is purchased by that Player and the Player gives details of his registration when purchasing his ticket, any prize is paid directly to the Player or to his bank account without the need for the Player to make any communication in order to establish his claim to the prize (subject to applicable prize claim rules in respect of higher tier prizes).

7.10 Unless the Commission agrees otherwise, the Licensee shall not, and shall procure that none of its Group Companies shall, be engaged or involved in any manner of capacity in the use, provision or promotion of any premium charge telephone numbers or lines for any purpose connected with the National Lottery or any Constituent Lottery or Ancillary Activity.

7.11 The Licensee shall only be entitled to accept tickets through the Interactive Systems if they are from Registered Players.

7.12 The Licensee shall use its best endeavours to ensure that such System Limits as the Commission shall have determined after consultation with the Licensee shall be applied at all times by the Interactive Systems. For the purposes of this Condition 7.12, "System Limits" means limitations applied by the Interactive System which regulate the number of, or the amounts expended on, tickets.

#### **Limit on number of Draws per hour**

7.13 The Licensee shall not allow more than one Draw to take place in the period of one hour in respect of:

- (a) one or more Draw-based Games licensed under a licence for a Constituent Lottery; or
- (b) one or more Associated Lotteries.

#### **New Distributor channels**

7.14 The Licensee shall not use any method of distribution of sales which has not previously been used for the purpose of participating in National Lottery games without the Commission's prior written approval.

#### **Code on top prizes**

7.15 The Licensee shall adopt and maintain and shall at all times comply with a code of practice which is first approved by the Commission concerning the availability of top prizes for all Scratchcard Lotteries. Schedule 7 shall apply in relation to the approval, review and amendment of such code. The Licensee shall publish the code, as approved by the Commission, on the National Lottery website ([www.national-lottery.co.uk](http://www.national-lottery.co.uk) (or such website address as the Licensee shall use from time to time)).

## **Player documents**

7.16 The Licensee shall adopt, maintain and comply with the terms and conditions, rules, procedures and game specific rules (as may be appropriate) for each Constituent Lottery. Such terms, conditions, procedures and game specific rules shall be subject to the prior written approval of the Commission.

7.17 The Licensee shall not make any change to the terms and conditions, rules, procedures and game specific rules for each Constituent Lottery, nor shall the Licensee waive compliance therewith without the prior written consent of the Commission. For the avoidance of doubt, this Condition shall not affect any exercise by the Licensee of its discretion where specifically provided by the terms and conditions, rules, procedures and game specific rules for each Constituent Lottery.

7.18 Notwithstanding any approval provided under this Condition 7 and without prejudice to the provisions of Schedule 7, the Commission reserves the right to require the Licensee at any time to make any amendments (which it shall in its absolute discretion consider appropriate) to the terms and conditions, rules, procedures and game specific rules for any Constituent Lottery. Following consultation with the Licensee, the Commission shall provide the Licensee with such notice of its requirements as it shall deem necessary in its absolute discretion.

7.19 The Licensee shall ensure that any changes to the terms and conditions, rules, procedures and game specific rules for each Constituent Lottery shall take effect on the same date and at the same time as against all Players in any Constituent Lottery, regardless of the medium on which a Player purchases or otherwise acquires his ticket.

7.20 The Licensee shall procure that each and every Distributor complies with the terms and conditions, rules, procedures and game specific rules for each Constituent Lottery.

7.21 The Licensee shall:

- (a) adopt, maintain and comply with the Player Guide (which has first been approved by the Commission) where tickets are bought from Distributors;
- (b) adopt, maintain and comply with the Service Guide (which has first been approved by the Commission) for the games which are played interactively via the Interactive Systems; and
- (c) adopt, maintain and comply with the Subscription Guide (which has first been approved by the Commission) where tickets are bought by Subscription,

and Schedule 7 shall have effect in relation to the approval, review and amendment of the documents referred to in this Condition 7.21.

7.22 The Player Guide shall contain the following information:

- (a) all possible methods of participating together with the price of a ticket for each method, any arrangements for ticket cancellation, and any Drawbreak arrangements;
- (b) a statement as to the odds of winning the various prizes, and the likely proportion of the face value of tickets which is expected to be paid in prizes;
- (c) the methods of determining whether the ticket is a winning ticket;
- (d) the methods of claiming any prize and the period within which prizes must be claimed; and
- (e) the minimum age of persons to whom tickets in a Constituent Lottery can be sold together with a statement that prizes are not payable to any person under that age.

## **Player information – Retail Outlets**

7.23 The Licensee shall ensure that copies of the terms and conditions, rules, procedures and game specific rules of each Constituent Lottery are available for reference purposes at every Retail Outlet where the tickets for such Constituent Lotteries are available for sale at the Retail Outlet in question.

7.24 The Licensee shall ensure that copies of the current Player Guide can be obtained without charge from every Retail Outlet.

7.25 Every document required to be made available pursuant to Conditions 7.23 and 7.24 shall contain:

- (a) the name and address of the registered or principal office of the promoter of each Constituent Lottery referred to in the document;
- (b) a telephone number from which further information about each Constituent Lottery referred to in the document can be obtained at a local call rate;
- (c) a telephone number to which complaints about each Constituent Lottery referred to in the document can be made at a local call rate; and
- (d) the minimum age of persons to whom tickets in each Constituent Lottery referred to in the document can be sold.

7.26 If the Retail Outlet is situated in Wales or the Distributor offers tickets on sale to participants in Wales the documents referred to in Conditions 7.23 and 7.24 shall be available in Welsh as well as in English.

7.27 The Licensee shall ensure that every ticket contains the following information:

- (a) the name of the Constituent Lottery, and clear indication that this Constituent Lottery forms part of the National Lottery;
- (b) the price applicable in accordance with the rules of the relevant Constituent Lottery;
- (c) the minimum age of persons to whom a ticket can be sold;
- (d) any cancellation arrangements;
- (e) how the Player can ascertain whether the ticket is a winning ticket;
- (f) how the Player can claim a prize and the period within which prizes must be claimed;
- (g) a statement as to where the rules of the Constituent Lottery can be obtained;
- (h) a local call rate telephone number from which further information about the Constituent Lottery may be obtained; and
- (i) the name of the promoter of the Constituent Lottery.

7.28 The Licensee shall create one or more notices the size, wording and number of which shall be approved by the Commission generally on an annual basis for display at Retail Outlets. The Licensee shall ensure that:

- (a) each such notice shall be appropriate for the method of effecting sales at Retail Outlets;
- (b) each such notice shall comprise a statement to the effect that it is unlawful to sell tickets to any person aged under 16 and shall state a telephone number which members of the public may call at a local call rate to report the details of any Distributor whom they believe has or may have sold tickets unlawfully; and
- (c) the notices described in this Condition 7.28 shall be displayed at Retail Outlets on a basis which shall be subject to the prior written approval of the Commission.

7.29 The Licensee shall ensure that at every Retail Outlet there shall be prominently displayed a notice advising Players how to find out how many prizes in each tier remain unclaimed in any game offering a fixed number of prizes, including the relevant local call rate telephone number.

7.30 Unless the Commission agrees otherwise, the Licensee shall ensure that at every outlet with Draw-based Facilities there shall be displayed a notice containing information of Sales Break times for all relevant Constituent Lotteries on sale.

#### **Player information – Interactive Systems**

7.31 The Licensee shall ensure that:

- (a) the current Player Guide;
- (b) the current Service Guide;
- (c) the current Subscription Guide; and
- (d) the terms and conditions, rules, procedures and game specific rules of all Constituent Lotteries (whether played interactively via the Interactive Systems or at Distributors or by Subscription) that are in force from time to time,

are accessible to the public, on the National Lottery website ([www.national-lottery.co.uk](http://www.national-lottery.co.uk) (or such website address as the Licensee shall use from time to time)); and

- (e) the price per ticket for each Constituent Lottery available on the Interactive Platform is visible to the public on the Interactive Platform.

7.32 Every document required to be made available pursuant to Condition 7.31 shall contain:

- (a) the name and address of the registered or principal office of the promoter of each Constituent Lottery referred to in the document;
- (b) a telephone number from which further information about each Constituent Lottery referred to in the document can be obtained at a local call rate;
- (c) a telephone number to which complaints about each Constituent Lottery referred to in the document can be made at a local call rate; and
- (d) the minimum age of persons to whom tickets in each Constituent Lottery referred to in the document can be sold.

7.33 The Licensee shall ensure that the following information is available via the Interactive Platform to each Registered Player where tickets or Subscriptions are available for sale:

- (a) the balance in the Registered Player's Account at any given time;
- (b) a record of the Registered Player's Transaction History; and
- (c) any information so required by the Commission in its discretion.

7.34 The Licensee shall advise the Commission of changes to player-facing screens accessible via the Interactive Platform on a basis to be specified by the Commission after consulting with the Licensee.

7.35 The Commission reserves the right to require the Licensee at any time to make any amendments it shall in its absolute discretion consider appropriate to the content of any player-facing screen via the Interactive Platform.

#### **Player information – requests for information**

7.36 Unless the Commission otherwise allows in any particular case, the Licensee shall give or send a copy of the:

- (a) terms and conditions, rules, procedures and game specific rules of any Constituent Lottery; and/or

(b) the current Player Guide, the current Service Guide or the current Subscription Guide,

to any person who requests such information within 21 days of such request being received by the Licensee.

7.37 If requested by any person, the information provided under Condition 7.36 shall be provided in Welsh or in any other language as the Commission may from time to time determine.

#### **Player information – NLDF/OLDF funding**

7.38 The Licensee shall ensure that material is available for reference purposes:

- (a) at each Retail Outlet; and
- (b) on the National Lottery website ([www.national-lottery.co.uk](http://www.national-lottery.co.uk) (or such website address as the Licensee shall use from time to time)),

stating the percentages of the NLDF and the OLDF which are allocated (after the allocation referred to in section 22(2) of the National Lottery Act) for the matters referred to in section 22(3) of the National Lottery Act.

7.39 The Licensee shall, if requested by any person, provide that person within 21 days of the receipt of the request, information stating the amount which was paid to the NLDF, and if applicable the OLDF in the most recent Financial Year.

#### **Player information – meeting Players’ needs**

7.40 The Licensee shall take all reasonable steps to ensure that information regarding the National Lottery is accessible to persons with visual and/or hearing impairments.

7.41 Unless the Commission agrees otherwise, the Licensee at least annually shall undertake or commission research to ensure that the provision of any service, materials or information, or any strategy, required by this Condition 7 takes account of Players’ and relevant others’ needs and views.

#### **Player information - reliability**

7.42 The Licensee shall ensure that any material and its content (whether in printed or electronic form) designed to promote a Constituent Lottery or to encourage or enable a Player to enter into or play in a Constituent Lottery, including:

- (a) the player-facing screens on the Interactive Platform;
- (b) any application form for use by Players or prospective Players in any registration scheme; and/or
- (c) any playslip (being a preformatted card or equivalent electronic format provided by the Licensee for a Constituent Lottery, bearing an area which enables a Player to make a selection of numbers for a game),

is accurate and does not mislead Players and is compatible with the terms and conditions, rules, procedures and game specific rules of the relevant Constituent Lottery. For the purposes of this Condition 7.42, the term “play” shall mean all the stages of a game including submitting an entry, purchasing a ticket, establishing whether a prize has been won and obtaining the prize.

#### **Prize payment**

7.43 The Licensee shall ensure that:

- (a) all Players in a Constituent Lottery are able to find out without payment to the Licensee and without undue inconvenience whether they have won a prize;
- (b) all prizes in every Constituent Lottery are paid to the persons who have claimed them in accordance with the rules of the Constituent Lottery;

- (c) the validation and payment of prizes to winners under Constituent Lotteries shall be made promptly and shall not unduly inconvenience such winners; and
- (d) the winners of prizes which are £50,000 or in excess of £50,000 in value under a Constituent Lottery are provided with appropriate sources of legal and financial advice.

7.44 The Licensee shall ensure that Distributors only pay prizes to individuals who are entitled to claim them.

7.45 The Licensee shall carry out and shall require that all Distributors and others responsible for the payment of prizes (whether in cash or otherwise) on its behalf shall carry out such identity checks and other security measures as the Licensee shall in its discretion from time to time deem reasonable and appropriate in relation to the payments of any particular prize amount.

7.45A If any person claims any right to payment of any prize in respect of any lost or stolen ticket on the reverse of which the name and address section shall have been completed, and in respect of which a prize has previously been paid, and if the Commission:

- (a) is of the opinion that the Licensee or any relevant Distributor or other person responsible for the payment of the prize has not properly carried out the identity checks and security measures referred to in Condition 7.45; and
- (b) directs the Licensee to make payment to the claimant of any amount not exceeding the amount of the relevant prize,

the Licensee shall (notwithstanding any provisions of the rules, terms and procedures for Draw-based Games which might otherwise entitle the Licensee to decline to pay a prize by reason of prior payment to another claimant) pay the claimant at its own cost the amount so directed by the Commission to be paid.

7.46 The Licensee shall (after due and careful investigation) ensure from its own resources that in the event that:

- (a) a prize winning ticket in any game in a Constituent Lottery shall be demonstrated to have been fraudulently, negligently or erroneously cancelled by the Licensee or by a Distributor, the Licensee shall pay to the bearer of such ticket an amount equal to the prize to which the bearer of that ticket would have been entitled but for such cancellation; and
- (b) a prize in respect of any game in a Constituent Lottery shall be demonstrated to have been paid to a person who, in accordance with the rules of such Constituent Lottery, was not entitled to purchase a ticket for such game and as a result of such payment the prize payments to any other prize winner in the same game is reduced, the Licensee shall use all reasonable endeavours to identify the prize winner or winners whose prize or prizes have been reduced by such wrongful prize payment and pay to the prize winner or winners the amount by which the relevant prize or prizes had been reduced.

7.47 The Licensee shall advise the Commission as soon as is reasonably practicable of circumstances likely to give rise to any claim by Players in respect of cancelled tickets in the circumstances of Condition 7.46(a) and of all additional payments made by the Licensee to prize winners in the circumstances of Condition 7.46(b).

#### **Protection of the identity of prizewinners**

7.48 Save as is otherwise required by Law, the Licensee shall not disclose (other than to the Commission or, where necessary, a Licensee Subcontractor) the identity of any person who has won a prize in any Constituent Lottery or who the Licensee is aware is, or is likely to be, entitled to any share in or part of any such prize without the prior written consent of that person.

7.49 The Licensee shall ensure that, save as is otherwise required by Law, the Licensee Subcontractor shall not disclose (other than to the Commission) the identity of any person who has won a prize in any Constituent Lottery or who the Licensee Subcontractor is aware is, or is likely to be, entitled to any share in or part of any such prize without the prior written consent of that person.

## **Player services**

7.50 The Licensee shall establish and implement an effective and efficient system for handling complaints and enquiries by Players and members of the public.

7.51 The Licensee shall voice-record all telephone calls and retain each record for one year from the date of the call of the telephone numbers referred to in Condition 7.25 and 7.32 and shall ensure that all callers are informed when they call and before the voice recording begins that the call is being recorded and why it is being recorded.

7.52 Intentionally left blank

## **Advertising and sales promotion code of practice and supplementary provisions**

7.53 The Licensee shall adopt and maintain a code or codes of practice which is/are first approved by the Commission covering advertising, sales promotion and public relations in respect of the National Lottery, every Constituent Lottery and Ancillary Activities.

7.54 Such codes of practice shall include information regarding:

- (a) the style and content of advertisements according to medium and location;
- (b) the style of tickets in Constituent Lotteries, publications and other materials associated with the National Lottery;
- (c) methods of avoiding aiming advertisements at those under 16 or other unsuitable target markets and audiences;
- (d) methods of avoiding any association between the National Lottery or any Constituent Lottery and:
  - (i) tobacco;
  - (ii) pharmaceuticals available on prescription; and
  - (iii) any unlawful form of gaming, betting, lottery or competition;
- (e) methods of ensuring that any association with alcohol is consistent with the image of the National Lottery;
- (f) the presentation of information which describes or appears to describe the chances of winning, the nature of prizes or the cost of playing;
- (g) promotions, co-promotions and sponsorship entered into by the Licensee or any Independent Section 6 Licensee in connection with the National Lottery or any Constituent Lottery;
- (h) Ancillary Activities, including merchandise;
- (i) sponsorship of the National Lottery or any Constituent Lottery by other persons;
- (j) the style and content of advertisements on National Lottery tickets or at any other place associated with the National Lottery or any Constituent Lottery; and
- (k) the form and conduct of all sales promotions in respect of a Constituent Lottery or with which a Constituent Lottery shall be involved or connected.

7.55 Schedule 7 shall apply in relation to the approval, review and amendment of the code or codes of practice referred to in Condition 7.53.

7.56 The code or codes of practice referred to in Condition 7.53 and any amendments made to such code or codes pursuant to the provisions of Schedule 7 shall be compatible with all codes or rules drawn up

by the Advertising Standards Authority and Ofcom in force at the time when the code of practice or amendments to it are prepared.

7.57 The Licensee shall comply with the current code or codes and shall use its best endeavours to ensure that any other person who carries out any advertising or sales promotions in respect of the National Lottery and every Constituent Lottery complies with such provisions of the current code or codes as are applicable.

7.58 The Licensee shall, unless the Commission otherwise allows in any particular case, send a copy of the current code or codes to any person who requests it.

7.59 For the purpose of Conditions 7.57 and 7.58, "the current code or codes" means the code or codes of practice referred to in Condition 7.53 as approved by the Commission together with any amendments to those codes approved by the Commission.

7.60 The Licensee shall:

- (a) ensure that any material produced by it which is designed to encourage the purchase of tickets in a Constituent Lottery is accurate, and in the case of any factual statements is true and capable of independent verification or confirmation;
- (b) use its best endeavours to ensure that any material produced by any Licensee Subcontractor at the request of or with the consent of the Licensee which is designed to encourage the purchase of tickets in a Constituent Lottery is accurate, and in the case of any factual statements is true and capable of independent verification or confirmation; and
- (c) for the avoidance of doubt, where any factual statement is not capable of independent verification or confirmation, ensure that such statement shall not be included in any such advertisement produced by itself and shall use its best endeavours to ensure that such a statement shall not be included in any such advertisement produced by a Licensee Subcontractor at the request of or with the consent of the Licensee.

7.61 The Licensee shall ensure that, and shall use its best endeavours to ensure that any Licensee Subcontractor ensures that:

- (a) no unsolicited telephone calls, unsolicited facsimile transmissions, spam emails or sms messages are used with a view to encouraging the purchase of tickets in a Constituent Lottery;
- (b) no advertisement for the National Lottery or any Constituent Lottery includes the name of, or any images which are identifiable with, any person to whom or any object or event in respect of which money has been distributed under the provisions of section 25(1) and 25(1A) of the National Lottery Act without the consent of that person or a person who is properly authorised by the relevant distributing body; and
- (c) save where the Licensee's regional offices use such information for promotional purposes and such information is already properly in the public domain neither the Licensee nor any Licensee Subcontractor shall use the identity or image of or any reference to any such person, object or event as is described in Condition 7.61(b) for any publicity or promotional or other such purpose whether connected with the National Lottery or any Constituent Lottery or otherwise without the consent of such person or of the person to whom such money was distributed or of the relevant distributing body.

## 8. Retailer commission and retailer management

### Retailer commission

8.1 The Licensee shall ensure that retailers' remuneration on the commencement of the Licence shall be as follows:

- (a) 6% of the value of sales made by that retailer in respect of any Scratchcard Game; and
- (b) 5% of the value of sales by that retailer in respect of any other Constituent Lottery.

The Licensee shall ensure that retailers' prize payment commission shall be as follows:

Prize Level	Commission Due
Up to and including £10	Nil
Prizes of £10.01 and above but up to £500	1 % of the value of any prize paid by that retailer
Prizes of £500.01 and above but less than £50,000	<b><i>The provision of this information will be reviewed in September 2009</i></b>
Prizes of £50,000 and above	Nil

8.2 During the term of the Licence, the Licensee shall not (unless otherwise agreed by the Commission in respect of short term tactical arrangements) materially change a retailer's remuneration unless the Commission has first received a notice in writing from the Licensee stating the basis of such remuneration or change to remuneration and any percentage commission relevant thereto and the terms of any other incentive arrangements 25 Business Days prior to the change. Any such notice shall include:

- (a) the Licensee's reasons for proposing to change a retailer's remuneration;
- (b) the estimated effect of the proposed change on ticket sales, contributions to good causes and the Licensee's financial position; and
- (c) such other information as the Commission shall request.

8.3 Within 10 Business Days of receipt of a notice from the Licensee to materially change a retailer's remuneration the Commission may by notice in writing to the Licensee require the Licensee to suspend arrangements proposed for such a change to enable reasonable time for further dialogue with the Licensee. Following such dialogue the Commission may by notice in writing to the Licensee require the Licensee not to change the retailer's remuneration, subject to such conditions as the Commission may specify.

### Retailer management

8.4 The Licensee shall:

- (a) ensure that clear and fair criteria are specified and applied for retailers to qualify for selection and de-selection. These criteria shall reflect the requirements in Condition 5.24 and be consistent with ensuring reasonable community access to Retail Outlets with Draw-based Facilities;
- (b) make the criteria referred to at Condition 8.4(a) available for public inspection;
- (c) provide means that encourage retailers to transmit operational queries to it quickly and shall ensure that it deals with such queries quickly and effectively; and
- (d) conduct or procure the conduct of such tests of retailers, as the Commission may require, to establish whether sales have been or are being made or are likely to be made by retailers to

purchasers under the age of 16 The coverage of such tests may be determined by the Commission, but not less than 9,000 tests must be carried out in respect of each Financial Year. The number of such tests may be increased by the Commission subject to the Licensee's agreement (not to be unreasonably withheld) if the Commission can show grounds for such increase.

## **9. Independent section 6 licence applicants**

### **Independent section 6 licence applicants**

9.1 The Licensee shall adopt, maintain and implement a strategy in connection with handling proposals submitted by third parties for games for inclusion in the National Lottery. The strategy shall first have been approved by the Commission and shall cover the procedures according to which the Licensee will evaluate such proposals and the criteria according to which it will reach decisions.

9.2 The strategy shall also cover the handling of any proposal that is submitted as, or which becomes, an application to the Licensee for agreement under section 1(3)(b) of the National Lottery Act for an application to be made to the Commission for a licence under section 6 of the National Lottery Act.

9.3 The Licensee shall co-operate with, assist and act reasonably in all its dealings with persons who are considering making or have made such proposals or applications to it.

9.4 Schedule 7 shall apply in relation to the approval, monitoring, review and amendment of the procedures referred to in Condition 9.1.

## 10. Information and reporting

### General obligations

10.1 The Licensee shall in the manner, format and timescale specified by the Commission, provide the Commission and its representatives and advisers with access to members of the Licensee's Staff and to Licensee Information for the purpose of:

- (a) allowing the Commission to carry out its duties and exercise its powers under the National Lottery Act;
- (b) verifying the Licensee's compliance with the Licence and all licences granted under section 6 of the National Lottery Act; and
- (c) allowing the Commission to prepare for Reletting.

10.2 In connection with its obligations in Condition 10.1, the Licensee shall within the timescale specified by the Commission:

- (a) make available or deliver to the Commission and its representatives and advisers (including to the Trustees if the Commission shall so specify) such Licensee Information as it shall request;
- (b) provide the same level and means of access (including secure electronic access in real time) to the Licensee Information as is available to the Licensee's Staff or any other party involved in the operation of the Technology Solution;
- (c) prepare and present the Licensee Information or its contents in such format or manner (including aggregated and disaggregated form) as the Commission may require, and shall provide such assistance as the Commission may require in connection with the verification of the Licensee Information;
- (d) obtain any third party consents that are required to allow the Licensee Information or its contents to be available to the Commission or used or published by it; and
- (e) make appropriately skilled and qualified or experienced members of the Licensee's Staff available to attend meetings with the Commission or its advisers and representatives in order to assist with the collation or verification of the Licensee Information,

in each case, notwithstanding the confidential nature (if any) of the Licensee Information.

10.3 In connection with its obligations in Condition 10.1, the Licensee shall, having received reasonable prior notice, allow the Commission and its advisers and representatives such access to the premises of the Licensee as is necessary to enable the Commission to inspect or take copies of Licensee Information. The Licensee shall allow the Trustees such access if so specified by the Commission.

10.4 In connection with its obligations in Condition 10.1, the Licensee shall establish and keep up to date on a monthly basis the following registers in the format specified by the Commission:

- (a) Licensee Assets;
- (b) Licensee Subcontracts, Series Subcontracts and Sub Series Subcontracts;
- (c) Key Licensee Subcontracts;
- (d) Property Interests;
- (e) Licensee Databases;
- (f) IP as set out in Condition 21.1;
- (g) Processes and Procedures as set out in Condition 5.10;

- (h) Secure Area registers in accordance with Condition 5.21;
- (i) Incident log in accordance with Conditions 5.15(b) and 10.7;
- (j) Retail Outlets and all premises from which tickets for the National Lottery and any Constituent Lottery are sold;
- (k) members of the Licensee's Staff;
- (l) risk register in accordance with Condition 14.24; and
- (m) any other register notified by the Commission from time to time,

and each register shall form part of the Licensee Information.

10.5 In connection with its obligations in Condition 10.1, the Licensee shall:

- (a) provide the Commission with electronic copies of:
  - (i) each Licensee Subcontract and each Key Licensee Subcontract;
  - (ii) each agreement concerning Property Interests;
  - (iii) each Section 1(3)(b) Agreement;
  - (iv) any Finance Agreement; and
  - (v) any other agreements or information specified by the Commission;
- (b) allow the Commission to inspect and take copies of any such contract, agreement or information; and
- (c) allow the Commission to disclose and provide any such contract, agreement or information to any third party for the purposes of Reletting and in fulfilling its statutory duties (and shall use its best endeavours to obtain any third party consents that are required to allow the Commission to do so).

This Condition 10.5 shall survive the expiry or revocation of the Licence in the following manner:

- (i) the Commission's rights in relation to the information referred to in Condition 10.5(c) shall survive indefinitely; and
- (ii) in all other respects, it shall survive for 24 months from the date of revocation or 18 months from the date of expiry.

10.5A The Licensee shall:

- (a) notify the Commission in the event that the Licensee, despite its best endeavours, cannot secure the third party consents referred to in Condition 10.5(c); and
- (b) if the Commission so requests, provide evidence to demonstrate to the Commission's satisfaction that best endeavours have been used.

10.6 The Commission shall be entitled to access, use or publish:

- (a) any Licensee Information;
- (b) any registers set out in Condition 10.4 (or their contents); and
- (c) subject to Condition 10.5(c), any contract, agreement or information set out in Condition 10.5 as it shall specify,

in each case, notwithstanding the confidential nature (if any) of the above materials.

This Condition 10.6 shall survive the expiry or revocation of the Licence in the following manner:

- (i) the Commission's right to use or publish the information referred to in Condition 10.6 shall survive indefinitely; and
- (ii) the Commission's right of access to the information referred to in Condition 10.6 shall survive for 18 months from the date of revocation or the date of expiry of the Licence; but
- (iii) the Commission's right of access to Licensee Information shall survive for 18 months from the date of the creation of such Licensee Information, if later than the period referred to in (ii).

### **Incident reports**

10.7 In the event of any incident occurring or being anticipated or reasonably suspected that might reasonably be expected to adversely affect the proper running, reputation or image of the National Lottery or the interests of the Players (**Incident**) including:

- (i) any fraud or attempted fraud or breach or attempted breaches of data security; or
- (ii) any material defect in any system of internal control of the Licensee; or
- (iii) any material matter to indicate that the Licensee has not kept a proper set of books and records and operated an adequate system of internal financial control,

the Licensee shall:

- (a) immediately inform the Commission of the Incident as soon as it became or should reasonably have become aware of it;
- (b) within such timescale specified by the Commission, provide the Commission with a written report detailing the nature, cause and impact or likely impact of the Incident, the action taken by the Licensee to address or minimise its immediate or anticipated consequences and the action taken or proposed by the Licensee to ensure that the Incident does not recur or that the risk of recurrence is minimised;
- (c) allow the Commission and its advisers such access to the premises of the Licensee as is necessary to enable the Commission to assess the impact or likely impact of the Incident and whether the action taken or proposed by the Licensee is adequate to ensure the proper running, reputation or image of the National Lottery;
- (d) make appropriately skilled, qualified and experienced members of the Licensee's Staff available to attend meetings with the Commission and its advisers or representatives in order to assist the Commission in understanding the nature, cause and impact or likely impact of the Incident and whether the action taken or proposed by the Licensee is adequate to ensure the proper running, reputation or image of the National Lottery; and
- (e) maintain a log of all Incidents.

### **Licensee Subcontractors**

10.8 In connection with its obligations in Conditions 10.1 and 10.7, the Licensee shall ensure that the Commission and its representatives and advisers shall be:

- (a) allowed access to any premises of any Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor where required by the Commission;
- (b) provided by Licensee Subcontractors, Series Subcontractors and Sub Series Subcontractors with any information in such format and within such timescale specified by the Commission (including any information which the Commission considers necessary to determine whether the National

Lottery is run and every Constituent Lottery promoted with all due propriety and that the Conditions and all codes of practice referred to herein have been and are being complied with); and

- (c) permitted to conduct interviews with any Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor or any of its Staff (including interviews for the purpose of determining whether the National Lottery is run and every Constituent Lottery promoted with all due propriety and that the Conditions and all codes of practice referred to herein have been and are being complied with).

#### **Provision of facilities**

10.9 The Licensee shall:

- (a) provide secure accommodation for the exclusive use of such of the Commission's Staff or its advisers and representatives at the Licensee's head office or at such other location as the Commission shall specify up to a maximum of 17 personnel and shall equip such accommodation with up to 6 lottery management computers, as specified by the Commission, which shall provide read only access to all databases, data, information and programs identical to that available to the senior management of the Licensee or its auditors;
- (b) provide appropriate computer facilities which enable the Commission or its advisers and representatives to review directly all information held by the Licensee's bankers in respect of the bank accounts of the Licensee in connection with the National Lottery; and
- (c) provide a Distributor terminal for the Commission's use.

#### **Management and operational information**

10.10 Without prejudice to the generality of Condition 10.1, the Licensee shall provide the Commission and its representatives and advisers with information relating to the management and running of the National Lottery or any Ancillary Activity, including the matters in Condition 10.12, and shall provide it in the manner and format and on a monthly basis or such other frequency specified by the Commission, notwithstanding the confidential nature (if any) of the information.

10.11 For the purposes of Condition 10.10:

- (a) the Licensee shall give the Commission secure electronic access to the information as soon as it becomes available to the Licensee and allow the Commission to use and publish such information; and
- (b) the Licensee shall:
  - (i) obtain any third party consents that are required to allow the information to be provided or to be used by the Commission within the timescale specified by the Commission; and
  - (ii) use best endeavours to obtain any third party consents that are required to allow such information to be published by the Commission and to obtain these consents within the timescale specified by the Commission.

10.11A The Licensee shall:

- (a) notify the Commission in the event that the Licensee, despite its best endeavours, cannot secure the third party consents referred to in Condition 10.11(b)(ii); and
- (b) if the Commission so requests, provide evidence to the Commission's satisfaction to demonstrate that best endeavours have been used.

10.12 The matters referred to in Condition 10.10 are:

- (a) sales of National Lottery tickets, broken down by Constituent Lottery, region of the country, type of Distributor, by each individual Distributor and by each individual Retail Outlet, by game, by Draw and by day;

- (b) the proportion of sales of National Lottery tickets paid in prizes (broken down by Constituent Lottery) and the proportion paid to the Secretary of State pursuant to Condition 11;
- (c) sales of tickets by Constituent Lottery broken down by distribution channel;
- (d) the speed of payment of prizes;
- (e) the distribution of prizes by value for each Constituent Lottery;
- (f) the number and geographical distribution of Retail Outlets and an indication of any changes which have occurred since the preceding report;
- (g) the speed of answering of telephone enquiries by the Licensee and availability of the Licensee's service;
- (h) the speed of reply by the Licensee to contact from a Player, other than by telephone, requiring a response;
- (i) the number and type of complaints and copies of all correspondence relating to complaints received by the Licensee and the outcome of such complaints;
- (j) the speed of response to and resolution of complaints received by the Licensee;
- (k) the length, regularity and timing of periods when systems which allow Players to purchase entries into Constituent Lotteries could not be used;
- (l) the speed of restoration of any facilities providing Constituent Lotteries following occasions on which they ceased to be available for use in whole or part;
- (m) systems reliability and availability statistics covering any part of the Technology Operation;
- (n) systems performance statistics, including response times at Distributor terminals and any other user access device used to access any part of the Technology Operation;
- (o) detailed marketing expenditure by the Licensee in respect of each Constituent Lottery;
- (p) coverage information for each relevant Constituent Lottery expressed as a percentage of all possible combinations chosen by Players, by game and by Draw;
- (q) market research conducted by or on behalf of the Licensee concerning the playing habits of consumers;
- (r) viewing figures for any television show associated with any Constituent Lottery;
- (s) the Licensee's staffing, organisation and infrastructure;
- (t) branding and marketing activity and plans;
- (u) revenues from any Ancillary Activity;
- (v) internally and externally prepared assurance or audit reports, and any other internal or external reports produced concerning the running, management or development of the National Lottery; and
- (w) any other matter which the Commission may from time to time specify.

### **Performance standards**

10.13 The Commission may, after consulting with the Licensee, including consulting as to which of the following standards and targets can properly be applied:

- (a) specify standards of performance on any matter referred to in Condition 10.12 or any other matter in relation to the running of the National Lottery and any Constituent Lottery and the Licensee shall comply with these standards; and
- (b) specify targets of performance on any matter referred to in Condition 10.12 or any other matter in relation to the running of the National Lottery and any Constituent Lottery.

10.14 In respect of the Licensee's performance of the targets specified under Condition 10.13(b), the Commission may review that performance and, after consulting with the Licensee, specify new or amended standards of performance which the Licensee shall comply with.

10.15 In connection with its obligations in Condition 10.13, the Licensee shall:

- (a) keep adequate records of the levels of performance achieved in respect of each standard of performance and performance target specified by the Commission;
- (b) report monthly to the Commission on its performance in such manner and format as the Commission may specify; and
- (c) publish in such manner and format as the Commission may specify a report containing details of the matters specified in Condition 10.12 for the Financial Year to which the report relates and such report shall contain in respect of each determined matter:
  - (i) a comparison between the level of performance achieved and the performance standard or performance target established for it in respect of the Financial Year to which the report relates; and
  - (ii) a statement of the expected level of performance in the next Financial Year following that to which the report relates.

10.16 The first report referred to in Condition 10.15(c) shall relate to the first Financial Year in which tickets for any Constituent Lottery are sold and be published within four months of the end of that Financial Year, and each subsequent report shall be published within four months of the end of the Financial Year to which it relates.

### **Banking records**

10.17 No proceeds received by the Licensee in respect of sales of National Lottery tickets or Ancillary Activities shall be deposited or paid into any bank account unless the bank where the account is to be maintained provides appropriate money transmission facilities.

10.18 The Licensee shall keep records of every financial transaction or financial event relating to the participation of Players in any Constituent Lottery to which the Licensee, or any other person acting in the capacity of agent to the Licensee is a party, in a form in which it is reasonably practicable to inspect and analyse.

10.19 The Licensee shall preserve all records required to be kept pursuant to Condition 10.18 for two years after the date of termination, expiry or revocation of this Licence and provide the Commission with access to such records for inspection by the Commission at any time. The Licensee may, during the two year period, seek the consent of the Commission to dispose of records and such consent may be granted on such terms and conditions as the Commission shall determine. At the end of the two year period, the Licensee may destroy the records unless the Commission has required that they be delivered up to it.

10.20 Without prejudice to Conditions 10.18 and 10.19, the Licensee shall keep the original of each ticket in respect of which a prize has been paid in excess of £50,000 (or such figure as the Commission may specify) until the expiry of a period of at least two years following the final date on which a claim in respect of that ticket could have been made.

### **Accounts**

10.21 Schedule 9 shall apply in relation to accounts of the Licensee.

**Player correspondence**

10.22 The Licensee shall retain all Player correspondence, in relation to a potential or actual dispute or complaint, in a form that it is reasonably practicable to inspect and analyse for a period of six years from receipt and make it available as soon as reasonably practicable to the Commission if it so requests.

## **11. Payments to the Secretary of State**

11.1 The Licensee shall comply with the provisions of Schedules 5, 8, 10 and 11 (which contain provisions requiring payments to be made to the Secretary of State and information to be provided to the Commission).

11.2 Without prejudice to any right of the Secretary of State under sections 9(3) or 10A(14) of the National Lottery Act, if the Licensee fails to pay to the Secretary of State any amount specified in Schedules 5, 8, 10 and 11 by the dates specified in those Schedules, it shall pay out of the proceeds of the Constituent Lotteries interest to the Secretary of State at the rate specified in Condition 11.4 on any amount unpaid from the date when the amount should have been paid to the date when it is paid inclusive.

11.3 For the purposes of this Condition 11, if a payment is not made by 3.00 p.m. on any Business Day it shall be deemed to have been made on the next Business Day and payment shall be treated as made only when credited to the account specified by the Commission pursuant to Condition 11.5.

11.4 For the purposes of Condition 11.2, the interest rate shall be 3% above the base rate for the time being of National Westminster Bank plc or such other clearing bank as the Commission may from time to time determine.

11.5 The Licensee shall make the payments to the Secretary of State referred to in Schedules 5, 8, 10 and 11 by CHAPS transfer or other direct transfer (as determined by the Commission) to a bank and for the credit of such account as is specified by the Commission. All payments made hereunder will be made net of any withholding or other taxes, unless the Licensee obtains clearance from the HM Revenue and Customs enabling all such payments to be made gross.

## **12. Shareholders, other Connected Parties and debt providers**

### **Arrangements with shareholders, other Connected Parties and debt providers**

12.1 The Licensee shall:

- (a) ensure that the memorandum and articles of association which were notified to and approved by the Commission prior to the commencement of the Licence are in force on the commencement of the Licence;
- (b) ensure that any shareholders' agreements and any Finance Agreements notified to and approved by the Commission prior to the commencement of the Licence are in force on the commencement of the Licence;
- (c) not without the prior written consent of the Commission make any material change to its memorandum and articles of association, shareholders' agreements or Finance Agreements;
- (d) ensure that on the commencement of the Licence its equity level and debt facility profile are as agreed to by the Commission prior to the commencement of the Licence;
- (e) not without the prior written consent of the Commission make material changes to its equity level or any material changes to its debt facility profile;
- (f) ensure that the arrangements made with Connected Parties which were notified to and approved by the Commission prior to the commencement of the Licence are in force on the commencement of the Licence;
- (g) not without the prior written consent of the Commission make material changes to the arrangements it agreed with Connected Parties and which were approved by the Commission prior to the commencement of the Licence; and
- (h) notify the Commission promptly on becoming aware of any default or potential default under any Finance Agreements.

In this Condition 12.1, "debt facility profile" means the amount and terms and conditions of committed debt financing available to the Licensee throughout the Licence and "equity" means paid up share capital.

### **Provision of information about directors, shareholders and others**

12.2 The Licensee shall in the manner, format and time limits specified by the Commission, provide the Commission and its advisers with such information as the Commission may from time to time request with a view to determining whether any person who is managing the Licensee's business or for whose benefit the Licensee's business is being carried on is in the Commission's opinion fit and proper.

12.3 The Licensee shall ensure that Connected Parties on the commencement of the Licence are materially the same or equivalent persons whose status as Connected Parties was notified to and consented to by the Commission prior to the commencement of the Licence.

12.4 The Licensee shall:

- (a) not allow any person to become:
  - (i) a director of the Licensee or any subsidiary of the Licensee;
  - (ii) a qualifying direct shareholder as defined in Condition 12.5(f) of the Licensee and any person who is a Connected Party to any such person;
  - (iii) a party to any Key Licensee Subcontract and any person who is a Connected Party in relation to any such person; or

(iv) any key member of the Licensee's Staff (that is, any executive director or senior manager and any other person or class of persons so designated by the Commission from time to time, whether employed by the Licensee or any subsidiary or engaged as a consultant or on secondment or in any other manner to provide services) or any subsidiary of the Licensee and any director of any subsidiary of the Licensee,

without the prior consent of the Commission; and

(b) notify the Commission in writing upon a person referred to in Condition 12.4(a) becoming or ceasing to be a Connected Party within 14 days.

12.5 A "Connected Party" in relation to any person means:

- (a) any director or other officer (other than an auditor) of that person;
- (b) any person (**15% holder**) who is entitled to exercise or control the exercise of 15% or more of the voting rights attaching to all of the issued shares of any class in the capital of that person (or, in relation to any entity not having a share capital, 15% or more of all of the voting rights which may be exercised by the members of that entity) or to receive (beneficially or otherwise) 15% or more of the total amount of any dividend or other distribution which may be declared, made or paid in respect of any class of shares in the capital of that person or who has any beneficial or other interest in shares with a nominal value equal to 15% or more of the total nominal value of the issued shares of any class of that person;
- (c) the immediate, intermediate or ultimate parent company of that person or the immediate, intermediate or ultimate parent company of any 15% holder of that person; and
- (d) any director or other officer (other than an auditor) of any 15% holder of that person or of the immediate, intermediate or ultimate parent company of that person or of the immediate, intermediate or ultimate parent company of any 15% holder of that person;

and, in addition, in relation to the Licensee only, also means:

- (e) any key member of the Licensee's Staff (that is, any executive director or senior manager and any other person or class of persons so designated by the Commission from time to time, whether employed by the Licensee or any subsidiary or engaged as a consultant or on secondment or in any other manner to provide services) or any subsidiary of the Licensee and any director of any subsidiary of the Licensee;
- (f) any person (**qualifying direct shareholder**) who is entitled to exercise or control the exercise of 3% or more of the voting rights attaching to all of the issued shares of any class in the capital of that person (or, in relation to any entity not having a share capital, 3% or more of all of the voting rights which may be exercised by the members of that entity) or to receive (beneficially or otherwise) 3% or more of the total amount of any dividend or other distribution which may be declared, made or paid in respect of any class of shares in the capital of that person or who has any beneficial or other interest in shares with a nominal value equal to 3% or more of the total nominal value of the issued shares of any class of the Licensee and any Connected Party in relation to any qualifying direct shareholder; and
- (g) any person who is a party to any Key Licensee Subcontract (as characterised in Condition 15.4) and any person who is a Connected Party in relation to any such person.

