



# THE FOURTH NATIONAL LOTTERY LICENCE COMPETITION

## Deed of Commitment

Version: ITA Phase 1  
26 October 2020

**DEED OF COMMITMENT**

From: [Application Specific Provision – name and address of Applicant to be included] ("**we**", or the "**Applicant**")

To: **The Gambling Commission** (the "**Commission**")  
Victoria Square House  
Victoria Square  
Birmingham  
United Kingdom  
B2 4BP

\_\_\_\_\_ 202●

Dear Sir/Madam

**THE 4<sup>TH</sup> NATIONAL LOTTERY LICENCE COMPETITION (THE "COMPETITION")**

We are today submitting to you an application for a licence under Section 5 of the Act (the "**Application**").

As required by the rules applicable to Applications, we are today also entering into this deed by which we commit that, should the Application be successful, the Proposed Licensee will enter into the Proposed Licensee Enabling Agreement and the Cooperation Agreement (each as defined below) relating to the implementation of the Application.

**1. INTERPRETATION**

**1.1** In this Deed:

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

"**Award Notification**" means a written notification from the Commission to the Applicant that:

- (a) the Application has been successful and as a result the Proposed Licensee under the Application has been chosen as the Selected New Licensee; and
- (b) the Standstill Period has ended and either:
  - (i) there has been no challenge during the Standstill Period to the Commission's decision to name the Proposed Licensee as the Selected New Licensee; or
  - (ii) there has been a challenge during the Standstill Period to the Commission's decision to name the Proposed Licensee as the Selected New Licensee but that challenge has been resolved to the satisfaction of the Commission;

"**Business Day**" means any day which is not a Saturday, a Sunday or a bank or public holiday in England;

**"Competition"** means the competition organised by the Commission to award the Fourth National Lottery Licence;

**"CA Deed of Adherence"** means a deed of adherence to the Cooperation Agreement (where applicable that form of deed of adherence as is specified to apply to a Reserve Applicant);

**"Cooperation Agreement"** means an agreement, with the purpose of ensuring a disruption free and orderly handover of the operation of the National Lottery and in the form attached as Appendix 2, to which the Commission and the Current Operator are currently party and in respect of which the Selected New Licensee is required to execute a CA Deed of Adherence;

**"Current Licence"** means the Third National Lottery Licence which is currently in force pursuant to Section 5 of the Act;

**"Current Operator"** means Camelot UK Lotteries Limited;

**"Enabling Agreement"** means an agreement substantially in the form issued by the Commission with the Invitation to Apply to provide for the implementation of the application of a Selected New Licensee;

**"Finance Agreement"** means each agreement or arrangement pursuant to which, during the Implementation Period or the Term, any person:

- (a) provides or will provide any loan or other finance or funding to the Proposed Licensee, other than any such agreement or arrangement which is on arm's length and market standard commercial terms, and is immaterial to the funding of the Proposed Licensee;
- (b) subscribes, will subscribe, or acquires the right to subscribe, for equity in the Proposed Licensee which would result in such person becoming a Qualifying Direct Shareholder (as defined in the Form of Fourth Licence) of the Proposed Licensee;
- (c) provides or will provide any credit or advance arrangement which benefits or will benefit the Proposed Licensee, other than trade credit to be provided to the Proposed Licensee by Lottery Subcontractors (as defined in the Form of Fourth Licence) in the ordinary course of business;
- (d) provides or will provide any guarantee or indemnity arrangement or a similar undertaking to incur a financial or other obligation arising by reference to an obligation or liability of the Proposed Licensee; or
- (e) issues or will issue any debt securities to the Proposed Licensee or grants to the Proposed Licensee a right to acquire debt securities,

in each case which is in legally binding form and has been submitted to the Commission with the Application;

**"Form of Fourth Licence"** means the form of the Fourth National Lottery Licence released with the ITA (as may be updated by the Commission from time to time during the Competition);

**"Fourth National Lottery Licence"** means the licence to be granted by the Commission under Section 5 of the Act to run the National Lottery following the expiry of the Current Licence;

**"FPA"** or **"First Provisional Awardee"** means the first person to whom the Commission makes a Provisional Award following the Competition;

**"FPA Enabling Agreement"** means an Enabling Agreement entered into by the Commission with the FPA;

**"FPA Not Proceeding"** means either:

- (a) the FPA not entering into an Enabling Agreement within a period of 15 Business Days from the date of the Award Notification; or
- (b) following the FPA having executed the FPA Enabling Agreement, a Reserve Applicant Notice being served;

**"FPA Proceeding"** means on or after the First Confirmation Date as specified in the FPA Enabling Agreement, the Initial Transition Plans and Initial Transfer Plan (each as defined in the FPA Enabling Agreement) become binding pursuant to that agreement;

**"Implementation Period"** means the period from (and including) the date on which the Proposed Licensee Enabling Agreement is entered into by the Proposed Licensee and the Commission to (but excluding) the start date of the Fourth National Lottery Licence;

**"Invitation to Apply"** means the invitation, issued by the Commission on 26 October 2020, for persons to apply for the Fourth National Lottery Licence by participating in the Competition;

**"Proposed Licensee"** means the entity proposed in the Application to operate the National Lottery pursuant to the Fourth National Lottery Licence;

**"Proposed Licensee Enabling Agreement"** means an Enabling Agreement between the Proposed Licensee and the Commission in substantially the form attached to the Application as the same may be modified by agreement between the Applicant and the Commission before any Provisional Award is made to the Proposed Licensee;

**"Provisional Award"** means the announcement by the Commission that it considers a party to have been successful in the Competition subject to:

