



THE FOURTH NATIONAL LOTTERY LICENCE COMPETITION

Transition Guidance Note

Version: ITA Phase 1
26 October 2020

4TH NATIONAL LOTTERY LICENCE COMPETITION: TRANSITION ARRANGEMENTS SUMMARY

This note describes¹ key elements of the process and associated documents for the transfer of the operation of the National Lottery² from the Outgoing Licensee to the Incoming Licensee.³

1. BACKGROUND

- 1.1 The Commission's statutory duties are to exercise its functions in accordance with Directions from the Secretary of State and, subject to those, in the manner it considers most likely to secure that the National Lottery is operated with all due propriety, that participants in the National Lottery are protected and, subject to those objectives, that returns to good causes are maximised.
- 1.2 The Commission has launched the Competition to identify the holder of the Fourth Licence. At the conclusion of the Competition, the Commission will confirm the identity of the Incoming Licensee as the person who will hold the Fourth Licence.
- 1.3 The Commission has published the draft transition documents (Deed of Commitment, Enabling Agreement and Cooperation Agreement) alongside the ITA. Applicants should note the additional information set out in section 19, the process for providing feedback on these documents referred to in sections 5.3.3 and 5.4.3, and the timing and scope of the required responses set out in section 22.10 (Questions 18 to 21) in the ITA.
- 1.4 Once the Incoming Licensee has been identified, that party will have until the expiry of the Third Licence (subject to specific provisions in the Enabling Agreement providing for the possibility of a delay to the Start Date) to establish its operations to run the National Lottery and for control of the National Lottery to be handed over from the Outgoing Licensee to the Incoming Licensee.
- 1.5 In accordance with the Act, the Fourth Licence will be awarded to take effect immediately following the expiry of the Third Licence. Only one Section 5 licence to run the National Lottery may be in place at any time. The Enabling Agreement enables the Incoming Licensee, when selected, to provide a binding commitment to implement its Application and enables the Commission to commit, subject to the Application being implemented and the Commission being satisfied that the Incoming Licensee is a fit and proper person to run the National Lottery, that the Fourth Licence will be granted to the Incoming Licensee. The Cooperation Agreement makes provision for the orderly handover of control of the National Lottery from the Outgoing Licensee to the Incoming Licensee; something in respect of which the Third Licence⁴ places obligations on the Outgoing Licensee.

2. KEY ACTIVITIES, DOCUMENTS AND TIMETABLE

- 2.1 Schedule 2 provides a visual overview of the transition process.
- 2.2 To ensure that the processes of implementing the winning Application and transitioning from the Third Licence to the Fourth Licence work successfully in parallel, a common set of Key Dates (which represent checkpoints and the decision gateways on those processes) is included in both the Enabling Agreement and the Cooperation Agreement. A copy of the

¹ **Important Note: This note is a summary of complex legal documentation. That documentation should be reviewed in detail by any party involved in the process. To the extent there is any conflict between this note and such documentation, Applicants should have regard to the provisions of the legal documentation itself. No legal reliance whatsoever may be placed on this note.**

² Schedule 1 contains a glossary of terms used in this note

³ This reflects the provisions of Condition 18 of the Third Licence and the principle that the Fourth Licence implements a fundamentally different regulatory model than the Third Licence including in relation to the "incentive mechanism" and is equally applicable whether Camelot or another Applicant is successful in the Competition.

⁴ In particular, Condition 18 of the Third Licence

Schedule which applies under each agreement is attached at Appendix 1 to this note for reference.

2.3 The main elements of Transition further described below are:

- (a) the commitments which each Applicant will make, as part of their Application, to implement that Application if successful in the Competition;
- (b) the designation of the person to whom the Fourth Licence is to be awarded as the Incoming Licensee and of a Reserve Applicant (if any);
- (c) implementation of the Incoming Licensee's Application, including in relation to the approval of Games and Ancillary Activities proposed in the Application;
- (d) handover of control of the National Lottery from the Outgoing Licensee to the Incoming Licensee;
- (e) ongoing regulatory processes, including ongoing Fit and Proper Checks and financial and operational assurance with respect to the Incoming Licensee; and
- (f) formal grant, and start, of the Fourth Licence.