12.6 Where any person has any agreement, arrangement or understanding (whether formal or informal and whether in writing or not) with another person or persons which concerns or relates to the Licensee or its business or affairs or any direct or indirect interest of any of the parties to such agreement, arrangement or understanding in the Licensee or any person who falls within any of Condition 12.5(b), 12.5(c) or 12.5(f) in relation to the Licensee then the holdings or interests of such parties shall, for the purposes of Condition 12.5 be aggregated and attributed to each party to the agreement, arrangement or understanding in relation to the appropriate person.

12.7 It shall be presumed (unless the contrary is demonstrated to the satisfaction of the Commission) that an agreement, arrangement or understanding of the type referred to in Condition 12.6 exists between any person who holds any shares in the capital of the Licensee or any interest therein and:

- (a) every person in relation to which it is a Connected Party or which is a Connected Party in relation to that person; and
- (b) every person who is its parent, step-parent, partner, child, step-child, brother, sister, aunt, uncle, nephew or niece. In this Condition 12.7 "partner" means a spouse or any other person with whom it is living as a couple.

12.8 The Licensee shall procure that each Connected Party completes a declaration confirming its fit and proper status in the form provided by the Commission.

12.9 The Licensee shall:

- (a) prepare on a consistent basis in respect of each accounting year accounting statements which disclose in relation to each transaction of a description specified in the left hand column of the table below which took place during the Financial Year to which the statements relate between the Licensee and any person who is a Connected Party in relation to the Licensee:
  - (i) all of the parties to the transaction; and
  - (ii) the information in relation to that transaction in the right hand column of the table;

Transaction	Information
Any borrowing or sums lent by or to the Licensee to or by any person who is a Connected Party in relation to the Licensee.	The principal of the amount borrowed or lent, the date on which or the dates between which repayment is to be made and the rate of interest payable.
The giving of any guarantee or other form of security by the Licensee for or in respect of any obligations of any person who is a Connected Party in relation to the Licensee or the acceptance of a guarantee by any such Connected Party for or in respect of any obligations of the Licensee.	The form of the guarantee or other security given, the assets the subject of the security, the amount of the obligation (including where relevant the rate of interest payable) and the date of maturity of the obligation.
The transfer of any asset or liability to or by the Licensee by or to any person who is a Connected Party in relation to the Licensee.	The asset or liability the subject of the transfer, the amount of the consideration for the transfer and the method of determining it and the value attributed to the asset or liability in the accounting records kept by the Licensee.
The supply of any service by or to the Licensee to or by any person who is a Connected Party in relation to the Licensee.	The nature of the service supplied, the terms on which it was supplied and the total charge made for the service.

- (b) procure that the accounting statements prepared in accordance with this Condition contain a certificate signed by the chief executive and one other director (if at the time of such signature there shall be no such appointee as chief executive then such certificate shall be signed by two directors) that, having taken all reasonable steps to verify the same, the accounting statements prepared in accordance with Condition 12.9(a) have been properly prepared in accordance with this Condition and comprise a complete list of the transactions and the statements provide a true and fair view of the transactions described in them; and

- (c) deliver to the Commission a copy of the accounting statements referred to in Condition 12.9(a) as soon as reasonably practicable, and in any event not later than three months after the end of the Financial Year to which they relate.

### **13. Vetting**

13.1 The Commission shall be entitled to carry out such investigations as it deems necessary and appropriate to determine whether, in its opinion, a person employed or engaged or to be employed or engaged in connection with the Licensee's business of running the National Lottery is fit and proper and the Licensee shall give the Commission all reasonable assistance in relation to such investigations.

13.2 Without prejudice to the generality of the foregoing, the Commission shall be entitled to determine that certain categories of the Licensee's personnel shall be subject to investigation.

13.3 Where a determination is made pursuant to Condition 13.2, the Commission shall notify the Licensee of its requirements in relation to those categories and the Licensee shall treat the requirements as constituting a Process and shall adopt and maintain a Procedure.

13.4 The Licensee shall adopt and maintain a Procedure for the activities it carries out to assist the Commission in its determination as to whether any person who is employed or engaged or to be employed or engaged in connection with the Licensee's business of running the National Lottery or for whose benefit the Licensee's business is being carried on is in the Commission's opinion fit and proper.

13.5 Condition 5.12 shall apply in relation to the approval and amendment of the Procedure referred to in Condition 13.4.

13.6 The Licensee shall comply with the Procedure described in Condition 13.4 and shall ensure that, if so required, every Licensee Subcontractor so nominated by the Commission shall so comply.

## **14. Control environment**

14.1 The Licensee shall establish and maintain an effective system of corporate governance, internal control and risk management.

### **Corporate governance**

14.2 The Licensee shall comply with the requirements of the Combined Code.

14.3 For the purpose of assessing the Licensee's compliance with Condition 14.2, the Commission shall consider matters which include the following:

- (a) stakeholder control of the business of the Licensee;
- (b) the Licensee's full and frank disclosure of information in its financial statements;
- (c) the rights and obligations of the board of directors of the Licensee;
- (d) the composition of the board of directors of the Licensee;
- (e) the control exercised by the board of directors of the Licensee in respect of the running of the National Lottery and any Ancillary Activity consented to by the Commission;
- (f) the independence of the board of directors of the Licensee;
- (g) the competence and commitment of the board of directors of the Licensee;
- (h) the Licensee's risk assessment and control procedures;
- (i) the Licensee's audit processes; and
- (j) the Licensee's policies and procedures, including its policies on anti-fraud and whistle-blowing.

### **Reporting requirement**

14.4 The Licensee shall submit an annual report on its compliance with the Combined Code to the Commission in respect of each Financial Year. The report shall be contained in the Licensee's annual statutory report and accounts. The Licensee shall procure that its statutory auditors report on the Licensee's compliance with the Combined Code in the Licensee's annual statutory report and accounts.

### **Audit requirement**

14.5 The Licensee shall ensure that it has the structures in place to deliver sound corporate governance, a review of which will form part of the internal audit process during the term of the Licence.

14.6 The Licensee shall ensure that copies of all internal audit reports produced during the term of the Licence, or after the expiry or revocation of the Licence in respect of matters arising during the Licence, are submitted to the Commission within 14 days of finalisation.

### **System of internal control**

14.7 The Licensee shall demonstrate that it has in place an effective system of internal control that supports a robust control environment to the satisfaction of the Commission. The Licensee shall ensure:

- (a) the effective and efficient running of the National Lottery;
- (b) the provision of reliable financial information and reporting; and
- (c) its compliance with the provisions of this Licence or any licence granted to it pursuant to section 6 of the National Lottery Act and any other provisions imposed under any statute which relates to the running of the National Lottery or the promotion of any Constituent Lottery.

14.8 The Licensee shall demonstrate that it:

- (a) has a commitment to competence and integrity in accordance with the image of the National Lottery;
- (b) has an appropriate organisational structure within which operations are planned, executed, controlled and monitored effectively to achieve the Licensee's objectives;
- (c) has an effective system of risk management, as set out in Conditions 14.24 to 14.26;
- (d) has satisfactory segregation of duties for all lottery processes and procedures;
- (e) has a reliable audit trail for all processes and procedures relating to the running of the National Lottery;
- (f) has an effective system to provide adequate support for statements by the Licensee on any National Lottery operations;
- (g) sets and communicates clear control objectives to all its managers;
- (h) sets performance indicators which allow it to monitor key operations and identify developments which require remedial action;
- (i) establishes and maintains information systems which provide ongoing identification of relevant, reliable and up-to-date information;
- (j) has a monitoring process which provides control procedures for all the Licensee's National Lottery operations and that these procedures are followed; and
- (k) has a formal procedure for identifying the lack of an effective system of internal control and for ensuring remedial action.

14.9 The Licensee shall ensure that, before any Constituent Lottery is promoted and thereafter, it has:

- (a) an audit committee composed of non-executive directors, the majority of whom are independent; and
- (b) an internal audit function with a reporting line agreed with the Commission with access to the audit committee referred to in Condition 14.9(a).

14.10 The Licensee shall provide to the Commission, upon request, a copy of:

- (a) the results of any reviews of the Licensee's operations; and
- (b) any report made by the Licensee's directors pursuant to Condition 14.6.

14.11 The Licensee shall, if the Commission determines, take any action necessary to ensure that the Licensee's auditors comply forthwith with the obligation referred to in Condition 14.20.

14.12 The Licensee shall perform a financial reconciliation between the transactions in Constituent Lotteries recorded by the Central Computer System and of other such financial control and accounting systems as the Commission shall determine. The Licensee shall perform such a financial reconciliation for each Constituent Lottery immediately after every Sales Break, when ticket sales cease in any Constituent Lottery which has a fixed number of tickets and at such other times as the Commission shall determine. The Commission shall have the right to inspect the reconciliation process and data upon giving reasonable notice to the Licensee.

14.13 The Licensee shall establish:

- (a) a code of corporate social responsibility; and

(b) a code of conduct which shall provide a code for an ethical framework for all business decisions,

and shall require the codes to be observed by all members of the Licensee's Staff and shall provide a copy of the codes to the Commission upon request.

14.14 The Licensee shall establish a procedure which encourages the Licensee's Staff and Licensee Subcontractors and their Staff to make appropriate disclosures to assist the Licensee in tackling fraud, corruption, unlawful or unacceptable conduct and any other malpractice within the organisation and in setting high standards of ethical conduct. The Licensee shall submit the procedure to the Commission for approval on the commencement of the Licence and shall make such changes to it as the Commission shall require. The Licensee shall ensure that, once approved by the Commission, the procedure is made known on a continuing basis to the Licensee's Staff.

14.15 The Licensee shall procure that each member of the Licensee's Staff shall be entitled without detriment to himself to disclose to any officer of the Licensee or any member of the Commission's Staff any qualifying disclosure as such disclosure is defined in section 43B of the Employment Rights Act 1996.

14.16 The Licensee shall ensure that all members of the Licensee's Staff who are involved in or have knowledge of any matter relating to the National Lottery and all Licensee Subcontractors are aware of the obligations of the Licensee to the Commission in so far as it is necessary for the Licensee to ensure its compliance with this Condition 14.

14.17 The Licensee shall ensure that all internal audit services comply with, or are equivalent to, guidance set out in the International Standards for the Professional Practice of Internal Auditing 2004 (as may be amended from time to time). The Licensee shall ensure that:

- (a) it follows the International Standards for the Professional Practice of Internal Auditing;
- (b) it employs or engages appropriately qualified and experienced individuals;
- (c) it evaluates systems of risk management and assesses their adequacy, efficiency and effectiveness; and
- (d) its internal audit function has reviewed its internal audit processes.

14.18 The Licensee shall ensure that its internal audit function takes reasonable steps to discover and report any fraud and that any internal audit programme includes an audit of the whistle-blowing procedure and practices of the Licensee.

#### **Reporting requirement**

14.19 The Licensee shall in the manner, format and timescale specified by the Commission, provide the Commission and its representatives and advisers with a report at such times as the Commission may require in respect of the following:

- (a) all key risks;
- (b) the latest Management Letter from external audit (if not already reported); and
- (c) reporting dates and dates of implementation of internal audit recommendations and any progress by the Licensee in implementing recommendations.

14.19A The Licensee shall submit an independently audited annual report within 6 months of the end of each Financial Year on its compliance with the Licensee's code of corporate social responsibility referred to in Condition 14.13(a).

#### **Audit requirement**

14.20 The Licensee shall ensure that its statutory auditors are appointed on terms which (in addition to any report which they are required to make under any statutory provision) require them:

- (a) to report in writing to the Licensee within three months of the end of each Financial Year on whether, in the course of any work performed by them for the Licensee, they have identified any material matters to indicate that the Licensee has not kept a proper set of books and records and operated an adequate system of internal financial control; and
- (b) to inform the Licensee forthwith whether, in the course of their audit or from any other source or in any other way, they are aware of any irregularities, fraud, failure to comply with any provisions imposed by or under any statute, breach of Conditions contained in this Licence or misconduct by the Licensee or its officers or any member of the Licensee's Staff.

14.21 The Licensee shall in the manner, format and timescale specified by the Commission, provide the Commission and its representatives and advisers with copies of all reports pursuant to Condition 14.20.

14.22 The Licensee shall procure that its internal auditors deliver to it an annual statement of assurance, the form and content of which is to be agreed with the Commission, and shall provide a copy of it to the Commission if requested.

14.23 The Licensee shall prepare an operating and financial review containing information including financial targets, a cost against budget analysis, and social and ethical policies and practices.

### **Risk management**

14.24 The Licensee shall establish and maintain an effective risk management strategy which shall:

- (a) be endorsed by the board of directors and the chief executive of the Licensee;
- (b) set out the Licensee's attitude to, capacity for and tolerance of risk;
- (c) set out a framework for the management of risk;
- (d) specify the way in which risk issues are to be considered at each level of business planning, including corporate objectives and objectives for management at functional level;
- (e) require the maintenance of a risk register;
- (f) contain risk evaluation criteria which are reviewed annually; and
- (g) enable risks to be identified and evaluated.

14.25 The Licensee shall establish and maintain a system to enable risks to the business objectives of the Licensee to be identified and evaluated which:

- (a) enables the identification of risks across its business and the allocation of resources in respect of them;
- (b) enables the link between risks to be identified and monitored; and
- (c) provides evaluation of inherent and residual risk, taking into account the likelihood and impact of the risk impeding the efficient running of the National Lottery and the acceptable level of exposure in relation to the risk.

14.26 The Licensee shall establish methods used by the Licensee in order to obtain assurance on the design and effectiveness of internal controls, ensuring that:

- (a) each level of management of the Licensee, including the board of directors, regularly reviews the risks and controls for which it is responsible;
- (b) the reviews referred to in Condition 14.26(a) are clearly monitored by and reported to the next level of management;
- (c) any need to change priorities is clearly recorded and reported; and

- (d) an appropriate level of assurance from an independent party is defined with particular reference to the role of internal audit and any other review bodies.

### **Reporting requirement**

14.27 The Licensee shall in the manner, format and timescale specified by the Commission, provide the Commission and its representatives and advisers with copies of the Licensee's risk policies, strategies and registers.

## 15. Contractors

### Ability to subcontract

15.1 Where the Commission has previously notified the Licensee that notification of certain Licensee Subcontracts in accordance with this Condition is required, the Licensee shall:

- (a) notify the Commission of each such proposed Licensee Subcontract; and
- (b) provide the Commission with details of each such proposed Licensee Subcontract, including the name of the Licensee Subcontractor, the nature of the Licensee Subcontract and the value of the Licensee Subcontract,

at least 28 days prior to the date for entering into that proposed Licensee Subcontract.

15.2 On request by the Commission that the Licensee shall not enter into a proposed Licensee Subcontract, the Licensee shall confirm to the Commission that it will not enter into the relevant proposed Licensee Subcontract.

### Management of subcontractors

15.3 The Licensee shall implement appropriate contractual management and performance arrangements with its Key Licensee Subcontractors to ensure that:

- (a) the Licensee meets its obligations under this Licence; and
- (b) each Key Licensee Subcontractor meets its obligations under the Key Licensee Subcontract.

### Designation of Key Licensee Subcontract

15.4 Unless determined otherwise by the Commission a Licensee Subcontract, Series Subcontract and Sub Series Subcontract (as defined in Condition 15.14) shall be automatically designated as key (**Key Licensee Subcontract**) if it has one or more of the following characteristics:

- (a) an annual aggregate value of a minimum of £3 million, or such other higher figure as the Commission may specify; and/or
- (b) it is related to the provision of any of the following (except where the provision is commodity-type in nature and easily replaced without material risk to the operation of the National Lottery):
  - (i) information technology services as related to gaming systems, network and channel provisions;
  - (ii) marketing and/or promotion of the National Lottery;
  - (iii) business continuity and disaster recovery plans;
  - (iv) intra group Licensee Subcontracts without competitive process; and
  - (v) any other category of arrangements which the Commission may specify from time to time.

15.5 A Section 1(3)(b) Agreement shall be automatically designated as a Key Licensee Subcontract.

15.6 The Commission may at any time amend Condition 15.4 by adding or removing characteristics of Licensee Subcontracts, Series Subcontracts and Sub Series Subcontracts for designation purposes as a Key Licensee Subcontract.

15.7 In addition to the designation process at Conditions 15.4 and 15.5, the Commission may at any time designate a Licensee Subcontract, a Series Subcontract and a Sub Series Subcontract as a Key Licensee Subcontract, at its own discretion.

15.8 Where a monetary value is required at Condition 15.4 the relevant monetary value will be the maximum amount of money committed by the Licensee to the potential Key Licensee Subcontractor in the period set out at Condition 15.4.

#### **Nature of subcontract and consultation**

15.9 Intentionally left blank

15.10 Intentionally left blank

15.11 The Licensee shall provide to the Commission a copy in such form as the Commission may specify of each executed Key Licensee Subcontract.

15.12 On request by the Commission, where the Commission has designated a Licensee Subcontract, a Series Subcontract and a Sub Series Subcontract as a Key Licensee Subcontract pursuant to Condition 15.7, the Licensee shall use all reasonable endeavours to make or procure any amendments to the designated Licensee Subcontract, Series Subcontract and Sub Series Subcontract as the Commission may request and shall confirm to the Commission that these amendments have been made.

#### **Terms of Licensee Subcontracts**

15.13 The Licensee shall procure that the contractual provisions specified in Conditions 15.15, 15.15A and 15.16 are incorporated in all Licensee Subcontracts in the manner and to the extent described in Conditions 15.15, 15.15A and 15.16 and so to enable such contractual provisions to operate as between the Commission and the relevant Licensee Subcontractor and be enforced by the Commission against the relevant Licensee Subcontractor.

15.14 Where a Licensee Subcontractor has subcontracted the performance of some material part or all of its obligations under a Licensee Subcontract (**Series Subcontract**) to a third party (**Series Subcontractor**) and where a Series Subcontractor has subcontracted the performance of some material part or all of its obligations under a Series Subcontract (**Sub Series Subcontract**) to a third party (**Sub Series Subcontractor**), the Licensee shall:

- (a) incorporate and procure that the Licensee Subcontractor incorporates the contractual provisions specified in Conditions 15.15, 15.15A and 15.16 in all Series Subcontracts in the manner and to the extent described in Conditions 15.15, 15.15A and 15.16; and
- (b) procure that the Licensee Subcontractor shall procure that the Series Subcontractor incorporates the contractual provisions specified in Conditions 15.15, 15.15A and 15.16 in all Sub Series Subcontracts in the manner and to the extent described in Conditions 15.15, 15.15A and 15.16,

so to enable such contractual provisions to operate as between the Commission and the Series Subcontractor and between the Commission and the Sub Series Subcontractor and be enforced by the Commission against the relevant Series Subcontractor and the relevant Sub Series Subcontractor.

#### **Mandatory flowdowns**

15.15 The Licensee shall ensure that:

- (a) every Licensee Subcontract, Series Subcontract and Sub Series Subcontract shall contain such provisions to enable the Licensee to fulfil its obligations under and comply with the Licence;
- (b) no Licensee Subcontract, Series Subcontract or Sub Series Subcontract shall exclude the Commission's rights arising by virtue of the Contracts (Rights of Third Parties) Act 1999;
- (c) every Licensee Subcontract, Series Subcontract and Sub Series Subcontract which is also designated as a Key Licensee Subcontract shall contain an express provision that:
  - (i) the Licensee, or in the case of a Series Subcontract, the Licensee Subcontractor, or in the case of a Sub Series Subcontract, the Sub Series Subcontractor, can terminate, assign or novate the Licensee Subcontract, or Series Subcontract, or Sub Series Subcontract if the Commission directs that such Licensee Subcontract, Series Subcontract or Sub Series

Subcontract should be terminated, assigned or novated within such period as the Commission may specify and to such parties as the Commission may specify;

- (ii) the Commission shall be entitled to obtain and provide or procure the provision of any information from the Licensee Subcontractor, the Series Subcontractor or the Sub Series Subcontractor specified by the Commission (including any specification as to its format and timescale for delivery) to any third party for the purpose of the Competition and for the purpose of fulfilling its statutory duties;
- (iii) the Commission's right to provide information from the Licensee Subcontractor, the Series Subcontractor and the Sub Series Subcontractor to any third party, as set out at Condition 15.15(c)(ii), shall not apply to information where the Licensee Subcontractor, the Series Subcontractor or the Sub Series Subcontractor can demonstrate to the Commission's satisfaction that:
  - (A) the information is not required by the third party for it to carry out any instructions, as specified by the Commission, or any activities in connection with which the Commission wishes to provide the information;
  - (B) the information is confidential information of the Licensee Subcontractor, the Series Subcontractor or the Sub Series Subcontractor; and
  - (C) the disclosure of the information would unduly prejudice the commercial interests of the Licensee Subcontractor, the Series Subcontractor or the Sub Series Subcontractor;
- (d) every Licensee Subcontract, Series Subcontract and Sub Series Subcontract contains provisions imposing an obligation on the Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor to:
  - (i) comply with the Data Protection Act and any equivalent legislation in any country or jurisdiction where it operates other than the United Kingdom in respect of any personal data received from the Licensee under the Licensee Subcontract, Series Subcontract and Sub Series Subcontract;
  - (ii) carry out the processing of the data only in accordance with the Licensee's instructions or as is necessary to perform its obligations under the Licensee Subcontract, Series Subcontract and Sub Series Subcontract;
  - (iii) put in place appropriate technical and organisational measures against unauthorised, accidental or unlawful access to, or processing of, personal data (having regard to the state of technological development and the cost of implementing these measures); and
  - (iv) obtain the necessary consents referred to in Condition 22.2 where the Licensee Subcontractor or Series Subcontractor or Sub Series Subcontractor will be collecting personal data on the Licensee's behalf;
- (e) every Key Licensee Subcontract contains provisions imposing an obligation on the Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor to:
  - (i) ensure that the Key Licensee Subcontract shall endure or be capable of enduring for a period of at least 24 months following expiry or revocation of the Licence, provided that:
    - (A) nothing in this Condition 15.15(e)(i) shall restrict the creation of a break clause in the ordinary course or the exercise no less than 6 months prior to the expected expiry of the Licence (or, where an extension has been granted, the expiry of any such extension of the Licence) in the ordinary course of any option to terminate the Key Licensee Subcontract under such a break clause; and
    - (B) where the Key Licensee Subcontract otherwise terminates in the ordinary course no less than 6 months prior to the expected expiry of the Licence (or where an extension has been granted, the expiry of any such extension of the Licence) the

obligation imposed under this Condition 15.15 (e)(i) shall be limited to ensuring that the Key Licensee Subcontract is capable of enduring for at least 24 months following revocation (and not expiry) of the Licence;

- (ii) provide the Commission and its advisers and representatives in an electronic form, at no charge, at such times as the Commission may specify, with such information as it may request relating to the National Lottery or the running of it or in any way concerning the Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor or as necessary for the Commission to determine whether the National Lottery and every Constituent Lottery is run with all due propriety;
  - (iii) permit the Commission and its advisers and representatives to conduct any interview with it or any of its Staff or agents (including interviews to determine whether the National Lottery is run and every Constituent Lottery is promoted with all due propriety and that the Conditions and all codes of practice referred to herein have been and are being complied with);
  - (iv) put in place systems to ensure the compliance by its Staff and/or agents with the terms and obligations under the Key Licensee Subcontract;
  - (v) comply with the guidelines as set out in Condition 21.10 for the use of all Lottery IP;
  - (vi) use Lottery IP as directed by the Commission on all National Lottery related materials;
  - (vii) immediately inform the Licensee on becoming aware of any Incident;
  - (viii) immediately inform the Licensee on becoming aware of any infringement of any Lottery IP use or proposed use as specified in Condition 21.23;
  - (ix) maintain the integrity and security of the National Lottery;
  - (x) comply with obligations on confidentiality and security at least as stringent as those imposed on the Licensee under the Licence; and
  - (xi) immediately notify the Licensee on becoming aware of any Incident which may have a material impact on the ability of the Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor to meet its obligations under the Licensee Subcontract, Series Subcontract or Sub Series Subcontract and to put in place the appropriate disaster recovery and/or business recovery plan;
- (f) every Licensee Subcontract, Series Subcontract and Sub Series Subcontract contains provisions to ensure that, the Commission, its advisers and its representatives shall be:
- (i) allowed access on reasonable prior notice to any premises of any Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor where required by the Commission in the exercise of its statutory duties;
  - (ii) provided by any Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor with, and on reasonable prior notice allowed to inspect and take copies at any time (either on or off the premises of the Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor as the Commission may decide) of, any information, at no charge, in such format and within such timescale specified by the Commission (including any information which the Commission considers necessary to allow it to perform its statutory duties); and
  - (iii) permitted to conduct interviews on reasonable prior notice with any Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor or any of its Staff (including interviews for the purpose of determining whether the National Lottery is run and every Constituent Lottery promoted with all due propriety and that the Conditions and all codes of practice referred to herein have been and are being complied with);

- (g) every Key Licensee Subcontract contains provisions imposing an obligation on the Key Licensee Subcontractor not to claim any right, title or interest in any Lottery IP (excluding gaming software or any generally available business application software) in which such Key Licensee Subcontractor has no right, title or interest (including in circumstances in which any such right, title or interest has been transferred by such Key Licensee Subcontractor pursuant to and in accordance with Condition 21.15); and
- (h) every Key Licensee Subcontract contains such other provisions specified by the Commission, following consultation with the Licensee, to perform those additional obligations which have been specified by the Commission on the Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor provided that any such additional provisions specified following execution of the Key Licensee Subcontract shall have no retrospective effect but the Licensee shall use reasonable endeavours to ensure such additional provisions are included in every Key Licensee Subcontract.

### **Best endeavours flowdowns**

15.15A.1 The Licensee shall use best endeavours to ensure that, save as otherwise agreed by the Commission, every Key Licensee Subcontract contains provisions imposing an obligation on the Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor to transfer in substantially the form set out in Schedule 12 Part 4(A) (**Key Licensee Subcontract Transfer**) or grant a royalty-free, payment-free, transferable, perpetual, non-exclusive licence in favour of the Commission (or such other person as the Commission may direct) of all such IP (excluding gaming software or any generally available business application software) as the Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor has to use and exploit any of the rights in that IP which are used and exploited or are capable of being used and exploited by the Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor in connection with the National Lottery or any Ancillary Activity in substantially the form set out in Schedule 12 Part 4(B) (**Key Licensee Subcontract Licence**).

15.15A.2 The Licensee shall:

- (a) notify the Commission in the event that the Licensee, despite its best endeavours, cannot secure the provisions referred to in Condition 15.15A.1; and
- (b) if the Commission so requests, provide evidence to the Commission's satisfaction to demonstrate that best endeavours have been used.

### **Reasonable endeavours flowdowns**

15.16 Where a Licensee Subcontract, Series Subcontract or Sub Series Subcontract has been designated as a Key Licensee Subcontract after its execution, the Licensee shall use all reasonable endeavours to procure the provisions at Condition 15.15(e), 15.15(g) and 15.15A are included within the Key Licensee Subcontract.

15.17 The Licensee shall:

- (a) use reasonable endeavours to procure that every Licensee Subcontract that is not a Key Licensee Subcontract contains the provisions imposing an obligation on the Licensee Subcontractor as set out at Condition 15.15(e);
- (b) procure that the Licensee Subcontractor shall use reasonable endeavours to procure that every Series Subcontract that is not a Key Licensee Subcontract contains provisions imposing an obligation on the Series Subcontractor as apply to a Licensee Subcontractor under Condition 15.15(e); and
- (c) procure that the Series Subcontractor shall use reasonable endeavours to procure that every Sub Series Subcontract that is not a Key Licensee Subcontract contains provisions imposing an obligation on the Sub Series Subcontractor as apply to a Licensee Subcontractor under Condition 15.15(e).

15.18 The Licensee shall:

- (a) use its best endeavours to ensure that every Licensee Subcontract contains the provisions imposing an obligation on the Licensee Subcontractor as set out at Condition 7.61(a);
- (b) use its best endeavours to ensure that every Licensee Subcontract contains the provisions imposing an obligation on the Licensee Subcontractor as set out at Condition 7.61(b) and 7.61(c);
- (c) use its best endeavours to ensure that every Licensee Subcontract, Series Subcontract and Sub Series Subcontract contains provisions to ensure that every Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor shall not use, copy, publish or register, or seek to register or use as a trade or service mark, patent, copyright, internet domain name, design or other IP:

- (i) any National Lottery Logo, Game Name or item of IP (excluding gaming software or any generally available business application software) intended to be used (but not yet in use); and

- (ii) any National Lottery Logo, Game Name or item of IP (excluding gaming software or any generally available business application software) used and intended to be used

only in connection with the promotion and running of the National Lottery, any Constituent Lottery or any Ancillary Activity (save as required pursuant to or permitted by Condition 21.18 or pursuant to a licence or permission granted in accordance with Condition 21.6); and

- (d) use its best endeavours to ensure that every Licensee Subcontract, Series Subcontract and Sub Series Subcontract contains provisions to ensure that every Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor shall not do any act or thing to prevent or impede any registration, or seek to impeach the rights of any owner, holder or applicant for registration of such rights pursuant to any requirement of the Commission under Condition 21.19, of:

- (i) any National Lottery Logo, Game Name or item of IP (excluding gaming software or any generally available business application software) intended to be used (but not yet in use); and

- (ii) any National Lottery Logo, Game Name or item of IP (excluding gaming software or any generally available business application software) used and intended to be used

only in connection with the promotion and running of the National Lottery, any Constituent Lottery or any Ancillary Activity.

#### **Termination, assignment, novation and variation of Licensee Subcontract and Series Subcontract**

15.19 If the Commission notifies the Licensee that it considers in the exercise of its statutory duties that it is appropriate that any Licensee Subcontract or Series Subcontract or Sub Series Subcontract should be terminated, assigned or novated, the Licensee shall procure that the Licensee Subcontractor or the Series Subcontractor or the Sub Series Subcontractor shall take all necessary steps at its own cost to terminate, assign or novate that Licensee Subcontract or Series Subcontract or Sub Series Subcontract within such period and to such third parties as the Commission specifies.

15.20 During the six month period prior to the expected expiry of the Licence, or, where an extension has been granted, the six month period prior to the expiry of any such extension of the Licence, the Licensee:

- (a) shall not terminate, assign or novate the Licensee Subcontract, the Series Subcontract or the Sub Series Subcontract; and
- (b) shall use best endeavours to procure that, the Licensee Subcontractor, the Series Subcontractor and the Sub Series Subcontractor shall not terminate the Licensee Subcontract, the Series Subcontract or the Sub Series Subcontract

without the Commission's prior written consent.

15.20A In respect of Condition 15.20(b), the Licensee shall:

(a) notify the Commission should a Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor, despite the Licensee's best endeavours, terminate a Licensee Subcontract, a Series Subcontract or a Sub Series Subcontract; and

(b) if the Commission so requests, provide evidence to the Commission's satisfaction to demonstrate that best endeavours have been used.

### **Corporate governance**

15.21 On request by the Commission, the Licensee shall ensure that any Key Licensee Subcontract contains corporate governance obligations on the Key Licensee Subcontractor that shall include the following:

- (a) a requirement that the Key Licensee Subcontractor shall maintain appropriate and effective boards and board committees including an audit committee and a remuneration committee, consisting wholly or mainly of non-executive directors with an appropriate number of independent non-executive directors;
- (b) a requirement that the board of the Key Licensee Subcontractor shall maintain a sound and robust system of risk management and internal control to safeguard the assets of the Key Licensee Subcontractor's business and to ensure it meets its operating objectives;
- (c) a requirement that the board of the Key Licensee Subcontractor shall be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties; and
- (d) a requirement that the board of the Key Licensee Subcontractor shall maintain an internal audit function to review and report on the Key Licensee Subcontractor's internal control system on a regular basis.

15.22 The Licensee shall procure that the Licensee Subcontractor, the Series Subcontractor and Sub Series Subcontractor is required to report to the Licensee (as well as to the board of the Licensee Subcontractor) any irregularity, fraud or material and relevant misconduct by the Licensee Subcontractor, the Series Subcontractor and Sub Series Subcontractor or any of its officers or Staff.

15.23 The Licensee acknowledges that each member of Staff of the Licensee Subcontractor, the Series Subcontractor and Sub Series Subcontractor who is involved in or has knowledge of any matter relevant to the relevant Licensee Subcontract, Series Subcontractor and Sub Series Subcontractor shall be entitled to disclose to any officer of the Licensee or any member of the Commission's Staff any qualifying disclosure as such disclosure is defined in section 43B of the Employment Rights Act 1996.

15.24 If so required by the Commission, the Licensee shall procure that the board of any Key Licensee Subcontractor shall certify in writing to the Commission and the Licensee annually, or at such frequency as specified by the Commission, that it has carried out all reasonable enquiries necessary to satisfy itself that:

- (a) there are no faults in any of its software which are known to the Key Licensee Subcontractor which could affect in any way the running of the National Lottery and which have not formally been reported to the Licensee;
- (b) all changes to software used in the National Lottery have been formally reported to the Licensee; and
- (c) no acts or omissions on the part of the Key Licensee Subcontractor have occurred that have put, or have the potential to put, the Licensee in breach of its obligations under this Licence.

15.25 The Licensee shall procure that the chairs of the committees in Condition 15.21(a) shall provide an annual written report in relation to the functions of the committee, the performance of the Key Licensee Subcontract and the integrity of the Key Licensee Subcontractor to the Licensee and to the board of the Key Licensee Subcontractor.

## Variation and renewal

15.26 The Licensee shall:

- (a) notify the Commission of any proposed variation to or relating to the mandatory flowdown terms and conditions of any Key Licensee Subcontracts and comply with any request by the Commission in respect of such proposed variation;
- (b) notify the Commission prior to the expiry date of any Key Licensee Subcontract (or, if earlier, such other date on which it is likely that such Key Licensee Subcontract will terminate), and upon request by the Commission, take all reasonable steps to enter into an appropriate replacement Key Licensee Subcontract (whether with the counterparty to the existing Licensee Subcontract or not) and comply with the instructions of the Commission in relation to the incorporation of mandatory flowdown terms and conditions in such replacement Key Licensee Subcontract; and
- (c) whether or not the Licence is continued after the Initial Expiry Date, the Licensee shall, to the extent so requested by the Commission, exercise its right to terminate any Key Licensee Subcontract on the Expiry Date.

## 16. Employees

### Restriction on changes to Staff numbers and terms and conditions

16.1 Save where otherwise required by applicable Law or where it has been notified in writing that it is the preferred bidder for any Successor Licence, the Licensee will not be permitted without the prior written consent of the Commission:

- (a) until the expiry or revocation of this Licence to agree to pay or provide any payment or benefit to any individual employed or engaged by the Licensee:
  - (i) in connection with such individual's continuing employment or engagement with the Licensee;
  - (ii) in connection with the termination of employment or engagement of such individual; and/or
  - (iii) in connection with the expiry or revocation of this Licence,in each case which the Licensee becomes liable to pay or provide on or after the expiry or revocation of this Licence;
- (b) in the two years preceding the expiry of this Licence to vary or purport or promise to vary any terms and conditions on which individuals are employed or engaged by the Licensee (including pension terms) other than annual salary/fee increases of no more than 3% per annum;
- (c) in the two years preceding the expiry of this Licence to create or grant, or purport or promise to create or grant, terms or conditions of employment or engagement for any individual where the employment or engagement of such individual by the Licensee may commence on or before the expiry of this Licence if and to the extent that such terms or conditions are materially different from the terms or conditions of employment or engagement of equivalent individuals already employed or engaged by the Licensee; and
- (d) in the two years preceding the expiry of this Licence to increase or decrease the number of individuals employed or engaged by the Licensee such that:
  - (i) the total number of individuals employed or engaged by the Licensee or the total cost per annum to the Licensee of employing and engaging such individuals is increased; or
  - (ii) the total number of individuals employed or engaged by the Licensee is decreased,in each case, by more than 5% during such two year period.

16.2 The Licensee shall not, without the prior consent of the Commission, at any time during the Licence and for three months after the expiry or revocation of the Licence, engage, employ, solicit or procure the engagement or employment of any member of the Commission's Staff which have been designated in writing, such designation specifying the time period for which the restriction applies.

16.3 The Licensee shall ensure that no Group Company shall (except with the prior consent of the Commission) at any time during the period of the Licence and for three months thereafter engage or employ, or solicit or procure the engagement or employment of any member of the Commission's Staff which have been designated in writing to the Licensee by the Commission specifying the time period for which the restriction applies.

### Redundancy Costs

16.4 Provided that the Licensee satisfies the Costs Expert that:

- (a) the Licensee has complied with its legal obligations relating to any redundancy exercise undertaken in the first year of the Licence; and

- (b) the Licensee has taken appropriate steps to minimise any Redundancy Costs associated with any such redundancy exercise,

(together, the **Redundancy Obligations**)

the Commission shall ensure that an adjustment is made to the Primary Contribution to take account of such of those Redundancy Costs which have, in the view of the Costs Expert, been reasonably, necessarily and properly incurred by the Licensee as a result of taking up the Licence, such adjustment to be made to the Primary Contribution within 21 days of the later of: (a) such Redundancy Costs (or any part thereof) having been paid by the Licensee; and (b) the date on which any such Redundancy Costs are determined by the Costs Expert to have been reasonably, necessarily and properly incurred and notified as such by the Costs Expert to the Commission and the Licensee.

16.5 The Licensee shall permit the Costs Expert to conduct interviews with any of the Licensee's Staff and shall provide the Costs Expert with such reasonable information as it may require in order to ascertain whether:

- (a) the Licensee has complied with its Redundancy Obligations; and
- (b) any Redundancy Costs associated with any redundancy exercise undertaken in the first year of the Licence have been reasonably, necessarily and properly incurred by the Licensee as a result of taking up the Licence.

## 17. Performance monitoring

17.1 Where the Commission, in its absolute discretion, is dissatisfied at any time with the Licensee's performance of any area of its operations under the Licence or arising out of or in connection with the Licence and irrespective of whether such performance constitutes a breach of the Licence, the Commission may require the Licensee to procure the carrying out of an independent review (**Review**) by an independent third party of the Licensee's performance in such area to assess whether and recommend how the Licensee's performance could be improved in such area.

17.2 In connection with a Review:

- (a) the appointment of the independent third party by the Licensee shall be subject to the Commission's prior written approval as to the identity of the independent third party and the terms of its appointment;
- (b) the Licensee shall ensure that no disruption is caused to the running of the National Lottery by the Review;
- (c) when the Review is completed, the Licensee shall provide a copy of the Review to the Commission immediately on receipt of it by the Licensee;
- (d) the Commission may, in its absolute discretion, publish the whole or any part of the Review;
- (e) if the Review shows that the Licensee is under-performing in any area and recommends certain actions for the improvement of the Licensee's performance (**Recommendations**), the Commission may:
  - (i) notify the Licensee of the Recommendations that it considers should be adopted by the Licensee; and
  - (ii) specify a reasonable period within which the Licensee shall implement the Recommendations;
- (f) if the Commission notifies the Licensee in accordance with Condition 17.2(e), the Licensee shall implement the Recommendations to the Commission's satisfaction within the specified period; and
- (g) if the Licensee fails to implement the Recommendations to the Commission's satisfaction within the specified period, then such failure shall constitute a breach of this Condition 17 unless the Licensee is able to provide the Commission with reasons for failure that the Commission determines, in its absolute discretion, to be satisfactory.

## 18. Handover on expiry or revocation of the Licence

18.1 The Commission may require the Licensee's compliance with this Condition 18 at any time whether before or after commencing Reletting.

### Preparation for Reletting

18.2 On request, the Licensee shall within the time limits specified by the Commission, provide the Commission and its representatives and advisers with access to members of the Licensee Staff, and to all books, records, systems, documents, software, scripts, Processes, Procedures, instructions, databases, information in relation to the Licensee's Staff and the Licensee's rights, powers, duties and liabilities in relation to the Licensee's Staff, information or data kept by or on behalf of the Licensee in connection with the National Lottery (including financial, operational, Player or Distributor databases, information or data, and any market research and any market research testing and methodologies conducted or prepared by or on behalf of the Licensee and any other materials specified by the Commission as being required) (collectively, the **Reletting Materials**) for the purpose of assisting the Commission and its representatives and advisers:

- (a) to prepare invitations, reports or other documents in connection with Reletting;
- (b) to enter into any agreement relating to the National Lottery; and
- (c) subject to Condition 18.3, to make the Reletting Materials available for due diligence review by such parties as the Commission may, in its absolute discretion, consider appropriate in connection with preparations for Reletting (collectively, the **Bidders**) and in preparation for the Handover Period, notwithstanding the confidential nature (if any) of the Reletting Materials,

provided that the exercise of such access rights by the Commission and its representatives and advisers shall not unduly interfere with the continuing provision and running of the National Lottery by the Licensee.

18.3 The Commission's right to make Reletting Materials available under Condition 18.2(c) shall not apply to information belonging to the Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor (**Subcontractor Information**) where the Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor can demonstrate to the Commission's satisfaction:

- (a) that the Subcontractor Information is not required by a Bidder for the purpose of the Competition;
- (b) that the Subcontractor Information is confidential information of the Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor; and
- (c) that the disclosure of the Subcontractor Information would unduly prejudice the commercial interests of the Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor.

18.4 In connection with its obligations in Condition 18.2, the Licensee shall within the time limits specified by the Commission:

- (a) make available or deliver to the Commission and its representatives and advisers such Reletting Materials as they shall require;
- (b) prepare and present the Reletting Materials or their contents in such format or manner (including aggregated and disaggregated form) as the Commission may require, and shall provide such assistance as the Commission may require in connection with the verification of the Reletting Materials;
- (c) when requested to do so, provide such confirmation in relation to the accuracy of the contents of the Reletting Materials as the Commission may require from time to time;
- (d) obtain any consents that are required to make the Reletting Materials or their contents available within the timescale specified by the Commission (including their availability for review under Condition 18.2(c)); and

- (e) make members of the Licensee Staff available to attend meetings with the Commission or its advisers and representatives in order to assist with the collation or verification of the Reletting Materials,

in each case, notwithstanding the confidential nature (if any) of the Reletting Materials.

