



THE FOURTH NATIONAL LOTTERY LICENCE COMPETITION

**Protecting Participant
Funds: Explanatory Note
for Applicants and
Request for Feedback
("4NL Trust Explanatory Note")**

Protecting Participant Funds: Explanatory Note for Applicants and Request for Feedback

1. Introduction

- 1.1 The Commission has issued the Invitation to Apply (“ITA”) for the Fourth National Lottery Licence (the “**Fourth Licence**”) as part of the competition for the Fourth Licence (the “**Competition**”).
- 1.2 A key outcome for the Fourth Licence is to protect National Lottery participants. The Commission will require the holder of the Fourth Licence to establish arrangements (including the appointment of a trustee) to protect National Lottery monies (the “**4NL Trust**”).
- 1.3 The Commission’s policy objective for the 4NL Trust is to protect the interests of Participants in relation to National Lottery monies. It wishes to pursue that objective in a way which is appropriate for a licence with an expected 10 year term, during which the National Lottery is likely to evolve, and which is also compatible with a transparent, open and robust competition.
- 1.4 The Commission has determined that this will best be achieved by requiring the Licensee to implement arrangements in respect of the 4NL Trust which build on the experience of the Third Licence but, where possible, to simplify those arrangements and by the Commission exercising continuing oversight through principles based requirements.
- 1.5 To achieve this, the Commission will:
 - (a) establish robust requirements for the 4NL Trust which will apply throughout the Fourth Licence; and
 - (b) provide a process for Applicants to provide commercial proposals which will meet those requirements but which also align with their proposed Business Plans, in a way which supports comparability, transparency and fairness of the Competition.

2. Legal Framework for the 4NL Trust

The legal framework for the 4NL Trust will be as follows:

- (a) the Fourth Licence will set out requirements for the 4NL Trust. These will include both minimum organisational requirements for the Trustee and the Account Bank (the “**Trustee Requirements**” and the “**Account Bank Requirements**”) and requirements for the form and operation of the Trust itself (together the “**Licence Requirements**”);
- (b) in order to ensure comparability of Applications with respect to the 4NL Trust, the Commission will specify the legal mechanics which Applicants will need to use to give effect to the Licence Requirements:
 - (i) at Phase One, the Commission describes these in a Short Form Trust Deed; and
 - (ii) at Phase Two, the Commission will provide a Long Form Trust Deed which Applicants will be required to enter into subject to limited bespoke

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Application Specific Provisions which can be proposed by the Applicant. Applicants will also be required to provide their related commercial proposals by way of Required Responses. This would include, for example, an Applicant's proposed Funds Protection Policies (as defined below);

- (c) Applicants' Required Responses will be evaluated on a Pass/Fail basis against the criteria of Participant Protection;
- (d) the Successful Applicant will be required by the Enabling Agreement to implement the Long Form Trust Deed (incorporating its Application Specific Provisions); and
- (e) the Cooperation Agreement will require the Current Operator and the Successful Applicant to cooperate to ensure a successful transition from the 3NL Trust to the 4NL Trust in line with proposals set out in the Applicants' Incoming Transition Plan.

3. Further Development of the 4NL Trust

3.1 The Commission is publishing with the ITA:

- (a) this note describing the Commission's approach and setting out:
 - (i) a request for feedback from Applicants and their proposed Trustee by 22 January 2021; and
 - (ii) details of the Phase One Required Responses which Applicants must address in their Phase One Applications;
- (b) within the Proposed Form of the Fourth Licence, a draft of Condition 16 of the Licence setting out the Licence Requirements; and
- (c) the Short Form Trust Deed.

3.2 Each Applicant will need to select a Proposed Trustee¹ and a Proposed Account Bank who, in each case, will satisfy the Licence Requirements set out in Appendix D. Those Proposed Trustees and Account Banks must submit their responses to the Commission's "fit and proper" vetting requirements no later than 18 December 2020.

3.3 This note invites feedback from Applicants and their Proposed Trustees as set out in Appendix E and Appendix F on the practicality of the Commission's current approach described in this note, draft Condition 16 and the Short Form Trust Deed. The deadline for receipt of that feedback is 22 January 2021. A feedback template has been provided by the Commission in Jaggaer.

3.4 The Commission will develop a Long Form Trust Deed (and any necessary ancillary documents) to give effect to the Licence Requirements. In doing so it will consider feedback from Applicants and, separately, Proposed Trustees on the questions raised in Appendix E and Appendix F. *It is important that Applicants' and Proposed Trustees' feedback to these questions is as complete as possible because the Commission intends to largely complete preparation of the Long Form Trust Deed prior to receiving Phase One Responses to the ITA.*

¹ Applicants should note that providers of trustee services are not restricted, by the rules of the Competition, to working with only one Applicant

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- 3.5 The Commission will issue the Long Form Trust Deed at the start of Phase Two, together with a Phase Two 4NL Trust Addendum to the ITA describing any changes to the Licence Requirements (other than the Trustee Requirements and the Account Bank Requirements) and/or the Required Responses from those described in this note. The Phase Two 4NL Trust Addendum will also summarise any significant differences in approach between the Long Form Trust Deed and the Short Form Trust Deed.
- 3.6 Whilst certain specified elements of the Long Form Trust Deed are Application Specific Provisions and can be tailored by the Applicant to reflect its commercial proposals and wider proposed Business Plan, many elements of the Long Form Trust Deed will be specified by the Commission and will not be open to amendment by Applicants.
- 3.7 Feedback will not be invited on the Long Form Trust Deed, which will reflect the Commission's policy position. However, should Applicants or their Proposed Trustees have any fundamental concerns regarding any technical aspects of the Long Form Trust Deed, they will have an opportunity to make the Commission aware of those, in writing, by the deadline specified in the Phase Two 4NL Trust Addendum. A template for the communication of those concerns will be provided by the Commission in Jaggaer. The Commission will consider any fundamental concerns which are raised but will not be obliged to make any changes to the Long Form Trust Deed. The Commission reserves the right to discuss any concerns with Applicants in order to ensure it has understood the technical points made.
- 3.8 Applicants will have the opportunity to submit, for review by the Commission, their proposed drafting with respect to Application Specific Provisions specified by the Commission in the Long Form Trust Deed (as well as other key legal documents). The Commission will provide Applicants with a non-binding view as to whether it considers that, on technical legal grounds, the drafting proposed by the Applicant would fail to operate in a manner which is capable of constituting a valid response to the relevant requirement. This process will not involve any form of Evaluation (whether on a pass/fail or a scored basis) nor assessment of, or comments on, the merits of those Applicant Specific Provisions, and the view provided cannot be taken as giving any indication of the likely outcome of any Evaluation. Applicants will not be entitled to place any legal reliance whatsoever on such view and should take their own legal advice on the terms and compliance of their Application.
- 3.9 Applicants are required to provide their commercial proposals by way of Required Responses to the ITA:
- (a) the Required Responses at Phase One are detailed in Appendix G to this Note. These should be provided as part of Applicant's Phase One Applications. The deadline for this is 19th March 2021. The Commission may include feedback on Applicant's Phase One Required Responses within its overall Phase One Feedback; and
 - (b) the Required Responses at Phase Two will be detailed in the Phase Two 4NL Trust Addendum issued at Phase Two.