2.4 The key documents involved are:

- (a) **Third Licence** – setting out responsibilities of the Outgoing Licensee including with respect to Transition;
- (b) **Fourth Licence** – setting out the responsibilities of the Incoming Licensee from the Start Date;
- (c) **Deed of Commitment** – committing each Applicant to ensure that their Proposed Licensee enters into the Enabling Agreement and adheres to the Cooperation Agreement if that Applicant receives an Award Notification;
- (d) **Enabling Agreement** – setting out the responsibilities of the Incoming Licensee to implement its Application and cooperate with the Outgoing Licensee and the Commission and confirming that, subject to this, they will be formally granted the Fourth Licence; and
- (e) **Cooperation Agreement** – setting out the processes to align the Transition activities of the Outgoing Licensee and the Incoming Licensee.

3. APPLICANTS, PROPOSED LICENSEES AND INCOMING LICENSEE

3.1 The holder of the Fourth Licence is required to be a special purpose entity (SPE). Any Applicant which is not itself the Proposed Licensee, must have formed the SPE which is to be its Proposed Licensee by the end of the Phase Two Response Period (as defined in the ITA), in order to ensure that the Commission is able to award the Fourth Licence to the Proposed Licensee named in the successful Application. The SPE must be established in the UK and copies of evidence of the SPE's registration as a corporate entity must be provided, by the end of the Phase Two Response Period. For further information, please refer to section 5.4.4 and 22.2 of the ITA.

3.2 In this note, the following terms are therefore used to describe the parties involved in an Application:

- (a) **Applicant** – the party which submits that Application;
- (b) **Preferred Applicant** - an Applicant who receives an Award Notification;

- (c) **Proposed Licensee** – in each Application, the SPE which it is proposed would hold the Fourth Licence if the Applicant who submitted that Application were selected as the Preferred Applicant;
- (d) **Incoming Licensee** – the party named as Proposed Licensee in the Application submitted by the Preferred Applicant who will enter into the Enabling Agreement and adhere to the Cooperation Agreement (and therefore who implements the Application); and
- (e) **Fourth Licensee** – the Incoming Licensee once the Fourth Licence Starts.

3.3 Because the Proposed Licensee is the party which would, if an Application were successful, eventually become the Fourth Licensee, the Application (and associated Fit and Proper Checks) primarily relate to the Proposed Licensee and its connected parties (and, once so designated, the Incoming Licensee).

4. **COMMITMENTS TO BE MADE BY ALL APPLICANTS**

4.1 An Application will only be valid if accompanied by an executed Deed of Commitment under which the Applicant will commit that:

- (a) their Application will remain open for the Commission to accept for 12 months;
- (b) if it receives an Award Notification, that Applicant's Proposed Licensee will:
 - (i) provide a Resource Availability Assurance Statement to the Commission (see paragraph 8.3 below for further details); and, having done so,
 - (ii) will execute the Enabling Agreement and the Cooperation Agreement;
- (c) if the Commission gives an Award Notification to another Applicant and notifies an Applicant who has executed the Deed of Commitment that it is the Reserve Applicant, that Applicant will accept that status; and
- (d) if the Applicant who has executed the Deed of Commitment is designated as the Reserve Applicant, the Commission may, at any time until the lapse of the deed, issue an Award Notification to that Applicant in which case they will be required to proceed in accordance with paragraph (b).

4.2 Under the Deed of Commitment, the obligations of the Applicant who executes it will lapse on the earlier of:

- (a) the Commission giving an Award Notification to another Applicant and does not, within 5 Business Days of doing so, designate the Applicant who executes it as Reserve Applicant;
- (b) where the Applicant has been designated Reserve Applicant, the Transition Plans for the Applicant who has received an Award Notification become binding on or after the First Confirmation Date (meaning that a Reserve Applicant will be released from its obligations if another Applicant's implementation successfully proceeds beyond the First Confirmation Date); and
- (c) in any event 12 months after the Deed is executed.

5. **COMMITMENTS TO BE MADE BY THE INCOMING LICENSEE**

5.1 Under the Enabling Agreement, the Incoming Licensee must implement its Application and associated documents, including its Transition Plan and the Cooperation Agreement.