#### **Handover Period**

18.5 Where reference is made in the Licence to the Handover Period, such period shall be deemed to commence on:

- (a) the date on which the Commission notifies the Licensee that such period shall commence in circumstances where the Commission considers that grounds for revocation of the Licence under section 10 of Part 1 and Schedule 3 of the National Lottery Act may arise;
- (b) the date on which the Commission notifies the Licensee that such period shall commence in circumstances where the Commission considers it reasonably likely that the Licence will be revoked by agreement between the parties within such period under section 10 of the National Lottery Act; or
- (c) where the Expiry Date is known, such date as the Commission may determine in its absolute discretion.

18.6 The Handover Period shall expire on the Expiry Date or the date of revocation or such other date as the Commission may determine.

#### **Non-frustration of Reletting or transfer**

18.7 The Licensee shall take no action or steps (or omit to take any action or steps) which has or have the effect, directly or indirectly, of:

- (a) preventing, prejudicing or frustrating the transfer as a going concern of the business or part of the business (as the case may be) of providing the National Lottery at the end of the Licence to a Successor Licensee;
- (b) preventing, prejudicing or frustrating the transfer as a going concern of the business or part of the business (as the case may be) of providing the National Lottery at the end of the Licence to any third parties who may submit competitive applications for, or otherwise enter into an agreement for the provision of supplies or services in connection with the National Lottery or the provision or operation of any asset in connection with the National Lottery; or
- (c) avoiding, frustrating or circumventing any provision of the Licence.

#### **Co-operation with Successor Licensee**

18.8 To ensure:

- (a) the continuity of, and an orderly handover of control of, the National Lottery;
- (b) the continuity of, and an orderly handover of control of, the provision of supplies or services in connection with the National Lottery;
- (c) the continuity of, and an orderly handover of control of, the operation of any asset in connection with the National Lottery; and
- (d) that the National Lottery is continued with the minimum of disruption or inconvenience to the public,

the Licensee shall during the Handover Period and continuing for such period as the Commission may specify, co-operate with the Commission and its representatives and advisers, the Successor Licensee (if appointed) and any third parties who may submit competitive applications for, or otherwise enter into an agreement for the provision of supplies or services in connection with the National Lottery or the provision or operation of any asset in connection with the National Lottery (if appointed), and take such steps within such

timescale as may be specified by the Commission (including agreeing to any amendments to the Co-operation Agreement specified by the Commission).

18.9 The Licensee's obligations under Condition 18.8 shall extend to the Trustees or their successor if this is specified by the Commission.

18.10 In connection with its obligations under Condition 18.8, the Licensee shall within the timescale specified by the Commission:

- (a) comply with the terms of the Co-operation Agreement (including any amendments specified by the Commission), which shall be entered into in accordance with Condition 18.11 and shall annex to it the Transition Plan developed and updated under Condition 18.13;
- (b) make updates or amendments to the Reletting Materials (and such other information as the Commission may specify) available to the Commission, the Successor Licensee and any third parties who may submit competitive applications for, or otherwise enter into an agreement for the provision of supplies or services in connection with the National Lottery or the provision or operation of any asset in connection with the National Lottery;
- (c) make available or deliver to the Commission, the Successor Licensee and any third parties who may submit competitive applications for, or otherwise enter into an agreement for the provision of supplies or services in connection with the National Lottery or the provision or operation of any asset in connection with the National Lottery such information as the Commission may specify relating to Players' Subscriptions or accounts held by or operated on behalf of the Licensee (including Players' preferred games or numbers);
- (d) make available or deliver to the Commission, the Successor Licensee and any third parties who may submit competitive applications for, or otherwise enter into an agreement for the provision of supplies or services in connection with the National Lottery or the provision or operation of any asset in connection with the National Lottery such information as the Commission may specify relating to transactions and prizes (including sample data and live or real time data on transactions or prizes), and assist the Commission, the Successor Licensee and any third parties who may submit competitive applications for, or otherwise enter into an agreement for the provision of supplies or services in connection with the National Lottery or the provision or operation of any asset in connection with the National Lottery in interpreting, testing, reconciling and validating any such information or data;
- (e) make available the information referred to in Condition 18.10(b), 18.10(c) and 18.10(d) in the format(s) specified by the Commission (including real time availability);
- (f) procure a licence and/or any necessary consents from third parties to allow the Successor Licensee to use any materials or receive any services provided to the Licensee during the Handover Period;
- (g) procure a licence to the Successor Licensee of the right to use prize validation software for all prizes for a period of at least 230 days or such other period as the Commission may specify following expiry or revocation of the Licence on substantially the same terms as those granted to the Licensee during the Handover Period;
- (h) make appropriately skilled, qualified and experienced members of the Licensee Staff available to attend such meetings with the Commission and the Successor Licensee and/or any other relevant parties as are reasonably necessary to determine those actions that are required to facilitate continuity and an orderly operational handover, including actions arising under the following:
  - (i) Licensee Subcontracts; and
  - (ii) Property Interests and any other agreements specified by the Commission;
- (i) provide suitable training and know-how to the Successor Licensee and any third parties who may submit competitive applications for, or otherwise enter into an agreement for the provision of supplies or services in connection with the National Lottery or the provision or operation of any asset in connection with the National Lottery; and

- (j) provide the Successor Licensee with copies of the Licensee's training or instructional materials and grant it a non-exclusive, payment-free and royalty-free licence to use these materials.

### **Co-operation Agreement**

18.11 During the Handover Period, the Licensee shall enter into the Co-operation Agreement with the Commission and/or the Successor Licensee within such period specified by the Commission.

18.12 The Co-operation Agreement shall deal with such matters as the Commission and the Successor Licensee may specify as being necessary to ensure compliance with Condition 18.8, including the matters referred to in Schedule 12 Part 3.

### **Transition Plan principles**

18.13 The Licensee shall develop, maintain and update the Transition Plan in accordance with Condition 18.15 in order to:

- (a) enable the Licensee to cease running the National Lottery at the Expiry Date and the Successor Licensee to commence running the National Lottery in a manner consistent with the Licensee's obligations under this Condition 18;
- (b) minimise any disruption or deterioration of the National Lottery during and after the Handover Period; and
- (c) detail the transition assistance services that the Licensee will perform to ensure a successful transfer to the Successor Licensee with no or minimal disruption or deterioration to service delivery quality to the Commission or members of the public.

18.14 The Transition Plan shall, as a minimum:

- (a) detail how the Licensee proposes to comply operationally with its obligations in this Condition 18;
- (b) detail how the Licensee proposes to transfer the Reletting Materials (and the updates or amendments referred to in Condition 18.10(b)), databases, information or data referred to in Condition 18.2 to the Successor Licensee during and (where appropriate) after the Handover Period;
- (c) detail the scope of the transition assistance services (including the provision of suitable training or know-how) to be provided by the Licensee, and the manner in which they will be provided, during and (where appropriate) after the Handover Period;
- (d) set out a timetable, process, critical deliverables and critical controls for performing the transition assistance;
- (e) describe how the Licensee will guarantee continuity of the National Lottery during the transition to the Successor Licensee, including a description of potential risks and a contingency and risk management plan;
- (f) for work or projects likely to be in progress as at the Expiry Date, detail the process for documenting the current status of the work or projects, stabilising for their continuity during transition, and providing any required training to achieve transfer of responsibility for the work or projects to the Successor Licensee and any third parties who may submit competitive applications for, or otherwise enter into an agreement for the provision of supplies or services in connection with the National Lottery or the provision or operation of any asset in connection with the National Lottery without loss of momentum or adverse impact on project timetables;
- (g) require the Licensee to provide contact details of the Licensee Staff who will liaise with the Commission in relation to the Licensee's compliance with the Transition Plan;
- (h) address the removal (if any) of Licensee Assets; and
- (i) otherwise be consistent with, and address the issues referred to in this Condition 18.

18.15 The Licensee shall:

- (a) develop the initial Transition Plan and submit it to the Commission and the Successor Licensee for review within three months of the commencement of the Handover Period;
- (b) subsequently develop and update the Transition Plan on an ongoing basis in consultation with the Commission and the Successor Licensee to ensure that it accurately reflects the manner of delivery of the National Lottery and that the Licensee can continue to meet its obligations under this Condition 18;
- (c) implement the Transition Plan on its terms; and
- (d) update the Transition Plan and implement the amended plan as directed by the Commission.

#### **Novation of Licensee Subcontracts**

18.16 As directed by the Commission, the Licensee shall novate its interest under any relevant Licensee Subcontract to the Successor Licensee. Novations shall be on such terms as the Commission may require and shall be on substantially the same terms set out in Schedule 12 Part 1 (***Licensee Subcontract Novation***), including:

- (a) that the Licensee shall not be released from any accrued but unperformed obligation, from the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the relevant parties, or from any liability in respect of any act or omission under or in relation to the relevant Licensee Subcontract before, or as at the date of, any such novation; and
- (b) that the Successor Licensee shall not be obliged, in connection with the novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in Condition 18.16(a),

but shall not, unless the Licensee otherwise agrees, be on terms which release any counterparty to the relevant Licensee Subcontract from any liability to the Licensee arising before the date of such novation.

18.17 No payment by the Commission will be made to the Licensee or the Licensee Subcontractors in connection with the novation of any Licensee Subcontracts.

#### **Condition of Licensee Assets**

18.18 If requested by the Commission at any time during the Handover Period, the Licensee shall procure the carrying out of an independent final survey of the Licensee Assets to assess whether the Licensee Assets have been and are being maintained by the Licensee in accordance with its obligations under Condition 5.9.

18.19 In connection with the survey referred to in Condition 18.18:

- (a) the appointment of an independent surveyor by the Licensee shall be subject to the Commission's prior written approval as to the identity of the independent surveyor and the terms of its appointment;
- (b) when carrying out the final survey, the Licensee shall ensure that no disruption is caused to the provision of the National Lottery;
- (c) when the final survey is completed, the Licensee shall provide a copy of the final survey to the Commission on receipt by the Licensee of the final survey;
- (d) if the final survey shows that the Licensee has not complied with, or is not complying with, its obligations under Condition 5.9 the Commission may:
  - (i) notify the Licensee of the rectification and/or maintenance work which is required to bring the condition of the Licensee Assets to the standard they would have been in if the Licensee had complied or was complying with its obligations under Condition 5.9; and

- (ii) specify a reasonable period within which the Licensee shall carry out such work;
- (e) the Licensee shall carry out such rectification and/or maintenance work to the Commission's satisfaction within the period specified; and
- (f) if the Licensee fails to carry out the necessary rectification and/or maintenance work to the Commission's satisfaction within the specified period, the Commission shall be entitled to carry out itself, or procure, such rectification and/or maintenance work at the Licensee's expense.

#### **Transfer of Licensee Assets**

18.20 During the Handover Period, the Commission may serve a notice on the Licensee and the Successor Licensee specifying the Licensee Assets (excluding IP) to be available for transfer by the Licensee to the Successor Licensee. Within such period as may be specified by the Commission, the Successor Licensee shall notify the Commission and the Licensee of which Licensee Assets it requires to be transferred to it by the Licensee (**Transferring Assets**).

18.21 Notwithstanding Condition 21.13(g) during the Handover Period, the Commission may require the Licensee to grant the Successor Licensee a payment-free, royalty-free and non-exclusive licence, in the form as specified by the Commission, to use any gaming software owned (and not merely licensed) by the Licensee for the remainder of the Handover Period and for a period of two years thereafter.

18.22 Notwithstanding Condition 21.13(g) during the Handover Period, the Commission may require the Licensee to use best endeavours to procure a grant to the Successor Licensee from a third party of a non-exclusive licence, on substantially the same terms as any licence granted to the Licensee by that third party, to allow use by the Successor Licensee of any gaming software developed by the third party for and on behalf of the Licensee in connection with the National Lottery or any Ancillary Activity, for the remainder of the Handover Period and for a period of two years thereafter.

18.23 The Licensee shall enter into an agreement with the Successor Licensee which shall be substantially in the form of the deed of transfer set out in Schedule 12 Part 2 (**Deed of Transfer for Transferring Assets**), which shall provide for the transfer of the Transferring Assets as are specified in the Deed of Transfer for Transferring Assets from the Licensee to the Successor Licensee.

18.24 Subject to the execution of the Deed of Transfer for Transferring Assets by the Successor Licensee, the Successor Licensee shall take possession of the Transferring Assets specified in the Deed of Transfer for Transferring Assets on the date of the Successor Licence.

18.25 Where the Licence:

- (a) expires, save as prohibited by Law, no amounts shall be payable to the Licensee for the transfer of the Transferring Assets other than in respect of Scratchcard Lottery tickets, in respect of which the amounts payable shall be agreed between the Licensee and the Successor Licensee failing which such amounts shall be determined by an Expert in accordance with Schedule 14; or
- (b) is revoked for any grounds other than Licensee Insolvency, save as prohibited by Law, the amount payable to the Licensee for the transfer of the Transferring Assets shall be at market value and such amount shall be agreed between the Licensee and the Successor Licensee failing which such amount shall be determined by an Expert in accordance with Schedule 14.

18.26 Within such period as the Commission may in its absolute discretion determine, the Licensee shall remove all Licensee Assets which are not transferred to the Successor Licensee together with all equipment and other information relating to the National Lottery from all Retail Outlets, unless the Commission otherwise directs.

#### **Associated obligations on expiry or revocation of the Licence**

18.27 On the expiry or revocation of the Licence, the Licensee shall:

- (a) having received reasonable prior notice, grant the Commission and its advisers such access as the Commission may request to any property owned, leased, held under licence or otherwise operated

and occupied by the Licensee at such time (**Property Interests**), for the purpose of facilitating the continued provision of the National Lottery;

- (b) if requested by the Commission assign its interest under all or any Property Interests which are used for or in connection with the provision or running of the National Lottery to the Successor Licensee or as the Commission may direct. Such assignment shall be on such terms as the Commission may require but shall include provisions dealing with the following:
- (i) that the Licensee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation relating to the Property Interests or any liability in respect of any act or omission under or in relation to the Property Interests before, or as at the date of, any such assignment (subject to any continuing liability under the relevant leasehold property and/or any authorised guarantee agreement which the Licensee may be required to enter into upon the assignment of relevant leasehold property); and
  - (ii) that the Successor Licensee shall be obliged, in connection with such assignment, to agree to assume as at the date of any such assignment responsibility for any covenants, obligations and liabilities (whether accrued and unperformed or current) and consequences of a breach referred to in Condition 18.27(b)(i), in each case attaching to the relevant Property Interest but excluding any covenants, obligations and liabilities which are personal to the Licensee which (for the avoidance of doubt) shall remain with the Licensee and shall not pass to the Successor Licensee;
- (c) within such period as the Commission specifies:
- (i) promptly cease to use any Lottery IP unless permitted to do so under Condition 21 and shall promptly remove or procure the removal of all signage and other representations of the Lottery IP;
  - (ii) not, and shall procure that its directors, officers and each member of the Licensee Staff shall not, use any Lottery IP or otherwise represent itself as being connected with the National Lottery unless permitted to do so under Condition 21;
  - (iii) execute and deliver (and procure that any relevant Group Companies shall execute and deliver) an assignment in such form as the Commission shall require in favour of the Commission or its nominee of:
    - (A) the goodwill, interest and connection of the Licensee or its relevant Group Companies in the businesses of acting as the licensees under section 5 of the National Lottery Act, the promoter of any Constituent Lotteries and the operator of any Ancillary Activities; and
    - (B) the Lottery IP;
- (d) expunge or transfer, at the Commission's request, any registration of the Licensee or any sub-licensee as a permitted licensee of any Lottery IP consisting of trade marks; and
- (e) do and execute all acts, deeds, documents and things, at the Commission's request, as may be necessary or appropriate to achieve the purposes of this Condition 18.27.

18.28 The Licensee shall indemnify the Successor Licensee against all claims, demands, losses and liabilities arising as a result of non-observance or non-performance by the Licensee prior to the date of the assignment of any of the covenants and obligations referred to in Condition 18.27.

18.29 On the Commission's request, the Licensee shall provide such evidence as the Commission requires of the Licensee's compliance with the obligations in this Condition 18 within such timescale as the Commission may specify.

#### **Post expiry or revocation of the Licence**

18.30 Following expiry or revocation of the Licence, the Licensee shall:

- (a) not, without the Commission's prior consent, use any Lottery IP or any IP or rights which so nearly resembles the Lottery IP as to be likely to deceive or cause confusion; or
- (b) procure that its directors, each member of the Licensee Staff, its agents and any Licensee Group Company or a joint venture company shall not use any Lottery IP or any IP or rights in the manner referred to in Condition 18.30(a).

18.30A In the first 18 months following the Expiry Date, the Licensee shall:

- (a) provide the Commission and its representatives and advisers with secure electronic access in real time to the Licensee Information as is available to the Licensee Staff or any other party who was prior to the expiry or revocation of the Licence involved in the operation of the Technology Solution;
- (b) permit the Commission and its representatives and advisers to conduct an audit of the Licensee and to give them the necessary access to the Licensee's books and papers and such other information as the Commission may specify to conduct an audit;
- (c) make available appropriately skilled, qualified and experienced members of the Licensee Staff (to the extent that such Licensee staff are employed or engaged by the Licensee at that time) to attend such meetings with the Commission and/or any other relevant parties in connection with Condition 18.30A(b);
- (d) permit the Commission and its representatives and advisers to have access to the Licensee's properties or premises for the purpose of carrying out an audit under Condition 18.30A(b);
- (e) provide the Successor Licensee with copies of the Licensee's training or instructional materials and grant it a perpetual, non-exclusive, payment-free and royalty-free licence to use these materials in its running of the National Lottery; and
- (f) co-operate with the Commission and the Successor Licensee in such other ways as the Commission may specify.

### **Continuing Obligations**

18.31 The Commission may at any time, discuss with the Licensee its requirements in connection with handover of Continuing Obligations relevant to the commencement of the Successor Licence.

18.32 The Licensee shall:

- (a) co-operate with the Commission in connection with any such discussions;
- (b) do all things necessary to ensure a smooth handover of such Continuing Obligations; and
- (c) comply with the Commission's requirements in respect of Continuing Obligations in a timely manner or within the timescale specified by the Commission (including, if appropriate, making payment or arranging for payment of sums sufficient to pay all prizes and costs associated with payment of such prizes to the extent that such sums will not be paid into the Players' Trust).

### **Conduct of Ongoing Disputes**

18.33 The Licensee shall at such times as the Commission may determine (whether before the expiry or revocation of the Licence and/or at any time after the expiry or revocation of the Licence), provide to the Commission details of any disputes, claims or proceedings (whether actual, contingent, threatened, present or future) between the Licensee and any parties in connection with the Licence, and which are continuing or expected to be continuing as at the date of the expiry of the Licence (**Ongoing Disputes**).

18.34 The Commission may, by notice in writing to the Licensee and the Successor Licensee, require the Successor Licensee to assume or take over the conduct of such Ongoing Disputes as the Commission may determine.

18.35 If the Commission requires the Successor Licensee to assume or take over the conduct of any Ongoing Disputes in accordance with Condition 18.33, the Licensee shall do all things necessary to assign,

vest in, or otherwise transfer to the Successor Licensee all claims, rights and remedies of the Licensee arising out of or in connection with those Ongoing Disputes.

18.36 The Licensee shall indemnify and hold harmless the Successor Licensee against any liability, claim, cost, judgment, damage or expense (including reasonable attorney's fees) that the Successor Licensee incurs or suffers as a result of having assumed the conduct of any Ongoing Dispute in accordance with this Condition 18. The Licensee shall if so directed by the Commission provide security for the performance of this obligation on terms, in a form and of an amount determined by the Commission.

18.37 The Licensee shall co-operate to ensure that the Successor Licensee is able to assume or take over the conduct of any proceedings and/or negotiations arising in connection with an Ongoing Dispute. Such co-operation shall include:

- (a) the provision of all relevant documents or information in the Licensee's possession, custody or power;
- (b) making available all personnel in the employment of the Licensee as the Successor Licensee or the Commission may request, for the purpose of providing relevant evidence and/or witness statements and for the giving of such evidence in any form of dispute resolution;
- (c) providing all reasonable assistance to locate personnel previously, but not at the time, in the employment of the Licensee for the purpose of providing relevant evidence and/or witness statements and for the giving of such evidence in any form of dispute resolution proceedings;
- (d) executing all formal documents, deeds, assignments or agreements which are or may be necessary in order to pursue the Ongoing Dispute or effect any settlement or agreement in respect of any Ongoing Dispute; and
- (e) complying with any other reasonable instructions or requirements of the Successor Licensee or the Commission in respect of the conduct of any proceedings or negotiations relating to an Ongoing Dispute.

## 19. Security for Players' funds

19.1 The Licensee shall as soon as practicable and in any event no later than 1 February 2009 enter into arrangements in a form and substance approved by the Commission for the appointment of one or more independent Trustees approved by the Commission to be the Trustees of the trust arrangements more particularly described in this Condition 19 (**Players' Trust**). These arrangements shall (unless otherwise agreed with the Commission) provide that, inter alia:

- (a) the Trustees shall hold all monies received by them under such arrangements (other than interest, which shall be treated as provided in Condition 19.1(e)) on trust:
  - (i) for the winners of prizes under Constituent Lotteries;
  - (ii) for Players who have made payments (or Subscriptions) for tickets; and, subject to that,
  - (iii) for the benefit of the NLDF and, if applicable, the OLDF; and
  - (iv) for such other beneficiaries as the Commission may require or approve (together, the **beneficiaries**) and;
  - (v) subject to all of the foregoing, for the benefit of the Licensee;
- (b) the Trustees shall not pay out any monies received by them other than in accordance with Procedures previously approved by the Commission which Procedures shall, inter alia, require that any such payment represents:
  - (i) reimbursement to the Licensee of prize monies properly paid to prize winners by or on behalf of the Licensee (other than prize monies paid out by Distributors and accordingly taken into account for the purposes of the calculation of the amount referred to in Condition 19.4);
  - (ii) the balance properly due to the Licensee at the start of ticket sales for the relevant Draw in respect of monies originally paid as advance payments or Subscriptions for that Draw;
  - (iii) payment of monies properly due to Players in any Constituent Lottery or persons or Players who have made payments (or Subscriptions) for tickets for any such Constituent Lottery;
  - (iv) payments of interest in accordance with Condition 19.1(e); and/or
  - (v) such other payments as the Commission shall have previously approved,

and such arrangements shall provide that the Trustees shall not in any event make any payment to the Licensee if following such payment the amount standing to the credit of the Trust Account would be less than £20,000,000 unless all obligations of the Licensee to all of the beneficiaries shall have been settled in full;

- (c) the sum of £20,000,000 (or such other amount as shall be agreed with the Commission) referred to in Condition 19.3 shall be available to the beneficiaries in the event of the insolvency or other default of the Licensee or on the occurrence of any other event as a result of which the charges referred to in Condition 19.8 shall become enforceable (**Enforcement Event**) provided that the said sum of £20,000,000 (or such other amount as shall be agreed with the Commission or part thereof) shall be returned to the Licensee once all amounts due to the beneficiaries have been paid in full;
- (d) the Trustees shall be entitled to invest funds standing to the credit of the Trust Account subject to such safeguards and restrictions as shall be specified from time to time by the Commission;
- (e) interest or other income earned by the investment of funds standing to the credit of the Trust Account shall be applied in the following order:
  - (i) first in or towards payment of the approved fees and expenses of the Trustees provided that the Commission reserves its right to approve or disapprove the contracted level of any

such fees and expenses and the out of pocket expenses of the Licensee (if any) (including the costs and expenses of establishing the Players' Trust and including legal and auditors fees provided that such fees shall not in aggregate exceed £200,000), bank charges relating to the Trust Account, any external auditors' fees and expenses incurred in the verification of Trust Account receipts and payments and in respect of any accounts produced;

- (ii) secondly, in or towards reimbursement to the Licensee of such amount (if any) paid by the Licensee in respect of the fees, costs and expenses referred to above, any software licence fees payable by the Licensee in connection with the Players' Trust;
  - (iii) thirdly in or towards payment to the Licensee of interest on any monies due but unpaid to the Licensee by way of reimbursement of prize payments at a rate of 1% over the base rate for the time being of the National Westminster Bank plc on each day whilst such amounts remain due but unpaid and in or towards payment to the Licensee of interest equal to the amount of interest actually earned on the sum of £20,000,000 (or such other amount as shall be agreed with the Commission) referred to in Condition 19.3;
  - (iv) fourthly in or towards payment of any taxes paid on any income derived from the Trust Accounts; and
  - (v) fifthly subject to the foregoing, any balance shall be paid within 28 days after the end of each Financial Year to the NLDF, and if applicable the OLF;
- (f) the Trustees shall as soon as reasonably practicable provide such information to the Commission concerning the arrangements and their operation as the Commission may at any time request (but only to the extent that such information is in the possession or under the control of the Trustees), including statements of receipts, payments and the amounts from time to time standing to the credit of the Trust Account;
- (g) the Commission shall be entitled from time to time by written notice to the Licensee and the Trustees to remove any Trustee of the Players' Trust and to appoint another or others in its or their stead; and
- (h) appropriate arrangements approved by the Commission shall be made:
- (i) for the regular delivery to the Trustees of details of the beneficiaries and the amounts due to them; and
  - (ii) to enable the Trustees and/or any receiver appointed by the Trustees to have access to any information and rights to use any element of the Technology Solution, so as to ensure that the Trustees or any receiver appointed by them will be able properly to discharge their duties on the occurrence of an Enforcement Event. Such access and rights shall be at no cost to the Trustees or any receiver appointed by them.

19.2 The Licensee shall not agree or consent to any variation, addition, waiver or suspension of any arrangements constituting the Players' Trust or any change in the identity of the Trustees at any time without the prior approval of the Commission.

19.3 The Licensee shall pay into the Trust Account on or before 1 February 2009 the sum of £20,000,000 (or such other amount as shall be agreed with the Commission) to be held on the trusts declared under the Players' Trust.

19.4 The Licensee shall, save as otherwise provided by way of financial arrangements under the terms of a licence under section 6 of the National Lottery Act, on each payment date, for value not later than 11.00 hours on Wednesday of each week (or on such time or day or at such other frequency as the Commission shall require) but if Wednesday (or such other day required by the Commission) is not a Business Day in England and Wales, the next Business Day in England and Wales, (or if the Monday preceding the payment day is not a Business Day in England and Wales, the payment which would otherwise have been due on the payment day which follows may be postponed to the next Business Day), pay:

- (a) into the Operational Trust Account an amount equal to:

- (i) (subject as provided in Condition 19.9) the aggregate of:
  - (A) the relevant percentage of the total face value of all National Lottery tickets sold (less any such tickets properly cancelled in accordance with Procedures approved pursuant to Condition 5) for any game in respect of which the Draw shall have taken place during the week ended at the close of business on the Saturday preceding the payment date (or such other period as the Commission may require); and
  - (B) the relevant percentage of the total face value of all tickets comprised in each settled pack of Scratchcard Lottery tickets which have become a settled pack during the week ending at the close of business on the Saturday preceding that payment date (or such other period as the Commission may require) less the relevant percentage of the face value of any National Lottery tickets comprised in any settled pack which have been cancelled or repurchased during the relevant week (with the prior consent of the Commission in the case of any such cancellation or repurchase made as a result of the cancellation or withdrawal of a Scratchcard Lottery) in each case less the aggregate amount of prizes properly paid by Distributors during the relevant week and properly retained by them from sums paid to the Licensee prior to that date (and for the purposes of this Condition 19.4 the "relevant percentage" shall mean the percentage of the total face value of the National Lottery tickets sold or, in the case of any Scratchcard Lottery, comprised in a settled pack which, in accordance with the rules of the relevant game, is to be paid out as prizes (whether in connection with the Draw or game or by way of reserve for prizes in any subsequent Draw or game)); and
- (ii) such amount as is necessary to ensure that the total funds standing to the credit of the Operational Trust Account immediately following the payment made under Condition 19.4(a)(i) and any payment made under this Condition 19.4(a)(ii); shall in aggregate be sufficient to discharge all prizes unclaimed at the close of business on the Saturday preceding the payment date in respect of any Draw conducted on or before the Saturday preceding the payment date, and the amount of prizes comprised in each pack of Scratchcard Lottery tickets settled on or prior to the Saturday preceding the payment date; and

"settled pack" means in relation to a Scratchcard Lottery ticket pack the earlier of:

- (i) the expiry of thirty clear days from the day on which the relevant Scratchcard Lottery ticket pack was activated;
  - (ii) the day on which sixty per cent by number of low tier winning Tickets in such Scratchcard Lottery ticket pack have been validated; or
  - (iii) the day on which a Retailer elects to settle such Scratchcard Lottery ticket pack by notifying the Licensee of such election through a terminal;
- (b) into the Subscription Trust Account or Trust Account for New Media, as appropriate, an amount equal to:
- (i) the total gross amount of all advance purchases or Subscriptions received during the week ending at the close of business on the Saturday preceding the payment date (or such other period as the Commission may require) for all National Lottery tickets for games the Draw for which is to take place after the Saturday preceding the payment date; and
  - (ii) such amount as is necessary to ensure that the total funds standing to the credit of the Subscription Trust Account and Trust Account for New Media immediately following the payment made under Condition 19.4(b)(i) and any payment under this Condition 19.4(b)(ii) shall in aggregate be sufficient to repay all advance and Subscription payments not allocated to a particular game at the close of business on the Saturday preceding the payment (or such other period as the Commission may require); and
- (c) into such other account forming part of the Players' Trust such further amount(s) as the Commission shall require.

19.5 Where the Licensee credits or agrees to credit or treat any person as having paid any amount by way of Subscription or advance payment, the Licensee shall at that time be treated as having received such Subscription or advance payment amount (whether or not it has in fact received such amount in whole or part).

19.6 The Licensee shall be responsible for all costs, charges, fees and expenses of the setting up and operation of the said arrangements constituting the Players' Trust insofar as not covered by the interest earned by investment of the funds standing to the credit of the Trust Account as provided above (subject to a right of reimbursement out of interest subsequently so earned).

19.7 The Licensee shall provide such regular reports and/or notifications to the Commission as the Commission may require in respect of all payments to and receipts from the Trust Account, such further information as to the calculation of each such amount as the Commission may from time to time specify (which shall be provided in such form, whether written, electronic or otherwise, as the Commission may require) and in relation to the Players' Trust generally and the Licensee shall further arrange that the bank at which the Trust Account is held shall also provide such information and shall allow such access to information concerning the Trust Account as the Commission may require.

19.8 The Licensee shall, no later than 1 February 2009 charge, assign or otherwise ensure (whether by way of declaration of trust or otherwise) in favour of the Trustees:

- (a) the proceeds of all ticket sales (including all receivables due to the Licensee from persons selling tickets and amounts representing Subscriptions or advance purchases);
- (b) all amounts standing to the credit of all accounts into which the proceeds of ticket sales are paid at any time;
- (c) the Licensee's interest in all amounts standing to the credit of the Trust Account from time to time; and
- (d) all authorised investments made from the amounts standing to the credit of the accounts referred to in Condition 19.8(b) and 19.8(c), and such other of the Licensee Assets and undertaking of whatever nature as the Commission shall require.

19.9 The Licensee shall, where after a pack of National Lottery tickets has been activated and has become a settled pack and the relevant payment has been made under Condition 19.4 in respect of all the National Lottery tickets comprised in it and the Licensee shall have cancelled or re-purchased from the relevant Distributor some or all of the tickets comprised in that pack (and, if such cancellation or repurchase is as a result of the cancellation or withdrawal of a Scratchcard Lottery, the Commission shall have given its prior consent) be entitled to receive from the Trustees out of the Trust Account an amount equal to the payment made in respect of the cancelled or repurchased tickets provided that such payment to the Licensee shall not be made if the amount remaining in the Trust Account would be less than £20,000,000 (or such other amount as shall be agreed with the Commission) or would thereafter not comply with Condition 19.4(b).

19.10 The Licensee shall:

- (a) notify the Trustees at least two weeks in advance (or if it shall become aware of such date less than two weeks in advance, then promptly upon becoming aware of it) of each date on which any ticket sales payment to be made under Schedule 8 will fall on a day other than a Tuesday and of any determination by the Commission under paragraph 8.1 of Schedule 8 as to any proportion of any payment to be postponed (and shall authorise the Commission to do so on its behalf if and whenever the Commission wishes to do so); and
- (b) except as required by any mandatory provision of the arrangements constituting the Players' Trust, not exercise in any relevant week any right to withdraw monies from the Retailer Collection Account if the aggregate of:
  - (i) the remaining balance standing to the credit of such account after such withdrawal; and
  - (ii) the value of any funds withdrawn from the Retailer Collection Account invested in accordance with Condition 19.1(d) the maturity dates for which fall prior to the due dates

for payment of the next succeeding payment to the NLDF and, where applicable, the OLDF and to the Players' Trust in the same relevant week,

would be insufficient to meet those payments.

19.11 The Licensee shall, if so required under any licence granted pursuant to section 6 of the National Lottery Act, in addition to paying the amounts to be paid into the Trust Account pursuant to Conditions 19.3 and 19.4, either:

- (a) pay into the Trust Prize Reserve Account comprised in the Players' Trust such amount or amounts in respect of any particular Constituent Lottery, as shall be specified in the relevant licence; and/or
- (b) to the extent that payment is not made in full pursuant to Condition 19.11(a), provide such bank or other guarantees or indemnities (in a form previously approved by the Commission) which when aggregated with the amount (if any) paid pursuant to Condition 19.11(a) shall equal the amount or amounts as shall be so specified.

19.12 The Licensee shall pay into the Trust Prize Reserve Account on or before the issue of any ticket which is issued without full payment by a third party payer (that is, not being the Licensee, any subsidiary of the Licensee, or any person on behalf of the Licensee or such subsidiary) of the full price payable in accordance with the rules and procedures of the relevant Constituent Lottery, an amount equal to the relevant percentage (as defined for the purposes of Condition 19.4) of such full price of that ticket or, if no relevant percentage shall be calculable in respect of any Constituent Lottery, such percentage as the Commission shall specify.

19.13 The Licensee shall make such further payments into the Players' Trust at such times as the Commission shall require in order to ensure that the rights and interests of the beneficiaries are fully protected at all times.

## 20. Confidentiality and freedom of information

### Confidentiality

20.1 The Licensee shall not disclose any Confidential Information to any third party.

20.2 Condition 20.1 shall not apply:

- (a) to any disclosure of information by the Licensee that is expressly permitted or required by the Licence, including where the Licensee is disclosing Licensee Information under Condition 10 or Reletting Materials under Condition 18;
- (b) to any disclosure of information by the Licensee that is reasonably required for the exercise or implementation of its rights or the performance of its obligations under the Licence;
- (c) to any disclosure of information which is already or has become generally available and in the public domain otherwise than as a result of a breach of this Licence or any other duty or obligation of confidentiality;
- (d) to any disclosure of information necessary to enable a determination to be made in relation to Ongoing Disputes or proceedings under the National Lottery Act;
- (e) to any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the Licensee or the rules of any stock exchange or governmental or regulatory authority having the force of Law;
- (f) to any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the Licensee;
- (g) to any provision of information to the Trustees or the Trustees' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Licensee to enable it to carry out its obligations under the Licence, to that person but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- (h) to any disclosure for the purpose of:
  - (i) the examination and certification of the Licensee's accounts;
  - (ii) any examination by the Comptroller and Auditor General;
  - (iii) any inspection by an independent auditor in accordance with this Licence; or
  - (iv) the provision of information to any appropriate government department or minister for any purpose related to or ancillary to the Licence and/or the National Lottery; or
- (i) to any disclosure of information for which the Licensee obtains the express prior written consent of the Commission.

20.3 Subject to Condition 18.3, the Commission may disclose any information (including Confidential Information) that it may so decide to disclose, which shall include:

- (a) any disclosure by the Commission of information relating to the Licence and such other information as may be required for the purpose of Reletting; and
- (b) any disclosure of information by the Commission to any department, office or agency of the government or their respective advisers or to any person engaged in providing services to the Commission for any purpose related to or ancillary to the Licence and/or the National Lottery.

20.4 To the extent that the Licensee is entitled, compelled or required to disclose Confidential Information to a third party (including any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor) in accordance with this Condition 20, it shall as far as is practicable:

- (a) do so on the basis that the Confidential Information remains confidential; and
- (b) prevent the third party from making any disclosure of the Confidential Information to any other third party without the express prior written consent of the Commission.

20.5 The Licensee undertakes (for itself and as trustee and agent for any Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor) that if it or any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor becomes aware that it or they may become compelled or required to disclose any Confidential Information then it, and where appropriate they, shall:

- (a) inform the Commission of such fact or obligation as soon as practicable and shall use all reasonable endeavours to do so before any Confidential Information is disclosed;
- (b) use all reasonable endeavours to give full details of any proposed disclosure to the Commission before any Confidential Information is disclosed;
- (c) use all reasonable endeavours to ensure that any such disclosure of Confidential Information will be limited to the minimum amount of Confidential Information required to satisfy any such disclosure obligation; and
- (d) use all reasonable endeavours to co-operate with the Commission, have due regard to the views and opinions of the Commission, take such steps as the Commission may require in order to mitigate the effects of, or avoid the requirement for, any such disclosure, and assist the Commission in any appropriate action which the Commission may decide to take.

20.6 The Licensee shall not make use of the Licence, any information issued or provided by or on behalf of the Commission in connection with the Licence, or any Confidential Information otherwise than for the purpose of the running of the National Lottery, except with the express prior written consent of the Commission.

20.7 The Licensee undertakes for itself and as trustee and agent for any Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor that:

- (a) on expiry or revocation of this Licence; or
- (b) if the Commission so requests in writing,

the Licensee, any Group Company and any Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor shall, on the Commission's request, return any Confidential Information in their possession or in the possession of any of their professional advisers, including any copies thereof, and shall destroy all notes or memoranda or other stored information of any kind prepared by the Licensee, any Group Company, any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor or any of their professional advisers relating to any of the Confidential Information and, if required by the Commission, provide written confirmation of its compliance with this Condition 20.7.

### **Freedom of information**

20.8 The Licensee acknowledges that the Commission is subject to the requirements of the FOIA and the EIR and the Licensee shall, and shall procure that any Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor shall, use all reasonable endeavours to assist and co-operate with the Commission to enable it to comply with its disclosure obligations pursuant to the FOIA and the EIR.

20.9 Where the Commission receives a Request for Information in relation to information that the Licensee or any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor is holding on behalf of the Commission (for the purposes of section 3(2)(b) of the FOIA and regulation 3(2)(b) of the EIR) and which the Commission does not hold itself, the Licensee shall, or shall procure that any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor shall, use all reasonable endeavours to:

- (a) provide the Commission with a copy of any such information in the form that the Commission requires as soon as practicable and in any event within ten Business Days (or such other period as the Commission may specify) of the Commission's request; and
- (b) provide all necessary assistance as requested by the Commission in connection with any such information, to enable the Commission to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.

20.10 Subject to Condition 20.7, the Licensee undertakes for itself and as trustee and agent for any Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor that any information held on behalf of the Commission (for the purposes of section 3(2)(b) of the FOIA and regulation 3(2)(b) of the EIR) by the Licensee or by any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor shall be either returned to the Commission after the Expiry Date or retained for disclosure for at least two years after the Expiry Date.

20.11 To the extent that the Licensee or any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor hold any information on behalf of the Commission (for the purposes of section 3(2)(b) of the FOIA and regulation 3(2)(b) of the EIR), the Licensee shall have the same obligations in respect of such information as it does in respect of Licensee Information under Conditions 10.1 to 10.3 and, where such information is held by any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor, under Condition 10.8.

20.12 The Licensee acknowledges and shall procure that any Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor shall acknowledge that the Commission may, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA and regulation 16 of the EIR, be obliged under the FOIA or the EIR to disclose information concerning the Licensee, any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor, the Competition or the National Lottery generally without consulting with the Licensee or any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor.

## 21. Intellectual Property

### IP register

21.1 The Licensee shall establish and maintain a current register in a format specified by the Commission of all IP used by the Licensee in performing its obligations under the Licence and all licences and sub-licences of IP granted by the Licensee, including, but not limited to, third party IP used by the Licensee and the status of any assignment, application for registration, application or amendment.

### Licence of Lottery IP

21.2 Subject to the provisions of this Licence, the Commission hereby grants to the Licensee for the duration of this Licence the royalty-free, payment-free, exclusive and non-transferable right:

- (a) to copy, publish and otherwise use any Lottery IP; and
- (b) to license or permit others to copy, publish and use Lottery IP,

only in connection with the running and promotion of the National Lottery or any approved Ancillary Activity, provided that such use is not detrimental to the interests of Players or damaging to the image or reputation of the National Lottery or in conflict with the interests of the National Lottery and provided always that such right shall not take effect in respect of any item of Lottery IP which is not owned absolutely by the Commission at the date of this Licence until it shall be so owned.

21.3 If the Commission requires at any time during this Licence, the Licensee shall grant a sub-licence to the Commission or its nominee in respect of all Lottery IP in substantially the form set out in Schedule 13 Part 1 (**Lottery IP Licence**), subject to any third party rights that may exist therein.

21.4 If the Licensee wishes to use the Lottery IP for a use other than the running or the promotion of the National Lottery, prior written consent from the Commission is required.

21.5 The Licensee shall amend any materials containing the Lottery IP in such manner and within such timescale as the Commission may specify.

### Sub-licences of Lottery IP

21.6 The Licensee shall have the right to grant royalty-free, payment-free, non-exclusive and non-transferable sub-licences to the same extent as the licence granted in Condition 21.2(a) but for no other purpose and shall enter any sub-licences in substantially the form set out in Schedule 13 Part 2 (**Lottery IP Sub Licence**). Any sub-licences which are not substantially in this form shall require the Commission's prior written consent and such sub-licences will contain such provisions as the Commission may specify.

21.7 Any sub-licence or permission granted by the Licensee under Condition 21.6 shall contain such other provisions as the Commission shall have previously notified to the Licensee in writing prior to its grant.

### National Lottery Logos

21.8 The Licensee shall ensure that, when used in connection with or containing information about the National Lottery or any Constituent Lottery, except with the prior approval of the National Lottery Commission:

- (a) the relevant National Lottery Logo appears on all National Lottery tickets; point of sale material; Retail Outlet equipment; notices indicating where National Lottery tickets can be purchased; any National Lottery or any Constituent Lottery web sites; all electronic sales channels capable of displaying the National Lottery Logo; advertisements; sponsorship by or for the Licensee; all correspondence by the Licensee; and all documents accessed by or made available to or sent to any person (whether or not required to be made available under Condition 7).
- (b) when the relevant National Lottery Logo appears on any corporate advertising or stationery of the Licensee, the Licensee shall include wording demonstrating that the Licensee is the operator of the National Lottery; and

- (c) the Licensee complies with any further direction the Commission may specify.