4. **Policy Context - Outcomes and risks being addressed**

- 4.1 The Commission has a Statutory Duty under the Act to protect the interests of Participants. That includes the interests of those Participants in relation to amounts to which they are

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entitled as a result of participating in Games (including prizes and the return of monies paid for future rights to participate in Games, such as vouchers).

4.2 Risks to those interests may arise from:

- (a) risks that the odds of winning, the procedure for claiming Prizes and any circumstances in which Prizes may not be paid are not clear to Participants;
- (b) risks that an individual Game might be designed, or might operate, in a way which creates risks that insufficient monies are available to meet liabilities to Participants;
- (c) risks that, across the National Lottery Game portfolio, there might be insufficient monies to meet liabilities to Participants; and
- (d) risks of Licensee insolvency.

4.3 The Commission will address these risks through:

- (a) an assessment of each Applicant's proposed Game portfolio as part of its Business Plan, along with its policy regarding the licensing and operation of individual Games (and the overall Game portfolio) and the licences granted in respect of those Games pursuant to s6 the Act; and
- (b) requirements for the 4NL Trust contained in Condition 16 of the Fourth Licence. This note focuses primarily on the requirements for, and development of, the 4NL Trust.

5. Licence Requirements

5.1 Condition 16 of the Fourth Licence will include requirements on the Licensee with respect to the 4NL Trust Arrangements. These will apply throughout the Fourth Licence Term.

5.2 The core elements of the Licence Requirements will be that:

- (a) the purpose of the Trust Arrangements (the "**Funds Protection Outcome**") will be to protect the interests of Prize Winners and certain other Participants (the "**Participant Fund Beneficiaries**") to receive payment of prizes and certain other amounts paid in respect of participation in Games (the "**Participant Fund Obligations**");
- (b) the Licensee will be required to appoint a Trustee, who must fulfil the Trustee Requirements, to act in the interests of the Participant Fund Beneficiaries;
- (c) all monies paid by Participants to participate in the National Lottery must be held in accounts approved by the Commission ("**Approved Accounts**");
- (d) those accounts must be held with an Account Bank which fulfils the Account Bank Requirements;
- (e) operational "**Lottery Accounts**" in the name of the Licensee, subject to security granted in favour of the Trustee to hold on trust for the benefit of the Participant Fund Beneficiaries;

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- (f) accounts for the purposes of holding and managing reserves against Prize and Ticket Entitlement liabilities (“**Trust Accounts**”) in the name of the Trustee but expressed to be held on trust by the Trustee for the benefit of the Participant Fund Beneficiaries;
- (g) the security arrangements will entitle the Trustee (or a receiver appointed by it) to control and distribute all funds in the Approved Accounts in order to pay the Participant Fund Obligations should certain events occur (e.g. the Licensee becomes insolvent);
- (h) the security arrangements must also provide the Trustee with access to the assets of the Licensee (such as premises, databases and IT systems) which may be required to enable the Trustee (or a receiver) to identify Participant Fund Beneficiaries and process payments to them;
- (i) the Licensee will be required to produce “**Funds Protection Policies**”². These will describe its methodology for the management of monies, including:
 - (i) the adoption of treasury and investment policies;
 - (ii) the creation of prize reserves; and/or
 - (iii) other mechanisms which will be established,

in each case to ensure that, across the National Lottery Game portfolio, there will be sufficient monies to meet liabilities to participants including in all credible portfolio volatility scenarios, in a way that fulfils the Funds Protection Outcome;
- (j) the Licensee will also be required to demonstrate how the Funds Protection Policies will help it to fulfil the Funds Protection Outcome;
- (k) using the methodology established by the Funds Protection Policies, the Licensee will be required to establish (and keep the Commission informed of) of the precise rules it uses in managing monies (for example, precise levels of prize reserves);
- (l) the Licensee will also be required to maintain a ring fenced “**Final Reserve Balance**” which will be available to the Trustee to pay the Participant Fund Obligations;
- (m) the Trust Documents will be “Designated Lottery Subcontracts”, meaning that any changes to these documents during the Fourth Licence Term must be notified to the Commission in accordance with Condition 5 of the Fourth Licence; and
- (n) the Licensee must provide regular and ad hoc assurance to the Commission in relation to its arrangements for the protection of Participant funds.

² The Commission may issue further guidance to Applicants during the Competition in relation to the issues required to be addressed by Funds Protection Policies.