- 5.2 To enable the Commission to assure itself that the Incoming Licensee will be ready to Start on time, the Key Dates Schedule⁵ specifies deadlines by which the Incoming Licensee must do certain things, which include:
- (a) by the Second Initial Checkpoint, providing a board resolution confirming that, to the best of the directors' knowledge and belief, the Incoming Licensee will have legal, commercial and operational arrangements in place to Start by the Start Date⁶;
 - (b) by the First Final Checkpoint, demonstrating to the Commission's satisfaction that the Licensee Contingency Protections have been established⁷;
 - (c) by the Second Final Checkpoint, confirming to the Commission that any approvals from any third parties necessary to proceed are in place and providing a board resolution that the Incoming Licensee will have the legal, commercial and operational arrangements in place to achieve either Fully or Partially Implemented Commencement (see below) by the Start Date⁸. If the Commission concludes that the Incoming Licensee will not be able to achieve Start by the Start Date, it may defer the Start Date; and
 - (d) by the First Readiness Date⁹, providing to the Commission confirmation from the Trustee and the Account Bank that relevant arrangements are in place in respect of the trust arrangements required to be established by the Incoming Licensee.

6. FIT AND PROPER CHECKS

6.1 The Commission:

- (a) cannot grant the Fourth Licence unless it is satisfied that the Incoming Licensee is a fit and proper person to operate the National Lottery¹⁰; and
- (b) must revoke the Fourth Licence if it is satisfied that the Fourth Licensee is not, or never was is a fit and proper person to operate the National Lottery¹¹.

6.2 For that reason, the Commission will, in parallel to the Competition, undertake Fit and Proper Checks on the Proposed Licensee and Persons Needing to be Checked¹² connected with the Proposed Licensee.

6.3 The process of undertaking Fit and Proper Checks will continue:

- (a) throughout the Implementation Period pursuant to the Enabling Agreement¹³; and
- (b) during the Fourth Licence¹⁴.

6.4 In order to ensure that the Commission has the information necessary to make an assessment, on the date of grant of the Fourth Licence, as to whether the Incoming Licensee is a fit and proper person to run the National Lottery:

- (a) on the Second Readiness Date, the Incoming Licensee must provide to the Commission an assurance statement confirming that (having made due enquiry) it

⁵ Schedule 2 of the Enabling Agreement

⁶ Enabling Agreement, Clause 20

⁷ Enabling Agreement, Clause 21

⁸ Enabling Agreement, Clause 22

⁹ Enabling Agreement, Clause 23

¹⁰ The Act, section 5(4) and Enabling Agreement, Clause 2

¹¹ The Act, section 10(1)

¹² Applicants should refer to the "Information for Applicants on Fit and Proper Checks" note for further information

¹³ Enabling Agreement, Clause 9

¹⁴ Fourth Licence, Conditions 5-7

has not identified any information which might be relevant to an assessment of whether a person who is subject to the Commission's Fit and Proper Checks meets the Fit and Proper Requirements and which has not been notified to the Commission¹⁵; and

- (b) on the Completion Date, the Incoming Licensee must provide to the Commission an assurance statement confirming that it is not aware of any material information which might be relevant to an assessment of whether a person who is subject to the Commission's Fit and Proper Checks meets the Fit and Proper Requirements and which has not been notified to the Commission.¹⁶

7. **ANCILLARY ACTIVITIES AND SECTION 6 LICENCES**

7.1 As part of the Competition, Applicants will need to provide details of their proposed portfolios of Games as part of their Application. Applicants may also provide details of proposed Ancillary Activities, where these are material to its Application.

7.2 As described in the ITA¹⁷, the Commission may provide guidance on these proposals during the Competition but will not approve Ancillary Activities or grant Section 6 Licences prior to the Award Notification.

7.3 Each Applicant will be required to identify in its Application the date on which it proposes to launch each Game it has described in its Distribution and Portfolio Strategy submitted as part of its Application¹⁸. Where the Application identifies a Game that the Fourth Licensee proposes to make available to Participants:

- (a) on and from the Start Date, including any Games which are currently operated by the Outgoing Licensee and the Incoming Licensee proposes to continue to operate during the term of the Fourth Licence (a Start Date Committed Game); or
- (b) during the first year of the term of the Fourth Licence (a First Year Committed Game),

the Incoming Licensee must submit applications for Section 6 Licences in respect of each of those Games during the Implementation Period.

7.4 The Enabling Agreement sets out the process by which the Incoming Licensee must seek Section 6 Licences for its proposed Games¹⁹. This includes the process for the Commission, in consultation with the Incoming Licensee, to determine a timetable for the submission of such applications by the Incoming Licensee.

7.5 Similarly, the Enabling Agreement sets out the process by which the Incoming Licensee may seek approval for its proposed Ancillary Activities²⁰ during the Implementation Period.