21.9 The Licensee shall amend any materials containing the National Lottery Logo as requested by the Commission.

#### **Guidelines on use of Lottery IP**

21.10 The Licensee shall:

- (a) unless and to the extent otherwise agreed by the Commission in respect of a particular item or class of Lottery IP, submit guidelines for approval by the Commission relating to the use and mode of display of any Lottery IP, its level of prominence and relationship to other logos or products and shall comply (and procure that every person licensed or otherwise permitted by it to use any Lottery IP shall comply, and shall use best endeavours to enforce such compliance) with all guidelines. The Licensee shall update such guidelines prior to any new logo or design being used in relation to the National Lottery or any Constituent Lottery or product and any update shall be subject to the Commission's approval. The Licensee shall make such amendments to the guidelines or update submitted to the Commission as the Commission shall require for its approval; and
- (b) seek approval from the Commission where the proposed use of any Lottery IP does not comply with the guidelines.

#### **Developed IP**

21.11 If the Licensee and/or any Group Company and/or joint venture company either individually creates or commissions or jointly create or commission any work containing IP for use in the National Lottery, any Constituent Lottery and/or any Ancillary Activity (***Developed IP***), the Licensee shall ensure that:

- (a) the Licensee and/or the Group Company and/or joint venture company has or have vested in it or them all such Developed IP free of any encumbrance and/or third party rights whatsoever;
- (b) the Commission has the right to receive a payment-free transfer of the Licensee's rights in the Developed IP if the Commission requests a transfer; and
- (c) the Commission has the right under the Licensee's contract with the relevant third party to receive a payment-free transfer of the third party's rights in the Developed IP if the Commission requests a transfer.

#### **Transfer or licence of IP of the Licensee**

21.12 At any time during the Licence, the Licensee shall, and shall procure that any Group Company or joint venture company shall, at its or their own cost:

- (a) transfer on a payment-free basis in substantially the form set out in Schedule 13 Part 3(A) (***Form of Deed of Transfer***); or
- (b) if the Commission directs, grant a royalty-free, payment-free, transferable, perpetual and exclusive licence in substantially the form set out in Schedule 13 Part 3(B) (***Form of Licence***),

in favour of the Commission or its nominee of all IP as the Licensee, such Group Company or joint venture company has to use and exploit the rights comprised in the items listed in Condition 21.13.

21.13 The items referred to in Condition 21.12 include:

- (a) Developed IP;
- (b) any Sign, internet domain name or name of any Constituent Lottery;
- (c) design or get up of any ticket or other thing integral to the playing or entering into of any Constituent Lottery, including rules and procedures, leaflets or other materials;
- (d) any codes of practice;

- (e) descriptions or specifications prepared by or on behalf of the Licensee or any Independent Section 6 Licensee relating to the Draw or determination of winners procedures;
- (f) any databases; and
- (g) any other works including software (other than gaming software or any generally available business application software), designs, inventions or databases which the Commission specifies to be available for use for the purpose of running the National Lottery or promoting any Constituent Lottery or of carrying on any Ancillary Activity (or for use by an applicant for a licence to do any such thing) which are currently used or exploited or are capable of being used or exploited by the Licensee in connection with the National Lottery or any Ancillary Activity.

21.14 For the avoidance of doubt, the Licensee shall, at any time assign, or procure the assignment of, on a payment-free basis, to the Commission or its nominee all information and rights in information comprised in the databases referred to at Condition 21.13(f) in substantially the form of assignment set out in Schedule 13 Part 4 (**Databases Assignment**).

#### **Transfer or licence of third party IP**

21.15 At any time during the Licence, the Licensee shall, and shall procure that any Group Company or joint venture company shall, at its or their own cost, use its best endeavours to procure that any relevant third party owner of IP, licensee or other persons having any interest or rights in any IP shall:

- (a) transfer, on a payment free basis in substantially the form set out in Schedule 13 Part 3(A) (**Form of Deed of Transfer**); or
- (b) if the Commission directs, grant a royalty-free, payment-free, transferable, perpetual and exclusive licence in substantially the form set out in Schedule 13 Part 3(B) (**Form of Licence**)

in favour of, the Commission or its nominee of all such IP as the transferor or licensor has to use and exploit any of the rights comprised within the items referred to in Condition 21.13 which are currently used or exploited or are capable of being used or exploited by the Licensee in connection with the National Lottery or any Ancillary Activity and which shall be specified by the Commission (whether any of such rights are used or exploited or capable of being used or exploited by the Licensee or any other person for any other purpose or in any other connection or not).

#### **Restrictions on use of Lottery IP**

21.16 Save for such interest as is granted to the Licensee under this Licence or which may be granted to another person pursuant to and in accordance with Condition 21.6, the Licensee shall not claim any right, title or interest in any Lottery IP.

21.17 Except with the prior consent of the Commission, the Licensee shall not (and shall use its best endeavours to procure that no other person shall) use, copy, publish, or register, or seek to register or use as a trade or service mark, patent, copyright, internet domain name, design or other IP or any item of Lottery IP (save as required pursuant to or permitted by Condition 21.18 or pursuant to a licence or permission granted in accordance with Condition 21.6).

#### **Registration of IP**

21.18 The Licensee shall register or seek to register, in the Commission's name, any Sign as a trade or service mark, or register or seek to register any internet domain name, with the prior consent of the Commission, and maintain any such registration made provided that:

- (a) the Licensee provides the Commission with such information as the Commission may require in the form and manner specified by it. The Licensee shall deliver such information to the Commission within one month of such application being filed or such Sign or internet domain name being registered; and
- (b) notwithstanding the provisions of Condition 21.20 which shall apply in any event, the Licensee shall do and execute all such acts, deeds, documents and things in relation to such applications and/or registrations and maintenance of registrations as the Commission shall require (including applying

for registration in the name of the Commission, or amending or withdrawing any application or registration or making no use of the item in question).

21.19 Where any item of Lottery IP is capable of registration (whether as a trade or service mark, patent, copyright, domain name or otherwise), the Licensee shall do and execute all such acts, deeds, documents and things necessary in relation to such registration to be made in the name of the Commission (including applying for registration in the name of the Commission or as it may direct or amending or withdrawing any application or making no use of the item in question pending such registration).

21.20 In complying with Conditions 21.18 and 21.19, the Licensee shall use all skill and care in carrying out the required formalities and follow best practice (including the employment of reputable trade mark agents or other agents).

21.21 The Licensee shall not (and shall use its best endeavours to procure that no other person shall) do any act or thing to prevent or impede any registration of any Lottery IP nor seek to impeach the rights of any owner, holder or applicant for registration of such rights pursuant to any requirement of the Commission under Condition 21.19.

21.22 The Licensee shall immediately notify the Commission on becoming aware of any internet domain names or IP the ownership or use of which would benefit the running of the National Lottery. The Commission and the Licensee shall consult to agree appropriate action to be taken in respect thereof.

### **Infringement**

21.23 The Licensee shall immediately notify the Commission in writing with full particulars on becoming aware of any use or proposed use by any other person of any works (including software), design, invention, database, internet domain name, Sign, trade name, trade or service mark, get up of goods or services, or mode of promotion or advertising which amounts or might amount to infringement of the rights conferred by any Lottery IP (or would or might do so if any registration were effected), or which might entitle the Commission or the Licensee to take action in respect of passing off, unfair competition or any similar rights.

21.24 On confirmation from the Commission that it has not authorised such use or infringement, the Licensee shall:

- (a) promptly issue written warnings to and use its best endeavours to obtain undertakings from the other person against such use or infringement;
- (b) promptly notify the Commission if it is unable to stop such use or infringement without issuing proceedings and shall propose enforcement measures to the Commission or its duly authorised representatives for approval; and
- (c) follow the approved enforcement measures and have daily control for such enforcement measures subject to any request made by the Commission as part of its approval.

21.25 The Licensee shall, at the request of the Commission and under the Commission's direction, commence legal proceedings in the Licensee's own name (unless the Commission specifies otherwise) without the Commission being joined as a party thereto in connection with any infringement or alleged infringement, or passing off, or unfair competition, or claim or counterclaim in respect of the registration of any Lottery IP or any part of it or them as the Commission may require. The Commission shall not be obliged to bring or defend any such proceedings nor to become a party to any such proceedings even if it has concurrent rights of action with the Licensee.

21.26 All damages or other monies (including payment of costs recovered from third parties) in respect of any infringement or other breach of any rights in respect of any Lottery IP shall be applied firstly, towards reimbursement of any costs properly incurred by the Commission and/or the Licensee in pursuing the matter in question and, if the monies recovered are insufficient to discharge all such costs, they shall be divided between the Commission and the Licensee in proportion to the costs incurred by each of them; and secondly, in payment to the Secretary of State absolutely.

21.27 Any such proceedings or claims shall be issued on such basis and using such legal and other advisers and counsel as the Licensee shall determine with the approval of the Commission. The Licensee shall (and shall procure that any such counsel or other advisers or agents shall) provide such information,

and report in relation to such proceedings, as the Commission shall require from time to time and the Commission shall be entitled at any time to require that such counsel and/or advisers and/or agents of the Licensee shall take such steps as it shall direct in relation to any such proceedings or claims. The Licensee shall allow the Commission full access to all documents in its possession or control in relation to such proceedings or claims.

21.28 If, after approval is received of the approved enforcement measures, there is a material change in relation to such proceedings the Licensee shall immediately notify the Commission and do all such things and take all actions as the Commission may request.

21.29 Notwithstanding Condition 21.27, the Licensee shall in any event indemnify the Commission against any costs and expenses (including legal expenses) incurred by the Commission as a result of or in connection with the Commission directing any proceedings or claims brought by the Licensee under Condition 21.25.

## **22. Data protection**

22.1 The Licensee shall ensure that and shall ensure that any Licensee Subcontractor shall ensure that all processing of personal data incorporated in any database maintained by or on behalf of the Licensee in connection with the running of the National Lottery or any Constituent Lottery or any Ancillary Activity shall be carried out in compliance with the Data Protection Act and any equivalent legislation in any country or jurisdiction other than the United Kingdom where:

- (a) the National Lottery or any Constituent Lottery or any Ancillary Activity takes place or activities in relation to the National Lottery or any Constituent Lottery or any Ancillary Activity; or
- (b) it is necessary for the Licensee to comply.

22.2 The Licensee shall ensure and procure that any Licensee Subcontractor shall ensure that all necessary prior consents are obtained from data subjects whose personal data is contained in any database referred to in Condition 22.1 as shall be necessary to permit use or transfer of or access to these databases and all information contained therein by the Commission or its nominee (including the Successor Licensee) in connection with the running of the National Lottery or any Constituent Lottery or any Ancillary Activity (including any use, access or transfer required by the Commission or its advisers or representatives in connection with the Competition or preparations for it). For the avoidance of doubt, the necessary consents shall be obtained when personal data is first collected or obtained from the data subjects so as to allow that transfer or access to take place within the timescale specified by the Commission.

## **23. Licence extensions**

### **Extension of the Licence**

23.1 If the Commission and the Licensee agree, the Licence shall continue on the terms set out in the Licence, or such other terms as the Licensee and the Commission may agree for a maximum period of five years, such period to be determined in the Commission's absolute discretion.

### **Extension of the Licence in the case of a Licensee Investment**

23.2 If the Licensee wishes to propose a Licensee Investment it must serve a Licensee Notice of Investment Opportunity (which shall include the implementation plans) on the Commission which shall set out:

- (a) the proposed Licensee Investment in sufficient detail to enable the Commission to evaluate it in full (for the avoidance of doubt, such detail shall include the costs of the Licensee Investment, the Licensee's assessment of the impact of the proposed Licensee Investment upon returns to good causes, the savings which will be made by the Licensee as a consequence of the Licensee Investment and, the benefits that the Licensee Investment will have for the National Lottery);
- (b) the Licensee's reasons for proposing the Licensee Investment;
- (c) any implications of the Licensee Investment for the Licensee, the National Lottery and/or the Commission; and
- (d) the period of the proposed extension of the Licence and the basis upon which this has been calculated.

23.3 The Commission shall have the right to determine and provide to the Licensee, further details of which shall apply to the proposal by the Licensee of a Licensee Investment.

23.4 The Commission may in its absolute discretion require the Licensee to propose a Licensee Investment in accordance with Condition 23.2 and the Licensee shall co-operate with the Commission in providing such a proposal.

23.5 The Commission shall consult with the Licensee and shall evaluate the Licensee Notice of Investment Opportunity in its absolute discretion and may propose modifications or accept or reject the Licensee Notice of Investment Opportunity.

23.6 If the Commission proposes modifications to the Licensee Notice of Investment Opportunity, the Licensee shall consult with the Commission and shall evaluate the modifications and may either reject the modifications and withdraw the Licensee Notice of Investment Opportunity without any obligation to proceed, or accept the modifications to the Licensee Notice of Investment Opportunity.

23.7 If the Commission accepts the Licensee Notice of Investment Opportunity (with or without modification), the Licensee shall issue a final version of the Licensee Notice of Investment Opportunity (which shall be modified as may be necessary to meet the Commission's concerns). The final version of the Licensee Notice of Investment Opportunity shall be subject to the approval of the Commission prior to issue.

23.8 The parties shall enter into any agreements necessary to amend this Licence and/or any other documents necessary to give effect to such extension, and the Licence shall continue on the terms set out in the Licence, or such other terms as the Licensee and the Commission may agree and the Licensee Investment shall be implemented in accordance with the implementation plans as set out in the Licensee Notice of Investment Opportunity.

### **Extension to facilitate handover**

23.9 To facilitate the handover of the National Lottery to a Successor Licensee or where the Commission, in its absolute discretion, considers that the competitive environment is not conducive to a Competition, or where the Commission considers, in its absolute discretion, that the Competition may take longer than it originally envisaged, the Commission may, in its absolute discretion, require the Licensee to continue to run the National Lottery on the terms set out in this Licence by extending the duration of the Licence for a period of six months, subject to a maximum of four such extensions, and the Licensee shall be obliged so to act provided that written notice of such requirement is given to the Licensee by the Commission no later than three months prior to the Expiry Date.

23.10 Where the Commission extends the Licence under Condition 23.9 and as a direct result of the Licensee being required to continue to act as operator for the period of the extension of the Licence, the Licensee incurs costs or expenses over and above those that it was incurring prior to the extension of the Licence then to the extent that such costs are:

- (a) reasonably and properly incurred; and
- (b) reasonably evidenced in writing by the Licensee on an open book basis, such evidence and further related information being provided to the Commission by the Licensee as may be requested,

the recovery of such costs or expenses shall be provided for under an arrangement then to be agreed as between the Commission and the Licensee.

23.11 If the parties cannot agree the sum to be provided for in favour of the Licensee under Condition 23.10(b), or the mechanism under which such sums will be recovered by the Licensee, the parties agree to refer the matter to an Expert for determination in accordance with Schedule 14.

## **24. No waiver**

24.1 No failure or delay by the Commission in exercising any right or remedy provided by Law under or pursuant to this Licence shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.

## **25. Severability**

25.1 Without prejudice to the Commission's powers under section 8 of the National Lottery Act, if and to the extent that any provision of this Licence is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in this Licence but without invalidating any of the remaining provisions of this Licence. Where the Commission cannot or does not exercise its powers under section 8 of the National Lottery Act, the Licensee shall meet with the Commission, if so requested by the Commission to negotiate in good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Licence not so affected) so as to re-establish an appropriate balance of the interests of the parties.

## 26. Governing Law and jurisdiction

26.1 This Licence shall be governed by and construed in accordance with English law.

26.2 Subject to Condition 26.3, the Commission and the Licensee irrevocably agree that the English courts shall have exclusive jurisdiction in relation to any legal action or proceedings arising out of or in connection with the Licence (**Proceedings**) and waive any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

26.3 The Commission and the Licensee agree that Condition 26.2 shall operate for the benefit of the Commission and accordingly, the Commission shall be entitled to take Proceedings in any other court or courts having jurisdiction.

## **27. Third party rights**

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

## 28. Notices

28.1 The Licensee shall give any notice under, or in connection with, this Licence in writing. Notice shall be served by sending it by fax to the number set out in Condition 28.4, or delivering it by hand, or sending it by prepaid recorded delivery, special delivery or registered post, to the address set out in Condition 28.4, or by sending it by electronic mail to the address set out in Condition 28.4, and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this Condition 28). Any notice so served by hand, fax, post or electronic mail shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, special delivery or registered post, at 09.00 hours on the second Business Day following the date of posting; and
- (d) in the case of electronic mail, when the email leaves the email gateway of the sender where it leaves such gateway before 18.00 hours on any Business Day or in any other case at 09.00 hours on the next Business Day after it leaves such gateway and the onus shall be on the party giving notice to prove the time that the email left its gateway,

provided that in each case where delivery by hand or by fax occurs after 18.00 hours on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 09.00 hours on the next following Business Day.

28.2 The Commission may give any notice under or in connection with, this Licence in writing. Notice may be served by sending it by fax to the number set out in Condition 28.4, or delivering it by hand, or sending it by prepaid recorded delivery, special delivery or registered post, to the address set out in Condition 28.4, or by sending it by electronic mail to the address set out in Condition 28.4, and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this Condition 28). Any notice so served by hand, fax, post or electronic mail may be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, special delivery or registered post, at 09.00 hours on the second Business Day following the date of posting; and
- (d) in the case of electronic mail, when the email leaves the email gateway of the sender where it leaves such gateway before 18.00 hours on any Business Day or in any other case at 09.00 hours on the next Business Day after it leaves such gateway and the onus shall be on the party giving notice to prove the time that the email left its gateway,

provided that in each case where delivery by hand or by fax occurs after 18.00 hours on a Business Day or on a day which is not a Business Day, service may be deemed to occur at 09.00 hours on the next following Business Day.

28.3 References to time in this Condition 28 are to local time in the country of the addressee.

28.4 The addresses, fax numbers and electronic mail addresses of the parties for the purpose of this Condition 28 are as follows:

**The Commission**

Address: 101, Wigmore Street

London

W1U 1QU

Fax: 0207 016 3401

For the attention of: Mark Harris, Chief Executive

Electronic mail address: m.harris@natlotcomm.gov.uk

**The Licensee**

Address: Tolpits Lane

Watford

Hertfordshire

WD18 9RN

Fax: 01923 425427

For the attention of: Gill Marcus, Company Secretary

Electronic mail address: gill.marcus@camelotgroup.co.uk

28.5 A party may notify the other party to this Licence of a change to its name, relevant addressee, address, fax number or electronic mail address for the purposes of this Condition 28, provided that, such notice shall only be effective on:

- (a) the date specified in the notice as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date following five Business Days after notice of any change has been given.

28.6 All notices under or in connection with this Licence shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

## **29. Survival**

29.1 Conditions 5.17, 6.6, 6.13, 6.14, 7.45 – 7.49, 7.51, 10.7, 10.17 – 10.22, 11, 12.9, 14.4, 14.6, 15.19, 16.2, 16.3, 18, 19, 20.1, 20.2, 20.4 – 20.11, 22, 24, 25, 26, 27, 28 and 29 together with Schedules 5, 8, 9, 10, 11, Parts 1 – 3 of Schedule 12, and 14 shall survive the expiry or revocation of this Licence.

29.2 The provisions of this Licence shall survive:

(a) for the purpose of enforcement;

(b) for the purpose of interpretation; and

(c) notwithstanding Condition 29.1, insofar as the provision states, expressly or by implication, that it is intended to survive the expiry or revocation of this Licence.

## Schedule 1

### Definitions

#### Condition 2

**15% holder** has the meaning set out in Condition 12.5;

**Account** means, in relation to a Registered Player other than a Subscriber, the notional account described as an account maintained by such Registered Player via the Interactive Systems;

**aggregate value of National Lottery tickets sold** has the meaning set out in Schedule 8 Part 1;

**Ancillary Activity** means:

- (a) any activity of the Licensee other than the running of the National Lottery;
- (b) the use of any IP, Licence Assets or Licensee Subcontract, Series Subcontract or Sub Series Subcontract by any person for any activity other than the running of the National Lottery;
- (c) other than the running of the National Lottery, any activity of any subsidiary (as defined under section 736 of the Companies Act 1985 as amended) of the Licensee, regardless of whether the subsidiary became a subsidiary of the Licensee before or after the Licence came into effect; and/or
- (d) any investment by the Licensee in the shares or securities of any company unless the shares or securities which are the subject of such investment:
  - (i) are listed on the main market of the London Stock Exchange or any other investment exchange that has been approved by the Commission; and
  - (ii) do not amount to more than 3% of the total issued share capital of that company;

and includes the exploitation of any IP, Licence Assets, Licensee Subcontract, Series Subcontract or Sub Series Subcontract by a third party whether or not in return for payment to the Licensee and whether or not such exploitation directly contributes to or forms part of the running of the National Lottery. Without prejudice to the generality of this definition Ancillary Activity shall include:

- (i) the broadcasting of, or the sale or other disposal of the rights to broadcast (whether on radio or television), any Draw in a Constituent Lottery or other method by which prize winners in such a lottery are ascertained or announced;
- (ii) the sale or other disposal of space for advertising on National Lottery tickets or at any other place associated with the National Lottery or any Constituent Lottery;
- (iii) the making of arrangements whereby the National Lottery or any Constituent Lottery is sponsored or an association between the National Lottery or any Constituent Lottery and any other person or any goods or services is publicised;
- (iv) the exploitation of any of the National Lottery Logos or the name of, or any logo used in relation to, any Constituent Lottery including in particular the sale of any merchandise which bears any of the National Lottery Logos or the name of, or any logo used in relation to, any Constituent Lottery;
- (v) the exploitation of any equipment used by the Licensee, a subsidiary of the Licensee or any Distributor primarily in connection with the National Lottery or any Constituent Lottery; and
- (vi) anything else which the Commission shall deem to be an Ancillary Activity;

**Ancillary Activity Payment** means payments made by the Licensee in accordance with Schedule 5;

**Ancillary Lottery** means a lottery which forms part of the National Lottery and is the subject of a licence granted under section 6 of the National Lottery Act which shall:

- (a) have as its sole purpose the promotion or marketing of a Constituent Lottery or Constituent Lotteries;
- (b) be restricted to Qualifying Players;
- (c) be Free of Additional Charge; and
- (d) only offer as a prize one or more single entries into Constituent Lotteries;

**Associated Lotteries** means where two or more Draw based Constituent Lotteries are promoted under separate licences and:

- (a) one Constituent Lottery is of the same description as the other Constituent Lottery (apart from any variation with respect to the time when any Draw in the Constituent Lottery can take place); or
- (b) in the opinion of the Commission, one Constituent Lottery is of the same description as the other Constituent Lottery except for a minor variation in the timing, prize structure, entry price or some other aspect of the Constituent Lottery.

**BACS** means the Bankers Automated Clearing System;

**Basic Primary Contribution** has the meaning set out in Schedule 8 Part 1;

**BC and DR Plans** means the Licensee's documented plans detailing the processes to be followed and the actions to be taken on the occurrence of one or more events resulting in the failure of, or interruption or disruption to the running of the National Lottery;

**beneficiaries** has the meaning set out in Condition 19.1(a);

**Best Industry Practice** means the standards and tests of skill, prudence, foresight, expertise and experience as would be expected of a skilled and experienced lottery operator engaged in the same undertaking as the Licensee;

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

**Carrier** has the meaning set out in Schedule 11;

**Central Computer System** means the system used to record and store wagers, determine winners and validate prizes;

**CHAPS** means the Clearing House Automatic Payment System;

**Combined Code** means the Combined Code on Corporate Governance 2003 (as amended);

**Competition** means the Reletting process;

**Comptroller and Auditor General** means the Comptroller-General of the receipt and issue of Her Majesty's Exchequer and Auditor-General of Public Accounts appointed in pursuance of the Exchequer and Audit Departments Act 1866;

**Condition** means a condition of this Licence;

**Confidential Information** means information relating in any way to the National Lottery, the Competition or the Commission (however it is conveyed or on whatever media it is stored) which is:

- (a) information that the Commission informs the Licensee should be considered confidential; or

- (b) information the nature of which implies that it is confidential, or which is imparted to the Licensee in circumstances that imply it is confidential, including information the disclosure of which would, or would be likely to, prejudice the National Lottery, the Competition, the commercial interests of any person, trade secrets, the IP of the Commission and all personal data and sensitive personal data within the meaning of the Data Protection Act;

**Connected Party** has the meaning set out in Condition 12.5;

**Consented Free Ticket** has the meaning set out in Schedule 8 Part 1;

**Constituent Lottery** means a lottery which forms part of the National Lottery and is the subject of a licence granted under section 6 of the National Lottery Act including an Ancillary Lottery;

**Continuing Obligations** means continuing obligations relevant to the commencement of the Successor Licence identified by the Commission which may include:

- (a) making all necessary arrangements to ensure the validation and payment of all prizes to prize winners, in accordance with the rules of the Constituent Lottery;
- (b) discharging obligations to third parties;
- (c) making all necessary arrangements to ensure that the Licensee's prize payment security arrangements are capable of being transferred to the Successor Licensee;
- (d) ensuring that arrangements with Players (including Player accounts, Subscriptions and advance payments for Constituent Lotteries which take place following the expiry or revocation of the Licence) continue into the Successor Licence;
- (e) ensuring continuity of a Constituent Lottery promoted by the Licensee; and
- (f) handover of conduct of Ongoing Disputes;

**Co-operation Agreement** means the agreement to be entered into pursuant to Condition 18, including, for the avoidance of doubt, the principles set out in Schedule 12 Part 3;

**Costs Expert** means the independent expert(s) appointed by the Commission for the purpose of determining the matters set out in Condition 16.4;

**Databases Assignment** means the form of assignment specified in Condition 21.14 in the form set out in Schedule 13 Part 4;

**Data Protection Act** means the Data Protection Act 1998;

**data subjects** means data subjects as defined in the Data Protection Act;

**debt facility profile** has the meaning set out in Condition 12.1;

**Deed of Transfer for Transferring Assets** means the deed specified in Condition 18.23 in the form set out in Schedule 12 Part 2;

**Developed IP** has the meaning set out in Condition 21.11;

**director** means a person who is, at the relevant time, a duly appointed executive director of the Licensee and a member of the Licensee's main board;

**Dispute** has the meaning set out in Schedule 14;

**Distributor** means any person authorised by the Licensee who sells or offers for sale any National Lottery tickets, other than the Licensee;

**document** means anything in which information or data of any description is recorded;

**Draw** means the process which culminates in the selection by the Licensee of a set of winning numbers for a National Lottery game on a random basis and includes any similar arrangement for determining the persons who have won prizes in a Constituent Lottery;

**Draw-based Facilities** means facilities where tickets for Constituent Lotteries may be purchased;

**Draw-based Game** means any National Lottery game, the result of which is determined by a Draw and in which a Player's selection is recorded on the Licensee's Central Computer System;

**EIR** means the Environmental Information Regulations 2004;

**Enforcement Event** has the meaning set out in Condition 19.1(c);

**Euro-Compliant** means in relation to the provision of the National Lottery, that any element of the Technology Solution is capable of processing any data denominated in the Euro in the same manner as it does for the pound (and vice versa) in compliance with the terms laid down by the Bank of England or other applicable Law and respects euro currency formatting conventions and requirements (including the Euro symbol), in each case, without any loss of performance or functionality;

**Expert** has the meaning set out in Schedule 14;

**Expiry Date** means the date on which the Licence ceases to have effect in accordance with Condition 1.2 or any later date that the Licence ceases to have effect calculated in accordance with Condition 23;

**Final Payment Day** has the meaning set out in Schedule 8 Part 1;

**Finance Agreement** means any agreement with the Licensee concerning its material sources of financing, including any bank or other loans, all guarantees, securities or other credit support, overdraft facilities or shareholder funding including equity and loans;

**Financial Year** means the period from the grant of the Licence until 31 March 2010 and thereafter each period from 1 April to the following 31 March except that the last financial year shall be the period from 1 April preceding the Expiry Date until the Expiry Date, unless the Licence is revoked pursuant to Schedule 3 of the National Lottery Act;

**Fit for Purpose** means that which enables the consistent delivery of the smooth provision and running of the National Lottery in compliance with the Licensee's obligations under this Licence in all aspects including in relation to capacity, performance, availability, scalability, resilience, flexibility, interoperability, Standards, security, integrity and Player access;

**FOIA** means the Freedom of Information Act 2000;

**Form of Deed of Transfer** means the form of transfer specified in Condition 21.12(a) and Condition 21.15(a) in the form set out in Schedule 13 Part 3(A);

**Form of Licence** means the form of licence specified in Condition 21.12(b) and Condition 21.15(b) in the form set out in Schedule 13 Part 3(B);

**Free of Additional Charge** means free of any additional consideration save for the amount of the cost of Entry into the relevant Constituent Lottery which shall be deemed to be consideration for entry into the relevant Ancillary Lottery;

**Game Name** means the name of a game which comprises the whole or part of a Constituent Lottery (or is intended to do so), and includes the design of the ticket or entry for that Constituent Lottery;

**Game Type** has the meaning set out in Schedule 8 Part 1;

**Gross Sales Retention** has the meaning set out in Schedule 8 Part 1;

**Group Company** means any subsidiary or immediate, intermediate or ultimate holding company of the Licensee from time to time and any subsidiary of any such immediate, intermediate or ultimate holding

company from time to time, “subsidiary” and “holding company” having the meanings set out in section 736 of the Companies Act 1985;

**Handover Period** means the period referred to in Conditions 18.5 and 18.6;

**Incident** has the meaning set out in Condition 10.7;

**Independent Person** means a third party appointed by the Licensee and approved by the Commission;

**Independent Section 6 Licensee** means any person other than the Licensee itself who holds a licence under section 6 of the National Lottery Act;

**Independent Verification System** means a system approved by the Commission designed to enable the Commission to verify the output of and ensure integrity of the gaming systems;

**Initial Expiry Date** means 31 January 2019;

**Instant Win Game** has the meaning set out in Schedule 8 Part 1;

**Intellectual Property or IP** means patents, trade marks, service marks, logos, get-up, trade names, internet domain names, rights in designs, copyright (including rights in computer software) and moral rights, database rights, semi-conductor topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered, and all rights or forms of protection having equivalent or similar effect anywhere in the world and registered includes registration, and applications for registration;

**Interactive Account Terms and Conditions** means the terms and conditions which shall be approved by the Commission in accordance with Condition 7.16 of the Licence as varied from time to time by agreement in writing between the Licensee and the Commission upon and subject to which Players are, inter alia, allowed to become Registered Players, operate Accounts and, subject to the Rules for Draw-based Games Played Interactively and the Interactive Draw-based Game Procedures, purchase tickets;

**Interactive Draw-based Game Procedures** means the procedures which shall be approved by the Commission in accordance with Condition 7.16 of the Licence as varied from time to time by agreement in writing between the Licensee and the Commission;

**Interactive Instant Win Game** has the meaning set out in Schedule 8 Part 1;

**Interactive Platform** means the system established and operated by the Licensee on the internet and/or interactive television;

**Interactive Systems** mean those elements of the Technology Solution which enable a Player to register, to manage its Account, to purchase tickets or to apply for Subscriptions without the involvement of a Distributor or other intermediary, including internet websites, interfaces with banks and relevant authentication agencies, mobile phone systems, interactive television and any terminal networks which may be used by a Player for such purposes;

**International Financial Reporting Standards** means the accounting standards and interpretations adopted by the International Accounting Standards Board and the European Union;

**intra group Licensee Subcontract** means any Licensee Subcontract which the Licensee enters into with a Group Company;

**Key Licensee Subcontract** means any subcontract designated as such pursuant to Conditions 15.4 and 15.7;

**Key Licensee Subcontract Licence** means the licence specified in Condition 15.15A in the form set out in Schedule 12 Part 4(B);

**Key Licensee Subcontractor** means any subcontractor whose subcontract with the Licensee meets the criteria for Key Licensee Subcontract in Conditions 15.4 and 15.7;

**Key Licensee Subcontract Transfer** means the transfer specified in Condition 15.15A in the form set out in Schedule 12 Part 4(A);

**Law** means any and all of the following each as in force from time to time:

- (a) laws, by-laws, common law or other legislation made by any legislative, judicial, regulatory or administrative body or agency (or any sub-division of them) of the United Kingdom or of the European Union or any supranational body which has rule making power or whose directives, decisions, instructions, rulings, laws or regulations are directly enforceable against the Licensee or against the Commission in relation to the National Lottery or the running of the National Lottery and all rules, regulations, ordinances, orders, notices, directives, guidance notes and circulars promulgated pursuant to the same to the extent legally effective; and
- (b) any authoritative judicial or legally effective administrative interpretation of each of the foregoing;

**Licence** means this licence;

**Licensee Assets** means unless otherwise agreed with Commission, all assets used in the operation of the National Lottery including, for the avoidance of doubt, any shareholdings;

**Licensee** means Camelot Group plc company number 02822203 of Tolpits Lane, Watford, Hertfordshire WD18 9RN;

**Licensee Database** means all electronic and manual databases and data files kept by or on behalf of the Licensee in connection with the National Lottery, any Constituent Lottery or Ancillary Activity concerning the Licensee or its business or affairs;

**Licensee Information** means all books, records, systems, documents, software, scripts, Processes, Procedures, instructions, databases, information in relation to the Licensee's Staff and the Licensee's rights, powers, duties and liabilities in relation to the Licensee's Staff, information or data kept by or on behalf of the Licensee in connection with the National Lottery (including financial, operational, Player or Distributor databases, information or data, and any market research conducted by or on behalf of the Licensee) and any other information the Commission may require concerning the Licensee or its business or affairs;

**Licensee Insolvency** means those grounds of insolvency specified in paragraph 3 of Schedule 3 to the National Lottery Act;

**Licensee Investment** means an investment by the Licensee which is authorised by the Commission in accordance with Condition 23.2 of the Licence on the basis that it represents a significant, unanticipated investment opportunity arising during the period of the Licence that may have the capacity to enhance the National Lottery in a way that benefits both good causes and the Licensee and which would not be undertaken in the absence of a Licence extension granted in accordance with Condition 23 of the Licence. For the avoidance of doubt, a Licensee Investment does not include any investment or expenditure required to ensure the Licensee's compliance with the terms of this Licence;

**Licensee Notice of Investment Opportunity** means a notice served on the Commission by the Licensee in accordance with Condition 23;

**Licensee Subcontract** means any agreement including any software licence entered into by the Licensee and a third party(ies) in connection with the National Lottery;

**Licensee Subcontract Novation** means the novation specified in Condition 18.16 in the form set out in Schedule 12 Part 1;

**Licensee Subcontractor** means the party with whom the Licensee enters into a Licensee Subcontract;

**Loss** means any loss, whether direct or indirect, including damages, liabilities, costs, expenses and demands;

**Lottery Duty** has the meaning set out in Schedule 8 Part 1;

**Lottery IP** means the National Lottery Logos, each Game Name and each item of IP specified by the Commission or used only in connection with the promotion and running of the National Lottery, any Constituent Lottery or any Ancillary Activity;

**Lottery IP Licence** means the licence specified in Condition 21.3 in the form set out in Schedule 13 Part 1;

**Lottery IP Sub Licence** means the sub-licence specified in Condition 21.6 in the form set out in Schedule 13 Part 2;

**Management Letter** means a letter to the management of the Licensee from its external auditors at the end of the external audit detailing issues such as any control weaknesses identified during the course of the audit and recommendations for correcting the issues;

**month** means calendar month;

**National Lottery** has the meaning ascribed to that term in the National Lottery Act;

**National Lottery Act** means the National Lottery etc Act 1993;

**National Lottery Logos** means the logos from time to time approved by the Commission for use generally in connection with the National Lottery or Constituent Lottery;

**National Lottery ticket or ticket** means a ticket or entry in a Constituent Lottery and includes any document providing evidence of a person's claim to participate in a Constituent Lottery;

**net value of National Lottery tickets sold** has the meaning set out in Schedule 8 Part 1;

**NLDF** means The National Lottery Distribution Fund, as described in section 21 of the National Lottery Act;

**NLDF Contribution** has the meaning set out in Schedule 8 Part 1;

**NLDF Weekly Payment** has the meaning set out in Schedule 8 Part 1;

**Non-Retailer Distributed Draw-Based Game** has the meaning set out in Schedule 8 Part 1;

**OLDF** means the Olympic Lottery Distribution Fund, as described in section 23 of the Horserace Betting and Olympic Lottery Act 2004;

**OLDF Contribution** has the meaning set out in Schedule 8 Part 1;

**OLDF overpayment** has the meaning set out in Schedule 8 Part 3;

**OLDF underpayment** has the meaning set out in Schedule 8 Part 3;

**OLDF Weekly Payment** has the meaning set out in Schedule 8 Part 1;

**Olympic Lottery** means any Constituent Lottery which has been designated an Olympic Lottery by or pursuant to its licence granted under section 6 of the National Lottery Act;

**Olympic Lottery ticket sales** has the meaning set out in Schedule 8 Part 1;

**Ongoing Disputes** means those disputes, claims or proceedings set out in Condition 18.33;

**Operational Trust Account** has the meaning set out in the Trust Deed pursuant to which the Players' Trust is constituted;

**overpayment** has the meaning set out in Schedule 8 Part 3;

**Part** means a part of this Licence;

**partner** has the meaning set out in Condition 12.7;

**personal data** means personal data as defined in the Data Protection Act;

**Player** means in relation to a Constituent Lottery, a person who has bought or been given a ticket or a chance in the Constituent Lottery;

**Player Guide** means the player guide referred to in Condition 7 as approved by the Commission together with any amendments to that guide approved by the Commission from time to time, and “current Player Guide” shall mean the latest version of the player guide which shall have been approved by the Commission;

**Players’ Trust** means a trust to be constituted in accordance with the provisions of Condition 19;

**Postcode District** means an area at the date of the grant of this Licence used by the Royal Mail covered by an individual postcode such as RH15 or W4, which has a minimum of 2000 residents;

**pound or £** means the lawful currency of the United Kingdom;

**Previous Licence** means the licence to run the National Lottery granted by the Commission to the Previous Licensee on 27 January 2002;

**Previous Licensee** means Camelot Group plc, company number 02822203 of Tolpits Lane, Watford, Hertfordshire WD18 9RN;

**Primary Contribution** means the amount calculated to be paid to the Secretary of State by the Licensee in respect of each Financial Year (or part thereof) and determined in accordance with the provisions of Schedule 8;

**Prize Payments** has the meaning set out in Schedule 8 Part 1;

**Prize Pay-out Ratio** has the meaning set out in Schedule 8 Part 1;

**Procedure** means a document explaining or describing a Process or part of a Process, including any written specifications for the levels of resilience, reliability, security, availability of service and quality assurance of any element of the Technology Solution;

**Process** means any operation undertaken by or on behalf of the Licensee in performing the National Lottery, including the operation of the relevant software and/or mechanical operations;

**processing** means in the context of Conditions 15 and 22 processing as defined in the Data Protection Act;

**Property Interests** means the interests set out in Condition 18.27(a);

**qualifying direct shareholder** has the meaning set out in Condition 12.5;

**Qualifying Player** means a purchaser of a ticket in a Constituent Lottery in relation to which an Ancillary Lottery is being run during the duration of that particular Ancillary Lottery as determined by the terms, conditions and rules for that particular Ancillary Lottery;

**Quarter** has the meaning set out in Schedule 11;

**Quarterly Payment Day** has the meaning set out in Schedule 11;

**Redundancy Costs** means payments due on termination of employment by reason of redundancy (as defined in section 139 of the Employment Rights Act 1996) including any entitlement to a statutory redundancy payment, any entitlement to an enhanced redundancy payment and any notice payment due;

**Redundancy Obligations** has the meaning set out in Condition 16.4;

**Registered Player** means a Player registered in the Licensee’s records as a Player of the Constituent Lotteries in accordance with the Interactive Account Terms and Conditions or a Player registered as purchasing a Subscription via the Interactive Systems in accordance with the terms and conditions for Draw-based Games as described by Condition 7.16 of the Licence;

**registration scheme** has the meaning set out in Condition 7.9;

**Reletting** means the exercise by the Commission whether before or after the Expiry Date of its functions under the National Lottery Act to secure the continued provision of the National Lottery from the Expiry Date;

**Reletting Materials** means the materials referred to in Condition 18.2;

**relevant percentage** has the meaning set out in Condition 19.4;

**Relevant Period** has the meaning set out in Schedule 8 Part 1;

**Relevant Saturday** has the meaning set out in Schedule 8 Part 1;

**Request for Information** has the meaning set out in the FOIA or, where a request is made under the provisions of the EIR, shall have the meaning given for the term 'request' in the EIR;

**Retail Outlet** means any premises where tickets in a Constituent Lottery are sold to Players who attend personally at the premises;

**Retailer Collection Account** has the meaning set out in the Trust Deed pursuant to which the Players' Trust is constituted;

**Retailer Commission** has the meaning set out in Schedule 8 Part 1;

**Retailer Distributed Draw-Based Game** has the meaning set out in Schedule 8 Part 1;

**Rules for Draw-based Games Played Interactively** means the rules for Draw-based Games played via the Interactive Systems as described by Condition 7.16;

**Sales Break** means the time at which tickets for a Constituent Lottery cease to be sold and when no further selections shall be entered into the Draw;

**Schedule** means a schedule to this Licence;

**Scratchcard Game** has the meaning set out in Schedule 8 Part 1;

**Scratchcard Lottery** means a Constituent Lottery which does not involve utilisation of Draw-based Facilities other than for activation or validation and in which a particular ticket is capable of being determined immediately following its purchase as a winning ticket and/or as conferring a right to participation in a future event;

**Secondary Contribution** has the meaning set out in Schedule 8 Part 1;

**Secretary of State** means the Secretary of State for Culture, Media and Sport;

**Section 1(3)(b) Agreement** means an agreement between the Licensee and an Independent Section 6 Licensee made under section 1(3)(b) of the National Lottery Act;

**Secure Area** means an area designated as such under Condition 5.20(a);

**Series Subcontract** means any contract between a Licensee Subcontractor and a third party referred to in Condition 15.14;

**Series Subcontractor** means a third party with whom a Licensee Subcontractor has contracted in accordance with Condition 15.14;

**Service Guide** means the service guide referred to in Condition 7 as approved by the Commission together with any amendments to that guide approved by the Commission from time to time, and "current Service Guide" shall mean the latest version of the service guide which shall have been approved by the Commission;

**Sign** means any sign (as defined in the Trade Marks Act 1994), name, word, device, logo or mark;

**Staff** means any and all of the following:

- (a) employees (temporary and permanent);
- (b) agency workers engaged in providing services;
- (c) any employees seconded from any other entity; and/or
- (d) any other worker (as defined in section 230 of the Employment Rights Act 1996) engaged in providing services;

**Standard** has the meaning set out in Condition 5.2;

**Subcontractor Information** has the meaning set out in Condition 18.3;

**Subscriber** means a person whose application for himself or another to play in a Constituent Lottery by Subscription has been accepted by the Licensee;

**Subscription** means an agreement between the Licensee and a Player whereby the Player commits to purchasing tickets in successive Constituent Lotteries in accordance with the terms and conditions for Draw-based Games as described by Condition 7.16 of the Licence;

**Subscription Guide** means the subscription guide referred to in Condition 7 as approved by the Commission together with any amendments to that guide approved by the Commission from time to time, and "current Subscription Guide" shall mean the latest version of the subscription guide which shall have been approved by the Commission;

**Subscription Trust Account** has the meaning set out in the Trust Deed pursuant to which the Players' Trust is constituted;

**Sub Series Subcontract** has the meaning set out in Condition 15.14;

**Sub Series Subcontractor** has the meaning set out in Condition 15.14;

**Successor Licence** means any licence or licences granted by the Commission pursuant to its powers under section 5 of the National Lottery Act following expiry or revocation of this Licence;

**Successor Licensee** means a party or parties succeeding or intended by the Commission to succeed the Licensee in the provision or running of all or any of the National Lottery including, where the context so admits, the Licensee where it is to continue to provide or run the National Lottery or part of the National Lottery following expiry or revocation of the Licence;

**System Function Proving Test** means an independent test designed to determine whether any element of the Technology Solution meets its relevant functional specification;

**System Limits** has the meaning set out in Condition 7.12;

**Technology Maintenance Plan** means the Licensee's documented plan as referred to in Condition 5.29;

**Technology Operation** means any aspect of the running of the National Lottery, Constituent Lottery and Ancillary Activity associated with the provision and operation of technology, including the Technology Solution, the Technology Processes and the Technology Organisation;

**Technology Organisation** means the Licensee's organisation, people and capabilities, including the relationships, contracts and agreements between the Licensee and any Licensee Subcontractor, involved in the development, operation or change of the Technology Solution;

**Technology Processes** means all activities associated with the provision and operation of technology forming part of the running of the National Lottery, Constituent Lottery and Ancillary Activity, including:

- (a) all activities associated with the design, development, procurement, testing and implementation of the Technology Solution;
- (b) all activities associated with the management and operation of the Technology Solution, including those for the purpose of ensuring the performance, availability, resilience, capacity, integrity and security of the Technology Solution; and
- (c) all activities associated with the management and implementation of change to the Technology Solution including the authorisation, testing, acceptance, release and implementation of all changes and any associated risk management activities;

**Technology Solution** means all computer hardware, software, data, gaming technology, telecommunications, data centre(s) and other facilities associated with the running of the National Lottery, Constituent Lottery and Ancillary Activity whether run by the Licensee or a third party;

**Transaction History** means details of all tickets purchased by a Registered Player (if any) and of all financial information relating to the use by that Registered Player of its Account for the preceding 180 day period and/or (where applicable) details of the entries to which the Registered Player's Subscription relates and the financial information relating to such entries;

**Transferring Assets** means the assets referred to in Condition 18.20;

**Transition Plan** means the Licensee's documented plan for the transition of the National Lottery to a Successor Licensee during the Handover Period and on or after expiry or revocation of the Licence;

**Trust Account** means one or more bank accounts to be maintained by the Trustee(s) referred to in Condition 19 with a United Kingdom clearing bank for the purpose of the arrangements referred to in Condition 19 (including for the avoidance of doubt arrangements relating to EuroMillions);

**Trust Account for New Media** has the meaning set out in the Trust Deed pursuant to which the Players' Trust is constituted;

**Trust Deed** means the trust deed which governs the constitution and operation of the Players' Trust;

**Trust Prize Reserve Account** has the meaning set out in the Trust Deed pursuant to which the Players' Trust is constituted;

**Trustees** means the independent trustee(s) appointed by the Licensee and approved by the Commission in connection with the Licensee's prize payment security arrangements;

**Unclaimed Prize** has the meaning set out in Schedule 8 Part 1;

**Unclaimed Prize Payment Date** has the meaning set out in Schedule 8 Part 1;

**underpayment** has the meaning set out in Schedule 8 Part 3;

**Unpaid Prize Date** has the meaning set out in Schedule 8 Part 1;

**Weekly Payment** has the meaning set out in Schedule 8 Part 1; and

**Weekly Payment Day** has the meaning set out in Schedule 8 Part 1.

## Schedule 2

### Condition 3

#### Part 1

#### Games and facilities to be available in the first five weeks of the Licence

1. The following games and facilities shall be available in the first five weeks of the Licence:

Game	Terminals	IDTV	Internet	Mobile
Lotto	X	X	X	X
Dream Number	X		X	X
EuroMillions	X	X	X	X
Thunderball	X		X	X
Lotto Hotpicks	X		X	X
Daily Play	X		X	X
At least one Scratchcard Game	X			
At least one Instant Win Game			X	
Game X			X	
Game Y			X	
Game Z			X	

2. In the first five weeks of the Licence, the Licensee shall ensure that there are no less than 27,500 terminals available for use in Retail Outlets.