6. Short Form Trust Deed

- 6.1 The Short Form Trust Deed sets out the key obligations of each of the Licensee and the Trustee in relation to the 4NL Trust.
- 6.2 In particular, the Short Form Trust Deed:
- (a) contains a covenant from the Licensee to the Trustee that it will discharge its obligations to make payments to the beneficiaries. The Trustee will hold the benefit of that covenant on trust for the beneficiaries;
 - (b) sets out the details of each person who is a beneficiary under the 4NL Trust, and the order in which those persons are paid the amount due to them if enforcement action is taken by the Trustee³;
 - (c) describes the bank accounts which must be established and maintained by each of the Licensee and the Trustee, and the circumstances in which payments can be made into and out of those accounts (a pictorial representation of these payment flows is included in Appendix C);
 - (d) provides for a security package to be given by the Licensee in favour of the Trustee (for the benefit of the beneficiaries), supported by covenants and other arrangements to support and protect that security;
 - (e) requires the Licensee to put in place arrangements (including by ensuring that the Trustee has the necessary rights under Critical Access Contracts) to ensure that, if enforcement action is taken by the Trustee, the Trustee has access to the systems and technology of the Licensee which are necessary in order for the Trustee to make payments to the beneficiaries under the 4NL Trust;
 - (f) requires the Licensee to make certain information and regular reporting available to the Trustee and the Commission, in order that the Trustee and the Commission can monitor the Licensee's compliance with the Trust Deed and the Licence;
 - (g) aligns with the Licence Requirements, including in relation to the policies and procedures the Licensee must establish and implement, and the transition of the trust arrangements to the Next Licensee; and
 - (h) specifies the circumstances in which the Licensee will be in default, and provides for the Trustee to enforce the security and (in its discretion) appoint a receiver to make payments to beneficiaries.
- 6.3 It is not intended that the Commission will be a direct party to the Trust Deed, but will instead be able to enforce its rights under the Trust Deed as a third party. This mirrors the arrangements in place under the 3NL Trust.
- 6.4 The Short Form Trust Deed focuses on the important and unique aspects of the 4NL Trust, as the Commission currently sees them. It does not include the standard legal mechanics

³ The primary beneficiaries of the 4NL Trust are Participants, but in an enforcement event, the Trustee (and any receiver appointed by it) and the Account Bank will also be beneficiaries in relation to the professional fees due to be paid to them

or “boilerplate” which will be included in the Long Form Trust Deed, which will be released by the Commission at Phase Two.

7. Relationship Between Licence Requirements and Long Form Trust Deed

- 7.1 Condition 16 of the Fourth Licence describes the overarching requirement that the Licensee must do everything it can to achieve the Funds Protection Outcome. As with other Conditions within the Fourth Licence, Condition 16 sets out some specific things the Licensee must do to achieve that outcome.
- 7.2 As described above, a key requirement within Condition 16 is that the Licensee maintains, at all times during the Fourth Licence Term, trust arrangements which meet the Licence Requirements set out in that Condition. The Long Form Trust Deed (including the appropriate Application Specific Provisions) will fulfil the Licence Requirements on and from the Start Date.
- 7.3 The Licensee will also be required to comply with certain “treasury” requirements, in order to ensure that the Funds Protection Outcome is fulfilled. These include ensuring that each Approved Account is operated by the Account Bank in the UK, and that all funds held in an Approved Account are held in sterling.
- 7.4 During the Fourth Licence Term, the Licensee will also be required to provide assurance to the Commission that the arrangements established by the Licensee fulfil the Funds Protection Outcome.
- 7.5 The Licence Requirements will apply throughout the Fourth Licence Term. As the National Lottery and financial market conditions are likely to evolve during the Fourth Licence Term, Condition 16 makes provision for amendments to be made to the Fund Protection Policies adopted by the Licensee, or to the Trustee Requirements or Account Bank Requirements, during the Fourth Licence Term.
- 7.6 Condition 16 of the Fourth Licence also provides for certain steps to be taken by the Licensee if the Commission is no longer satisfied that the Trustee meets the Trustee Requirements and/or if the Account Bank meets the Account Bank Requirements. This includes the transfer of arrangements to a replacement Trustee or Account Bank, and the steps the Licensee must take in order to ensure that Participant funds are adequately protected in the interim period before the arrangements can be transferred.
- 7.7 Condition 16.29 requires the Licensee to cooperate (and to ensure that the Trustee and Account Bank cooperate) with the Next Licensee, and that person’s selected trustee and account bank, in connection with the transition of the arrangements for the protection of Participant funds from the Licensee to the Next Licensee. It is expected that the detailed operational and practical steps in relation to that transition will be agreed between the Licensee and the Next Licensee prior to the start of the Next Licence.

8. Evaluation of the 4NL Trust at Phase Two

- 8.1 As part of its Phase Two Application, each Applicant will be required to provide:

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- (a) a copy of the Long Form Trust Deed, with the Application Specific Provisions included (and no other changes to the Long Form Trust Deed issued by the Commission); and
 - (b) responses to the Phase Two Required Responses. This may include narrative responses or the submission of documents (for example, a Funds Protection Policy and form of Trust Implementation Agreement).
- 8.2 As described in the ITA, the manner in which these aspects of the Application address the risk that Participants will not be paid amounts to which they are entitled will be evaluated by the Commission on a Pass/Fail basis as part of Participant Protection.
- 8.3 Portfolio Volatility and its management will also have implications for the performance of the National Lottery and risks to Good Causes Contributions (noting that, as Participants' interests take priority over Good Causes Contributions, successful protection of Participants' interests will not necessarily imply optimal management of risks to Good Causes Contributions). Applicants' Game portfolio proposals, implications for portfolio volatility and the approach to managing that volatility (reflected in Funds Protection Policies) will be evaluated in this context on a scored basis as part of the Business Plan Area.
- 8.4 The protection of Participant funds, and in particular the proposed application of the Funds Protection Policies in the context of each Game (and the portfolio of Games overall) will also be considered by the Commission when reviewing any application for a licence under section 6 of the Act.
- 9. Implementation of the 4NL Trust**
- 9.1 As part of its Phase Two Application, each Applicant will be required to submit a form of Trust Implementation Agreement. This agreement should set out the practical and operational steps which will be taken during the Implementation Period in order to establish the 4NL Trust.
- 9.2 The Commission will not prescribe the form of Trust Implementation Agreement; this will be for Applicants to propose. Instead, the Commission:
- (a) has included a Phase One Required Response which asks Applicants to describe its proposed approach to the Trust Implementation Agreement and the issues raised by it, including the items which it expects to be covered in that agreement, how milestones will be set and how progress will be measured and reported to the Commission during the Implementation Period; and
 - (b) will include, in the Phase Two Required Responses, a list of minimum requirements which must be addressed in the Trust Implementation Agreement submitted by each Applicant with its Phase Two Application. The form of Trust Implementation Agreement submitted by each Applicant will be assessed by the Commission against those minimum requirements on a pass/fail basis, as part of Evaluation.
- 9.3 The Enabling Agreement requires the Incoming Licensee to execute the Trust Implementation Agreement and makes provision for any amendments to that agreement to be notified to the Commission (with the Commission having the right to require the Incoming Licensee not to implement any such proposed amendment).