8. **AVAILABILITY OF RESOURCES OF THE INCOMING LICENSEE**

8.1 As part of the Competition, Applicants will be required to demonstrate that their Proposed Licensee will have sufficient financial and operational resources available to it to operate the National Lottery²¹.

¹⁵ Enabling Agreement, Clause 24

¹⁶ Enabling Agreement, Clause 25

¹⁷ ITA, section 5.3

¹⁸ Applicants should refer to the "Section 6 Guidance Note" for further information

¹⁹ Enabling Agreement Clause 11

²⁰ Enabling Agreement Clause 12

²¹ ITA, sections 8.3 and 22.5

- 8.2 At regular intervals during the Implementation Period, the Incoming Licensee is required to provide further assurance to the Commission that it has access to the resources which are necessary for it to fulfil its obligations. This includes:
- (a) pursuant to the Deed of Commitment (see paragraph 4.1(b) above and paragraph 8.3 below);
 - (b) throughout the Implementation Period pursuant to the Enabling Agreement²²; and
 - (c) at specific Key Dates under the Enabling Agreement (see paragraph 5 above).
- 8.3 The active assurance to be provided in accordance with the terms of the Deed of Commitment and the Enabling Agreement is in the form of a Resource Availability Assurance Statement, which is a statement certified by the board of Directors of the Incoming Licensee confirming that:
- (a) the Incoming Licensee has, and to the best of its knowledge and belief will have, sufficient financial and operational resources to implement its Application;
 - (b) financial covenants and contingency protections specified in the Enabling Agreement submitted with the Application are in place and are complied with.
- 8.4 After Start, the Fourth Licensee has ongoing obligations in relation to financial and operational resilience pursuant to the Fourth Licence²³.

9. FULLY OR PARTIALLY IMPLEMENTED COMMENCEMENT AND IMPLEMENTATION COSTS

- 9.1 The Fourth Licence distinguishes between:
- (a) **Fully Implemented Commencement** – where the Incoming Transition Plan and all of the Incoming Licensee's obligations under the Enabling Agreement are fulfilled to the Commission's satisfaction; and
 - (b) **Partially Implemented Commencement** – where the Incoming Transition Plan and all of the Incoming Licensee's obligations under the Enabling Agreement have not been fulfilled to the Commission's satisfaction but the Commission is still satisfied that it is appropriate to proceed to Start, subject to certain "Outstanding Implementation Steps" needing to be subsequently undertaken by the Fourth Licensee. In this scenario, Fully Implemented Commencement will only occur once those outstanding steps are subsequently achieved.
- 9.2 The Fourth Licence provides for an adjustment to the calculation of the Surplus to enable the Fourth Licensee to recover certain costs incurred in connection with the implementation of its Application and the handover of the National Lottery from the Outgoing Licensee²⁴ in accordance with Schedule 5 of the Fourth Licence²⁵. However, costs incurred by the Incoming Licensee during the Implementation Period will not be recoverable until the Incoming Licensee achieves Fully Implemented Commencement and the Commission has determined that such costs are "Recoverable Implementation Costs"²⁶.
- 9.3 For further information on Recoverable Implementation Costs please see section 19 of the ITA.

²² Enabling Agreement, Clause 17

²³ Fourth Licence, Condition 18

²⁴ The calculation of Recoverable Implementation Costs is set out in Clause 28 of the Enabling Agreement

²⁵ Fourth Licence, Schedule 5, Part B, Paragraph 9

²⁶ Fourth Licence, Schedule 5, Part B, Paragraph 9

10. TERMINATION OF THE ENABLING AGREEMENT OR DELAYING START

10.1 The Commission may terminate the Enabling Agreement²⁷ if:

- (a) the Incoming Licensee is in persistent and material breach of that Agreement and does not remedy the breach in accordance with the Commission's instructions; or
- (b) certain other circumstances arise including insolvency of the Incoming Licensee or the Commission determining (in accordance with its duties under the Act) that the Incoming Licensee is not (or never was) a fit and proper person to run the National Lottery; or
- (c) the Fourth Licence does not Start within 12 months after the expiry of the Third Licence (see paragraph 5.2(b) and 10.2 for circumstances in which Start may be delayed).

10.2 In certain circumstances where the Commission is not satisfied that the Incoming Licensee has complied with the requirements of the Enabling Agreement and is ready to Start operation of the National Lottery in a manner which will ensure no disruption or deterioration in the operation of the National Lottery, the Commission may delay Start²⁸.