- (a) the conclusion of the Standstill Period without challenge to the Commission's decision; or
- (b) in the event of a challenge during the Standstill Period, that challenge being resolved to the satisfaction of the Commission;

**"Reserve Applicant"** means a person being notified that it will be granted a Provisional Award in the event of the FPA Not Proceeding;

**"Reserve Applicant Notice"** means a Reserve Applicant Notice served pursuant to the Cooperation Agreement;

**"Resource Availability Assurance Statement"** shall have the meaning given to it in the Enabling Agreement;

**"Resource Availability Commitments"** shall have the meaning given to it in the Enabling Agreement;

**"Selected New Licensee"** means an entity with whom, having made its selection in the Competition, the Commission determines it wishes to finalise the Fourth National Lottery Licence subject to the expiry of the Standstill Period;

**"Standstill Period"** means the voluntary standstill period which will be observed by the Commission, during which participants in the Competition will receive feedback from the Commission and may raise any concerns;

**"Term"** means the term of the Fourth National Lottery Licence; and

**"Third National Lottery Licence"** means the licence under Section 5 of the Act to operate the National Lottery granted to the Current Operator in February 2009 and scheduled to run until July 2023.

1.2 The headings in this Deed do not affect its interpretation.

## 2. **TERMS OF APPLICATION**

The Applicant irrevocably undertakes to the Commission that, unless and until this Deed lapses in accordance with paragraph 5 below:

- (a) the Application and the proposals contained in the Application will remain valid and open for acceptance by the Commission for a period of 12 months from the date of this Deed;
- (b) if it receives an Award Notification, the Applicant shall procure that within 5 Business Days of receipt of that Award Notification (or, if that is not possible as a result of any legal matter, as soon after that as the Applicant and the Commission are able to do so):
  - (i) the Proposed Licensee will provide a Resource Availability Assurance Statement to the Commission accompanied by evidence sufficient to demonstrate that the Resource Availability Commitments are true including confirmation that where, or to the extent that, a Finance Agreement is conditional upon receipt of the Award Notification, that condition has been fulfilled and the relevant Finance Agreement is unconditional as at the date of the Resource Availability Assurance Statement;
  - (ii) immediately having done so, the Proposed Licensee will execute the Cooperation Agreement and the Proposed Licensee Enabling Agreement; and
- (c) as at the date of this Deed, the Applicant has available to it sufficient financial resources as would be necessary to enable the Proposed Licensee to provide a Resource Availability Assurance Statement to the Commission in accordance with paragraph (b) above if the Applicant receives an Award Notification;
- (d) the Applicant shall not (other than pursuant to the Application) enter into any agreement or arrangement, incur any obligation or give any indication of intent that might restrict its ability to comply with the terms of this Deed.

## 3. **FINALISATION OF THE ENABLING AGREEMENT**

Before entering into the Proposed Licensee Enabling Agreement, the Commission shall, in consultation with the Applicant, consider modifying the Proposed Licensee Enabling Agreement to reflect:

- (a) any fact, matter, or circumstance arising between the date of the Application and the date upon which the Proposed Licensee enters into the Proposed Licensee Enabling Agreement;
- (b) if the date upon which the Proposed Licensee Enabling Agreement is entered into is less than 18 months before the expiry date of the Third National Lottery Licence, the fact of such period being less than 18 months,

and shall make any modifications it concludes are appropriate.

#### 4. **APPLICANT PREPAREDNESS CONFIRMATION**

If:

- (a) the Commission notifies the Applicant that it is the Reserve Applicant, promptly upon receipt of such notification; and
- (b) subsequently upon request from the Commission (but on no more than two occasions)

the Applicant will provide to the Commission a written statement approved by the board of directors of the Applicant repeating, as at the date of that statement, the undertakings set out in clause 2(b) of this Deed.

#### 5. **LAPSE OF DEED**

This Deed shall lapse on the earlier of:

- (a) the Commission making a Provisional Award to the FPA and not, within 5 Business Days of making that award, notifying the Applicant that it is the Reserve Applicant;
- (b) FPA Proceeding; or
- (c) the expiry of 12 months after the date of this Deed.

#### 6. **REMEDIES**

- 6.1 The Applicant acknowledges and agrees that if the terms of this Deed are breached, damages may be an inadequate remedy and equitable relief including injunctions and specific performance may be appropriate remedies in addition to damages for the enforcement of the obligations of this Deed.
- 6.2 Without prejudice to the Commission's legal responsibilities at law, this Deed shall not give rise to any obligations on the Commission or any rights or remedies of the Applicant or the Proposed Licensee against the Commission.

#### 7. **GOVERNING LAW**

This Deed and any non-contractual obligations arising out of or in connection with this Deed shall be governed by, and interpreted in accordance with, English law. The English courts shall have exclusive jurisdiction in relation to all disputes (including claims for set-off and counterclaims) arising out of or in connection with this Deed.

**[EXECUTED as a DEED by Applicant**        )  
acting by:                                        )

Director

Director/Secretary]

## **Appendix 1**

### **Form of Proposed Licensee Enabling Agreement**

*[Application Specific Provision – Form of Enabling Agreement submitted with Application to be appended here. This will include, as an Appendix to the form of Enabling Agreement, the form of Fourth Licence which will be granted to the Proposed Licensee (subject to any amendments in accordance with the terms of the Enabling Agreement) ]*



**Appendix 2**

**Form of Cooperation Agreement**

*[Form of Cooperation Agreement entered into between the Commission and the Outgoing Licensee during Phase Two of the Competition to be appended here]*