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- 9.4 As part of its reporting obligations under the Enabling Agreement, the Incoming Licensee will report to the Commission its progress in establishing the 4NL Trust Arrangements in line with the milestones described in the Trust Implementation Agreement. As the Start Date approaches, certain confirmations and assurances are required to be provided to the Commission by each of the Incoming Licensee, the Trustee and the Account Bank, that the relevant arrangements for the 4NL Trust have been properly implemented and are ready for the Start of the Fourth Licence.
- 9.5 The Cooperation Agreement also provides the framework for the Incoming Licensee and the Outgoing Licensee to cooperate to agree arrangements for the transition of trust arrangements from the 3NL Trust to the 4NL Trust. The steps to be taken by each of the Incoming Licensee and the Outgoing Licensee will be included in the Incoming Transition Plan and the Outgoing Transition Plan which will be agreed in accordance with clause 5.4 of the Cooperation Agreement.
10. **Next Steps**
- 10.1 Each Applicant must identify its Proposed Trustee and Proposed Account Bank. It is the responsibility of each Applicant to ensure that its Proposed Trustee meets the Trustee Requirements and the Proposed Account Bank meets the Account Bank Requirements.
- 10.2 The Commission intends to carry out Fit and Proper Checks on each Applicant's Proposed Trustee and Proposed Account Bank (each of which will be a Key Subcontractor of the Licensee). To enable the Commission to do this, each Applicant must ensure that all relevant information and declaration forms from each of the Proposed Trustee and Proposed Account Bank are submitted to the Commission by no later than 18 December 2020.
- 10.3 The Commission requests feedback separately from each Applicant on the requests set out in Appendix E, and from that Applicant's Proposed Trustee on the requests set out in Appendix F, in each case by no later than 22 January 2021. The Commission strongly encourages Applicants and their Proposed Trustees to take this opportunity to provide feedback to the Commission, in order that this feedback can be taken into account as part of the development of the Long Form Trust Deed (noting that only those provisions of the Long Form Trust Deed which the Commission specifies are relevant to Applicants' commercial proposals may be amended or proposed by Applicants as part of their Phase Two Applications).

Appendix A – Glossary of Terms used in this note

3NL Trust	the trust arrangements established by the Current Operator pursuant to the Third National Lottery Licence
4NL Trust	has the meaning given to that term in paragraph 1.2 of this note
Account Bank	has the meaning given to that term in the Proposed Form of Fourth Licence
Account Bank Requirements	the organisational requirements which must be met by the Account Bank, as set out in the Proposed Form of Fourth Licence and as described in Appendix D of this Note
Act	National Lottery etc. Act 1993 (as amended from time to time)
Applicant	has the meaning given to that term in the ITA
Application	has the meaning given to that term in the ITA
Application Specific Provisions	the provisions of the Short Form Trust Deed or the Long Form Trust Deed (as applicable) which are specified by the Commission as required to be proposed by Applicants as part of their Phase One Application or Phase Two Application
Approved Accounts	has the meaning given to that term in the Proposed Form of Fourth Licence
Business Plan	has the meaning given to that term in the ITA
Commission	the Gambling Commission
Competition	the Competition for the award of the Fourth Licence
Cooperation Agreement	has the meaning given to that term in the ITA
Critical Access Contracts	has the meaning given to that term in the Short Form Trust Deed
Current Operator	the current operator of the National Lottery pursuant to the Third National Lottery Licence
Designated Lottery Subcontract	has the meaning given to that term in the Proposed Form of Fourth Licence
Enabling Agreement	has the meaning given to that term in the ITA
Evaluation	has the meaning given to that term in the ITA
Final Reserve Balance	the funds (in an amount proposed by the Applicant as an Application Specific Provision) to be held by the Trustee in the Trust Final Reserve Account

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Fit and Proper Checks	has the meaning given to that term in the Proposed Form of Fourth Licence (and as further described in “Information for Applicants on Fit and Proper Checks” issued with the ITA)
Fourth Licence	the Fourth National Lottery Licence, to be awarded as part of the Competition
Fourth Licence Term	has the meaning given to that term in the ITA
Funds Protection Outcome	has the meaning given to that term in the Proposed Form of Fourth Licence
Funds Protection Policies	has the meaning given to that term in the Proposed Form of Fourth Licence
Game	has the meaning given to that term in the Proposed Form of Fourth Licence
Implementation Period	has the meaning given to that term in the ITA
Incoming Licensee	has the meaning given to that term in the ITA
ITA	the Invitation to Apply for the Fourth Licence
Licence Requirements	has the meaning given to that term in paragraph 2(a) of Part A of this note
Licensee	the operator of the National Lottery pursuant to the Fourth Licence
Long Form Trust Deed	the full form of Trust Deed issued by the Commission in Phase Two of the Competition
Lottery Accounts	those Approved Accounts as are held in the name of the Licensee, as further described in the Short Form Trust Deed
Key Subcontractor	has the meaning given to that term in the Proposed Form of Fourth Licence
Participant	has the meaning given to that term in the Proposed Form of Fourth Licence
Participant Fund Beneficiaries	has the meaning given to that term in the Proposed Form of Fourth Licence
Participant Fund Obligations	has the meaning given to that term in the Proposed Form of Fourth Licence
Phase One	the first phase of the ITA stage of the Competition, as described in section 5 of the ITA and Appendix B of this note
Phase One Application	the form of Application to be submitted by Applicants at Phase One of the Competition, as described in section 5 of the ITA
Phase One Feedback	the feedback to be provided by the Commission to Applicants on their Phase One Applications, as described in section 5 of the ITA