11. COOPERATION BETWEEN THE OUTGOING AND INCOMING LICENSEES

11.1 The Third Licence includes specific conditions requiring the Outgoing Licensee to cooperate with the Commission and the Incoming Licensee to achieve an orderly handover of control of the National Lottery and the transfer of certain associated assets, contracts etc²⁹.

11.2 The Enabling Agreement places obligations on the Incoming Licensee to cooperate with the Outgoing Licensee and the Commission in relation to the same³⁰.

11.3 The Cooperation Agreement operates to align the obligations on the Outgoing and Incoming Licensee by:

- (a) providing a period (prior to the First Confirmation Date) for the Outgoing and Incoming Licensees to update and align their Transition Plans, select the items to be transferred, agree the basis of transfer and certain other matters (and for the Commission to intervene if they fail to agree);
- (b) providing a mechanism for the Outgoing Licensee and the Incoming Licensee to agree (and for the Commission to intervene if they fail to agree) the mechanisms to give effect to transfer; and
- (c) for the Outgoing Licensee and the Incoming Licensee to give effect to the transfers and other matters so determined.

Schedule 3 provides detail as to the operation of this mechanism.

11.4 One mechanism to ensure the implementation of the Incoming Licensee's Application, and also alignment between the transition activities of the Outgoing Licensee and the Incoming Licensee, is the production and ongoing maintenance of Transition Plans. The Third Licence requires the Outgoing Licensee to produce a transition plan. Applicants will be

²⁷ Enabling Agreement, Clause 29

²⁸ Enabling Agreement, Clause 26.6

²⁹ Third Licence, Condition 18

³⁰ Enabling Agreement, Clause 3

required to provide an Incoming Transition Plan as part of their Application, and the Enabling Agreement will require the Incoming Licensee to update and implement this.

- 11.5 Costs for which either the Outgoing Licensee or the Incoming Licensee is not otherwise responsible (under the Third Licence, the Enabling Agreement or the Fourth Licence, as applicable) will be apportioned equitably³¹ between them.

12. GOVERNANCE

- 12.1 The Enabling Agreement provides for an Incoming Transition Governance Board, which will be made up of representatives appointed by each of the Incoming Licensee and the Commission. The Incoming Transition Governance Board will monitor and discuss any issues which arise in respect of the implementation of the Incoming Licensee's Application³².
- 12.2 The Cooperation Agreement provides for a Joint Transition Governance Board, which will be made up of representatives appointed by each of the Outgoing Licensee, the Incoming Licensee and the Commission. The Joint Transition Governance Board will monitor and discuss any issues which arise in respect of the cooperation between the Incoming Licensee and the Outgoing Licensee, as further described in the Cooperation Agreement³³.
- 12.3 The Commission intends to provide indicative terms of reference for each of the Incoming Transition Governance Board and the Joint Transition Governance Board by the end of Phase One of the Competition.
- 12.4 Each of the Incoming Transition Governance Board and the Joint Transition Governance Board may establish Operational Committees to oversee certain specific operational aspects of implementation or cooperation, as the case may be.
- 12.5 In the case of each of the Incoming Transition Governance Board and the Joint Transition Governance Board, where a matter cannot be agreed between the members of the Board, the representatives appointed by the Commission shall determine the relevant matter.

13. DISPUTES

- 13.1 Where there is a dispute between the Incoming Licensee and/or the Outgoing Licensee and/or the Commission (other than where such a dispute is in relation to costs), the Cooperation Agreement provides for an "escalation process", with a view to that dispute being resolved between the parties³⁴. This includes (on the Commission's election) the parties participating in a non-binding mediation process.
- 13.2 Where the matter cannot be resolved between the parties, the Commission may make a determination on the relevant matter³⁵. This may involve the Commission taking:
- (a) enforcement action against the Outgoing Licensee if, having followed the appropriate process, the Commission has determined that there has been a breach of the Third Licence; or
 - (b) action against the Incoming Licensee if the Commission has determined that there has been a breach of the Enabling Agreement.

³¹ Third Licence, Schedule 12 Part 3, Cooperation Agreement, Clause 26

³² Enabling Agreement, Clause 18 and 19

³³ Cooperation Agreement, Clause 20

³⁴ Cooperation Agreement, clause 27.2

³⁵ Cooperation Agreement, clause 27.2(d)

The Commission may also take other action as part of such determination, for example, by extending deadlines under the Enabling Agreement for the benefit of the Incoming Licensee.