## Schedule 2

### Condition 3

#### Part 2

#### Financial penalties

1.1 In the event that the Licensee does not have the facilities and/or games in place in accordance with Condition 3.1, the Licensee may be required to pay a financial penalty of a sum not exceeding £10,000,000 per week for a maximum period of five weeks.

1.2 In determining any financial penalty payable by the Licensee in accordance with paragraph 1.1, the Commission shall have regard to the matters set out in section 10A of the National Lottery Act, Direction 10 of the Directions to the Commission under Section 11 of the National Lottery Act and the following matters:

- (a) where retail coverage is less than the minimum set out in Schedule 2 Part 1 for the periods specified in Condition 3.1, the Commission shall have regard to:
  - (i) the proportion of the minimum number of Distributors not able to provide service on each day; and
  - (ii) whether some turnover may come from distribution channels other than the Distributors or from other Distributors;
- (b) where the number of facilities and/or games is less than the minimum set out in Schedule 2 Part 1, the Commission shall have regard to:
  - (i) the proportion of revenue that the Commission had expected to be contributed to good causes by the facilities and/or games that were not in place for the periods specified in Condition 3.1; and
  - (ii) whether the sales of another game or through other facilities may be higher as people who would have played the game which was not available for the periods specified in Condition 3.1 have instead played another game which is available or played through other facilities;
- (c) the extent of disruption caused by the delay, for example whether the delay affects all or part of the National Lottery, and whether this is in all or part of the United Kingdom;
- (d) the extent to which the delay was caused by circumstances within the Licensee's control;
- (e) the extent to which the delay was reasonably foreseeable and/or potentially preventable;
- (f) the extent to which the Licensee notified the Commission promptly of the risk of delay; and
- (g) the extent to which the Licensee took all appropriate actions to mitigate the consequences.

1.3 The Commission may determine that the Licensee, if it so chooses, may pay the amounts set out in paragraph 1.1 over the duration of the Licence.

1.4 If the Licensee fails to pay any amount specified in Schedule 2 Part 2 by the period specified in section 10A(12) of the National Lottery Act, it shall pay interest for the period and at the rate specified in section 10A(13) of the National Lottery Act. For the avoidance of doubt, any such interest will be additional to sums payable under paragraph 1.1.

## Schedule 3

### Handover from the Previous Licensee

#### Condition 4

1.1 The Licensee shall, so far as it is relevant, make arrangements:

(a) to pay prizes in respect of any Constituent Lottery claimed before the expiry of the Previous Licence which have, at the commencement of this Licence, not yet been paid, if the claim period (as determined by the relevant rules of the Constituent Lottery) has not expired at the date of expiry of the Previous Licence;

(b) to pay prizes in respect of any Constituent Lottery claimed after the expiry of the Previous Licence and the commencement of this Licence if the claim period (as determined by the relevant rules of the Constituent Lottery) has not expired at the date of expiry of the Previous Licence;

(c) to make payments to the Secretary of State in accordance with Part 3 of Schedule 8 to this Licence for prizes eligible to be claimed (in accordance with the relevant rules of the Constituent Lottery) prior to expiry of the Previous Licence but which have not been claimed in accordance with the relevant rules of the Constituent Lottery and which accordingly are Unclaimed Prizes;

(d) to make payments to the Secretary of State in accordance with Part 3 of Schedule 8 to this Licence at such time as prizes claimed (in accordance with the relevant rules of the Constituent Lottery) prior to expiry of the Previous Licence become Unpaid Prizes;

(e) to ensure that the payments referred to in (a), (b), (c) and (d) above and any costs associated with such payments are correctly attributed to the Previous Licence or to this Licence, as the case may be;

(f) for the continued conduct of disputes, claims or proceedings (whether actual, contingent, threatened, present or future) between the Licensee and its Players and Distributors in connection with the Previous Licence, and which are continuing or expected to be continuing, as at the date of expiry of the Previous Licence;

(g) to ensure that any payments and costs associated with such payments arising out of such disputes, claims or proceedings referred to in (f) above are correctly attributed to the Previous Licence or to this Licence, as the case may be;

(h) to ensure a smooth transition between the Previous Licence and this Licence in respect of the service provided to Registered Players;

(i) to ensure the continued provision of the EuroMillions game referred to in Schedule 2 Part 1 of this Licence;

(j) to ensure the continued provision of electronic point of sale services in Retail Outlets;

(k) to ensure that the Players' Trust is established in fulfilment of the obligations contained in Condition 19 of this Licence;

(l) in relation to Scratchcard Lottery tickets;

(m) in relation to consumables; and

(n) in relation to any other matter arising from the Previous Licence.

## **Schedule 4**

### **Condition 6**

#### **Part 1**

#### **Ancillary activities that the Commission has consented to**

## **Schedule 4**

### **Condition 6**

#### **Part 2**

#### **Further Conditions relating to Ancillary Activities**

## **Schedule 5**

### **The Ancillary Activity Payment**

**Conditions 6 and 11**

**Schedule 6**

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## **Schedule 7**

### **Codes of practice and strategies**

#### **Conditions 7, 9, 13 and 14**

1.1 In this Schedule, “code” means a code of practice or guide prepared pursuant to Conditions 7 or 13 or the procedure referred to in 14.14 and “strategy” means a strategy prepared pursuant to Condition 7 and Condition 9.

1.2 The Commission may approve a code in the form in which it was submitted to it or may make modifications to it before approving it.

1.3 At least once in each Financial Year and at any other time when directed by the Commission, the Licensee shall review each code and strategy and the manner of its operation to determine whether amendments should be made to it.

1.4 The Licensee shall submit the results of the review carried out pursuant to paragraph 1.3 to the Commission as soon as reasonably practicable.

1.5 The Licensee shall submit any amendments to the code or strategy (whether arising from a review carried out under paragraph 1.3 or otherwise) to the Commission for approval and thereupon paragraph 1.2 shall apply taking references in that paragraph to the code or strategy as references to amendments to the code or strategy.

## Schedule 8

### Primary and Secondary Contributions

Conditions 7, 11 and 19

#### Part 1

#### Definitions and interpretation

1.1 In this Schedule the following terms shall have the meanings ascribed below:

**aggregate value of National Lottery tickets sold** means the total of the face value of tickets sold in each Financial Year or any relevant period in each Financial Year determined/adjusted in accordance with the provisions of paragraph 1.2(a), (b), (c) and (d) but excluding any Consented Free Ticket issued in that year;

**Basic Primary Contribution** means the amount of the Primary Contribution calculated in accordance with the provisions of paragraph 2 but before any adjustment is made in accordance with the provisions of paragraph 6;

**Consented Free Ticket** means a ticket or play in a Constituent Lottery which, with the Commission's consent, has been given away free in accordance with the rules of the relevant Constituent Lottery;

**Final Payment Day** means, in relation to each Financial Year, the day 28 days after the day on which the annual accounts referred to in Schedule 9 in respect of that Financial Year were provided to the Commission;

**Game Type** means one of the following categories: Retailer Distributed Draw-Based Games; Non-Retailer Distributed Draw-Based Games; Scratchcard Games; or Interactive Instant Win Games;

**Gross Sales Retention** means, for each Game Type and in each Financial Year or any Relevant Period in each Financial Year, the amount calculated in accordance with paragraph 2.4;

**Instant Win Game** means any National Lottery game, the result of which is determined at the point of purchase of the ticket;

**Interactive Instant Win Game** means any Instant Win Game where tickets are sold by means that do not require Players to attend personally at the premises;

**Lottery Duty** means the amount due from the Licensee by way of lottery duty pursuant to the Finance Act 1993;

**net value of National Lottery tickets sold** means the aggregate value of National Lottery tickets sold, for each Game Type and in each Financial Year or any Relevant Period in each Financial Year, less (i) 12% of such value; (ii) Prize Payments; (iii) Gross Sales Retention; and (iv) Retailer Commission;

**NLDF Contribution** means the Primary Contribution less the OLDF Contribution;

**NLDF Weekly Payment** means that proportion of the Weekly Payment that is paid into the NLDF;

**Non-Retailer Distributed Draw-Based Game** means any Draw-based Game where tickets are sold by means that do not require Players to attend personally at the premises;

**OLDF Contribution** means the amount calculated by multiplying the Primary Contribution by a fraction that is determined by dividing the Olympic Lottery ticket sales by the aggregate value of National Lottery tickets sold;

**OLDF Weekly Payment** means that proportion of the Weekly Payment that is paid into the OLDF;

**Olympic Lottery ticket sales** means the total of the face value of tickets sold in respect of all Olympic Lotteries in each Financial Year or any Relevant Period in each Financial Year determined/adjusted in accordance with the provisions of paragraphs 1.2(a), (b), (c) and (d) but excluding any Consented Free Ticket issued in that year in respect of any Olympic Lottery;

**Primary Contribution** means the amount calculated in accordance with the provisions of paragraph 2 and adjusted pursuant to paragraph 6 to be paid to the Secretary of State by the Licensee in respect of each Financial Year (or part thereof) and determined in accordance with the provisions of this Schedule 8;

**Prize Payments** means the aggregate of all amounts in each Financial Year or any Relevant Period in each Financial Year which, in accordance with the rules of any Constituent Lottery, has been determined as capable of being paid as a prize (whether or not they have been paid);

**Prize Pay-out Ratio** means a deemed prize pay-out which is specified in the licence under section 6 of the National Lottery Act for the relevant Constituent Lottery;

**Relevant Period** means that part of a Financial Year that ends with the Relevant Saturday or on the last day of that Financial Year;

**Relevant Saturday** means the Saturday before the Weekly Payment Day for the Relevant Week in question;

**Relevant Week** means, in relation to any Weekly Payment Day, the period of seven days ending on the Saturday before that Weekly Payment Day;

**Retailer Commission** means payments to Distributors for the service of selling tickets and paying prizes in relation to Retailer Distributed Draw-Based Games and Scratchcard Games where Players are required to attend personally at the premises and, subject to the prior written consent of the Commission in respect of (a) the identity of the third party or parties (which may be given on an individual basis or by class) and (b) the amount of the payment, payments to third parties for the service of paying prizes in relation to those Games where Players have attended personally at a Distributor to purchase their ticket;

**Retailer Distributed Draw-Based Game** means any Draw-based Game where tickets are sold to Players who attend personally at the premises;

**Scratchcard Game** means any Instant Win Game where tickets are sold to Players who attend personally at the premises;

**Secondary Contribution** means the amount described at and determined in accordance with paragraph 4 to be paid to the Secretary of State by the Licensee;

**Unclaimed Prize** means, on any date, a prize or part of a prize which has not been claimed by any person so entitled within the timescale allowed by and in accordance with the rules of any Constituent Lottery;

**Unclaimed Prize Payment Date** means, in respect of any Unclaimed Prize, the date which is the first Weekly Payment Day after the end of the timescale allowed by and in accordance with the rules of any Constituent Lottery for the claim of any prize;

**Unpaid Prize** means, on any date any prize which has been claimed by the relevant prize winner and a payment has attempted to have been made by way of any method or process and the Licensee has not been able to effect payment to the proposed recipient of such amount by the Unpaid Prize Date;

**Unpaid Prize Date** means, in respect of any Unpaid Prize, the date which is the seventh anniversary of the earliest of:

- (a) the date which has been determined in accordance with the regulations of a Constituent Lottery;
- (b) the Expiry Date,

provided that, where a cheque or payment instruction has been issued in respect of any prize, the Unpaid Prize Date will be the later of the seventh anniversary of (a) or (b) and the seventh anniversary of the date of issue of any cheque or payment instruction in respect of that prize;

**Weekly Payment** means the payment to be made in each week by the Licensee to the Secretary of State in accordance with the provisions of paragraph 7; and

**Weekly Payment Day** means, subject to paragraph 8, each Tuesday or, if a Tuesday is not a Business Day in England and Wales, the next Business Day in England and Wales.

1.2 For the purposes of this Schedule:

- (a) in determining the value of National Lottery tickets sold:
  - (i) the value of all National Lottery tickets sold in the Financial Year or other Relevant Period in question shall be taken into account whether or not the Licensee receives the consideration for any tickets sold save that:
    - (A) a National Lottery ticket which has been properly cancelled in accordance with Procedures approved by the Commission pursuant to Condition 5 shall not be treated as sold; and
    - (B) a National Lottery ticket which was comprised in a pack of tickets which has been activated but the sale of which ticket has subsequently been cancelled or which ticket has been repurchased prior to such pack becoming a settled pack shall not be treated as sold provided that, if such cancellation or repurchase is as a result of the cancellation or withdrawal of a Scratchcard Lottery, the Commission shall have given its prior consent to such cancellation or repurchase;
  - (ii) a National Lottery ticket shall be treated as sold at the higher of the price at which it is actually sold and the price at which it should have been sold to a Player in accordance with the rules of the Constituent Lottery; and
  - (iii) a National Lottery ticket which appears (whether as a result of the inspection of any record, the drawing of an inference from a statistical sampling operation, or any other process) to have been generated or created in respect of which there is no record of a sale nor proof that it has not been sold shall be treated as having been sold at the price at which it should have been sold in accordance with the rules of the Constituent Lottery;
- (b) a National Lottery ticket shall be treated as sold on the date on which it is sold (or in the case of a pack of tickets, the date on which such pack became a settled pack) by or on behalf of the Licensee or the relevant Independent Section 6 Licensee (whether or not it has subsequently been sold by a Distributor or other agent or intermediary to any person who participates or intends to participate in the relevant Constituent Lottery) and, in the case of payments made in advance or by subscription, shall be treated as sold at the time when the relevant part of such payment is transferred out of the Trust Account to the Licensee (or for its benefit) in accordance with the provisions referred to in Condition 19.1(b)(ii);
- (c) where after a pack of tickets has been activated and has become a settled pack and the related ticket sales payment has accordingly been made in respect of all the tickets comprised in it, the Licensee or Independent Section 6 Licensee shall cancel or repurchase from the relevant Distributor some or all of the tickets comprised in that pack (with the prior consent of the Commission in the case of any such cancellation or repurchase made as a result of the cancellation or withdrawal of a Scratchcard Lottery), the Licensee shall be credited with the amount of the ticket sales payment made in respect of such cancelled or repurchased tickets and its obligation in respect of the ticket sales payment due in the next (and, if necessary, subsequent) weeks shall be reduced accordingly;
- (d) save where expressly provided otherwise a ticket shall be treated as sold whether it is issued pursuant to a sale or otherwise or given away free or sold for less than the full price applicable in accordance with the rules of the relevant Constituent Lottery and whether with or without full payment by a third party payer (that is, not being the Licensee, or any Group Company, or any person on behalf of the Licensee or such Group Company) of the full price payable in accordance with the rules and procedures of the relevant Constituent Lottery; and
- (e) any reference to a paragraph is to a paragraph in this Schedule.

## **Schedule 8**

### **Primary and Secondary Contributions**

**Conditions 7, 11 and 19**

#### **Part 2**

#### **Calculation of the Primary and Secondary Contribution**

2.1 The Primary Contribution shall be calculated by adjusting the Basic Primary Contribution in accordance with paragraph 6 and be paid to the Secretary of State in accordance with the provisions of Part 3 of this Schedule 8.

2.2 The Basic Primary Contribution shall be calculated, for each Game Type and each Financial Year, by applying the percentage represented by 100 minus the retention rate shown in the relevant column of Table 1 to any portion of the net value of National Lottery tickets sold that falls between the relevant lower tranche boundary and the relevant upper tranche boundary, subject to adjustment of the tranche boundaries, if appropriate, in accordance with the provisions of paragraph 3.

2.3 The net value of National Lottery tickets sold shall be calculated, for each Game Type and each Financial Year, by deducting from the aggregate value of National Lottery tickets sold:

- (a) 12 per cent. of such value;
- (b) Prize Payments;
- (c) the Gross Sales Retention; and
- (d) Retailer Commission.

2.4 The Gross Sales Retention shall be calculated by applying, for each Game Type and for each Financial Year, the retention rate shown in the relevant column of Table 2, to any portion of the aggregate value of National Lottery tickets sold that falls between the relevant lower tranche boundary and the relevant upper tranche boundary, subject to adjustment of the tranche boundaries, if appropriate, in accordance with the provisions of paragraph 3.

2.5 The provisions of paragraphs 2.2 to 2.4 are reproduced as a formula in Appendix I to this Schedule 8 and in the case of any conflict between the provisions of this paragraph 2 and the formula, the provisions of the formula shall prevail.

**Table 1: Parameters – Net Sales Retention**

	Retailer Distributed Draw-Based Games			Non-Retailer Distributed Draw-Based Games			Scratchcard Games			Interactive Instant Win Games		
	Tranche Boundaries		Retention Rate (%)	Tranche Boundaries		Retention Rate (%)	Tranche Boundaries		Retention Rate (%)	Tranche Boundaries		Retention Rate (%)
	Lower (£m)	Upper (£m)		Lower (£m)	Upper (£m)		Lower (£m)	Upper (£m)		Lower (£m)	Upper (£m)	
1	0	290	43.18	0	56	43.18	0	37	43.18	0	6	43.18
2	290	726	1.40	56	89	0.92	37	59	1.97	6	9	1.61
3	726	907	3.05	89	270	1.22	59	91	2.60	9	27	2.13
4	907	1,100	3.54	270	361	1.85	91	122	3.95	27	35	3.23
5	1,100	1,500	6.00	361	451	2.82	122	152	6.03	35	44	4.95
6	1,500	n/a	3.54	451	n/a	3.27	152	n/a	6.98	44	n/a	5.73

**Table 2: Parameters – Gross Sales Retention**

	Retailer Distributed Draw-Based Games			Non-Retailer Distributed Draw-Based Games			Scratchcard Games			Interactive Instant Win Games		
	Tranche Boundaries		Retention Rate (%)	Tranche Boundaries		Retention Rate (%)	Tranche Boundaries		Retention Rate (%)	Tranche Boundaries		Retention Rate (%)
	Lower (£m)	Upper (£m)		Lower (£m)	Upper (£m)		Lower (£m)	Upper (£m)		Lower (£m)	Upper (£m)	
1	0	1,000	0.58	0	200	2.37	0	550	1.84	0	150	2.62
2	1,000	2,150	0.61	200	600	2.20	550	700	1.93	150	200	2.48
3	2,150	3,000	1.60	600	1,000	2.17	700	800	2.21	200	300	3.66
4	3,000	3,500	2.46	1,000	1,600	3.41	800	1250	3.46	300	600	3.95
5	3,500	n/a	2.64	1,600	2,300	3.78	1250	2000	4.00	600	n/a	4.43
6				2,300	n/a	4.08	2000	n/a	4.64			

3.1 On 1 April 2010 and on 1 April in each subsequent year, each tranche boundary shown in the relevant columns of table 1 and table 2 shall be adjusted by the application of the following formula:

$$a_t = a_{t-1} (100 + \text{CPI})$$

100

Where:

$a_t$  is the adjusted relevant tranche boundary in Financial Year  $t$  before making the adjustments in paragraph 3.3. For the first adjustment, on 1 April 2010,  $a_{t-1}$  will be the relevant tranche boundary as shown in table 1 or table 2; and

**CPI** is the percentage change (whether positive or negative), rounded to four decimal places, in the Consumer Prices Index in the 12 months to the previous February.

3.2 For the purposes of this paragraph 3 “Consumer Prices Index” means the Consumer Prices Index published by the Office for National Statistics or, if there is a material change in the basis of the index and the Commission determines that the Consumer Prices Index referred to above should not be used for the purposes of this Schedule 8, such other index as the Commission may determine.

3.3 The tranche boundaries applicable in any Financial Year as adjusted in paragraph 3.1 shall be pro-rated to take account of the number of days in that year on which the Licensee is licensed to sell National Lottery tickets. The resulting amounts in £ million shall be rounded to one decimal place.

4.1 The Secondary Contribution shall be calculated in accordance with this paragraph and be paid to the Secretary of State in accordance with the provisions of Part 3 of this Schedule 8.

4.2 The Secondary Contribution shall be calculated with reference to the difference in each Financial Year between the Licensee’s Adjusted Profit Before Interest and Tax (“APBIT”) as defined in paragraph 4.5 and its Theoretical Profit Before Interest and Tax (“TPBIT”) as defined in paragraph 4.6.

4.3 The Licensee shall treat the Secondary Contributions as tax deductible and if the APBIT exceeds the TPBIT in any Financial Year, then the Secondary Contribution for that Financial Year shall be based on the difference between these two measures and calculated as:

28% of any part of the difference that lies between 0% and 10% of the TPBIT; plus

50% of any part of the difference that lies between 10% and 20% of the TPBIT; plus

80% of any part of the difference that is in excess of 20% of the TPBIT.

4.4 If Secondary Contributions are, for whatever reason, not tax deductible and if the APBIT exceeds the TPBIT in any Financial Year, then the Secondary Contribution for that Financial Year shall be based on the difference between these two measures and calculated as:

(1 minus the Effective Tax Rate) multiplied by 28% of any part of the difference that lies between 0% and 10% of the TPBIT; plus

(1 minus the Effective Tax Rate) multiplied by 50% of any part of the difference that lies between 10% and 20% of the TPBIT; plus

(1 minus the Effective Tax Rate) multiplied by 80% of any part of the difference that is in excess of 20% of the TPBIT

where: (a) the Effective Tax Rate equals:

Total tax charge (including deferred tax)

Profit Before Tax (as shown in the audited financial statements for the Financial Year)

and where: (b) Profit Before Tax is calculated prior to any provision or charge for the Secondary Contribution, and also excludes any profits which are subject to ancillary contributions to good causes and the associated ancillary contributions.

4.5 The APBIT is calculated with reference to Profit Before Interest and Tax in the audited financial statements for any Financial Year, subject to the following adjustments:

(a) Profit Before Interest and Tax is calculated prior to any provision or charge for the Secondary Contribution, and also excludes any profits which are subject to ancillary contributions to good causes and the associated ancillary contributions;

(b) Profit Before Interest and Tax is adjusted (if necessary) as if prepared in accordance with the accounting policies adopted by the Licensee in its accounts as at 31 March 2006;

(c) in respect of the Financial Year from 1 February 2009 to 31 March 2010, with reference to the audited financial statements for the year ended 31 March 2009, an adjustment will be made to exclude revenue received and expenditure incurred prior to 1 Feb 2009; and

(d) in respect of the Financial Year from 1 April 2018 to 31 January 2019, with reference to the audited financial statements for the year ended 31 March 2019, an adjustment will be made to exclude revenue received and expenditure incurred after 1 February 2019, unless the expenditure incurred is as a direct result of acting as Licensee.

4.6 The TPBIT for each Financial Year is calculated as:

£12 million; plus

0.6% of any part of the aggregate value of National Lottery tickets sold that lies between £3,000 million and £4,000 million; plus

1.2% of any part of the aggregate value of National Lottery tickets sold that lies above £4,000 million.

4.7 For the purpose of calculating Secondary Contributions, the 14 months from 1 February 2009 and the 10 months to 31 January 2019 shall each be treated as a Financial Year, and the monetary amounts used to calculate the TPBIT in paragraph 4.6 shall be pro-rated to take account of the number of days during those periods on which the Licensee is licensed to sell National Lottery tickets.

5.1 If during any Relevant Period, Lottery Duty is less than 12% of the aggregate value of National Lottery tickets sold, the Primary Contribution shall be increased by an amount equal to the difference between the Lottery Duty payable and the amount that would have been payable as Lottery Duty if Lottery Duty had remained at 12%.

5.2 If during any Relevant Period Lottery Duty is more than 12% of the aggregate value of National Lottery tickets sold, the Primary Contribution shall be decreased by an amount equal to the difference between the Lottery Duty payable and the amount that would have been payable as Lottery Duty if Lottery Duty had remained at 12%.

5.3 If during any Relevant Period there is a change in the rate of VAT or in the VAT regime, then the Primary Contribution shall be adjusted by an amount equal to the additional VAT cost or decrease in VAT cost such that the Licensee will be cost neutral to such a change.

6.1 The further adjustments to be made to the Primary Contribution are as follows:

(a) the addition or deduction of such amounts as are necessary to reflect any change in Lottery Duty calculated in accordance with the provisions of paragraph 5;

(b) the deduction of any such amounts as are necessary to cover Redundancy Costs in accordance with Condition 16.4 of the Licence; and

(c) any other adjustments that are agreed between the Licensee and the Commission.

## Schedule 8

### Primary and Secondary Contributions

Conditions 7, 11 and 19

#### Part 3

#### Payment

7.1 Subject to the provisions of paragraphs 8, 9 and 10, on each Weekly Payment Day the Licensee shall pay to the Secretary of State out of the proceeds of the Constituent Lotteries the Weekly Payment, which shall be an amount (after making allowance for any adjustments in accordance with paragraph 6) equal to:

- (a) the proportion of Primary Contribution calculated by applying the tranche boundaries and Prize Payments adjusted in respect of any Relevant Period in accordance with paragraph 2.1 less the aggregate Weekly Payments already made by the Licensee pursuant to this Part 3 of Schedule 8;
- (b) the Unclaimed Prizes in the relevant Financial Year less amounts previously paid in that Financial Year in respect of Unclaimed Prizes; and
- (c) Unpaid Prizes (if any) in the relevant Financial Year less amounts previously paid in that Financial Year in respect of Unpaid Prizes.

7.2 The Weekly Payment shall be made in two parts, one to the NLDF and the other to the OLDF. The payment to the NLDF shall be the Weekly Payment less the amount paid to the OLDF. The amount (if relevant) to be paid to the OLDF shall be equal to:

- (a) the proportion of the OLDF Contribution, being the proportion of Primary Contribution as calculated in paragraph 7.1(a) above before deducting the aggregate Weekly Payments already made by the Licensee, multiplied by Olympic Lottery ticket sales in the Relevant Period and then divided by the aggregate value of National Lottery tickets sold in the Relevant Period, less the aggregate Weekly Payments already made to the OLDF in that Financial Year;
- (b) the amount of the Unclaimed Prizes as set out in paragraph 7.1(b) above, where these prizes relate to Olympic Lotteries; and
- (c) the amount of the Unpaid Prizes as set out in paragraph 7.1(c) above, where these prizes relate to Olympic Lotteries

7.3 In the event that exceptional circumstances prevent the Licensee from verifying the accuracy of its calculation of the Weekly Payment in any week and, as a result, a shortfall could occur in the relevant Weekly Payment, the Licensee shall notify the Commission in writing and, following such notification, may pay instead of the Weekly Payment such sum as the Licensee shall estimate will at least equal its payment obligations under the Licence. If the Licensee shall subsequently determine that the estimated sum is in excess of its actual obligation in respect of the relevant Weekly Payment, the Licensee shall notify the Commission in writing of such determination and, not less than five Business Days after such notification, may withhold from the relevant Weekly Payment such sum as shall equal the excess.

7.4 The Licensee shall procure that any notification to the Commission provided for in paragraph 7.3 is accompanied by appropriate documentary evidence of the potential shortfall or excess, and the Licensee shall forthwith upon being so requested by the Commission provide any such further information as the Commission shall require in relation to the subject matter of the notification.

7.5 The notification and the provision of documentary evidence to the Commission in accordance with the provisions of paragraphs 7.3 and 7.4 shall not be taken to imply any consent by the Commission to the relevant payment or withholding of any sum by the Licensee.

8.1 If a Monday is not a Business Day in England and Wales, the payment which would otherwise have been due on the Weekly Payment Day which immediately follows may be postponed to the next day which is a Business Day in England and Wales.

9.1 For the purposes of calculating the Weekly Payment:

- (a) the tranche boundaries shown in Table 1 and Table 2 applicable in any Relevant Period of a Financial Year (adjusted in accordance with paragraph 3) shall be pro-rated to take account of the number of days in that Relevant Period on which the Licensee is licensed to sell National Lottery tickets and Prize Payments shall be the actual Prize Payments with respect to the Relevant Period; and
- (b) any such tickets which were comprised in a pack shall not be treated as sold for the purpose of this paragraph until the date on which the relevant pack has become a settled pack.

10.1 In this paragraph 10:

- (a) "overpayment" means the amount (if any) by which the aggregate of NLDF Weekly Payments during any Financial Year exceeds the NLDF Contribution for that Financial Year or the amount (if any) by which any payment made to the NLDF in respect of any Financial Year under Schedules 8 or 10 to this Licence exceeds the amount which should have been paid to the NLDF under those Schedules, in respect of that Financial Year;
- (b) "underpayment" means the amount by which the aggregate of the NLDF Weekly Payments for that Financial Year falls short of the NLDF Contribution for that Financial Year or the amount (if any) by which any payment made to the NLDF in respect of any Financial Year under Schedules 8 or 10 to this Licence falls short of the amount which should have been paid under those Schedules in respect of that Financial Year;
- (c) "OLDF overpayment" means the amount by which the aggregate of the OLDF Weekly Payments during any Financial Year exceeds the OLDF Contribution for that Financial Year or the amount (if any) by which any payment made to the OLDF in respect of any Financial Year under Schedule 8 to this Licence exceeds the amount which should have been paid to the OLDF under that Schedule, in respect of that Financial Year; and
- (d) "OLDF underpayment" means the amount by which the aggregate of the OLDF Weekly Payments for that Financial Year falls short of the OLDF Contribution for that Financial Year or the amount (if any) by which any payment made in respect of any Financial Year under Schedule 8 to this Licence falls short of the amount which should have been paid under that Schedule in respect of that Financial Year.

10.2 An overpayment shall be deducted from the payment which falls to be made by the Licensee on the first Weekly Payment Day after the Final Payment Day for the Financial Year in respect of which the overpayment arose or made on such other date after the Final Payment Day as may be specified by the Commission. The Licensee shall notify the Commission in writing of the amount of an overpayment at least five Business Days prior to the deduction of that overpayment.

10.3 If an overpayment is greater than the payment which falls to be made on the Weekly Payment Day referred to in paragraph 10.2, the balance shall be deducted from the payment which falls to be made on the following Weekly Payment Day and this procedure shall be repeated until the overpayment has been offset in full against payments which would otherwise fall to be made pursuant to paragraph 7.

10.4 If the final payment made by the Licensee to the NLDF or, if applicable, the OLDF under the terms of any licence granted under section 5 of the National Lottery Act to the Licensee results in an overpayment, then the amount of such overpayment shall be deducted from the payment which falls to be made by the Licensee on the first Weekly Payment Day after the overpayment arose or on such other date after the relevant Final Payment Day as may be specified by the Commission. The Licensee shall notify the Commission in writing of the amount of an overpayment at least five Business Days prior to the deduction of that overpayment.

10.5 An underpayment shall be added to the payment which falls to be made by the Licensee on the first Weekly Payment Day after the Final Payment Day for the Financial Year in respect of which the

underpayment arose or shall be made on such other date after the relevant Final Payment Day as may be specified by the Commission.

10.6 An OLDF overpayment shall be deducted from the OLDF Weekly Payment made into the OLDF which falls to be made by the Licensee on the same day as the overpayment or underpayment, as may be applicable, set out in paragraphs 10.2 and 10.5. The Licensee shall notify the Commission in writing of the amount of an OLDF overpayment at least five Business Days prior to the deduction of that OLDF overpayment.

10.7 An OLDF underpayment shall be added to the OLDF Weekly Payment made into the OLDF which falls to be made by the Licensee on the same day as the overpayment or underpayment, as may be applicable, set out in paragraphs 10.2 and 10.5.

10.8 The Licensee shall procure that any notification to the Commission provided for in paragraphs 10.2, 10.4 or 10.6 is accompanied by appropriate documentary evidence of the overpayment or OLDF overpayment, and the Licensee shall forthwith upon being so requested by the Commission provide any such further information as the Commission shall require in relation to the subject matter of the notification.

10.9 The notification and the provision of documentary evidence to the Commission in accordance with the provisions of paragraphs 10.2, 10.4, 10.6 and 10.8 shall not be taken to imply any consent by the Commission to the relevant overpayment or OLDF overpayment being deducted by the Licensee.

11.1 On the Final Payment Day for each Financial Year the Licensee shall pay to the Secretary of State, out of the proceeds of the Constituent Lotteries, the amount (if any) of the Secondary Contribution.

## **Schedule 8**

### **Primary and Secondary Contributions**

**Conditions 7, 11 and 19**

#### **Part 4**

##### **Information**

1.1 The Licensee shall deliver to the Commission, or its representatives or advisers (as nominated by the Commission) on a weekly basis and within two days of each Weekly Payment Date a report in writing setting out the Weekly Payment Date and containing details of:

(a) the Weekly Payment and how it has been calculated in accordance with paragraph 7 of Schedule 8 Part 3;

(b) the relevant Primary Contribution amount (used to calculate the Weekly Payment) and how it has been calculated in accordance with Schedule 8;

(c) the relevant Unclaimed Prize amount (used to calculate the Weekly Payment) and how it has been calculated in accordance with Schedule 8;

(d) the relevant Unpaid Prize amount (used to calculate the Weekly Payment) and how it has been calculated in accordance with Schedule 8;

(e) the proportion of the Weekly Payment paid to the OLDF and how it has been calculated;

(f) the proportion of the Weekly Payment paid to the NLDF and how it has been calculated;

(g) the amount of the Unclaimed Prizes referred to in paragraph 1.1(c) above which relate to Olympic Lotteries;

(h) the amount of the Unpaid Prizes referred to in paragraph 1.1(d) above which relate to Olympic Lotteries;

(i) any other payments made to the NLDF or the OLDF;

(j) any adjustments made to the Weekly Payment; and

(k) any other information as specified by the Commission

## APPENDIX I TO SCHEDULE 8

### Formula for calculating the Basic Primary Contribution

The Basic Primary Contribution for each Financial Year and for each Game Type  $j$  shall be the following amount in pounds:

$$(100 - \frac{R_{1,j}^1}{100}) N_{1,j} + (100 - \frac{R_{2,j}^1}{100}) N_{2,j} \text{ and so on to } (100 - \frac{R_{x,j}^1}{100}) N_{x,j}$$

where:

$R_{i,j}^1$  is the retention rate shown in Table 1 for tranche  $i$  and Game Type  $j$ ; and

$N_{i,j}$  is the net value of National Lottery tickets sold for Game Type  $j$  falling within tranche  $i$ . It is calculated as follows:

$$\begin{aligned} \text{if } N_j < L_{i,j}^1, \text{ then } & N_{i,j} = 0 \\ \text{if } L_{i,j}^1 \leq N_j \leq U_{i,j}^1, \text{ then } & N_{i,j} = N_j - L_{i,j}^1 \\ \text{if } N_j > U_{i,j}^1, \text{ then } & N_{i,j} = U_{i,j}^1 - L_{i,j}^1 \\ \text{if } N_j > L_{x,j}^1, \text{ then } & N_{x,j} = N_j - L_{x,j}^1 \end{aligned}$$

where:

$x$  is the highest tranche number for that game type;

$L_{i,j}^1$  is the lower tranche boundary for tranche  $i$  and Game Type  $j$  as shown in Table 1 and adjusted in accordance with paragraph 3;

$U_{i,j}^1$  is the upper tranche boundary for tranche  $i$  and Game Type  $j$  as shown in Table 1 and adjusted in accordance with paragraph 3; and

$N_j$  is the net value of National Lottery tickets sold for Game Type  $j$ . It is calculated as follows:

$$N_j = (0.88S_j - P_j - R_j - G_j)$$

where:

$S_j$  is the aggregate value of National Lottery tickets sold for Game Type  $j$ ;

$P_j$  is the Prize Payments for Game Type  $j$ ;

$R_j$  is:

for Retailer Distributed Draw-Based Games and Scratchcard Games, the value of Retailer Commission that is payable in relation to  $S_j$ , and

for all other Game Types, zero; and

$G_j$  is the Gross Sales Retention for Game Type  $j$ . It is calculated as follows:

$$G_j = \frac{R_{1,j}^2}{100} S_{1,j} + \frac{R_{2,j}^2}{100} S_{2,j} \text{ and so on to } \frac{R_{x,j}^2}{100} S_{x,j}$$

where:

$R_{i,j}^2$  is the retention rate shown in Table 2 for tranche  $i$  and Game Type  $j$ ; and

$S_{i,j}$  is the aggregate value of National Lottery tickets sold for Game Type  $j$  falling within tranche  $i$ . It is calculated as follows:

$$\text{if } S_j < L_{i,j}^2, \text{ then } S_{i,j} = 0$$

$$\text{if } L_{i,j}^2 \leq S_j \leq U_{i,j}^2, \text{ then } S_{i,j} = S_j - L_{i,j}^2$$

$$\text{if } S_j > U_{i,j}^2, \text{ then } S_{i,j} = U_{i,j}^2 - L_{i,j}^2$$

$$\text{if } S_j > L_{x,j}^2, \text{ then } S_{x,j} = S_j - L_{x,j}^2$$

where:

$x$  is the highest tranche number for that game type;

$L_{i,j}^2$  is the lower tranche boundary for tranche  $i$  and Game Type  $j$  as shown in Table 2 and adjusted in accordance with paragraph 3;

$U_{i,j}^2$  is the upper tranche boundary for tranche  $i$  and Game Type  $j$  as shown in Table 2 and adjusted in accordance with paragraph 3; and

$S_j$  is as defined above.