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Phase One Required Responses	the responses required from each Applicant as part of its Phase One Application, as set out in the ITA and Appendix G of this note
Phase One Application	the form of Application to be submitted by Applicants at Phase Two of the Competition for evaluation by the Commission, as described in section 5 of the ITA
Phase Two	the second phase of the ITA stage of the Competition, as described in section 5 of the ITA and Appendix B of this note
Phase Two 4NL Trust Addendum	the addendum to the ITA to be issued by the Commission in Phase Two, describing any changes to the Licence Requirements and containing the Phase Two Required Responses in relation to the 4NL Trust, as described in section 3.5 of Part A of this note
Phase Two Required Responses	the responses required from each Applicant as part of its Phase Two Application, as set out in the ITA and the Phase Two 4NL Trust Addendum
Prize	has the meaning given to that term in the Proposed Form of Fourth Licence
Proposed Account Bank	the person identified by an Applicant in its Application as the person it intends will be the Account Bank if that Applicant is selected as the Successful Applicant
Proposed Form of Fourth Licence	has the meaning given to that term in the ITA
Proposed Trustee	the person identified by an Applicant in its Application as the person it intends will be the Trustee if that Applicant is selected as the Successful Applicant
Short Form Trust Deed	the short form of the Trust Deed issued by the Commission with the ITA
Start	has the meaning given to that term in the Proposed Form of Fourth Licence
Start Date	has the meaning given to that term in the Proposed Form of Fourth Licence
Successful Applicant	has the meaning given to that term in the ITA
Trust Accounts	those Approved Accounts as are held in the name of the Trustee, as further described in the Short Form Trust Deed
Trust Deed	the security trust deed to be entered into between the Licensee and the Trustee in relation to the 4NL Trust
Trust Documents	the legal documents (including the Trust Deed) which give effect to the 4NL Trust
Trust Implementation Agreement	the agreement (the form of which is to be proposed by Applicants as part of their Phase Two Applications) to be entered into between the Incoming Licensee and the Trustee, as described in paragraph 9.1 of Part A of this note

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Trustee has the meaning given to that term in the Proposed Form of Fourth Licence

Trustee Requirements means the organisational requirements which must be met by the Trustee, as set out in the Proposed Form of Fourth Licence and as described in Appendix D of this Note.

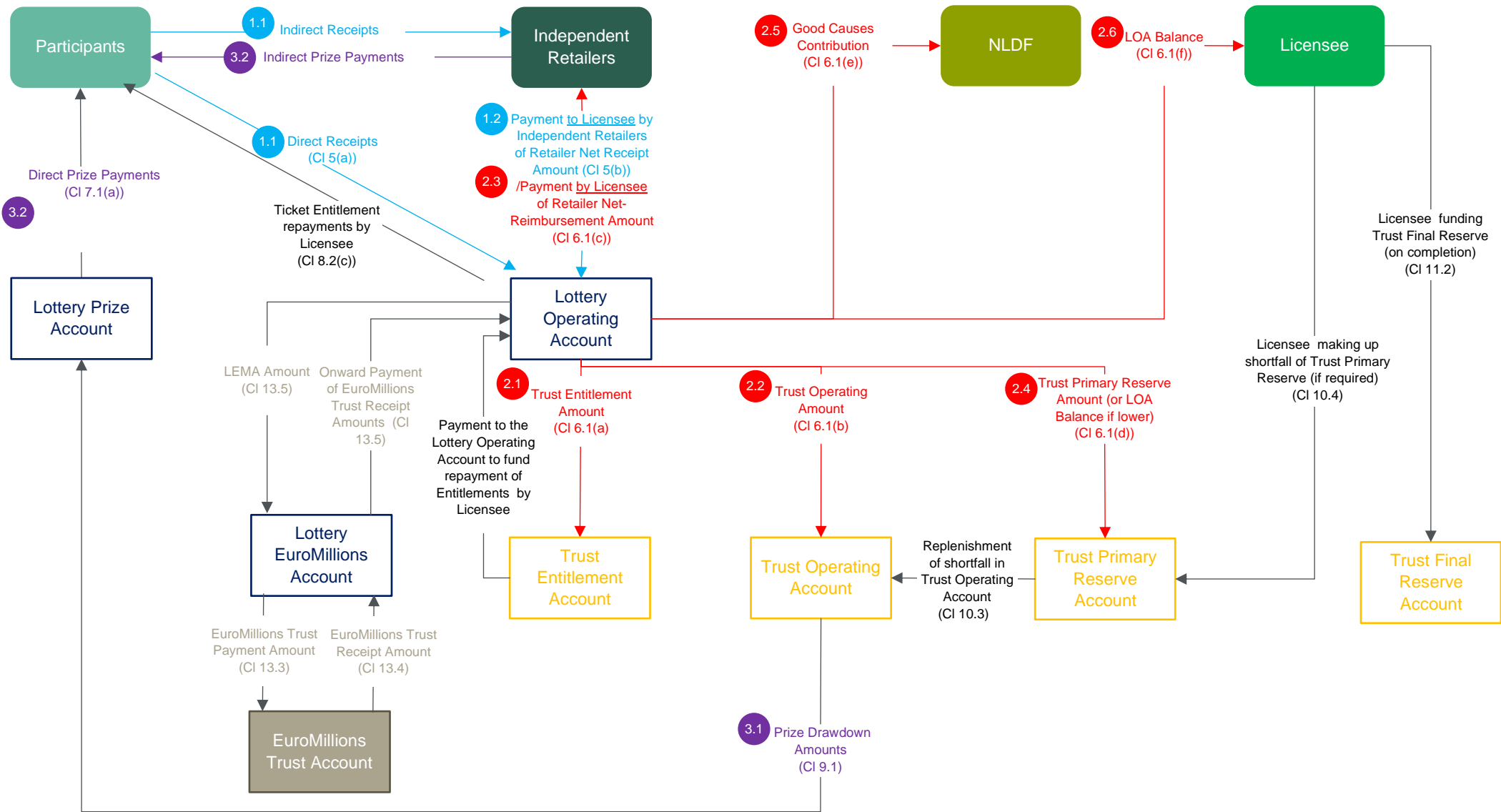
Appendix B – 4NL Trust Indicative Timeline