## **Schedule 9**

### **Accounts**

#### **Condition 10**

1.1 The Licensee shall at such monthly or other intervals as may be agreed with the Commission, prepare and submit management accounts to the Commission in a form notified by the Commission to the Licensee.

1.2 The Licensee shall produce annual accounts for each Financial Year in accordance with the Companies Act 1985 and all other statutory requirements and in conformity with International Financial Reporting Standards and shall procure that they shall be so prepared and audited and delivered to the Commission within three months after the end of each Financial Year.

## Schedule 10

### Condition 11

#### Part 1

#### Minimum marketing expenditure

1.1 The Licensee shall ensure that the minimum marketing expenditure inclusive of VAT (to the extent that it is not recoverable) during the term of the Licence is not less than the higher of the two figures set out in paragraphs 1.1(a) and 1.1(b) in absolute terms:

(a) The minimum absolute amount (**floor**) of expenditure to be spent by the Licensee in all years and at all levels of actual sales is as set out in Table 1.1(a) below:

**Table 1.1(a) - Floor marketing expenditure inclusive of VAT (to the extent that it is not recoverable)**

Financial Year	To 31/03 2010	2010 /2011	2011 /2012	2012 /2013	2013 /2014	2014 /2015	2015 /2016	2016 /2017	2017 /2018	to 31/01 2019	Total
<b>Floor</b>											
<b>£m</b>	59.8	55.4	50.9	51.3	53.4	55.0	56.6	58.3	60.9	51.6	553.2

(b) The average annual expenditure inclusive of VAT (to the extent that it is not recoverable), allowing for variation in any Financial Year according to specific marketing activities, is as set out in Table 1.1(b) below:

**Table 1.1(b) - Minimum marketing expenditure inclusive of VAT (to the extent that it is not recoverable) as a percentage of aggregate value of total ticket sales**

	Feb 2009 – Mar 2014	Apr 2014 – Jan 2019
<b>Average annual expenditure inclusive of VAT (to the extent that it is not recoverable) as a percentage of aggregate value of total ticket sales</b>	1.22%	1.07%

1.2 If the marketing expenditure incurred by the Licensee is less than the minimum marketing expenditure calculated in accordance with paragraph 1.1 above, the Licensee shall pay to the Secretary of State an amount equal to the difference on the Final Payment Date in respect of that Financial Year.

1.3 If the Licence is extended in accordance with Condition 23, the minimum marketing expenditure in respect of the period of extension shall be as agreed between the Commission and the Licensee.

1.4 For the avoidance of doubt, the “marketing expenditure” referred to in this Schedule:

(a) shall only be allowable if it is:

- (i) discretionary expenditure directed at advertising or promoting the National Lottery or any Constituent Lottery, including media advertising, sponsorship, retail and consumer promotions or public relations, and production costs for such advertising and promotion;

- (ii) necessary expenditure paid to external companies for services in respect of paragraph 1.4(a)(i), including agency, consultant, legal and insurance fees;
  - (iii) expenditure to manage the effectiveness of the advertising and promotion referred to in paragraph 1.4(a)(i), including market research, and media audits; or
  - (iv) expenditure directed at any form of new channel marketing including internet, mobile telephony, and interactive television; and
- (b) shall not be allowable, if it:
- (i) includes any expenditure by the Licensee for solely corporate objectives;
  - (ii) includes any of the Licensee's corporate overheads, including marketing staff costs such as employee salaries, bonuses, benefits and related costs; or
  - (iii) is integral to playing the National Lottery, including communications via new channels (including internet, mobile telephony, and interactive television) that are play-related.

1.5 If the Commission requires the Licensee to pay for, or contribute to, any other marketing expenditure, the minimum marketing expenditure will, as the Commission deems appropriate, be adjusted in line with the relevant adjustment to the retention under paragraph 6 of Schedule 8.

1.6 Subject to the Commission's prior agreement, marketing expenditure incurred by an Independent Section 6 Licensee may be classified as allowable marketing expenditure.

1.7 The Licensee shall notify the Commission if, during the term of the Licence, the Licensee changes the marketing activities that it performs in-house from those agreed with the Commission prior to the commencement of the Licence, including by:

- (a) outsourcing activities to a marketing agency; or
- (b) doing those activities currently outsourced in-house.

1.8 If, during the term of the Licence, the Licensee changes the marketing activities that it performs in-house from those agreed with the Commission prior to the commencement of the Licence, the Commission may adjust the level of minimum marketing expenditure to reflect the costs of such activities.

## **Schedule 10**

### **Condition 11**

#### **Part 2**

#### **Information**

- 1.1 The Licensee shall in respect of each Financial Year:
- (a) deliver to the Commission a statement containing details of the marketing expenditure incurred by it during the Financial Year; and
  - (b) where the Commission has determined under Schedule 10 Part 1 that marketing expenditure incurred by an Independent Section 6 Licensee shall be taken into account, ensure that a statement containing details of the marketing expenditure incurred by the Independent Section 6 Licensee during the Financial Year is delivered to the Commission.
- 1.2 Any statement referred to in paragraph 1.1 shall:
- (a) be in writing; and
  - (b) contain a certificate signed by the chief executive of the Licensee and one other director (if at the time of such signature there shall be no such appointee as chief executive then such certificate shall be signed by two directors) that, having taken all reasonable steps to verify the statement, the statement gives a true and fair view of the marketing expenditure, in accordance with Part 3 of this Schedule, that has been incurred by the relevant licensee.
- 1.3 In paragraph 1.2 “relevant licensee” means the licensee by whom the marketing expenditure was incurred.
- 1.4 The statements referred to in paragraph 1.1 shall be furnished to the Commission by 1 July after the end of the Financial Year to which they relate.
- 2.1 The Licensee shall, following delivery of the statements referred to in paragraph 1.1, provide to the Commission such further information relating to the matters described in the statements as the Commission may require.

## Schedule 10

### Condition 11

#### Part 3

#### Heads of marketing expenditure

- 1.1 Marketing expenditure shall be allowable on the following items:
- (a) all forms of advertising of the National Lottery and any Constituent Lottery, including television, radio, outdoor poster sides, newspaper and magazine advertising, internet advertising, other advertising through new media distribution channels and any other form of advertising, but excluding any form of communication integral to playing the National Lottery, and any agency, consultancy and legal fees and insurance costs in respect of the foregoing;
  - (b) any sponsorship activity to support the National Lottery brand, provision of the National Lottery website, media audits, media buying and planning, broadcast consultants and any agency, consultancy and legal fees and insurance costs in respect of the foregoing;
  - (c) all forms of media production costs, payments to agencies, direct mail advertising including production costs, point of sale material (but not including semi-permanent material which will be in place over several years), printed material to communicate how to play the National Lottery and National Lottery marketing messages, design including brand and game design (but not including delivery and storage of Scratchcard Lottery tickets), new game development costs (but excluding costs in relation to operational technology development and any recurring intellectual property or content fees associated with ongoing game sales), and any agency, consultancy and legal fees and insurance costs in respect of the foregoing;
  - (d) all forms of retail and consumer promotions for the National Lottery or any Constituent Lottery (including materials and contributions to promotions organised by Distributors, manufacturers or other persons), including sales promotions, press promotions, cross product promotions, "free" ticket promotions paid for by the Licensee (but excluding "free" ticket promotions paid for by the NLDF and by third parties) and Distributor promotions, all forms of promotions undertaken by third parties, all forms of advertising and promotion undertaken by Independent Section 6 Licensees, trade communications, merchandise in connection with broadcast and promotions, Distributor literature, including Distributor's handbook and second chance Draw promotions, and any agency, consultancy and legal fees and insurance costs in respect of the foregoing;
  - (e) all forms of public relations activity in relation to the National Lottery or any Constituent Lottery (but excluding public relations activity relating to the Licensee), including public relations agency costs and expenses, regional public relations costs, winners' publicity, press conferences and news releases, journalists' briefings and excursions, photography, production of National Lottery literature, such as syndicate packs, details of National Lottery Good Cause Awards etc., and any agency, consultancy and legal fees and insurance costs in respect of the foregoing;
  - (f) all forms of market research carried out in relation to promoting the National Lottery or any Constituent Lottery (but excluding any research relating only to the Licensee, e.g. corporate identity), including new game development research, research in respect of the National Lottery brand and impact, advertising tracking research, advertising effectiveness studies, game effectiveness research, research to understand the National Lottery and wider market and potential future market scenarios; and
  - (g) all forms of new channel marketing, including production of, and payments for, outbound advertising or promotional messages through new channels such as the internet, mobile telephony, interactive television and smartcards, and including all costs of consumer promotions through new channels, and payments for cross-selling from other internet web sites and mobile and iDTV content and network providers (but excluding any costs of communication integral to purchasing a National Lottery ticket or inbound communication from consumers or retailers, and excluding third party costs associated with the ongoing provision of a game through new channels such as the internet, mobile telephony, or smartcards), and any agency, consultancy and legal fees and insurance costs in respect of the foregoing.

## Schedule 11

### Lost and stolen Scratchcard Lottery tickets

#### Condition 11

1.1 The Licensee shall require all Distributors and Carriers of Scratchcard Lottery tickets to make payments to the Licensee in respect of any Scratchcard Lottery tickets which are lost or stolen while in their custody or control. For the purposes of this Schedule, (**Carrier**) shall mean any person who delivers Scratchcard Lottery tickets on the Licensee's behalf.

1.2 The Licensee shall pay:

- (a) in respect of all Constituent Lotteries other than Olympic Lotteries, to the NLDF out of the proceeds of all such Constituent Lotteries; and
- (b) in respect of Olympic Lotteries, to the OLDF out of the proceeds of all such Olympic Lotteries,

an amount equal to all monies received by it from Distributors or Carriers in accordance with paragraph 1.1 (after the deduction of costs reasonably incurred in recovering the same). The Licensee shall make such payment no later than 28 days after the end of each Quarter (**Quarterly Payment Day**). For the purposes of this Schedule, "Quarter" shall mean the period from 1 April to 30 June, 1 July to 30 September, 1 October to 31 December and 1 January to 31 March or such other period as the Commission may specify from time to time.

1.3 The Licensee shall deliver to the Commission within 21 days of the Quarterly Payment Day a statement for each Constituent Lottery of:

- (a) the number of Scratchcard Lottery tickets which were reported lost or stolen;
- (b) the monies received by the Licensee from Distributors or Carriers in accordance with paragraph 1.1;
- (c) any costs incurred in recovering such monies received by the Licensee from Distributors or Carriers in accordance with paragraph 1.1;
- (d) the amount paid to the NLDF in accordance with paragraph 1.2;
- (e) the amount paid to the OLDF in accordance with paragraph 1.2;
- (f) all Scratchcard Lottery tickets lost or stolen prior to that date for which no monies have been received by the Licensee from Distributors or Carriers in accordance with paragraph 1.1, together with details of the steps being taken to recover such monies or an explanation as to why no steps are being taken; and
- (g) the amounts received by the Licensee from Distributors or Carriers in accordance with paragraph 1.1 but in respect of which no payment has been made by the Licensee to the NLDF or, as the case may be, the OLDF and an explanation as to why no such payment has been made.

## Schedule 12

### Condition 18.16

#### Part 1

#### The Licensee Subcontract Novation

THIS DEED is made on \_\_\_\_\_

#### BETWEEN:

- (1) [Licensee Subcontractor] (company no.) whose registered office is at [ ] (A);
- (2) [Licensee] (company no.) whose registered office is at [ ] (B); and
- (3) [Successor Licensee] (company no.) whose registered office is at [ ] (C).

#### WHEREAS:

- (A) B runs the National Lottery under a licence dated [•] (**Section 5 Licence**) granted to it by the National Lottery Commission (**Commission**) under section 5 of the National Lottery etc. Act 1993 (**Act**).
- (B) [A and B] entered into an agreement on [ ] whereby [ ] [as amended by [ ]], (**Contract**).
- (C) Following the [expiry or revocation] of the Section 5 Licence, the Commission has appointed [C] to run the National Lottery as the Successor Licensee pursuant to a licence dated [•] (**Successor Licence**).
- (D) [B] wishes to be released and discharged from the Contract and the parties have agreed to the novation of the Contract and to the substitution of [C] as a party to the Contract in place of [B].

#### IT IS AGREED as follows:

### 1. Definitions and interpretation

1.1 Terms defined in the Section 5 Licence and not otherwise defined in this Deed shall have the same meaning as set out in the Section 5 Licence.

1.2 The clause headings are for ease of reference only and shall not affect the interpretation or construction of this Deed.

1.3 In this Deed, unless the context otherwise requires:

- (a) references to Clauses, Schedules and paragraphs in this Deed shall be construed as references to the Clauses, Schedules and paragraphs of this Deed;
- (b) references to persons includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
- (c) the headings are inserted for convenience only and do not affect the construction of this Deed;
- (d) references to one gender includes all genders;
- (e) words importing the plural include the singular and vice versa;
- (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re enacted;

- (g) any reference to a document in the agreed form is to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties);
- (h) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (i) reference to the words “includes” or “including” are to be construed without limitation.

## **2. Novation**

2.1 In consideration of the mutual undertakings contained in this Deed, and with effect from [the date of this Deed] [insert alternative date] (**Effective Date**):

- (a) [B] shall cease to be a party to the Contract and [C] shall become a party to it in place of [B];
- (b) subject to Clause 3, [C] undertakes with [A] to accept, observe, perform and discharge all the liabilities and obligations of [B] under the Contract in substitution for [B];
- (c) subject to Clause 3, [A] agrees to the substitution of [C] in place of [B] and that [C] may exercise and enjoy all the rights of [B] arising under the Contract in substitution for [B] as if [C] had at all times been a party to the Contract]; and
- (d) subject to Clause 3, [A] hereby releases and discharges [B] from all claims, demands, liabilities and obligations under the Contract (howsoever arising and whether arising on, before or after the Effective Date) and accepts the liabilities and obligations to it of [C] in place of [B].

## **3. Retained liabilities and obligations**

3.1 Nothing in this Deed shall have the effect of:

- (a) releasing [B] from any accrued but unperformed obligation, from the consequences of any breach of the Contract which is the subject of arbitration or litigation between [A] and [B], or from any liability in respect of any act or omission under or in relation to the Contract before, or as at the Effective Date; or
- (b) obliging [C] to assume responsibility for any unperformed obligation, liability or consequence of a breach referred to in 3(a).

## **4. Further assurance**

4.1 Each of the parties agrees to perform (or procure the performance of) all further acts and things, and execute and deliver (or procure the execution and delivery of) such further documents, as may be required by Law or as may be necessary or reasonably desirable to implement and/or give effect to this Deed.

## **5. Counterparts**

5.1 This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

## **6. Force majeure**

6.1 Neither party shall be liable for any failure or delay in performing any of its obligations under this Deed if the failure or delay is due to any cause outside its reasonable control, and it shall be entitled to a reasonable extension of the time for performing the obligations as a result of the cause.

## **7. [Supremacy of Successor Licence]**

7.1 Each of [B] and [C] agrees with the other that, in the event of any inconsistency between any of the terms of this Deed and any of the terms of the Successor Licence, the terms of the Successor Licence shall prevail as between them, but without prejudice to [A]'s rights under this Deed and the Contract.]

## **8. Confidential Information**

8.1 Each of the parties shall both during and after the arrangements contemplated by this Deed have terminated:

- (a) keep confidential the terms of this Deed and all information, whether in written or any other form, which has been disclosed to it by or on behalf of the other party pursuant to its respective obligations under this Deed which by its nature ought to be regarded as confidential (including any business information in respect of the other party which is not directly applicable or relevant to the transactions contemplated by this Deed); and
- (b) procure that its officers, employees and representatives and those of any group companies keep secret and treat as confidential all such documents and information.

8.2 Clause 8.1 does not apply to information:

- (a) which shall after the date of this Deed become published or otherwise generally available to the public, except in consequence of a wilful or negligent act or omission by the other party to this Deed in contravention of the obligations in Clause 8.1;
- (b) to the extent made available to the recipient party by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the other party or which has been disclosed under an express statement that it is not confidential;
- (c) to the extent required to be disclosed by any applicable Law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of Law, provided that the party disclosing the information shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before the disclosure shall be made and shall take all reasonable action to avoid and limit the disclosure;
- (d) which has been independently developed by the recipient party otherwise than in the course of the exercise of that party's rights under this Deed or the implementation of this Deed;
- (e) which, in order to perform its obligations under or pursuant to this Deed, either party is required to disclose to a third party;
- (f) which, in order to perform its obligations under the Section 5 Licence and the Successor Licence either party is required to disclose to the Commission or to a third party approved in advance by the Commission; and
- (g) which the recipient party can prove was already known to it before its receipt from the disclosing party.

8.3 The provisions of this Clause shall survive any termination of this Deed.

## **9. Notices**

9.1 The parties shall give any notice under, or in connection with, this Deed in writing. Notice shall be served by sending it by fax to the number set out in Clause 9.3, or delivering it by hand, or sending it by prepaid recorded delivery, special delivery or registered post, to the address set out in Clause 9.3, or by sending it by electronic mail to the address set out in Clause 9.3, and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this

Clause 9). Any notice so served by hand, fax, post or electronic mail shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, special delivery or registered post, at 10.00 hours on the second Business Day following the date of posting; and
- (d) in the case of electronic mail, when the email leaves the email gateway of the sender where it leaves such gateway before 17.00 hours on any Business Day or in any other case at 08.00 hours on the next Business Day after it leaves such gateway and the onus shall be on the party giving notice to prove the time that the email left its gateway,

provided that in each case where delivery by hand or by fax occurs after 18.00 hours on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 09.00 hours on the next following Business Day.

9.2 References to time in this Clause 9 are to local time in the country of the addressee.

9.3 The addresses, fax numbers and electronic mail addresses of the parties for the purpose of this Clause 9 are as follows:

**The Licensee Subcontractor**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

**The Licensee**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

**The Successor Licensee**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

9.4 A party may notify the other party to this Deed of a change to its name, relevant addressee, address, fax number or electronic mail address for the purposes of this Clause 9, provided that, such notice shall only be effective on:

- (a) the date specified in the notice as the date on which the change is to take place; or

(b) if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date following five Business Days after notice of any change has been given.

9.5 All notices under or in connection with this Deed shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

**10. Entire agreement**

10.1 This Deed and the Section 5 Licence set out the entire agreement and understanding between the parties in respect of the subject matter of this Deed. This Clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

**11. Severability**

11.1 If, and to the extent that, any provision of this Deed is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in this Deed but without invalidating any of the remaining provisions of this Deed provided that the parties shall meet to negotiate in good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Deed not so affected) so as to re-establish an appropriate balance of the interests of the parties.

**12. Third party rights**

12.1 With the exception of the Commission’s rights under Clause 12.2 and unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

12.2 All rights and interests exercisable by the Successor Licensee under this Deed shall be exercisable by the Commission.

**13. Governing Law and jurisdiction**

13.1 This Deed shall be governed by and construed in accordance with English law.

13.2 The parties irrevocably agree that the English courts shall have exclusive jurisdiction in relation to any legal action or proceedings arising out of or in connection with the Licence (**Proceedings**) and waive any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

AS WITNESS this Deed has been signed by the duly authorised representatives of the parties the day and year first before written.

**SIGNED** by )  
for and on behalf of )  
**[A]** )

**SIGNED** by )  
for and on behalf of )  
**[B]** )

**SIGNED** by )  
for and on behalf of )  
**[C]** )

## Schedule 12

### Condition 18.23

#### Part 2

### The Deed of Transfer for Transferring Assets

This **DEED** is made on \_\_\_\_\_ 200\_

#### **BETWEEN**

(1) [ ] (company no.) whose registered office is at [ ] (**Transferor**); and

(2) [ ] (company no.) whose registered office is at [ ] (**Transferee**).

#### **WHEREAS**

- (A) The Transferor runs the National Lottery under a licence dated [●] (**Section 5 Licence**) granted to it by the National Lottery Commission (the **Commission**) under section 5 of the National Lottery etc. Act 1993 (**Act**).
- (B) The Transferor is the legal and beneficial owner of the assets set out in Schedule 1 used in the running of the National Lottery (together, the **Transferring Assets**).
- (C) Under the Section 5 Licence, the Transferee has been designated as the Successor Licensee to whom the Transferring Assets are to be assigned or transferred.
- (D) The Transferor has agreed to assign the Transferring Assets to the Transferee, on the terms and conditions set out in this Deed.
- (E) The Transferee desires to acquire, and the Transferor desires to transfer, all right, title and interest of the Transferor in and to the Transferring Assets.

**IT IS AGREED** as follows:

#### **1. Definitions and interpretation**

1.1 Terms defined in the Section 5 Licence and not otherwise defined in this Deed shall have the same meaning as set out in the Section 5 Licence.

1.2 In this Deed, unless the context otherwise requires:

- (a) references to Clauses, Schedules and paragraphs in this Deed shall be construed as references to the Clauses, Schedules and paragraphs of this Deed;
- (b) references to persons includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
- (c) the headings are inserted for convenience only and do not affect the construction of this Deed;
- (d) references to one gender includes all genders;
- (e) words importing the plural include the singular and vice versa;
- (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re enacted;

- (g) any reference to a document in the agreed form is to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties);
- (h) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (i) reference to the word “includes” or “including” are to be construed without limitation.

## **2. Commencement**

2.1 This Deed shall come into force on [day] [month] [year] (**Commencement Date**).

## **3. Transfer of the Transferring Assets**

3.1 [In consideration of the payment of [ ] [On a payment-free basis]<sup>1</sup>, the Transferor transfers, or shall procure the transfer of, the Transferring Assets to the Transferee on [date] and its successors and assigns, subject to the terms and conditions of any licences granted to third parties, all its right, title and interest in and to the Transferring Assets.

3.2 The obligation of the Transferor to transfer the Transferring Assets, and of the Transferee to accept the transfer, contained in Clause 3.1, shall be subject to the condition that the Transferring Assets are transferred with such title as the Transferor enjoyed immediately prior to the transfer and the Transferee shall acquire the Transferring Assets subject to such encumbrances, restrictions, covenants, licences, agreements and arrangements as may have affected the Transferring Assets prior to the transfer.

3.3 Subject to Clause 3.2, title to all Transferring Assets which can be transferred on delivery shall pass on delivery [and such delivery shall take place on [insert date].]

## **4. Warranties**

4.1 Each party warrants that it has full authority, power and capacity to enter into and carry out its obligations under this agreement.

4.2 The Transferor warrants that it has the right to transfer the Transferring Assets to the Transferee.

## **5. Infringement**

5.1 In the event of any claim against any of the Transferring Assets the Transferor shall upon the reasonable request of the Transferee and at the Transferor's expense co-operate with and assist the Transferee in any of the aforesaid actions by, for example, providing information and documents and executing all papers and performing such other acts as reasonably may be required.

## **6. Indemnity**

6.1 The Transferor shall indemnify the Transferee against each and any loss, liability and cost (including legal expenses) which the Transferee suffers or incurs as a result of or in connection with any claim against the Transferee that the use of the Transferring Assets in connection with the Transferee's obligations under the Successor Licence, the National Lottery or any Ancillary Activity infringes the Intellectual Property or other rights of a third party.<sup>2</sup>

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<sup>1</sup> Where the Licence expires, consideration will only be necessary if Scratchcards are to be transferred. Where the Licence is revoked for grounds other than Licensee Insolvency, the amount payable for the Transferring Assets shall be market value. As a deed, no consideration is required for legal effect

<sup>2</sup> This clause does not deal with tax issues and potential charges, which may or may not arise at the time of the transfer depending on legislation in force at the time of the transfer.

## **7. Further assurance**

7.1 The Transferor shall, at its own cost, sign all documents and do all things which may be required by Law or which the Transferee may request from time to time (including executing as soon as reasonably practicable after the date of this Deed all documents which the Transferee may require to effect the registration or recording of the assignment of the Transferring Assets to the Transferee in any relevant jurisdiction) to implement and/or give effect to this Deed and for the purpose of granting the Transferee the full benefit of and title to the assets, rights and benefits to be transferred under this Deed.

## **8. Severability**

8.1 If, and to the extent that, any provision of this Deed is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in this Deed but without invalidating any of the remaining provisions of this Deed provided that the parties shall meet to negotiate in good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Deed not so affected) so as to re-establish an appropriate balance of the interests of the parties.

## **9. Entire agreement**

9.1 This Deed and the Section 5 Licence set out the entire agreement and understanding between the parties in respect of the subject matter of this Deed. This Clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

## **10. Waivers and amendments**

10.1 No failure or delay by either party in exercising any right or remedy provided by Law under or pursuant to this Deed shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.

10.2 The rights and remedies provided for are cumulative and not exclusive of any rights and remedies provided by Law.

10.3 No provision of this Deed may be amended, modified, waived, discharged or terminated otherwise than by the express written agreement of the parties to this Deed nor may any breach of any provision of this Deed be waived or discharged except with the express written consent of the party not in breach.

## **11. Confidential Information**

11.1 Each of the parties shall both during and after the arrangements contemplated by this Deed have terminated:

- (a) keep confidential the terms of this Deed and all information, whether in written or any other form, which has been disclosed to it by or on behalf of the other party pursuant to its respective obligations under this Deed which by its nature ought to be regarded as confidential (including any business information in respect of the other party which is not directly applicable or relevant to the transactions contemplated by this Deed); and
- (b) procure that its officers, employees and representatives and those of any group companies keep secret and treat as confidential all such documents and information.

11.2 Clause 11.1 does not apply to information:

- (a) which shall after the date of this Deed become published or otherwise generally available to the public, except in consequence of a wilful or negligent act or omission by the other party to this Deed in contravention of the obligations in Clause 11.1;
- (b) to the extent made available to the recipient party by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the other party or which has been disclosed under an express statement that it is not confidential;

- (c) to the extent required to be disclosed by any applicable Law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of Law, provided that the party disclosing the information shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before the disclosure shall be made and shall take all reasonable action to avoid and limit the disclosure;
- (d) which has been independently developed by the recipient party otherwise than in the course of the exercise of that party's rights under this Deed or the implementation of this Deed;
- (e) which, in order to perform its obligations under or pursuant to this Deed, either party is required to disclose to a third party;
- (f) which, in order to perform its obligations under the Section 5 Licence and the Successor Licence either party is required to disclose to the Commission or to a third party approved in advance by the Commission; and
- (g) which the recipient party can prove was already known to it before its receipt from the disclosing party.

11.3 The provisions of this Clause shall survive any termination of this Deed.

## 12. Notices

12.1 The parties shall give any notice under, or in connection with, this Deed in writing. Notice shall be served by sending it by fax to the number set out in Clause 12.3, or delivering it by hand, or sending it by prepaid recorded delivery, special delivery or registered post, to the address set out in Clause 12.3, or by sending it by electronic mail to the address set out in Clause 12.3, and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this Clause 12). Any notice so served by hand, fax, post or electronic mail shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, special delivery or registered post, at 10.00 hours on the second Business Day following the date of posting; and
- (d) in the case of electronic mail, when the email leaves the email gateway of the sender where it leaves such gateway before 17.00 hours on any Business Day or in any other case at 08.00 hours on the next Business Day after it leaves such gateway and the onus shall be on the party giving notice to prove the time that the email left its gateway,

provided that in each case where delivery by hand or by fax occurs after 18.00 hours on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 09.00 hours on the next following Business Day.

12.2 References to time in this Clause 12 are to local time in the country of the addressee.

12.3 The addresses, fax numbers and electronic mail addresses of the parties for the purpose of this Clause 12 are as follows:

### The Transferor

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

### **The Transferee**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

12.4 A party may notify the other party to this Deed of a change to its name, relevant addressee, address, fax number or electronic mail address for the purposes of this Clause 12, provided that, such notice shall only be effective on:

- (a) the date specified in the notice as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date following five Business Days after notice of any change has been given.

12.5 All notices under or in connection with this Deed shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

## **13. Third party rights**

13.1 With the exception of the Commission's rights under Clause 13.2 and unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

13.2 All rights and interests exercisable by the Transferee under this Deed shall be exercisable by the Commission.

## **14. Force majeure**

14.1 Neither party shall be liable for any failure or delay in performing any of its obligations under this Deed if the failure or delay is due to any cause outside its reasonable control, and it shall be entitled to a reasonable extension of the time for performing the obligations as a result of the cause.

## **15. Governing Law and jurisdiction**

15.1 This Deed shall be governed by and construed in accordance with English law.

15.2 The parties irrevocably agree that the English courts shall have exclusive jurisdiction in relation to any legal action or proceedings arising out of or in connection with the Licence (**Proceedings**) and waive any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

**16. Counterparts**

16.1 This Deed may be entered into in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

**IN WITNESS WHEREOF** the parties have executed this document as a Deed as of the day and year first written above.

**EXECUTED AS A DEED BY** )  
[TRANSFEROR] )  
acting by two Directors or a Director )  
and Company Secretary )

**EXECUTED AS A DEED BY** )  
[TRANSFeree] )  
acting by two Directors or a Director )  
and Company Secretary )

**SCHEDULE 1**

**TRANSFERRING ASSETS**

## Schedule 12

### Condition 18

#### Part 3

#### Co-operation Agreement

The Co-operation Agreement shall provide for working arrangements to be agreed between the Licensee and the Successor Licensee to ensure the matters set out in Condition 18.8(a) – (d) are secured, including arrangements;

- for the exchange of information or data;
- for consultation;
- for an equitable apportionment of the costs incurred by the Licensee and the Successor Licensee arising out of the obligations arising under the Co-operation Agreement; and
- that the Licensee and the Successor Licensee will not act unreasonably in relation to their respective obligations arising under the Co-operation Agreement.

The Co-operation Agreement shall provide for

- the Licensee to give to the Commission and/or the Successor Licensee reasonable access to existing infrastructure and access to test software and systems (as the Commission may direct);
- the Licensee to give to the Commission and/or the Successor Licensee reasonable access to information or data (as the Commission may direct);
- the Licensee to give to the Commission and/or the Successor Licensee transfers of the inventory of Scratchcard Lottery tickets (and the payment referred to in Condition 18.25);
- the Licensee to give to the Commission and/or the Successor Licensee reasonable access to and copies of data relating to Player Subscriptions and on-line accounts (as the Commission may direct);
- the Licensee to give to the Commission and/or the Successor Licensee reasonable access to Distributors and any Distributor database(s) (as the Commission may direct);
- transfers of data;
- transfers of broadcasting rights;
- payment of outstanding prizes;
- the transfer of Ongoing Disputes, including provisions for the handling of claims, including obligations for the Successor Licensee to consult and have regard to the representations of the Licensee and not to act unreasonably; and including conditions relating to the effective arrangement for the recovery by the Licensee of the costs reasonably incurred and not recovered by the Licensee prior to the Ongoing Dispute being assumed or taken over by the Successor Licensee, in the event of a claim of costs awarded or settled in favour of the Successor Licensee; and
- such other matters as the Commission may specify.

## Schedule 12

### Condition 15.15A

#### Part 4(A)

#### The Key Licensee Subcontract Transfer

DEED OF ASSIGNMENT made on \_\_\_\_\_ 200\_

#### BETWEEN

- (1) [Licensee Subcontractor/Series Subcontractor/Sub Series Subcontractor] (company no.) whose registered office is at [ ] (**Subcontractor**); and
- (2) [The National Lottery Commission of 101 Wigmore Street, London W1U 1QU (**Commission**) [or its nominee (**Nominee**)].]

#### WHEREAS

- (A) [●] runs the National Lottery under a licence dated [●] (**Section 5 Licence**) granted to it by the Nominee under section 5 of the National Lottery etc. Act 1993 (**Act**).
- (B) The Subcontractor has entered into a contract with [●] which is designated as a Key Licensee Subcontract pursuant to Condition 15 of the Section 5 Licence (**Subcontract**).
- (C) Pursuant to Condition 15.15A of the Section 5 Licence and the terms of the Subcontract the Subcontractor has agreed to assign to the [Commission /Nominee] all of the Intellectual Property that the Subcontractor has to use and exploit any of the rights in that Intellectual Property which are used and exploited or capable of being used or exploited by the Subcontractor in connection with the National Lottery or any Ancillary Activity on the terms and conditions set out herein.

IT IS AGREED as follows:

### 1. Definitions and interpretation

- 1.1 Terms defined in the Section 5 Licence and not otherwise defined in this Deed shall have the same meaning as set out in the Section 5 Licence.
- 1.2 In this Deed, unless the context otherwise requires:
  - (a) references to Clauses, Schedules and paragraphs in this Deed shall be construed as references to the Clauses, Schedules and paragraphs of this Deed;
  - (b) references to persons includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
  - (c) the headings are inserted for convenience only and do not affect the construction of this Deed;
  - (d) references to one gender includes all genders;
  - (e) words importing the plural include the singular and vice versa;
  - (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re enacted;
  - (g) any reference to a document in the agreed form is to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties);

- (h) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (i) reference to the word “includes” or “including” are to be construed without limitation.

## **2. Commencement**

2.1 This Deed shall come into force on [day] [month] [year] (**Commencement Date**).

## **3. Assignment**

3.1 The Subcontractor, at its own cost, assigns or shall procure the assignment to the [Commission/Nominee] and their successors and assigns, on a payment-free basis and subject to the terms and conditions of any licences granted to third parties, all its right, title and interest in and to all of the Intellectual Property that the Subcontractor has to use and exploit any of the rights in that Intellectual Property which are used and exploited or capable of being used or exploited by the Subcontractor in connection with the National Lottery or any Ancillary Activity (including, but not limited to, goodwill and statutory and common law rights attaching to the Intellectual Property including the right to sue for damages and other remedies for infringement or misuse of the Intellectual Property which may have occurred prior to the date of this Deed and to retain those damages or any account of profits) (**Subcontractor IP**).

## **4. Warranties**

4.1 Each party warrants that it has full authority, power and capacity to enter into and carry out its obligations under this agreement.

4.2 The Subcontractor warrants that:

- (a) it owns all of the rights and interests in, and has title to, the Subcontractor IP, and is entitled to grant the assignment to the [Commission/Nominee] under Clause 3;
- (b) each of the Subcontractor IP is valid and subsisting;
- (c) it has not given a third party permission to use any of the Subcontractor IP nor is it under an obligation to do so;
- (d) all application, filing, registration, renewal and other fees in respect of registrations (or applications for registration) of the Subcontractor IP have been paid;
- (e) it has not acquiesced in the unauthorised use of the Subcontractor IP, nor is any party infringing, or likely to infringe, any of the Subcontractor IP; and
- (f) no claim has been made by a third party which disputes the right of the Subcontractor to use any trade mark, nor is the Subcontractor aware of any circumstances likely to give rise to a claim.

## **5. Infringement**

5.1 In the event of any claim against any of the Intellectual Property assigned pursuant to Clause 3, including without limitation any challenge to the validity or subsistence of any of the Intellectual Property or any claim for infringement, opposition, cancellation, revocation or rectification in relation to the Intellectual Property, the Subcontractor shall upon the request of the [Commission/Nominee] and at the Subcontractor's expense co-operate with and assist the [Commission/Nominee] in any of the aforesaid actions by, for example, providing information and documents and executing all papers and performing such other acts as may be required.

## **6. Indemnity**

6.1 The Subcontractor shall indemnify the [Commission/Nominee] against each and any loss, liability and cost (including legal expenses) which the Commission/Nominee suffers or incurs as a result of or in

connection with any claim against the Commission/Nominee that the use of the Subcontractor IP in connection with the obligations of the Commission [and the Nominee] under the Section 5 Licence, the Successor Licence, the National Lottery or any Ancillary Activity infringes the Intellectual Property rights or other rights of a third party.

## **7. Further assurance**

7.1 The Subcontractor shall, at its own cost, sign all documents and do all things which may be required by Law or which the [Commission/Nominee] may request from time to time (including executing as soon as reasonably practicable after the date of this Deed all documents which the [Commission/Nominee] may require to effect the registration or recording of the assignment of the Subcontractor IP to the [Commission/Nominee] in any relevant jurisdiction) and for the purpose of granting the Transferee the full benefit of and title to the assets, rights and benefits to be transferred under this Deed.

## **8. Severability**

8.1 If, and to the extent that, any provision of this Deed is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in this Deed but without invalidating any of the remaining provisions of this Deed provided that the parties shall meet to negotiate in good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Deed not so affected) so as to re-establish an appropriate balance of the interests of the parties.

## **9. Confidential Information**

9.1 Each of the parties shall both during and after the arrangements contemplated by this Deed have terminated:

- (a) keep confidential the terms of this Deed and all information, whether in written or any other form, which has been disclosed to it by or on behalf of the other party pursuant to its respective obligations under this Deed which by its nature ought to be regarded as confidential (including any business information in respect of the other party which is not directly applicable or relevant to the transactions contemplated by this Deed); and
- (b) procure that its officers, employees and representatives and those of any group companies keep secret and treat as confidential all such documents and information.

9.2 Clause 9.1 does not apply to information:

- (a) which shall after the date of this Deed become published or otherwise generally available to the public, except in consequence of a wilful or negligent act or omission by the other party to this Deed in contravention of the obligations in Clause 9.1;
- (b) to the extent made available to the recipient party by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the other party or which has been disclosed under an express statement that it is not confidential;
- (c) to the extent required to be disclosed by any applicable Law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of Law, provided that the party disclosing the information shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before the disclosure shall be made and shall take all reasonable action to avoid and limit the disclosure;
- (d) which has been independently developed by the recipient party otherwise than in the course of the exercise of that party's rights under this Deed or the implementation of this Deed;
- (e) which, in order to perform its obligations under or pursuant to this Deed, either party is required to disclose to a third party;

- (f) which, in order to perform its obligations under the Section 5 Licence and the Successor Licence either party is required to disclose to the Commission or to a third party approved in advance by the Commission; and
- (g) which the recipient party can prove was already known to it before its receipt from the disclosing party.

9.3 The provisions of this Clause shall survive any termination of this Deed.

## 10. Notices

10.1 The parties shall give any notice under, or in connection with, this Deed in writing. Notice shall be served by sending it by fax to the number set out in Clause 10.3, or delivering it by hand, or sending it by prepaid recorded delivery, special delivery or registered post, to the address set out in Clause 10.3, or by sending it by electronic mail to the address set out in Clause 10.3, and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this Clause 10). Any notice so served by hand, fax, post or electronic mail shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, special delivery or registered post, at 10.00 hours on the second Business Day following the date of posting; and
- (d) in the case of electronic mail, when the email leaves the email gateway of the sender where it leaves such gateway before 17.00 hours on any Business Day or in any other case at 08.00 hours on the next Business Day after it leaves such gateway and the onus shall be on the party giving notice to prove the time that the email left its gateway,

provided that in each case where delivery by hand or by fax occurs after 18.00 hours on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 09.00 hours on the next following Business Day.

10.2 References to time in this Clause 10 are to local time in the country of the addressee.

10.3 The addresses, fax numbers and electronic mail addresses of the parties for the purpose of this Clause 10 are as follows:

### **The Subcontractor**

Address: [ ● ]

Fax: [ ● ]

For the attention of: [ ● ]

Electronic mail address: [ ● ]

### **The Commission/Nominee**

Address: [ ● ]

Fax: [ ● ]

For the attention of: [ ● ]

Electronic mail address: [ • ]

10.4 A party may notify the other party to this Deed of a change to its name, relevant addressee, address, fax number or electronic mail address for the purposes of this Clause 10, provided that, such notice shall only be effective on:

- (a) the date specified in the notice as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date following five Business Days after notice of any change has been given.

10.5 All notices under or in connection with this Deed shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

## 11. Third party rights

EITHER

Unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

OR<sup>1</sup>

11.1 With the exception of the Commission's rights under Clause 11.2 and unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

11.2 All rights and interests exercisable by the Subcontractor under this Deed shall be exercisable by the Commission.

## 12. Force majeure

12.1 Neither party shall be liable for any failure or delay in performing any of its obligations under this Deed if the failure or delay is due to any cause outside its reasonable control, and it shall be entitled to a reasonable extension of the time for performing the obligations as a result of the cause.

## 13. Entire agreement

13.1 This Deed and the Section 5 Licence set out the entire agreement and understanding between the parties in respect of the subject matter of this Deed. This Clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

## 14. Governing Law and jurisdiction

14.1 This Deed shall be governed by and construed in accordance with English law.

14.2 The parties irrevocably agree that the English courts shall have exclusive jurisdiction in relation to any legal action or proceedings arising out of or in connection with the Licence (**Proceedings**) and waive any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

## 15. Counterparts

15.1 This Deed may be entered into in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

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<sup>1</sup> For use when a third party is the Assignee.

**IN WITNESS WHEREOF** this Deed has been signed by the authorised representatives of the parties on the day and year first written above.

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

## Schedule 12

### Condition 15.15A

#### Part 4(B)

#### The Key Licensee Subcontract Licence

THIS DEED is made on \_\_\_\_\_ 20[ ]

#### BETWEEN

- (1) [ ] (company no.) whose registered office is at [ ] (**Subcontractor**); and
- (2) [The National Lottery Commission of 101 Wigmore Street, London W1U 1QU (**Commission**) [or its nominee (**Nominee**).]

#### WHEREAS

- (A) [●] runs the National Lottery under a licence dated [●] (**Section 5 Licence**) granted to it by the National Lottery Commission under section 5 of the National Lottery etc. Act 1993 (**Act**).
- (B) The Subcontractor has entered into a contract with [●] which is designated as a Key Licensee Subcontract pursuant to Condition 15 of the Section 5 Licence (**Subcontractor**).
- (C) Pursuant to Condition 15.15A of the Section 5 Licence and the terms of the Subcontract the Subcontractor has agreed to grant a licence to the [Commission /Nominee] of all Intellectual Property that the Subcontractor has to use and exploit any of the rights in that Intellectual Property which are used and exploited or capable of being used or exploited by the Subcontractor in connection with the National Lottery or any Ancillary Activity on the terms and conditions set out herein.