ITA Stage: Phase One		
4NL Trust Briefing Session Explanatory Note released	September 2020	<ul style="list-style-type: none"> Note was sent out to Applicants and Trust Providers following Briefing Session in September 2020.
ITA Launch	October 2020	<ul style="list-style-type: none"> Commission issues Short Form Trust Deed to Applicants with ITA together with this Note.
Proposed Trustee and Proposed Account Bank Vetting Deadline	18 December 2020	<ul style="list-style-type: none"> Applicants to provide details of Proposed Trustee and Proposed Account Bank for Fit & Proper Checks and Vetting.
Feedback on Short Form Trust Deed to be submitted to the Commission	22 January 2021	<ul style="list-style-type: none"> Applicants and Proposed Trustees provide feedback on Short Form Trust Deed and points set out in this 4NL Trust Explanatory Note.
Deadline for submission of Phase One Applications	19 March 2021	<ul style="list-style-type: none"> Applicants provide Required Responses and details of their proposed Applicant Specific Provisions with respect to the Short Form Trust Deed as part of Phase One Applications.
ITA Stage: Phase Two		
Long Form Trust Deed released	May 2021	<ul style="list-style-type: none"> Commission issues Long Form Trust Deed at the start of Phase Two (with limited number of schedules/gaps to accommodate Applicant Specific Provisions) and together with the Phase Two 4NL Trust Addendum containing details of any additional or revised requirements in relation to the 4NL Trust.
Deadline for Applicant and Proposed Trustee to advise the Commission of any fundamental technical concerns with the Long Form Trust Deed	TBC at Phase Two	<ul style="list-style-type: none"> Applicants and Proposed Trustees advise the Commission of any fundamental technical concerns with the Long Form Trust Deed (Note: this will provide Applicants and Proposed Trustees the opportunity to identify technical concerns only. The Commission will not enter into discussions regarding commercial merits).
Phase Two Applications deadline (which includes the legal clarification process)	July 2021	<ul style="list-style-type: none"> During the legal clarification process, Applicants will have an opportunity to deal with potential technical issues in the legal documents prior to the Application deadline. Applicants submit with their Application their Required Responses and the Long Form Trust Deed which includes their proposed Applicant Specific Provisions (for Evaluation process).
Implementation Period		

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Implementation Period starts	October 2021	<ul style="list-style-type: none"> • Incoming Licensee and 4NL Trustee put in place arrangements to implement the 4NL Trust and transition from the 3NL Trust. • Incoming Licensee applies for Section 6 licences for Committed Games, including Portfolio Volatility Assurance.
Licence Term		
Fourth Licence Start Date	August 2023	<ul style="list-style-type: none"> • 4NL Trust in full operation.

Appendix C – Illustrative Funds Flows



Illustrative Funds Flow: Guidance Notes:

- Clause references are to provisions in the Short Form Trust Deed.
- “Lottery Accounts” are shown in **Dark Blue**. These are in the name of the Licensee but subject to the security arrangements.
- “Trustee Accounts” are shown in **Orange**. These are in the name of the Trustee
- The three main regular/periodic (and sequential) payments are shown as follows:
 - National Lottery Receipts paid by Participant to Retailers or direct to the Licensee are shown in **Light Blue**. The sequence of these payments is numbered 1.1-1.2. These amounts are received into the Lottery Operating Account.
 - The “waterfall” of payments out of the Lottery Operating Account (Clause 6.1 of the Short Form Trust Deed) are shown in **Red**. The priority of these payments is numbered 2.1-2.6.
 - Prize payments (and payments to fund Prize payments) are shown in **Purple**. The sequence of these payments is numbered 3.1-3.2.
- Other payments, which are not necessarily regular/periodic, are shown in **Black**
- EuroMillions payments (if applicable) are shown in **Brown**
- The following are not shown:
 - Non-Cash Prize Supplier Payments (Clause 7.1(b) of the Short Form Trust Deed) which the Licensee will pay in parallel to Direct Prize Payments
 - Additional Weekly Good Causes Payments (and associated payments) (Clause 14 of the Short Form Trust Deed)
 - Trust Income and Trust Costs including all payments between accounts (Clause 32 of the Short Form Trust Deed).

Appendix D – Licence Requirements (Trustee and Account Bank)

1. As described in paragraph 10.1, the Trustee and Account Bank proposed by each Applicant must meet the Trustee Requirements and the Account Bank Requirements (as applicable) set out in the Fourth Licence. These requirements must be met by the Proposed Trustee and Proposed Account Bank during the Competition and throughout the Implementation Period and the Fourth Licence Term. The Proposed Form of the Fourth Licence describes how these requirements may be changed during the Fourth Licence Term.
2. It is the Applicant's responsibility to ensure that its Proposed Trustee and Proposed Account Bank meet the Trustee Requirements and the Account Bank Requirements (as applicable). The Commission will evaluate whether these requirements are met by each Applicant's Proposed Trustee and Proposed Account Bank on a Pass/Fail basis.
3. Each of the Enabling Agreement and Condition 16 of the Fourth Licence will include provisions which will apply if, at any point during the Implementation Period or the Fourth Licence Term, the Commission is not satisfied that the Trustee meets the Trustee Requirement and/or the Account Bank meets the Account Bank requirements.
4. The "**Account Bank Requirements**" are:
 - (a) the Account Bank must be a fit and proper person (and is therefore subject to the Commission's "Fit and Proper Checks");
 - (b) the Account Bank must be regulated by the Prudential Regulation Authority (or any successor to it from time to time);
 - (c) the Account Bank is not a Connected Party of the Licensee or the Trustee; and
 - (d) hold investment grade credit ratings from at least two Recognised Rating Agencies, being:
 - (i) Standard & Poor's
 - (ii) Moody's
 - (iii) Fitch
 - (iv) DBRS Morningstar.
5. The "**Trustee Requirements**" are:
 - (a) the Trustee must be a fit and proper person (and is therefore subject to the Commission's "Fit and Proper Checks");
 - (b) the Trustee is an entity incorporated in the UK and subject to:
 - (i) the regulation of the Financial Conduct Authority (or any successor to it from time to time); and
 - (ii) UK tax rules and requirements;
 - (c) the Trustee is not a Connected Party of the Licensee or the Account Bank;

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- (d) the Trustee has sufficient financial and operational resources to operate the Trust Arrangements in accordance with the Trust Documents;
- (e) the Trustee has the experience and capability to operate the Trust Arrangements in accordance with the Trust Documents; and
- (f) with effect from the date upon which the Trust Implementation Agreement comes into effect, the Trustee has complied in all material respects with the Trust Implementation Agreement and, once in force, the Trust Documents to which it is a party.

Appendix E - Feedback sought from Applicants

To be provided by 22 January 2021

Feedback is sought from each Applicant on the following matters.

The Commission's purpose in seeking this feedback is to support its development of the Long Form Trust Deed and final required responses regarding the 4NL Trust which will be effective in achieving the Funds Protection Outcome, will operate in a manner which will facilitate the full range of Applicants submitting compliant and competitive Applications and will facilitate a fair and open evaluation of Applicants' proposals for the 4NL Trust (the "**Objective**"). Responses should therefore address issues likely to be of generic concern to Applicants generally.

Feedback to the matters listed in this Appendix should not include commercial proposals or proposals which are inherent to a particular Application. Commercial proposals or proposals which are inherent to a particular Application are invited through the Phase One Responses (see Appendix G).

1. Does the Applicant consider any key features of the 4NL Trust outlined in paragraph 3 of Part A of this note to be inappropriate or likely to be impractical for Applicants or Trustees generally?
2. Does the Applicant consider the structure and approach of Lottery Accounts and Trustee Accounts described in the Short Form Trust Deed is appropriate? If the Applicant considers any changes would be appropriate to that structure, what are those changes and why would this support achievement of the Objective?
3. Does the Applicant consider that any changes would be required to accommodate the EuroMillions Trust arrangements, should the Applicant decide to include EuroMillions within its portfolio of Games?
4. Does the Applicant consider that the definition of the Funds Protection Policies included in the Licence and the Short Form Trust Deed is appropriate?
5. Does the Applicant consider that any specific additional provision should be made regarding the proposed relationship between the Licensee and the Trustee?
6. In light of the need to ensure that the Trust Arrangements are effective for the full term of the Licence, does the Applicant consider that any additional mechanisms (other than those currently described in Condition 16 of the Proposed Form of Fourth Licence) should be included to address the need for change during that period?
7. Does the Applicant have any specific concerns regarding the ability of the Licensee and the Trustee to create and operate the security mechanics envisaged by the Licence?
8. Does the Applicant consider that any features of the proposed Trust Arrangements are likely to prejudice the ability of Applicants generally to secure arrangements with an appropriate Trustee and an appropriate Account Bank?
9. What, if any, information and specific operational arrangements does the Applicant consider would need to be provided for to ensure a transfer of funds and operations from the existing trust arrangements under the Third Licence to the 4NL Trust?

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10. Please describe the approval processes which will need to be undertaken by the Applicant and/or the Proposed Licensee in order to put in place the 4NL Trust and transition from 3NL to 4NL trust arrangements.

Appendix F – Feedback sought from Proposed Trustees

To be provided by 22 January 2021

Feedback is sought from each Proposed Trustee on the following matters. Applicants should note that this feedback is sought directly from its Proposed Trustee, and is separate to the feedback requested from Applicants described in Appendix E. The Commission does not expect or require feedback from Applicants and their Proposed Trustees to be aligned or consistent.

The Commission's purpose in seeking this feedback is to support its development of the Long Form Trust Deed and final required responses regarding the 4NL Trust which will be effective in achieving the Funds Protection Outcome, will operate in a manner which will facilitate the full range of Applicants submitting compliant and competitive Applications and will facilitate a fair and open evaluation of Applicants' proposals for the 4NL Trust (the "**Objective**").

Commercial proposals or proposals which are inherent to a particular application, or a particular Trustee's commercial proposal to the associated Applicant, is invited through the Phase One Responses (see Appendix G).

The Commission is particularly interested in feedback from Trustees regarding requirements which would need to be placed on Applicants in order to enable the 4NL Trust to operate successfully or regarding matter which are likely to influence the ability of the Trustee to successfully fulfil that role.

1. Does the Trustee consider any key feature of the 4NL Trust outlined in paragraph 3 of Part A of this note to be inappropriate or likely to be impractical for Trustees or Applicants generally?
2. Does the Trustee consider the structure and approach of Lottery Accounts and Trustee Accounts described in the Short Form Trust Deed is appropriate? If the Trustee considers any changes would be appropriate to that structure, what are those changes and why would this support achievement of the Objective?
3. Does the Trustee consider that any changes would be required to accommodate the EuroMillions Trust arrangements, should the Applicant decide to include EuroMillions within its portfolio of Games?
4. Does the Trustee consider that the definition of the Funds Protection Policies included in the Licence and the Short Form Trust Deed is appropriate?
5. Does the Trustee consider that any specific additional provision should be made regarding the proposed relationship between the Trustee and the Licensee?
6. In light of the need to ensure that the Trust Arrangements are effective for the full term of the Licence, does the Trustee consider that any additional mechanisms (other than those currently described in Condition 16 of the Proposed Form of Fourth Licence) should be included to address the need for change during that period?
7. Does the Trustee have any specific concerns regarding the effectiveness and workability of the security mechanics envisaged by the Short Form Trust Deed?

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8. What, if any, information and specific operational arrangements does the Trustee consider would need to be provided for to ensure a transfer of funds and operations from the existing trust arrangements under the Third Licence to the 4NL Trust?
9. Would the Trustee anticipate that there will be specific operational or practical requirements to establish and operate the 4NL Trust?
10. Please describe the approval processes which will need to be undertaken by the Trustee in order to put in place the 4NL Trust and transition from 3NL to 4NL trust arrangements.

Appendix G – Phase One Required Responses

To be provided as part of Phase One Applications

ITA Reference 22.4 - Protecting Participant Funds

Please provide, as part of your Phase One Application, responses to the following Required Responses.

In order to prepare your response to these questions, you may find it useful to refer to Licence Condition 16 and the Short Form Trust Deed.

1. **Please identify your Proposed Trustee and Proposed Account Bank.**

- Your response should include information and evidence which is sufficient to allow the Commission to assess whether the Proposed Trustee meets the Trustee Requirements and the Proposed Account Bank meets the Account Bank Requirements (as set out in paragraph 4 and 5 of Appendix D). Your response should be no more than 3 pages.
- As part of its assessment of whether the Proposed Trustee and the Proposed Account Bank meet the relevant requirements, the Commission will undertake checks to confirm whether each of the Proposed Account Bank and Proposed Trustee are fit and proper persons. As described in paragraph 3.2 of Part A of this note, you are required to provide the information necessary for the Commission to carry out these checks separately to these Required Responses, by no later than 18 December 2020.