IT IS AGREED as follows:

### 1. Definitions and interpretation

1.1 Terms defined in the Section 5 Licence and not otherwise defined in this Deed shall have the same meaning as set out in the Section 5 Licence.

1.2 In this Deed, unless the context otherwise requires:

- (a) references to Clauses, Schedules and paragraphs in this Deed shall be construed as references to the Clauses, Schedules and paragraphs of this Deed;
- (b) references to persons includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
- (c) the headings are inserted for convenience only and do not affect the construction of this Deed;
- (d) references to one gender includes all genders;
- (e) words importing the plural include the singular and vice versa;
- (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re enacted;
- (g) any reference to a document in the agreed form is to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties);

- (h) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (i) reference to the word “includes” or “including” are to be construed without limitation.

## **2. Commencement**

2.1 This Deed shall come into force on [day] [month] [year] (**Commencement Date**) and shall continue until terminated in accordance with Clause 11 (**Term**).

## **3. Grant of Licence**

3.1 The Subcontractor grants to the [Commission /Nominee] a royalty-free, payment-free, transferable, [sub-licensable/ non sub-licensable]<sup>1</sup>, non-exclusive and perpetual licence to all Intellectual Property that the Subcontractor has to use and exploit any of the rights in that Intellectual Property which are used and exploited or capable of being used or exploited by the Subcontractor in connection with the National Lottery or any Ancillary Activity (**Subcontractor IP**).

## **4. Maintenance of Subcontractor IP**

4.1 The Subcontractor shall, at its own cost, take all steps required to maintain registrations for the Subcontractor IP in the relevant registries in any jurisdiction.

4.2 Where the [Commission/Nominee] wishes to apply to register any of the Subcontractor IP in the relevant registries in any jurisdiction for the purpose of ensuring the registration of the [Commission/Nominee] as a registered licensee of Subcontractor IP, it may ask the Subcontractor to do so on its behalf. The Subcontractor shall apply to register the relevant Subcontractor IP in its own name and all costs of filing, prosecuting, registering and maintaining the application and any resulting registration shall be paid by the Subcontractor.

## **5. Future Subcontractor IP**

5.1 If at any time any item becomes an item of Subcontractor IP in any manner howsoever pursuant to the Section 5 Licence, such item shall be automatically deemed to fall within the licence set out in Clause 3.

## **6. Warranties**

6.1 Each party warrants that it has full authority, power and capacity to enter into and carry out its obligations under this Deed.

6.2 The Subcontractor warrants that:

- (a) it owns all of the rights and interests in, and has title to, the Subcontractor IP, and is entitled to grant the rights granted to the Licensee under Clause 3;
- (b) each of the Subcontractor IP is valid and subsisting;
- (c) it has not given a third party permission to use any of the Subcontractor IP nor is it under an obligation to do so;
- (d) all application, filing, registration, renewal and other fees in respect of registrations (or applications for registration) of the Subcontractor IP have been paid;
- (e) it has not acquiesced in the unauthorised use of the Subcontractor IP, nor is any party infringing, or likely to infringe, any of the Subcontractor IP; and

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<sup>1</sup> Only the Commission to have rights to grant sub-licences. The grant to the Nominee is to be non sub-licensable.

- (f) no claim has been made by a third party which disputes the right of the Subcontractor to use any trade mark, nor is the Subcontractor aware of any circumstances likely to give rise to a claim.

## **7. Indemnity**

7.1 The Subcontractor shall indemnify the [Commission/Nominee] against each and any loss, liability and cost (including legal expenses) which the [Commission/Nominee] suffers or incurs as a result of or in connection with any claim against the [Commission/Nominee] that the use of the Subcontractor IP by the [Commission/Nominee] in accordance with this Deed infringes the Intellectual Property or other rights of a third party.

## **8. Further assurance**

8.1 The Subcontractor shall, at its own cost, sign all documents and do all things which may be required by Law or which the [Commission/Nominee] may request from time to time (including executing as soon as reasonably practicable after the date of this Deed all documents which the [Commission/Nominee] may require to effect the registration or recording of the grant of Sub Licence as set out in Clause 4 to the [Commission/Nominee] in any relevant jurisdiction) to implement and/or give effect to this Deed and for the purpose of granting the [Commission/Nominee] the full benefit of and title to the assets, rights and benefits to be granted under this Deed.

## **9. Ownership of rights**

9.1 The [Commission/Nominee] shall not at any time do or suffer to be done any act or thing which is likely to in any way prejudice the Subcontractor's title.

9.2 The [Commission/Nominee] shall, at the cost of the Subcontractor, on request give to the Subcontractor or its authorised representative any information as to its use of the Subcontractor IP which the Subcontractor may reasonably require and in such form as is reasonable practicable for the [Commission/Nominee].

## **10. Infringement**

10.1 Each party shall immediately notify the other in writing of any of the following matters which come to its attention during the Term (giving full particulars):

- (a) infringement or suspected or threatened infringement of the Subcontractor IP whether by imitation or otherwise;
- (b) any allegation or complaint made by any third party that any of the Subcontractor IP is invalid, that use of the Subcontractor IP infringes any third party rights or that use of the Subcontractor IP may cause deception or confusion to the public;
- (c) any other form of attack on or claim to the Subcontractor IP, and

the [Commission/Nominee] shall not make any admissions in respect of these matters other than to the Subcontractor and at the request of the Subcontractor shall furnish the Subcontractor, at the Subcontractor's cost, with all information in its possession which may be reasonably required by the Subcontractor.

10.2 The Subcontractor shall have the right to decide whether or not to take action and to assume the conduct of all actions, claims and proceedings in its own name [(and not in the name of the [Commission/Nominee])] relating to the Subcontractor IP and shall bear the costs and expenses of actions, claims and proceedings.

10.3 The [Commission/Nominee] shall provide or procure the provision of any assistance reasonably required by the Subcontractor, at Subcontractor's cost, in connection with such claims, actions or proceedings in connection with any of the matters in Clause 10.1.

10.4 In the event that the [Commission/Nominee] provides such assistance as referred to in Clause 10.3, it shall, as between the parties to this Deed, be entitled to receive any compensation payments and

any award of costs or damages arising out of any such actions or proceedings. The remainder of any such payments, costs or damages, shall, as between the parties, belong to the Subcontractor.

## **11. Termination**

11.1 The Commission/Nominee may terminate this Deed by giving to the Subcontractor not less than [ ] months' prior written notice to that effect.

11.2 On the occurrence of any of the following events, a party may (without prejudice to any other right or remedy) by written notice to the other party terminate this Deed with immediate effect:

- (a) if the other party commits a material breach of any material obligation under this Deed, (including a breach of any representation or warranty) and in the case of a breach which is capable of remedy fails to remedy it within thirty (30) days of receipt of notice from the first party giving particulars of such breach and requiring it to be remedied;
- (b) a petition is presented, or a meeting is convened for the purpose of considering a resolution or any other steps are taken by any person with a view to the appointment of an administrator (whether out of court or otherwise) against or for the winding up of the other party or an administration order or a winding up order is made against or a provisional liquidator appointed with respect to the other party;
- (c) an encumbrancer takes possession of, or a trustee or administrative receiver or similar officer is appointed in respect of, all or any part of the business or assets of the other party, or distress or any form of execution is levied or enforced upon or sued out against any such assets and is not discharged within [7] days of being levied, enforced or sued out;
- (d) the other party is unable to pay its debts as they fall due or the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities, or it suspends or threatens to suspend making payments with respect to all or any class of its debts;
- (e) any voluntary arrangement is proposed under section 1 of the Insolvency Act 1986 in respect of the other party;
- (f) the other party proposes or makes any composition or arrangement or composition with, or any assignment for the benefit of, its creditors; or
- (g) anything analogous to any of the events described in paragraphs (a) to (e), inclusive, occurs under the laws of any applicable jurisdiction.

11.3 For the purposes of Clause 11.2(a), a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to time of performance.

## **12. Effects of termination**

12.1 Upon termination of this Deed for any reason, the rights and licence granted under this Deed to the [Commission/Nominee] shall cease and determine and the [Commission/Nominee] shall without delay discontinue any and all use of the Subcontractor IP.

12.2 Termination of this Deed shall not release either of the parties from any other liability which at the time of termination has already accrued to the other party, nor affect in any way the survival of any other right, duty or obligation of the parties which is expressly stated elsewhere in this Deed to survive such termination.

## **13. Confidential Information**

13.1 Each of the parties shall both during and after the arrangements contemplated by this Deed have terminated:

- (a) keep confidential the terms of this Deed and all information, whether in written or any other form, which has been disclosed to it by or on behalf of the other party pursuant to its respective

obligations under this Deed which by its nature ought to be regarded as confidential (including any business information in respect of the other party which is not directly applicable or relevant to the transactions contemplated by this Deed); and

- (b) procure that its officers, employees and representatives and those of any group companies keep secret and treat as confidential all such documents and information.

13.2 Clause 13.1 does not apply to information:

- (a) which shall after the date of this Deed become published or otherwise generally available to the public, except in consequence of a wilful or negligent act or omission by the other party to this Deed in contravention of the obligations in Clause 13.1;
- (b) to the extent made available to the recipient party by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the other party or which has been disclosed under an express statement that it is not confidential;
- (c) to the extent required to be disclosed by any applicable Law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of Law, provided that the party disclosing the information shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before the disclosure shall be made and shall take all reasonable action to avoid and limit the disclosure;
- (d) which has been independently developed by the recipient party otherwise than in the course of the exercise of that party's rights under this Deed or the implementation of this Deed;
- (e) which, in order to perform its obligations under or pursuant to this Deed, either party is required to disclose to a third party;
- (f) which, in order to perform its obligations under the Section 5 Licence and the Successor Licence either party is required to disclose to the Commission or to a third party approved in advance by the Commission; and
- (g) which the recipient party can prove was already known to it before its receipt from the disclosing party.

13.3 The provisions of this Clause shall survive any termination of this Deed.

## **14. Severability**

14.1 If, and to the extent that, any provision of this Deed is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in this Deed but without invalidating any of the remaining provisions of this Deed provided that the parties shall meet to negotiate in good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Deed not so affected) so as to re-establish an appropriate balance of the interests of the parties.

## **15. Waivers and amendments**

15.1 No failure or delay by the Subcontractor in exercising any right, power, privilege or remedy under this Deed shall operate as a waiver or impairment of that right, privilege, power, or remedy, nor shall any single or partial exercise by the Subcontractor of any right, power, privilege or remedy preclude any further exercise of any other right, power, privilege or remedy.

15.2 The rights and remedies provided for are cumulative and not exclusive of any rights and remedies provided by Law.

15.3 No provision of this Deed may be amended, modified, waived, discharged or terminated otherwise than by the express written agreement of the parties to this Deed nor may any breach of any provision of this Deed be waived or discharged except with the express written consent of the party not in breach.

## 16. Third party rights

Unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

OR<sup>2</sup>

16.1 With the exception of the Commission's rights under Clause 16.2 and unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

16.2 All rights and interests exercisable by the Subcontractor under this Deed shall be exercisable by the Commission.

## 17. Notices

17.1 The parties shall give any notice under, or in connection with, this Deed in writing. Notice shall be served by sending it by fax to the number set out in Clause 17.3, or delivering it by hand, or sending it by prepaid recorded delivery, special delivery or registered post, to the address set out in Clause 17.3, or by sending it by electronic mail to the address set out in Clause 17.3, and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this Clause 17). Any notice so served by hand, fax, post or electronic mail shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, special delivery or registered post, at 10.00 hours on the second Business Day following the date of posting; and
- (d) in the case of electronic mail, when the email leaves the email gateway of the sender where it leaves such gateway before 17.00 hours on any Business Day or in any other case at 08.00 hours on the next Business Day after it leaves such gateway and the onus shall be on the party giving notice to prove the time that the email left its gateway,

provided that in each case where delivery by hand or by fax occurs after 18.00 hours on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 09.00 hours on the next following Business Day.

17.2 References to time in this Clause 17 are to local time in the country of the addressee.

17.3 The addresses, fax numbers and electronic mail addresses of the parties for the purpose of this Clause 17 are as follows:

### The Subcontractor

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

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<sup>2</sup> For use when a third party (Nominee) is the Licensee.

## **The Commission/Nominee**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

17.4 A party may notify the other party to this Deed of a change to its name, relevant addressee, address, fax number or electronic mail address for the purposes of this Clause 17, provided that, such notice shall only be effective on:

- (a) the date specified in the notice as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date following five Business Days after notice of any change has been given.

17.5 All notices under or in connection with this Deed shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

## **18. Governing Law and jurisdiction**

18.1 This Deed shall be governed by and construed in accordance with English law.

18.2 The parties irrevocably agree that the English courts shall have exclusive jurisdiction in relation to any legal action or proceedings arising out of or in connection with the Licence (**Proceedings**) and waive any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

## **19. Entire agreement**

19.1 This Deed [and the Section 5 Licence] set[s] out the entire agreement and understanding between the parties in respect of the subject matter of this Deed. This Clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

## **20. Force majeure**

20.1 Neither party shall be liable for any failure or delay in performing any of its obligations under this Deed if the failure or delay is due to any cause outside its reasonable control, and it shall be entitled to a reasonable extension of the time for performing the obligations as a result of the cause.

## **21. Assignment**

21.1 No party shall nor shall it purport to assign, transfer, charge or otherwise deal with all or any of its rights and/or obligations under this Deed nor grant, declare, create or dispose of any right or interest in it, without the prior written consent of the other party/parties, such approval not to be unreasonably withheld or delayed.

21.2 If either party assigns, transfers or charges all or any of its rights and/or obligations under this Deed it shall notify the other party as soon as practicable after such assignment, transfer, or charge together with full particulars of the assignee, transferee, or chargee.

## 22. Counterparts

22.1 This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have executed this document as a Deed as of the day and year first written above.

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

## Schedule 13

### Condition 21.3

#### Part 1

#### The Lottery IP Licence

THIS DEED is made on \_\_\_\_\_ 20[ ]

#### BETWEEN

- (1) [ ] (company no.) whose registered office is [ ] (**Licensor**); and
- (2) [The National Lottery Commission of 101 Wigmore Street, London W1U 1QU (**Commission**) [or its nominee (**Nominee**)].]

#### WHEREAS

- (A) The Licensor runs the National Lottery under a licence dated [●] (**Section 5 Licence**) granted to it by the Commission under section 5 of the National Lottery etc. Act 1993 (**Act**).
- (B) The Commission is the proprietor of and beneficially entitled to certain items of Lottery IP.
- (C) Pursuant to Condition 21.2 (a) of the Section 5 Licence the Commission has granted an exclusive licence to the Licensor (subject to the terms of the Section 5 Licence) to copy, publish and otherwise use any Lottery IP for the duration of the Section 5 Licence.
- (D) Pursuant to Condition 21.3 of the Section 5 Licence, the Licensor has agreed to grant a sub-licence to the [Commission /Nominee] of all Lottery IP on the terms and conditions set out herein.

IT IS AGREED as follows:

### 1. Definitions

Terms defined in the Section 5 Licence and not otherwise defined in this Deed shall have the same meaning as set out in the Section 5 Licence.

1.1 In this Deed, unless the context otherwise requires:

- (a) references to Clauses, Schedules and paragraphs in this Deed shall be construed as references to the Clauses, Schedules and paragraphs of this Deed;
- (b) references to persons includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
- (c) the headings are inserted for convenience only and do not affect the construction of this Deed;
- (d) references to one gender includes all genders;
- (e) words importing the plural include the singular and vice versa;
- (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re enacted;
- (g) any reference to a document in the agreed form is to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties);

- (h) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (i) reference to the word “includes” or “including” are to be construed without limitation.

## 2. Commencement

2.1 This Deed shall come into force on [day] [month] [year] (**Commencement Date**) and shall continue until terminated in accordance with Clause 11 (**Term**).

## 3. Grant of Licence

3.1 *The Licensor grants to the Commission a royalty-free, payment-free, non-exclusive and perpetual licence to:*

- (a) use and exploit any and/or all items of Lottery IP in any such way as the [Commission /Nominee] shall in its sole discretion see fit (including, but not limited to, the right to copy, publish, reproduce, store, broadcast, include in a cable programme, adapt, extract or re-utilise any item of Lottery IP (or any part thereof)) anywhere in the world in connection with any purpose in the course of carrying out its duties and functions generally and under the Act or in connection with and for the duration of the Section 5 Licence or any licence granted by the Commission under Section 6 of the Act or any other licence granted under the Act and to permit the Secretary of State by way of sub-licence to do all of the foregoing; and
- (b) permit the use of the Lottery IP (including such of the National Lottery Logos which the Commission shall notify to the Licensor from time to time, such logos to be automatically deemed to fall within the provisions of this Clause 3.1) by any person detailed below having a relevant association with the National Lottery:
  - (i) a distributing body referred to in Section 23 of the Act;
  - (ii) any person who has been appointed by a distributing body referred to in Section 23 of the Act to exercise on its behalf any of its functions relating to or connected with the distribution of National Lottery money in accordance with Section 25A of the Act;
  - (iii) any person who is in receipt of National Lottery funds or vouchers (as defined in the Act);
  - (iv) any public sector body;
  - (v) any government department;
  - (vi) any charity; or
  - (vii) any publisher.

*[and;*

- (c) *to grant a royalty-free, payment-free, non-transferable and non-exclusive sub-licence of Lottery IP to any third party subject to the terms of this Deed.<sup>1</sup>*

3.2 The Commission shall maintain records of any permission it grants under Clause 3.1 and on request shall provide to the Licensor copies of any such permission, at the cost of the Licensor, as soon as is reasonably practicable after such grant and in such form as is reasonably practicable for the Commission.

3.3 The Commission shall use all reasonable endeavours to:

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<sup>1</sup> Clause 3.1(c) applies where the grant of the licence is to the Commission only.

- (a) comply with guidelines relating to the use and mode of display of any Lottery IP (as referred to in Condition 21.10 of the Section 5 Licence); and
- (b) ensure that all persons to whom it grants permission to use the Lottery IP under Clause 3.1(b) are aware of, and comply with, the guidelines referred to under Clause 3.3(a).

3.4 The Licensor agrees that the Commission shall have complied with its obligations under Clause 3.3(b) if, when granting permission to any person under Clause 3.1(b), the Commission:

- (a) states in such permission that the person in question shall comply with the guidelines referred to in Clause 3.3(a); and
- (b) states in such permission that the Commission shall have the right to terminate the permission if the person in question does not comply with the guidelines referred to in Clause 3.3(a).

#### **4. Maintenance of Lottery IP**

4.1 The Licensor shall, at its own cost, take all steps required to maintain registrations for the Lottery IP in the relevant registries in any jurisdiction.

4.2 Where the Nominee wishes to apply to register any of the Lottery IP in the relevant registries in any jurisdiction for the purpose of ensuring the registration of the Nominee as a registered licensee of Lottery IP, it may ask the Licensor to do so on its behalf. The Licensor shall apply to register the relevant Lottery IP the name of the Commission and all costs of filing, prosecuting, registering and maintaining the application and any resulting registration shall be paid by the Licensor.

#### **5. Future Lottery IP**

5.1 If at any time on or after the Commencement Date any item becomes an item of Lottery IP in any manner howsoever pursuant to the Section 5 Licence, such item shall be automatically deemed to fall within the licence set out in Clause 3.

#### **6. Warranties**

6.1 Each party warrants that it has full authority, power and capacity to enter into and carry out its obligations under this agreement.

6.2 The Licensor warrants that

- (a) it is entitled to grant the rights granted to the [Commission/Nominee] under Clause 3;
- (b) each of the Lottery IP is valid and subsisting;
- (c) it has not given a third party permission to use any of the Lottery IP nor is it under an obligation to do so;
- (d) all application, filing, registration, renewal and other fees in respect of registrations (or applications for registration) of the Lottery IP have been paid;
- (e) it has not acquiesced in the unauthorised use of the Lottery IP, nor is any party infringing, or likely to infringe, any of the Lottery IP; and
- (f) no claim has been made by a third party which disputes the right of the Licensor to use any Trade Mark, nor is the Licensor aware of any circumstances likely to give rise to a claim.

#### **7. Further assurance**

7.1 The Licensor shall, at its own cost, sign all documents and do all things which may be required by Law or which the [Commission/Nominee] may request from time to time (including executing as soon as

reasonably practicable after the date of this Deed all documents which the [Commission/Nominee] may require to effect the registration or recording of the grant of licence as set out in Clause 3 to the [Commission/Nominee] in any relevant jurisdiction) to implement and/or give effect to this Deed and for the purpose of granting the [Commission/Nominee] the full benefit of and title to the assets, rights and benefits to be granted under this Deed.

## **8. Indemnity**

8.1 The Licensor shall indemnify the [Commission/Nominee] against each and any loss, liability and cost (including legal expenses) which the [Commission/Nominee] suffers or incurs as a result of or in connection with any claim against the [Commission/Nominee] that the use of the Lottery IP by the [Commission/Nominee] in accordance with this Deed infringes the Intellectual Property or other rights of a third party.

## **9. Ownership of rights**

9.1 Neither party shall at any time do or suffer to be done any act or thing which is likely to in any way prejudice the Commission's title.

9.2 The [Commission/Nominee] shall, at the cost of the Licensor, on request, give to the Licensor or its authorised representative any information as to its use of the Lottery IP which the Licensor may reasonably require and in such form as is reasonably practicable for the [Commission/Nominee].

## **10. Infringement**

10.1 Each party shall immediately notify the other in writing of any of the following matters which come to its attention during the Term (giving full particulars):

- (a) infringement or suspected or threatened infringement of the Lottery IP whether by imitation or otherwise;
- (b) any allegation or complaint made by any third party that any of the Lottery IP is invalid, that use of the Lottery IP infringes any third party rights or that use of the Lottery IP may cause deception or confusion to the public; and
- (c) any other form of attack on or claim to the Lottery IP.

The [Commission/Nominee] shall not make any admissions in respect of these matters other than to the Licensor and at the request of the Licensor shall furnish the Licensor, at the Licensor's cost, with all information in its possession which may be reasonably required by the Licensor.

10.2 The Commission shall have the right to decide whether or not to request the Licensor to take action and assume the conduct of all actions, claims and proceedings in its own name [( and not in the name of the [Commission/Nominee])] relating to the Lottery IP and the Licensor shall bear the costs and expenses of actions, claims and proceedings.

10.3 The [Commission/Nominee] shall provide or procure the provision of any assistance reasonably required by the Licensor, at Licensor's cost, in connection with such claims, actions or proceedings in connection with any of the matters in Clause 10.1.

10.4 In the event that the [Commission/Nominee] provides such assistance as referred to in Clause 10.3, it shall, as between the parties to this Deed, be entitled to receive any compensation payments and any award of costs or damages arising out of any such actions or proceedings. The remainder of any such payments, costs or damages, shall, as between the parties, belong to the Licensor.

## **11. Termination**

11.1 The Commission/Nominee may terminate this Deed by giving to the Licensor not less than [ ] months' prior written notice to that effect.

11.2 On the occurrence of any of the following events, a party may (without prejudice to any other right or remedy) by written notice to the other party terminate this agreement with immediate effect:

- (a) if the other party commits a material breach of any material obligation under this Deed, (including a breach of any representation or warranty) and in the case of a breach which is capable of remedy fails to remedy it within thirty (30) days of receipt of notice from the first party giving particulars of such breach and requiring it to be remedied;
- (b) a petition is presented, or a meeting is convened for the purpose of considering a resolution or any other steps are taken by any person with a view to the appointment of an administrator (whether out of court or otherwise) against or for the winding up of the other party or an administration order or a winding up order is made against or a provisional liquidator appointed with respect to the other party;
- (c) an encumbrancer takes possession of, or a trustee or administrative receiver or similar officer is appointed in respect of, all or any part of the business or assets of the other party, or distress or any form of execution is levied or enforced upon or sued out against any such assets and is not discharged within [7] days of being levied, enforced or sued out;
- (d) the other party is unable to pay its debts as they fall due or the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities, or it suspends or threatens to suspend making payments with respect to all or any class of its debts;
- (e) any voluntary arrangement is proposed under section 1 of the Insolvency Act 1986 (as amended, re enacted or replaced from time to time) in respect of the other party;
- (f) the other party proposes or makes any composition or arrangement or composition with, or any assignment for the benefit of, its creditors; or
- (g) anything analogous to any of the events described in paragraphs (a) – (e), inclusive, occurs under the laws of any applicable jurisdiction.

11.3 For the purpose of Clause 11.2(a), a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to time of performance.

## **12. Effects of termination**

12.1 Upon termination of this Deed for any reason, the rights and licence granted under this Deed to the [Commission/Nominee] shall cease and determine and the Commission/Nominee shall without delay discontinue any and all use of the Lottery IP.

12.2 Termination of this Deed shall not release either of the parties from any other liability which at the time of termination has already accrued to the other party, nor affect in any way the survival of any other right, duty or obligation of the parties which is expressly stated elsewhere in this Deed to survive such termination.

## **13. Confidential Information**

13.1 Each of the parties shall both during and after the arrangements contemplated by this Deed have terminated:

- (a) keep confidential the terms of this Deed and all information, whether in written or any other form, which has been disclosed to it by or on behalf of the other party pursuant to its respective obligations under this Deed which by its nature ought to be regarded as confidential (including, without limitation, any business information in respect of the other party which is not directly applicable or relevant to the transactions contemplated by this Deed); and
- (b) procure that its officers, employees and representatives and those of any group companies keep secret and treat as confidential all such documents and information.

13.2 Clause 13.1 does not apply to information:

- (a) which shall after the date of this Deed become published or otherwise generally available to the public, except in consequence of a wilful or negligent act or omission by the other party to this Deed in contravention of the obligations in Clause 13.1;
- (b) to the extent made available to the recipient party by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the other party or which has been disclosed under an express statement that it is not confidential;
- (c) to the extent required to be disclosed by any applicable Law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of Law, provided that the party disclosing the information shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before the disclosure shall be made and shall take all reasonable action to avoid and limit the disclosure;
- (d) which has been independently developed by the recipient party otherwise than in the course of the exercise of that party's rights under this Deed or the implementation of this Deed;
- (e) which, in order to perform its obligations under or pursuant to this Deed, either party is required to disclose to a third party;
- (f) which, in order to perform its obligations under the Section 5 Licence and the Successor Licence either party is required to disclose to the Commission or to a third party approved in advance by the Commission; and
- (g) which the recipient party can prove was already known to it before its receipt from the disclosing party.

13.3 The provisions of this Clause shall survive any termination of this Deed.

## **14. Severability**

14.1 If, and to the extent that, any provision of this Deed is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in this Deed but without invalidating any of the remaining provisions of this Deed provided that the parties shall meet to negotiate in good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Deed not so affected) so as to re-establish an appropriate balance of the interests of the parties.

## **15. Waivers and amendments**

15.1 No failure or delay by either party in exercising any right or remedy provided by Law under or pursuant to this Deed shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.

15.2 The rights and remedies provided for are cumulative and not exclusive of any rights and remedies provided by Law.

15.3 No provision of this Deed may be amended, modified, waived, discharged or terminated otherwise than by the express written agreement of the parties to this Deed nor may any breach of any provision of this Deed be waived or discharged except with the express written consent of the party not in breach.

## **16. Notices**

16.1 The parties shall give any notice under, or in connection with, this Deed in writing. Notice shall be served by sending it by fax to the number set out in Clause 16.3, or delivering it by hand, or sending it by prepaid recorded delivery, special delivery or registered post, to the address set out in Clause 16.3, or by sending it by electronic mail to the address set out in Clause 16.3, and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this

Clause 16). Any notice so served by hand, fax, post or electronic mail shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, special delivery or registered post, at 10.00 hours on the second Business Day following the date of posting; and
- (d) in the case of electronic mail, when the email leaves the email gateway of the sender where it leaves such gateway before 17.00 hours on any Business Day or in any other case at 08.00 hours on the next Business Day after it leaves such gateway and the onus shall be on the party giving notice to prove the time that the email left its gateway,

provided that in each case where delivery by hand or by fax occurs after 18.00 hours on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 09.00 hours on the next following Business Day.

16.2 References to time in this Clause 16 are to local time in the country of the addressee.

16.3 The addresses, fax numbers and electronic mail addresses of the parties for the purpose of this Clause 16 are as follows:

**The Licensor**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

**The Commission/Nominee**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

16.4 A party may notify the other party to this Deed of a change to its name, relevant addressee, address, fax number or electronic mail address for the purposes of this Clause 16, provided that, such notice shall only be effective on:

- (a) the date specified in the notice as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date following five Business Days after notice of any change has been given.

16.5 All notices under or in connection with this Deed shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

## **17. Governing Law and jurisdiction**

17.1 This Deed shall be governed by and construed in accordance with English law.

17.2 The parties irrevocably agree that the English courts shall have exclusive jurisdiction in relation to any legal action or proceedings arising out of or in connection with the Licence (**Proceedings**) and waive any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

## **18. Entire agreement**

18.1 This Deed and the Section 5 Licence set out the entire agreement and understanding between the parties in respect of the subject matter of this Deed. This Clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

## **19. Force majeure**

19.1 Neither party shall be liable for any failure or delay in performing any of its obligations under this Deed if the failure or delay is due to any cause outside its reasonable control, and it shall be entitled to a reasonable extension of the time for performing the obligations as a result of the cause.

## **20. Assignment**

20.1 No party shall nor shall it purport to assign, transfer, charge or otherwise deal with all or any of its rights and/or obligations under this Deed nor grant, declare, create or dispose of any right or interest in it, without the prior written consent of the other party/parties, such approval not to be unreasonably withheld or delayed.

20.2 If either party assigns, transfers or charges all or any of its rights and/or obligations under this Deed it shall notify the other party as soon as practicable after such assignment, transfer, or charge together with full particulars of the assignee, transferee, or charge.

## **21. Third party rights**

EITHER

Unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.<sup>2</sup>

OR<sup>3</sup>

21.1 With the exception of the Commission's rights under Clause 21.2 and unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

21.2 All rights and interests exercisable by the Licensor under this Deed shall be exercisable by the Commission.

## **22. Counterparts**

22.1 This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

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<sup>2</sup> For use when the Commission is the Licensee.

<sup>3</sup> For use when a third party is the Assignee.

IN WITNESS WHEREOF, the Parties have executed this document as a Deed as of the day and year first written above.

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

## Schedule 13

### Condition 21.6

#### Part 2

#### The Lottery IP Sub Licence

THIS DEED is made on \_\_\_\_\_ 20[ ]

#### BETWEEN

(1) [ ] (company no.) whose registered office is [ ] (**Licensor**); and

(2) [ ] (company no.) whose registered office is [ ] (**Licensee**).

#### WHEREAS

- (A) The Licensor runs the National Lottery under a licence dated [●] (**Section 5 Licence**) granted to it by the National Lottery Commission (**Commission**) under section 5 of the National Lottery etc. Act 1993 (**Act**).
- (B) The Commission is the proprietor of and beneficially entitled to certain items of Lottery IP.
- (C) Pursuant to Condition 21.2 (a) of the Section 5 Licence the Commission has granted an exclusive licence to the Licensor (subject to the terms of the Section 5 Licence) to copy, publish and otherwise use any Lottery IP for the duration of the National Lottery.
- (D) Pursuant to Condition 21.6 of the Section 5 Licence, the Licensor has the right to grant a royalty-free, payment-free, non-exclusive, and non-transferable sub-licence [**Sub Licence**] subject to the terms of Condition 21.2 (a) and the terms of the Section 5 Licence.
- (E) The Licensor has agreed to grant a Sub Licence to Licensee of all Lottery IP on the terms and conditions set out herein.

IT IS AGREED as follows:

### 1. Definitions

Terms defined in the Section 5 Licence and not otherwise defined in this Sub Licence shall have the same meaning as set out in the Section 5 Licence.

1.1 In this Deed, unless the context otherwise requires:

- (a) references to Clauses, Schedules and paragraphs in this Deed shall be construed as references to the Clauses, Schedules and paragraphs of this Deed;
- (b) references to persons includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
- (c) the headings are inserted for convenience only and do not affect the construction of this Deed;
- (d) references to one gender includes all genders;
- (e) words importing the plural include the singular and vice versa;
- (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re enacted;

- (g) any reference to a document in the agreed form is to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties);
- (h) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (i) reference to the word “includes” or “including” are to be construed without limitation.

## **2. Commencement**

2.1 This Sub Licence shall come into force on [day] [month] [year] (**Commencement Date**) and shall continue until terminated in accordance with Clause 11 (**Term**).

## **3. Grant of Sub Licence**

3.1 The Licensor grants to [Licensee] for the duration of the Section 5 Licence a royalty-free, payment-free, [non-] transferable<sup>1</sup>, [non] sub-licensable<sup>2</sup> and non-exclusive Sub Licence to copy publish and otherwise use any and/or all items of Lottery IP only in connection with the running and promotion of the National Lottery or any approved Ancillary Activity provided that such use is not detrimental to the interests of Players or damaging to the image or reputation of the National Lottery or in conflict with the interests of the National Lottery and provided always that such right shall not take effect in respect of any item of Lottery IP which is not owned absolutely by the Commission at the date of this Sub Licence until it shall be so owned.

3.2 The Licensor shall maintain records of any permission it grants under Clause 3.1 and shall provide to the Commission copies of any such permission, at the cost of the Licensor, as soon as is reasonably practicable after such grant and in such form as is requested by the Commission.

3.3 The Licensee shall comply with guidelines relating to the use and mode of display of any Lottery IP (as referred to in Condition 21.10 of the Section 5 Licence).

## **4. Maintenance of Lottery IP**

4.1 The Licensor shall, at its own cost, take all steps required to maintain registrations for the Lottery IP in the relevant registries in any jurisdiction.

4.2 Where the Licensee wishes to apply to register any of the Lottery IP in the relevant registries in any jurisdiction for the purpose of ensuring the registration of the Licensee as a registered licensee of Lottery IP, it may ask the Licensor to do so on its behalf. The Licensor shall apply to register the relevant Lottery IP in the name of the Commission and all costs of filing, prosecuting, registering and maintaining the application and any resulting registration shall be paid by the Licensor.

## **5. Future Lottery IP**

5.1 If at any time on or after the Commencement Date any item becomes an item of Lottery IP in any manner howsoever pursuant to the Section 5 Licence, such item shall not automatically fall within the licence set out in Clause 3.

## **6. Warranties**

6.1 Each party warrants that it has full authority, power and capacity to enter into and carry out its obligations under this agreement.

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<sup>1</sup> Where the Licensee is the Commission, the Commission will have the right to transfer its sub-licence and grant sub-licences.

<sup>2</sup> Where the Licensee is not the Commission, any grant of sub-licence is subject to the approval of the Commission.

6.2 The Licensor warrants that:

- (a) it is entitled to grant the rights granted to the Licensee under Clause 3;
- (b) each of the Lottery IP is valid and subsisting;
- (c) it has not given a third party permission to use any of the Lottery IP nor is it under an obligation to do so;
- (d) all application, filing, registration, renewal and other fees in respect of registrations (or applications for registration) of the Lottery IP have been paid;
- (e) it has not acquiesced in the unauthorised use of the Lottery IP, nor is any party infringing, or likely to infringe, any of the Lottery IP; and
- (f) no claim has been made by a third party which disputes the right of the Licensor to use any Trade Mark, nor is the Licensor aware of any circumstances likely to give rise to a claim.

## **7. Indemnity**

7.1 The Licensor shall indemnify the Licensee/Commission against each and any loss, liability and cost (including legal expenses) which the Licensee/Commission suffers or incurs as a result of or in connection with any claim against the Licensee/Commission that the use of the Lottery IP by the Licensee/Commission in accordance with this Deed infringes the Intellectual Property or other rights of a third party.

## **8. Further assurance**

8.1 The Licensor shall, at its own cost, sign all documents and do all things which may be required by Law or which the [Commission/Nominee] may request from time to time (including executing as soon as reasonably practicable after the date of this Deed all documents which the [Commission/Nominee] may require to effect the registration or recording of the grant of Sub Licence as set out in Clause 3 to the [Commission/Nominee] in any relevant jurisdiction) to implement and/or give effect to this Deed and for the purpose of granting the [Commission/Nominee] the full benefit of and title to the assets, rights and benefits to be granted under this Deed.

## **9. Ownership of rights**

9.1 The Licensee recognises that the Commission is the owner of the Lottery IP and shall not at any time do or suffer to be done any act or thing which is likely to in any way prejudice the Commission's title.

9.2 The Licensee agrees that it shall not make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of any of the Lottery IP or the goodwill attaching to any of the Lottery IP except under the terms of this Deed and the Licensee further acknowledges that nothing contained in this Deed shall give the Licensee any right, title or interest in or to the Lottery IP save as granted under this Deed.

9.3 The Licensee shall, at the cost of the Licensor, on request give to the Licensor or its authorised representative any information as to its use of the Lottery IP which the Licensor may reasonably require and in such form as is reasonably practicable for the Licensee.

## **10. Infringement**

10.1 Each party shall immediately notify the other in writing of any of the following matters which come to its attention during the Term (giving full particulars):

- (a) infringement or suspected or threatened infringement of the Lottery IP whether by imitation or otherwise;
- (b) any allegation or complaint made by any third party that any of the Lottery IP is invalid, that use of the Lottery IP infringes any third party rights or that use of the Lottery IP may cause deception or confusion to the public; and

- (c) any other form of attack on or claim to the Lottery IP.

The Licensee shall not make any admissions in respect of these matters other than to the Licensor and/or the Commission and at the request of the Licensor and/or the Commission shall furnish the Licensor and/or the Commission, at the Licensor's cost, with all information in its possession which may be reasonably required by the Licensor and/or the Commission.

10.2 The Commission shall have the right to decide whether or not to request the Licensor to take action and assume the conduct of all actions, claims and proceedings only in its own name relating to the Lottery IP and the Licensor shall bear the costs and expenses of actions, claims and proceedings.

10.3 The Licensee shall provide or procure the provision of any assistance reasonably required by the Licensor, at Licensor's cost, in connection with such claims, actions or proceedings in connection with any of the matters in Clause 10.1.

10.4 In the event that the Licensee provides such assistance as referred to in Clause 10.3, it shall not be entitled to receive any compensation payments and any award of costs or damages arising out of any such actions or proceedings.

## 11. Termination

11.1 The Licensor may terminate this Deed by giving to the Licensee not less than [ ] months' prior written notice to that effect.

11.2 On the occurrence of any of the following events, a party may (without prejudice to any other right or remedy) by written notice to the other party terminate this agreement with immediate effect:

- (a) if the other party commits a material breach of any material obligation under this Sub Licence, (including a breach of any representation or warranty) and in the case of a breach which is capable of remedy fails to remedy it within thirty (30) days of receipt of notice from the first party giving particulars of such breach and requiring it to be remedied;
- (b) a petition is presented, or a meeting is convened for the purpose of considering a resolution or any other steps are taken by any person with a view to the appointment of an administrator (whether out of court or otherwise) against or for the winding up of the other party or an administration order or a winding up order is made against or a provisional liquidator appointed with respect to the other party;
- (c) an encumbrancer takes possession of, or a trustee or administrative receiver or similar officer is appointed in respect of, all or any part of the business or assets of the other party, or distress or any form of execution is levied or enforced upon or sued out against any such assets and is not discharged within [7] days of being levied, enforced or sued out;
- (d) the other party is unable to pay its debts as they fall due or the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities, or it suspends or threatens to suspend making payments with respect to all or any class of its debts;
- (e) any voluntary arrangement is proposed under section 1 of the Insolvency Act 1986 (as amended, re enacted or replaced from time to time) in respect of the other party;
- (f) the other party proposes or makes any composition or arrangement or composition with, or any assignment for the benefit of, its creditors; or
- (g) anything analogous to any of the events described in paragraphs (a) – (e), inclusive, occurs under the laws of any applicable jurisdiction.

For the purpose of Clause 11.2(a), a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to time of performance.

11.3 The Licensor may terminate this Sub Licence if the Licensee does not comply with the guidelines referred to in Clause 3.3.

## **12. Effects of termination**

12.1 Upon termination of this Sub Licence for any reason, the rights and licence granted under this Sub Licence to the Licensee shall cease and determine and the Licensee shall without delay discontinue any and all use of the Lottery IP.

12.2 Termination of this Sub Licence shall not release either of the parties from any other liability which at the time of termination has already accrued to the other party, nor affect in any way the survival of any other right, duty or obligation of the parties which is expressly stated elsewhere in this Sub Licence to survive such termination.

## **13. Confidential Information**

13.1 Each of the parties shall both during and after the arrangements contemplated by this Sub Licence have terminated:

- (a) keep confidential the terms of this Sub Licence and all information, whether in written or any other form, which has been disclosed to it by or on behalf of the other party pursuant to its respective obligations under this Deed which by its nature ought to be regarded as confidential (including, any business information in respect of the other party which is not directly applicable or relevant to the transactions contemplated by this Sub Licence); and
- (b) procure that its officers, employees and representatives and those of any group companies keep secret and treat as confidential all such documents and information.

13.2 Clause 13.1 does not apply to information:

- (a) which shall after the date of this Sub Licence become published or otherwise generally available to the public, except in consequence of a wilful or negligent act or omission by the other party to this Sub Licence in contravention of the obligations in Clause 13.1;
- (b) to the extent made available to the recipient party by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the other party or which has been disclosed under an express statement that it is not confidential;
- (c) to the extent required to be disclosed by any applicable Law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of Law, provided that the party disclosing the information shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before the disclosure must be made and shall take all reasonable action to avoid and limit the disclosure;
- (d) which has been independently developed by the recipient party otherwise than in the course of the exercise of that party's rights under this Sub Licence or the implementation of this Sub Licence;
- (e) which, in order to perform its obligations under or pursuant to this Sub Licence, either party is required to disclose to a third party;
- (f) which, in order to perform its obligations under the Section 5 Licence and the Successor Licence either party is required to disclose to the Commission or to a third party approved in advance by the Commission; and
- (g) which the recipient party can prove was already known to it before its receipt from the disclosing party.

13.3 The provisions of this Clause shall survive any termination of this Sub Licence.

## **14. Severability**

14.1 If, and to the extent that, any provision of this Deed is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in this Deed but without invalidating any of the remaining provisions of this Deed provided that the parties shall meet to negotiate in good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Deed not so affected) so as to re-establish an appropriate balance of the interests of the parties.