2. **Please provide a copy of the Short Form Trust Deed, with each Application Specific Provision completed.**

- Your response should include the legal drafting to be included in the Short Form Trust Deed to ensure that the relevant clauses of that document both reflect your commercial proposals and are legally effective.
- Where you consider necessary for provisions other than Application Specific Provisions to be amended in order for the Short Form Trust Deed to operate, please set out the details of those required amendments in your Application, along with an explanation as to why each change is necessary.

3. **Please explain the methodology (providing supporting analysis) you used to calculate your Final Reserve Balance, in order to ensure this is sufficient to cover all liabilities to beneficiaries if enforcement action is taken.**

- Your response should be no more than 8 pages.
- As part of your response, please explain how your proposed Final Reserve Balance reflects:
 - the risk and exposure associated with your proposed Game portfolio; and

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- the value of the “Licensee Assets” which will be charged to the Trustee as part of the security package given by the License.
 - If you have proposed an alternative form of protection to an amount being included in the Trust Final Reserve Account (e.g. a security bond), please provide full details of this alternative proposal, including an explanation of how this will provide an equivalent (or greater) level of protection when compared with the reserve account mechanism set out in the Short Form Trust Deed.
4. **Please provide your Funds Protection Policies.**
- Your response should be no more than 20 pages.
 - The Funds Protection Policies should provide a joined up, cohesive strategy to protect Participant funds. The Policies should be relevant and appropriate to the Business Plan and proportionate to any risks inherent in it. Where aspects of your Business Plan (such as Games in your proposed portfolio or the portfolio in aggregate) may drive specific or increased risks to Participants, you should include additional protective measures to mitigate such risks.
 - As a minimum, your Funds Protection Policies must show due consideration of the Licensee’s obligations under Condition 16 of the Fourth Licence.
5. **Please detail how you will implement, manage, monitor and adapt your Funds Protection Policies to ensure that the Funds Protection Outcome is met in a changing environment.**
- Your response should be no more than 8 pages.
 - As a minimum, your response must show due consideration of the Licensee’s obligations under Condition 16 of the Fourth Licence.
6. **Please provide details of the proposed reporting which will be provided to each of the Trustee and the Commission, including an explanation of how this will be sufficient to enable the Trustee and the Commission to monitor the Licensee’s compliance with the requirements of the Trust Documents and the Fourth Licence.**
- Your response should be no more than 8 pages.
 - Please provide an explanation of the details to be included in each report, the form of report and how regularly the report will be submitted.
 - Please also explain if and how you propose that the information and updates to be provided by the Licensee to each of the Commission and the Trustee in relation to the Trust Arrangements will change if there is:
 - a Financial Distress Event (as described in the Form of Fourth Licence);
 - a Potential Default Event; or
 - a Default Event.

7. **Please explain the systems and processes the Licensee will implement in order to ensure that it can operationalise the Trust Arrangements.**
- Your response should be no more than 20 pages.
 - Your response should detail the accounting systems, process and policies which the Licensee will implement in order to ensure that it can meet its obligations under the Trust Documents and the Licence, in particular with regard to:
 - the transfer of funds between accounts;
 - the allocation of monies to distinct prize reserves within a bank account;
 - the monitoring of those prize reserves and the mechanism to ensure such reserves are replenished if they fall below the specified threshold; and
 - the ability of the Licensee to obtain a “snapshot” view, at any time, of the balance of each account and of each reserve.
 - If you intend to include EuroMillions within your Game portfolio, your response should detail your approach to the interaction between the 4NL Trust and the EuroMillions Trust.
8. **Please explain how you will ensure that the Trustee (or any receiver appointed by it) is able to perform its functions and discharge obligations to beneficiaries under the 4NL Trust if enforcement action is taken.**
- Your response should be no more than 12 pages.
 - Your response should include details of the Lottery Subcontracts which you expect to be “Critical Access Contracts”, and an explanation of the methodology you have used to identify those contracts.
 - You should provide details of the provisions which will be included in those Critical Access Contracts, in order to ensure that the Trustee (or any receiver appointed by it) can process payments to beneficiaries under the Trust Arrangements, as described in clause 21 of the Short Form Trust Deed. Please explain how you will ensure that the relevant contract counterparties agree to the inclusion of these provisions in the relevant contracts.
 - Please explain how the Licensee will hold Participant Data, and the arrangements it will put in place to ensure that such data can be accessed and used by the Trustee (or a receiver appointed by it) if enforcement action is taken.
9. **Please explain how the Trust Implementation Agreement will be effective as part of your overall proposal for your Transition Business Plan Area.**
- Your response should be no more than 15 pages.
 - You should outline the main principles and milestones that you expect your proposed full form of Trust Implementation Agreement at Phase Two to contain.

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- Your response should include details of the issues which will be included in the Trust Implementation Agreement, along with an explanation of how those issues will be addressed with clear links to your Incoming Transition Plan.

Note: Responses to this question should be aligned to your proposals as part of your Incoming Transition Plan as part of the Transition Business Plan. You will be required to provide a full form of Trust Implementation Agreement for evaluation as part of your Phase Two Application.

10. **Please explain how the Licensee will manage its arrangements with Retailers in a way which fulfils the Funds Protection Outcome.**

- Your response should be no more than 15 pages.
- As part of your response, you should explain how the Licensee will ensure that its arrangements with Retailers will reflect the provisions and requirements of the 4NL Trust.
- Please also explain how the Licensee will work with Retailers at the Start of the Fourth Licence to minimise any impact to Participants and Retailers from the transition between the 3NL Trust and the 4NL Trust.
- As a minimum, your Funds Protection Policy must show due consideration of the Licensee's obligations under Condition 16 of the Fourth Licence.

Please note: You should ensure that all your projected revenues and costs of delivering associated with the proposals submitted in respect of these Required Responses are captured in your Financial Template. In your Supporting Financials and Supporting Narrative you must provide the breakdown of projected revenues and associated costs and how these relate to your proposal. For further guidance, please see Section 23 of the ITA.

You should also ensure all risks and mitigations associated with your response to this question are included in your consolidated Risk Register (details in Section 22.12 of the ITA) and are appropriately categorised to ensure they are evaluated correctly.