## **15. Waivers and amendments**

15.1 No failure or delay by either party in exercising any right or remedy provided by Law under or pursuant to this Deed shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.

15.2 The rights and remedies provided for are cumulative and not exclusive of any rights and remedies provided by Law.

15.3 No provision of this Sub Licence may be amended, modified, waived, discharged or terminated otherwise than by the express written agreement of the parties to this Sub Licence nor may any breach of any provision of this Sub Licence be waived or discharged except with the express written consent of the party not in breach.

## **16. Notices**

16.1 The parties shall give any notice under, or in connection with, this Deed in writing. Notice shall be served by sending it by fax to the number set out in Clause 16.3, or delivering it by hand, or sending it by prepaid recorded delivery, special delivery or registered post, to the address set out in Clause 16.3, or by sending it by electronic mail to the address set out in Clause 16.3, and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this Clause 16). Any notice so served by hand, fax, post or electronic mail shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, special delivery or registered post, at 10.00 hours on the second Business Day following the date of posting; and
- (d) in the case of electronic mail, when the email leaves the email gateway of the sender where it leaves such gateway before 17.00 hours on any Business Day or in any other case at 08.00 hours on the next Business Day after it leaves such gateway and the onus shall be on the party giving notice to prove the time that the email left its gateway,

provided that in each case where delivery by hand or by fax occurs after 18.00 hours on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 09.00 hours on the next following Business Day.

16.2 References to time in this Clause 16 are to local time in the country of the addressee.

16.3 The addresses, fax numbers and electronic mail addresses of the parties for the purpose of this Clause 16 are as follows:

### **The Licensor**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

### **The Licensee**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

16.4 A party may notify the other party to this Deed of a change to its name, relevant addressee, address, fax number or electronic mail address for the purposes of this Clause 16, provided that, such notice shall only be effective on:

- (a) the date specified in the notice as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date following five Business Days after notice of any change has been given.

16.5 All notices under or in connection with this Deed shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

## **17. Governing Law and jurisdiction**

17.1 This Deed shall be governed by and construed in accordance with English law.

17.2 The parties irrevocably agree that the English courts shall have exclusive jurisdiction in relation to any legal action or proceedings arising out of or in connection with the Licence (**Proceedings**) and waive any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

## **18. Entire agreement**

18.1 This Sub Licence and the Section 5 Licence set out the entire agreement and understanding between the parties in respect of the subject matter of this Sub Licence. This Clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

## **19. Force majeure**

19.1 Neither party shall be liable for any failure or delay in performing any of its obligations under this Sub Licence if the failure or delay is due to any cause outside its reasonable control, and it shall be entitled to a reasonable extension of the time for performing the obligations as a result of the cause.

## **20. Assignment**

20.1 No party shall nor shall it purport to assign, transfer, charge or otherwise deal with all or any of its rights and/or obligations under this Sub Licence nor grant, declare, create or dispose of any right or interest in it, without the prior written consent of the other party/parties, such approval not to be unreasonably withheld or delayed.

20.2 If either party assigns, transfers or charges all or any of its rights and/or obligations under this Sub Licence it shall notify the other party as soon as practicable after such assignment, transfer, or charge together with full particulars of the assignee, transferee, or chargee.

## 21. Third party rights

EITHER

Unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.<sup>3</sup>

OR<sup>4</sup>

21.1 With the exception of the Commission's rights under Clause 21.2 and unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

21.2 All rights and interests exercisable by the Licensor under this Deed shall be exercisable by the Commission.

## 22. Counterparts

22.1 This Sub Licence may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this document as a Deed as of the day and year first written above.

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

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<sup>3</sup> For use when the Commission is the Licensee.

<sup>4</sup> For use when a third party is the Licensee.

## Schedule 13

### Condition 21.12(a) and 21.15(a)

#### Part 3(A)

#### Form of Deed of Transfer

##### Form of Deed of Transfer

THIS DEED is made as of the [] day of [month] [year]

##### BETWEEN

- (1) [\_\_\_\_\_] (company no.) whose registered office is at [\_\_\_\_\_] (**Assignor**);
- (2) [\_\_\_\_\_] (company no.) whose registered office is at [\_\_\_\_\_] [*The Commission or its nominee*] (**Assignee**);

##### WHEREAS

- (A) [Assignor] runs the National Lottery under a licence dated [●] (**Section 5 Licence**) granted to it by the National Lottery Commission under section 5 of the National Lottery etc. Act 1993 (**Act**).
- (B) The Commission is the proprietor of and beneficially entitled to certain items of Lottery IP.
- (C) Assignor owns Intellectual Property (each as described in or set out in the Schedule to this Deed and together the **Transferred IPR**).
- (D) Pursuant to Condition [21.12 (a)/Condition 21.15 (a)] Assignor has agreed to transfer such Transferred IPR on a payment free basis to Assignee on the terms and conditions contained in this Deed.
- (E) Assignee desires to acquire, and Assignor desires to transfer, all right, title and interest of Assignor in and to the Transferred IPR.

IT IS AGREED as follows:

### 1. Definitions

1.1 Terms defined in the Section 5 Licence and not otherwise defined in this Deed shall have the same meaning as set out in the Section 5 Licence.

1.2 In this Deed, unless the context otherwise requires:

- (a) references to Clauses, Schedules and paragraphs in this Deed shall be construed as references to the Clauses, Schedules and paragraphs of this Deed;
- (b) references to persons includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
- (c) the headings are inserted for convenience only and do not affect the construction of this Deed;
- (d) references to one gender includes all genders;
- (e) words importing the plural include the singular and vice versa;
- (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re enacted;

- (g) any reference to a document in the agreed form is to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties);
- (h) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (i) reference to the word “includes” or “including” are to be construed without limitation.

## 2. Commencement

2.1 This Deed shall come into force on [day] [month] [year] (**Commencement Date**).

## 3. Transfer of Transferred IPR

3.1 The Assignor, at its own cost, assigns or shall procure the assignment to the [Commission/Nominee] and their successors and assigns, on a payment-free basis and subject to the terms and conditions of any licences granted to third parties, all its right, title and interest in and to all of the Transferred IPR that the Assignor has to use and exploit any of the rights comprised in the items listed in Clause 3.2 [which are currently used or exploited or capable of being used or exploited by the [Licensee/Assignor] in connection with the National Lottery or any Ancillary Activity and which shall be specified by the Commission (whether any such rights are used or exploited or capable of being used or exploited by the Assignor or any other person for any other person or in any other connection or not)]<sup>1</sup> (including, but not limited to, goodwill and statutory and common law rights attaching to the Transferred IPR including the right to sue for damages and other remedies for infringement or misuse of the Transferred IPR which may have occurred prior to the date of this Deed and to retain those damages or any account of profits.)

3.2 The items referred to in Clause 3.1 include:

- (a) Developed IP;
- (b) any Sign, internet domain name or name of any Constituent Lottery;
- (c) design or get up of any ticket or other thing integral to the playing or entering into of any Constituent Lottery, including rules and procedures, leaflets or other materials;
- (d) any codes of practice;
- (e) descriptions or specifications prepared by or on behalf of the [Assignee/Licensee] or any Independent Section 6 Licensee relating to the Draw or determination of winners procedures;
- (f) any database; and
- (g) any other works including software (other than gaming software), designs, inventions or databases which the Commission specifies to be available for use for the purpose of running the National Lottery or promoting any Constituent Lottery or of carrying on any Ancillary Activity (or for use by an applicant for a licence to do any such thing) which are currently used or exploited or are capable of being used or exploited by the [Assignee/Licensee] in connection with the National Lottery or any Ancillary Activity.

## 4. Infringement

4.1 In the event of any infringement action or claim against any of the Transferred IPR made before, on or after the Commencement Date, including, without limitation, any challenge to the validity or subsistence of any of the Transferred IPR or any claim for infringement, opposition, cancellation, revocation or

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<sup>1</sup> Square brackets for use with Condition 21.15(a).

rectification in relation to the Transferred IPR, Assignor shall upon the request of Assignee and at Assignee's expense co-operate with and assist Assignee in any of the aforesaid actions by providing information and documents and executing all papers and performing such other acts as reasonably may be required.

## **5. Indemnity**

5.1 The Assignor shall indemnify the [Commission/Nominee/Assignee] against each and any loss, liability and cost (including legal expenses) which the Assignee suffers or incurs as a result of or in connection with any claim against the Assignee that the use of the Transferred IPR in connection with the obligations of the Commission [and the Nominee] under the Section 5 Licence, the Successor Licence, the National Lottery or any Ancillary Activity infringes the Intellectual Property rights or other rights of a third party.

## **6. Further assurance**

6.1 Assignor shall at its own cost sign all documents and do all things which may be required by Law or which the [Commission/Nominee/Assignee] may request from time to time (including executing as soon as reasonable practicable after the date of this Deed all documents which the [Commission/Nominee/Assignee] may require to effect the registration or recording of the assignment of the Transferred IPR to the [Commission/Nominee/Assignee] in any relevant jurisdiction) to implement and/or give effect to this Deed and for the purpose of granting the [Commission/Nominee/Assignee] the full benefit of and title to the assets, rights and benefits to be transferred under this Deed. For the avoidance of doubt, all other costs associated with the assignment or recordal of the assignment shall be borne by the Assignor.

## **7. Warranties**

7.1 Each party warrants that it has full authority, power and capacity to enter into and carry out its obligations under this agreement.

7.2 The Assignor warrants that:

- (a) it is entitled to grant the rights granted to the Assignee under Clause 3;
- (b) each of the Transferred IPR is valid and subsisting;
- (c) it has not given a third party permission to use any of the Transferred IPR nor is it under an obligation to do so;
- (d) all application, filing, registration, renewal and other fees in respect of registrations (or applications for registration) of the Transferred IPR have been paid;
- (e) it has not acquiesced in the unauthorised use of the Transferred IPR, nor is any party infringing, or likely to infringe, any of the Transferred IPR; and
- (f) no claim has been made by a third party which disputes the right of the Licensor to use any Trade Mark, nor is the Assignor aware of any circumstances likely to give rise to a claim.

## **8. Files and records**

8.1 To the extent that such documents are available, Assignor will, at its own cost, make available to Assignee for inspection and provide copies of all official documents and all correspondence (including, but not limited to, correspondence between Assignor and any of Assignor's agents and legal advisers) relating to the Transferred IPR. Assignor will notify its representatives of the change of ownership in each country where the Transferred IPR is being assigned and will provide the Assignee with a list of such representatives.

## **9. Notices**

9.1 The parties shall give any notice under, or in connection with, this Deed in writing. Notice shall be served by sending it by fax to the number set out in Clause 9.3, or delivering it by hand, or sending it by

prepaid recorded delivery, special delivery or registered post, to the address set out in Clause 9.3, or by sending it by electronic mail to the address set out in Clause 9.3, and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this Clause 9). Any notice so served by hand, fax, post or electronic mail shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, special delivery or registered post, at 10.00 hours on the second Business Day following the date of posting; and
- (d) in the case of electronic mail, when the email leaves the email gateway of the sender where it leaves such gateway before 17.00 hours on any Business Day or in any other case at 08.00 hours on the next Business Day after it leaves such gateway and the onus shall be on the party giving notice to prove the time that the email left its gateway,

provided that in each case where delivery by hand or by fax occurs after 18.00 hours on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 09.00 hours on the next following Business Day.

9.2 References to time in this Clause 9 are to local time in the country of the addressee.

9.3 The addresses, fax numbers and electronic mail addresses of the parties for the purpose of this Clause 9 are as follows:

**The Assignor**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

**The Assignee**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

9.4 A party may notify the other party to this Deed of a change to its name, relevant addressee, address, fax number or electronic mail address for the purposes of this Clause 9, provided that, such notice shall only be effective on:

- (a) the date specified in the notice as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date following five Business Days after notice of any change has been given.

9.5 All notices under or in connection with this Deed shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

## **10. Legal relationship**

10.1 Nothing in this Deed is deemed to constitute a partnership between the parties nor constitute any party the agent of the other party for any purpose.

## **11. Confidential Information**

11.1 Each of the parties shall both during and after the arrangements contemplated by this Sub Licence have terminated:

- (a) keep confidential the terms of this Sub Licence and all information, whether in written or any other form, which has been disclosed to it by or on behalf of the other party pursuant to its respective obligations under this Deed which by its nature ought to be regarded as confidential (including, without limitation, any business information in respect of the other party which is not directly applicable or relevant to the transactions contemplated by this Sub Licence); and
- (b) procure that its officers, employees and representatives and those of any group companies keep secret and treat as confidential all such documents and information.

11.2 Clause 11.1 does not apply to information:

- (a) which shall after the date of this Sub Licence become published or otherwise generally available to the public, except in consequence of a wilful or negligent act or omission by the other party to this Sub Licence in contravention of the obligations in Clause 11.1;
- (b) to the extent made available to the recipient party by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the other party or which has been disclosed under an express statement that it is not confidential;
- (c) to the extent required to be disclosed by any applicable Law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of Law, provided that the party disclosing the information shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before the disclosure shall be made and shall take all reasonable action to avoid and limit the disclosure;
- (d) which has been independently developed by the recipient party otherwise than in the course of the exercise of that party's rights under this Sub Licence or the implementation of this Sub Licence;
- (e) which, in order to perform its obligations under or pursuant to this Sub Licence, either party is required to disclose to a third party;
- (f) which, in order to perform its obligations under the Section 5 Licence and the Successor Licence either party is required to disclose to the Commission or to a third party approved in advance by the Commission; and
- (g) which the recipient party can prove was already known to it before its receipt from the disclosing party.

11.3 The provisions of this Clause shall survive any termination of this Sub Licence.

## **12. Severability**

12.1 If, and to the extent that, any provision of this Deed is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in this Deed but without invalidating any of the remaining provisions of this Deed provided that the parties shall meet to negotiate in

good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Deed not so affected) so as to re-establish an appropriate balance of the interests of the parties.

### **13. Force majeure**

13.1 Neither party shall be liable for any failure or delay in performing any of its obligations under or pursuant to this Deed if the failure or delay is due to any cause outside its reasonable control, and it shall be entitled to a reasonable extension of the time for performing the obligations as a result of such cause.

### **14. Parties in interest**

14.1 The provisions of this Deed shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

### **15. Governing Law and jurisdiction**

15.1 This Deed shall be governed by and construed in accordance with English law.

15.2 The parties irrevocably agree that the English courts shall have exclusive jurisdiction in relation to any legal action or proceedings arising out of or in connection with the Licence (**Proceedings**) and waive any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

### **16. Entire agreement**

16.1 This Deed and the Section 5 Licence set out the entire agreement and understanding between the parties in respect of the subject matter of this Deed. This Clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

### **17. Third party rights**

EITHER

Unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.<sup>2</sup>

OR<sup>3</sup>

17.1 With the exception of the Commission's rights under Clause 17.2 and unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

17.2 All rights and interests exercisable by the Assignor under this Deed shall be exercisable by the Commission.

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<sup>2</sup> For use when the Commission is the Assignee.

<sup>3</sup> For use when the Nominee is the Assignee.

**18. Counterparts**

18.1 This agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this document as a Deed as of the day and year first written above.

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

**SCHEDULE**

**Transferred IPR**

## Schedule 13

### Conditions 21.12(b) and 21.15(b)

#### Part 3(B)

#### Form of Licence

THIS DEED is made on \_\_\_\_\_ 20[ ]

#### BETWEEN

- (1) [ \_\_\_\_\_ ] (company no.) whose registered office is at [ \_\_\_\_\_ ] (**Licensor**); and
- (2) [ \_\_\_\_\_ ] (company no.) whose registered office is at [ \_\_\_\_\_ ] [*The Commission or its nominee*] (**Commission/Nominee**).

#### WHEREAS

- (A) [Licensor] runs the National Lottery under a licence dated [●] (**Section 5 Licence**) granted to it by the [National Lottery Commission (**Commission**)] under section 5 of the National Lottery etc. Act 1993 (**Act**).
- (B) The Licensor is the legal and beneficial owner of intellectual property as set out in the Schedule to this Deed (**Intellectual Property**).
- (C) Pursuant to [Condition 21.12 (b)/Condition 21.15(b)] [Licensor] agrees to grant a licence to [Commission/Nominee] of all Intellectual Property on the terms and conditions contained in this Deed.

IT IS AGREED as follows:

### 1. Definitions

- 1.1 Terms defined in the Section 5 Licence and not otherwise defined in this Deed shall have the same meaning as set out in the Section 5 Licence.
- 1.2 In this Deed, unless the context otherwise requires:
- (a) references to Clauses, Schedules and paragraphs in this Deed shall be construed as references to the Clauses, Schedules and paragraphs of this Deed;
  - (b) references to persons includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
  - (c) the headings are inserted for convenience only and do not affect the construction of this Deed;
  - (d) references to one gender includes all genders;
  - (e) words importing the plural include the singular and vice versa;
  - (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re enacted;
  - (g) any reference to a document in the agreed form is to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties);

- (h) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (i) reference to the words “includes” or “including” are to be construed without limitation.

## 2. Commencement and duration

2.1 This Deed commences on [\_\_\_\_\_] [the date of this Deed] (**Commencement Date**) and continues until terminated in accordance with Clause 11.

## 3. Grant of Licence

3.1 The Licensor grants, for the duration of the Section 5 Licence, to the [Commission/Nominee] a royalty-free, payment-free, transferable<sup>1</sup>, perpetual and exclusive licence of all Intellectual Property as the Licensor has to:

- (a) use and exploit the rights comprised in the items listed in Clause 3.2 [which are currently used or exploited or capable of being used or exploited by the [Licensee/Licensor] in connection with the National Lottery or any Ancillary Activity and which shall be specified by the Commission (whether any of such rights are used or capable of being used or exploited by the Licensor in the National Lottery or any other person for any other purpose or in any other connection or not)]<sup>2</sup> subject to the terms of this Deed. [; and]
- (b) *[grant a royalty-free, payment-free, non-transferable, non-exclusive and perpetual sub-licence to any third party.<sup>3</sup>]*

3.2 The items referred to in Clause 3.1 include:

- (a) Developed IP;
- (b) any Sign, internet domain name or name of any Constituent Lottery;
- (c) design or get up of any ticket or other thing integral to the playing or entering into of any Constituent Lottery, including rules and procedures, leaflets or other materials;
- (d) any codes of practice;
- (e) descriptions or specifications prepared by or on behalf of the Licensee or any Independent Section 6 Licensee relating to the Draw or determination of winners procedures;
- (f) any database; and
- (g) any other works including software (other than gaming software), designs, inventions or databases which the Commission specifies to be available for use for the purpose of running the National Lottery or promoting any Constituent Lottery or of carrying on any Ancillary Activity (or for use by an applicant for a licence to do any such thing) which are currently used or exploited or are capable of being used or exploited by the Licensee in connection with the National Lottery or any Ancillary Activity.

3.3 At the request of the [Commission/Nominee], the Licensor shall at its own cost, execute and take all steps reasonably required for the registration or recordal of any aspect of the licence granted to the [Commission/Nominee] under Clause 3.1 in the relevant registries in any jurisdiction.

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<sup>1</sup> Where the Licensee is the Nominee, any transfer is subject to approval of the Commission.

<sup>2</sup> Square brackets for use with Condition 21.15(b).

<sup>3</sup> Clause 3.1(b) only applies where the Commission is the Licensee.

3.4 The [Commission/Nominee] agrees that any registration or recordal made pursuant to Clause 3.3 may be cancelled by Licensor on the expiry or termination of this Deed and that it will assist Licensor, at Licensor's cost, so far as is reasonably necessary to achieve such cancellation by executing any documents reasonably required by the Licensor to effect the cancellation.

## **4. Maintenance of Intellectual Property**

4.1 The Licensor shall, at its own cost, take all steps required to maintain registrations for the Intellectual Property in the relevant registries in any jurisdiction.

4.2 Where the [Commission/Nominee] wishes to apply to register any of the Intellectual Property in the relevant registries in any jurisdiction for the purpose of ensuring the registration of the [Commission/Nominee] as a registered licensee of Lottery IP, it may ask the Licensor to do so on its behalf. The Licensor shall apply to register the relevant Intellectual Property in the name of the Commission and all costs of filing, prosecuting, registering and maintaining the application and any resulting registration shall be paid by the Licensor.

## **5. Future Lottery IP**

5.1 If at any time on or after the Commencement Date any item becomes an item of Intellectual Lottery in any manner howsoever pursuant to the Section 5 Licence, such item shall not automatically fall within the licence set out in Clause 3.

## **6. Warranties**

6.1 Each party warrants that it has full authority, power and capacity to enter into and carry out its obligations under this agreement.

6.2 The Licensor warrants that:

- (a) it owns all of the rights and interests in, and has title to, the Intellectual Property, and is entitled to grant the rights granted to the Licensee under Clause 3;
- (b) each of the Intellectual Property is valid and subsisting;
- (c) it has not given a third party permission to use any of the Intellectual Property nor is it under an obligation to do so;
- (d) all application, filing, registration, renewal and other fees in respect of registrations (or applications for registration) of the Intellectual Property have been paid;
- (e) it has not acquiesced in the unauthorised use of the Intellectual Property, nor is any party infringing, or likely to infringe, any of the Intellectual Property; and
- (f) no claim has been made by a third party which disputes the right of the Licensor to use any Trade Mark, nor is the Licensor aware of any circumstances likely to give rise to a claim.

## **7. Indemnity**

7.1 The Licensor shall indemnify the [Commission/Nominee] against each loss, liability and cost (including reasonable legal expenses) which the [Commission/Nominee] suffers or incurs as a result of or in connection with any claim against the [Commission/Nominee] that the use of the Intellectual Property by the [Commission/Nominee] in accordance with this agreement infringes the intellectual property or other rights of a third party.

## **8. Further assurance**

8.1 The Licensor shall, at its own cost, sign all documents and do all things which may be required by Law or which the [Commission/Nominee] may request from time to time (including executing as soon as reasonably practicable after the date of this Deed all documents which the [Commission/Nominee] may require to effect the registration or recording of the grant of Licence as set out in Clause 3 to the

[Commission/Nominee] in any relevant jurisdiction) to implement and/or give effect to this Deed and for the purpose of granting the [Commission/Nominee] the full benefit of and title to the assets, rights and benefits to be granted under this Deed.

## **9. Ownership of rights**

9.1 The [Commission/Nominee] recognises that the Licensor is the owner of the Intellectual Property and shall not at any time do or suffer to be done any act or thing which is likely to in any way prejudice the Licensor's title.

9.2 The [Commission/Nominee] shall on reasonable request give to the Licensor, at the Licensor's cost, or its authorised representative any information as to its use of the Intellectual Property which the Licensor may reasonably require.

## **10. Infringement**

10.1 Each party shall immediately notify the other in writing of any of the following matters which come to its attention during the Term (giving full particulars):

- (a) infringement or suspected or threatened infringement of the Intellectual Property whether by imitation or otherwise;
- (b) any allegation or complaint made by any third party that any of the Intellectual Property is invalid, that use of the Intellectual Property infringes any third party rights or that use of the Intellectual Property may cause deception or confusion to the public; and
- (c) any other form of attack on or claim to the Intellectual Property; and

the [Commission/Nominee] shall not make any admissions in respect of these matters other than to the Licensor and shall furnish the Licensor with all information in its possession which may be reasonably required by the Licensor.

10.2 The Commission shall have the right to decide whether or not to request the Licensor to take action and to assume the conduct of all actions, claims and proceedings in its own name (and not in the name of the [Commission/Nominee]) relating to the Intellectual Property and the Licensor shall bear the costs and expenses of actions, claims and proceedings.

10.3 The [Commission/Nominee] shall provide or procure the provision of any assistance reasonably required by the Licensor, at Licensor's cost, in connection with such claims, actions or proceedings in connection with any of the matters in Clause 10.1.

10.4 In the event that the [Commission/Nominee] takes such steps, it shall, as between the parties to this Deed, be entitled to receive any compensation payments and any award of costs or damages arising out of any such actions or proceedings. The remainder of any such payments, costs or damages, shall, as between the parties, belong to Licensor.

## **11. Termination**

11.1 The Commission/Nominee may terminate this Deed by giving to the Licensor not less than [ ] months' prior written notice to that effect.

11.2 On the occurrence of any of the following events, a party may (without prejudice to any other right or remedy) by written notice to the other party terminate this agreement with immediate effect:

- (a) if the other party commits a material breach of any material obligation under this Deed, (including a breach of any representation or warranty) and in the case of a breach which is capable of remedy fails to remedy it within thirty (30) days of receipt of notice from the first party giving particulars of such breach and requiring it to be remedied;
- (b) a petition is presented, or a meeting is convened for the purpose of considering a resolution or any other steps are taken by any person with a view to the appointment of an administrator (whether

out of court or otherwise) against or for the winding up of the other party or an administration order or a winding up order is made against or a provisional liquidator appointed with respect to the other party;

- (c) an encumbrancer takes possession of, or a trustee or administrative receiver or similar officer is appointed in respect of, all or any part of the business or assets of the other party, or distress or any form of execution is levied or enforced upon or sued out against any such assets and is not discharged within [seven] days of being levied, enforced or sued out;
- (d) the other party is unable to pay its debts as they fall due or the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities, or it suspends or threatens to suspend making payments with respect to all or any class of its debts;
- (e) any voluntary arrangement is proposed under section 1 of the Insolvency Act 1986 (as amended, re enacted or replaced from time to time) in respect of the other party;
- (f) the other party proposes or makes any composition or arrangement or composition with, or any assignment for the benefit of, its creditors; or
- (g) anything analogous to any of the events described in paragraphs (a) to (e), inclusive, occurs under the laws of any applicable jurisdiction.

11.3 For the purpose of Clause 11.2(a), a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to time of performance.

## **12. Effects of termination**

12.1 Upon termination of this Deed for any reason, the rights and licence granted under this Deed to the [Commission/Nominee] shall cease and determine and the Commission/Nominee shall without delay discontinue any and all use of the Intellectual Property.

12.2 Termination of this Deed shall not release either of the parties from any other liability which at the time of termination has already accrued to the other party, nor affect in any way the survival of any other right, duty or obligation of the parties which is expressly stated elsewhere in this Deed to survive such termination.

## **13. Assignment and other dealings**

13.1 The Licensor agrees and acknowledges that the [Commission/Nominee] shall be entitled at any time to assign, transfer or charge all or any of its rights and/or obligations under this Deed or to sub-contract the performance of any of its obligations under this Deed, provided however that:

- (a) neither party shall have any greater liability under this Deed than it would have had in the absence of such assignment, transfer, or charge or sub-contract; and
- (b) any such sub-contracting shall not relieve the [Commission/Nominee] from liability for the performance of the sub-contracted obligation or duty.

If the [Commission/Nominee] assigns or transfers or charges any of its rights and/or obligations under this agreement or sub-contracts the performance of any of its obligations under this agreement, the [Commission/Nominee] will notify the Licensor as soon as practicable after such assignment, transfer, or charge or sub-contracting, together with particulars of the assignee, transferee, or chargee or sub-contractor.

13.2 The Licensor shall from time to time upon request from the [Commission/Nominee] execute any agreements or other instruments (including, without limitation, any supplement or amendment to this agreement) which may be required in order to give effect to or perfect any assignment, transfer, or charge or sub-contracting referred to in Clause 13.1.

13.3 The Licensor shall not nor shall it purport to assign, transfer, charge or otherwise deal with all or any of its rights and/or obligations under this agreement nor grant, declare, create or dispose of any right or

interest in it, or sub-contract the performance of any of its obligations under this agreement without the prior written consent of the [Commission/Nominee], such consent not to be withheld or delayed.

## **14. Confidential Information**

14.1 Each of the parties shall both during and after the arrangements contemplated by this Deed have terminated:

- (a) keep confidential the terms of this Deed and all information, whether in written or any other form, which has been disclosed to it by or on behalf of the other party pursuant to its respective obligations under this Deed which by its nature ought to be regarded as confidential (including any business information in respect of the other party which is not directly applicable or relevant to the transactions contemplated by this Deed); and
- (b) procure that its officers, employees and representatives and those of any group companies keep secret and treat as confidential all such documents and information.

14.2 Clause 14.1 does not apply to information:

- (a) which shall after the date of this Deed become published or otherwise generally available to the public, except in consequence of a wilful or negligent act or omission by the other party to this Deed in contravention of the obligations in Clause 14.1;
- (b) to the extent made available to the recipient party by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the other party or which has been disclosed under an express statement that it is not confidential;
- (c) to the extent required to be disclosed by any applicable Law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of Law, provided that the party disclosing the information shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before the disclosure shall be made and shall take all reasonable action to avoid and limit the disclosure;
- (d) which has been independently developed by the recipient party otherwise than in the course of the exercise of that party's rights under this Deed or the implementation of this Deed;
- (e) which, in order to perform its obligations under or pursuant to this Deed, either party is required to disclose to a third party;
- (f) which, in order to perform its obligations under the Section 5 Licence and the Successor Licence either party is required to disclose to the Commission or to a third party approved in advance by the Commission; and
- (g) which the recipient party can prove was already known to it before its receipt from the disclosing party.

14.3 The provisions of this Clause shall survive any termination of this Deed.

## **15. Severability**

15.1 If, and to the extent that, any provision of this Deed is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in this Deed but without invalidating any of the remaining provisions of this Deed provided that the parties shall meet to negotiate in good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Deed not so affected) so as to re-establish an appropriate balance of the interests of the parties.

## 16. Waivers and amendments

16.1 No failure or delay by either party in exercising any right or remedy provided by Law under or pursuant to this Deed shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.

16.2 The rights and remedies provided for are cumulative, may be exercised as often as such party considers appropriate and are not exclusive of any rights and remedies provided by Law.

16.3 No provision of this Deed may be amended, modified, waived, discharged or terminated otherwise than by the express written agreement of the parties to this Deed nor may any breach of any provision of this Deed be waived or discharged except with the express written consent of the party not in breach.

## 17. Notice

17.1 The parties shall give any notice under, or in connection with, this Deed in writing. Notice shall be served by sending it by fax to the number set out in Clause 17.3, or delivering it by hand, or sending it by prepaid recorded delivery, special delivery or registered post, to the address set out in Clause 17.3, or by sending it by electronic mail to the address set out in Clause 17.3, and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this Clause 17). Any notice so served by hand, fax, post or electronic mail shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, special delivery or registered post, at 10.00 hours on the second Business Day following the date of posting; and
- (d) in the case of electronic mail, when the email leaves the email gateway of the sender where it leaves such gateway before 17.00 hours on any Business Day or in any other case at 08.00 hours on the next Business Day after it leaves such gateway and the onus shall be on the party giving notice to prove the time that the email left its gateway,

provided that in each case where delivery by hand or by fax occurs after 18.00 hours on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 09.00 hours on the next following Business Day.

17.2 References to time in this Clause 17 are to local time in the country of the addressee.

17.3 The addresses, fax numbers and electronic mail addresses of the parties for the purpose of this Clause 17 are as follows:

### The Licensor

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

### The Commission/Nominee

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

17.4 A party may notify the other party to this Deed of a change to its name, relevant addressee, address, fax number or electronic mail address for the purposes of this Clause 17, provided that, such notice shall only be effective on:

- (a) the date specified in the notice as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date following five Business Days after notice of any change has been given.

17.5 All notices under or in connection with this Deed shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

## **18. Governing Law and jurisdiction**

18.1 This Deed shall be governed by and construed in accordance with English law.

18.2 The parties irrevocably agree that the English courts shall have exclusive jurisdiction in relation to any legal action or proceedings arising out of or in connection with the Licence (**Proceedings**) and waive any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

## **19. Entire agreement**

19.1 This Deed and the Section 5 Licence set out the entire Deed and understanding between the parties in respect of the subject matter of this Deed. This Clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

## **20. Legal relationship**

20.1 Nothing in this agreement is deemed to constitute a partnership between the parties nor constitute any party the agent of the other party for any purpose.

## **21. Force majeure**

21.1 Neither party shall be liable for any failure or delay in performing any of its obligations under or pursuant to this Deed if the failure or delay is due to any cause outside its reasonable control, and it shall be entitled to a reasonable extension of the time for performing the obligations as a result of such cause.

## **22. Third party rights**

EITHER

Unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.<sup>4</sup>

OR<sup>5</sup>

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<sup>4</sup> For use when the Commission is the Assignee.

<sup>5</sup> For use when the Nominee is the Assignee.

22.1 With the exception of the Commission’s rights under Clause 22.2 and unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

22.2 All rights and interests exercisable by the Licensor under this Deed shall be exercisable by the Commission.

**23. Counterparts**

23.1 This agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this document as a deed as of the day and year first written above.

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

**SCHEDULE 1**

## Schedule 13

### Condition 21.14

#### Part 4

#### Databases Assignment

This Deed is made on \_\_\_\_\_ 20[ ]

#### BETWEEN

- (1) [ ] (company no.) whose registered office is at [ ] (**Assignor**);  
and
- (2) [ ] (company no.) whose registered office is at [ ]  
[The Commission/Nominee] (**Assignee**).

#### WHEREAS

- (A) [Assignor] runs the National Lottery under a licence dated [•] (**Section 5 Licence**) granted to it by the National Lottery Commission under section 5 of the National Lottery etc. Act 1993 (**Act**).
- (B) The Assignor is the legal and beneficial owner of the copyright and/or database rights in the databases set out in Schedule 1 (**Databases**) and has the right to all information and data held in the Databases.
- (C) Pursuant to Condition 21.14 of the Section 5 Licence, the Assignor has agreed to assign the copyright and/or database rights in the Databases and the rights it has in the information or data held within the Databases (**Transferred Databases**) to the Assignee on the terms and conditions set out in this Deed.
- (D) The Assignee desires to acquire and the Assignor desires to transfer all right, title and interest of Assignor in and to the Transferred Databases.

**IT IS AGREED** as follows:

#### 1. Definitions

- 1.1 Terms defined in the Section 5 Licence and not otherwise defined in this Deed shall have the same meaning as set out in the Section 5 Licence.
- 1.2 In this Deed, unless the context otherwise requires:
- (a) references to Clauses, Schedules and paragraphs in this Deed shall be construed as references to the Clauses, Schedules and paragraphs of this Deed;
  - (b) references to persons includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
  - (c) the headings are inserted for convenience only and do not affect the construction of this Deed;
  - (d) references to one gender includes all genders;
  - (e) words importing the plural include the singular and vice versa;
  - (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re enacted;

- (g) any reference to a document in the agreed form is to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties);
- (h) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (i) reference to the word “includes” or “including” are to be construed without limitation.

## **2. Interpretation**

2.1 The clause headings are for ease of reference only and shall not affect the interpretation or construction of this Deed.

## **3. Commencement**

3.1 This Deed shall come into force on [day] [month] [year] (**Commencement Date**).

## **4. Assignment of work**

4.1 The Assignor, at its own cost, assigns to the Assignee its successors and assigns, on a payment-free basis, all its right, title and interest in and to the Transferred Databases absolutely free from any third party loan, licence, restriction, covenants, charge or encumbrance including the right to sue for damages and other remedies for infringement or misuse of the Transferred Databases which may have occurred prior to the date of this Deed and to retain those damages.

## **5. Waiver of moral rights**

5.1 The Assignor expressly waives and shall procure the assignment of all moral rights in the Transferred Databases.

## **6. Infringement**

6.1 In the event of any infringement action or claim made against the Assignee before, on or after the Commencement Date in respect of the Transferred Databases, Assignor shall upon the reasonable request of Assignee and at Assignor's expense co-operate with and assist Assignee in any of the aforesaid actions by, for example, providing information and documents and executing all papers and performing such other acts as reasonably may be required.

## **7. Indemnity**

7.1 The Assignor shall indemnify the [Commission/Nominee] against each and any loss, liability and cost (including legal expenses) which the Transferee suffers or incurs as a result of or in connection with any claim against the Transferee that the use of the Transferred Databases in connection with the obligations of the Commission [and the Nominee] under the Section 5 Licence, the Successor Licence, the National Lottery or any Ancillary Activity infringes the Intellectual Property rights or other rights of a third party.

## **8. Further assurances**

8.1 Assignor shall at its own cost sign all documents and do all things which may be required by Law or which the [Commission/Nominee/Assignee] may request from time to time (including executing as soon as reasonably practicable after the date of this Deed all documents which the [Commission/Nominee/Assignee] may require to give effect to the assignment of the Transferred Databases to the [Commission/Nominee/Assignee] in any relevant jurisdiction) to implement and/or give effect to this Deed and for the purpose of granting the [Commission/Nominee/Assignee] the full benefit of and title to the assets, rights and benefits to be transferred under this Deed.

## 9. Files and records

9.1 To the extent that such documents are available, Assignor will, at Assignor's cost, upon the request of Assignee, make available to Assignee for inspection and provide copies of all relevant documents (including, but not limited to, correspondence) relating to the Transferred Databases. Assignor will notify its representatives of the change of ownership in each country where the Transferred Databases is being assigned and will provide the Assignee with a list of such representatives.

## 10. Confidential Information

10.1 Each of the parties shall both during and after the arrangements contemplated by this Deed have terminated:

- (a) keep confidential the terms of this Deed and all information, whether in written or any other form, which has been disclosed to it by or on behalf of the other party pursuant to its respective obligations under this Deed which by its nature ought to be regarded as confidential (including any business information in respect of the other party which is not directly applicable or relevant to the transactions contemplated by this Deed); and
- (b) procure that its officers, employees and representatives and those of any group companies keep secret and treat as confidential all such documents and information.

10.2 Clause 10.1 does not apply to information:

- (a) which shall after the date of this Deed become published or otherwise generally available to the public, except in consequence of a wilful or negligent act or omission by the other party to this Deed in contravention of the obligations in Clause 10.1;
- (b) to the extent made available to the recipient party by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the other party or which has been disclosed under an express statement that it is not confidential;
- (c) to the extent required to be disclosed by any applicable Law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of Law, provided that the party disclosing the information shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before the disclosure shall be made and shall take all reasonable action to avoid and limit the disclosure;
- (d) which has been independently developed by the recipient party otherwise than in the course of the exercise of that party's rights under this Deed or the implementation of this Deed;
- (e) which, in order to perform its obligations under or pursuant to this Deed, either party is required to disclose to a third party;
- (f) which, in order to perform its obligations under the Section 5 Licence and the Successor Licence either party is required to disclose to the Commission or to a third party approved in advance by the Commission; and
- (g) which the recipient party can prove was already known to it before its receipt from the disclosing party.

10.3 The provisions of this Clause 10 shall survive any termination of this Deed.

## 11. Notices

11.1 The parties shall give any notice under, or in connection with, this Deed in writing. Notice shall be served by sending it by fax to the number set out in Clause 11.3, or delivering it by hand, or sending it by prepaid recorded delivery, special delivery or registered post, to the address set out in Clause 11.3, or by sending it by electronic mail to the address set out in Clause 11.3, and in each case marked for the attention

of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this Clause 11). Any notice so served by hand, fax, post or electronic mail shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, special delivery or registered post, at 10.00 hours on the second Business Day following the date of posting; and
- (d) in the case of electronic mail, when the email leaves the email gateway of the sender where it leaves such gateway before 17.00 hours on any Business Day or in any other case at 08.00 hours on the next Business Day after it leaves such gateway and the onus shall be on the party giving notice to prove the time that the email left its gateway,

provided that in each case where delivery by hand or by fax occurs after 18.00 hours on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 09.00 hours on the next following Business Day.

11.2 References to time in this Clause 11 are to local time in the country of the addressee.

11.3 The addresses, fax numbers and electronic mail addresses of the parties for the purpose of this Clause 11 are as follows:

**The Assignor**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

**The Assignee**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

11.4 A party may notify the other party to this Deed of a change to its name, relevant addressee, address, fax number or electronic mail address for the purposes of this Clause 11, provided that, such notice shall only be effective on:

- (a) the date specified in the notice as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date following five Business Days after notice of any change has been given.

11.5 All notices under or in connection with this Deed shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

## **12. Legal relationship**

12.1 Nothing in this Deed is deemed to constitute a partnership between the parties nor constitute any party the agent of the other party for any purpose.

## **13. Force majeure**

13.1 Neither party shall be liable for any failure or delay in performing any of its obligations under or pursuant to this Deed if the failure or delay is due to any cause outside its reasonable control, and it shall be entitled to a reasonable extension of the time for performing the obligations as a result of such cause.

## **14. Parties in interest**

14.1 The provisions of this Deed shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

## **15. Severability**

15.1 If, and to the extent that, any provision of this Deed is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in this Deed but without invalidating any of the remaining provisions of this Deed provided that the parties shall meet to negotiate in good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Deed not so affected) so as to re-establish an appropriate balance of the interests of the parties.

## **16. Governing Law and jurisdiction**

16.1 This Deed shall be governed by and construed in accordance with English law.

16.2 The parties irrevocably agree that the English courts shall have exclusive jurisdiction in relation to any legal action or proceedings arising out of or in connection with the Licence (***Proceedings***) and waive any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

## **17. Entire agreement**

17.1 This Deed and the Section 5 Licence set out the entire agreement and understanding between the parties in respect of the subject matter of this Deed. This Clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

## **18. Third party rights**

EITHER

Unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.<sup>1</sup>

OR<sup>2</sup>

18.1 With the exception of the Commission's rights under Clause 18.2 and unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

18.2 All rights and interests exercisable by the Assignor under this Deed shall be exercisable by the Commission.

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<sup>1</sup> For use when the Commission is the Assignee.

<sup>2</sup> For use when the Nominee is the Assignee.

**19. Counterparts**

19.1 This agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have executed this document as a Deed as of the day and year first written above.

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

**SCHEDULE 1**

**The Databases**

## Schedule 14

### Expert determination

#### Conditions 18.25 and 23.10

1.1 Any dispute concerning the subject of Condition 18.25(a) or 18.25(b) or Condition 23.10 (*Dispute*) shall be referred to an independent person (*Expert*) who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties.

1.2 The Expert shall be appointed jointly by the parties, or, in default of agreement by the President or the Deputy President, for the time being of the Chartered Institute of Arbitrators, or any successor body.

1.3 The parties shall agree the procedure for the reference to the Expert. In default of agreement the Expert shall give directions as to the conduct of the reference giving both parties the opportunity to make such representations in writing and orally as they may reasonably require.

1.4 The parties shall bear their own costs in connection with the reference and the costs of the Expert shall be paid by the parties in equal proportions.

1.5 The Expert shall not be required to give reasons for its determination.