- 13.3 That determination of the Commission will be binding on the parties, but is without prejudice to any rights of the Outgoing Licensee or the Incoming Licensee (as the case may be) to challenge such a decision under section 31 of the Senior Courts Act 1981 or section 7 of the Human Rights Act 1998³⁶.
- 13.4 Where there is a dispute between the Outgoing Licensee and the Incoming Licensee in relation to costs, that matter shall be referred to an expert for determination in accordance with the procedure set out in Schedule 5 of the Cooperation Agreement.

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³⁶ Cooperation Agreement, clause 27.3

Schedule 1

Glossary

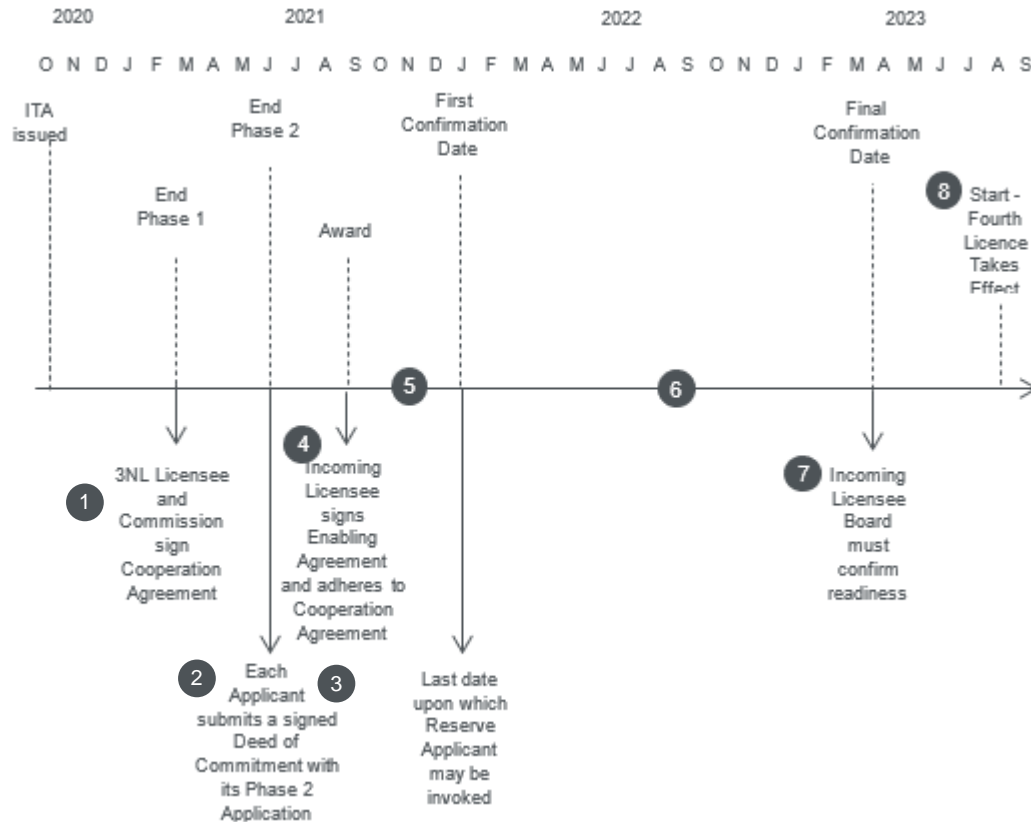
Act	the National Lottery etc Act 1993 (as updated from time to time)
Account Bank	the person identified as the “Account Bank” in the Application submitted in respect of the Incoming Licensee
Ancillary Activity	any activity undertaken by the Fourth Licensee other than the operation of the National Lottery, as described in Condition 14.1 of the Form of Fourth Licence
Application	an Application for the Fourth Licence, with the person submitting such Application being the “Applicant”
Asset Survey	means the final asset survey of Licensee Assets (as defined in the Third Licence) described in Condition 18.18 of the Third Licence
Award	a decision by the Commission, following the standstill period, to award the Fourth Licence
Commission	the Gambling Commission
Competition	the competition for the Fourth Licence organised by the Commission
First Confirmation Date	the date which is 90 Business Days after the date of the Enabling Agreement
Fit and Proper Checks	checks by the Commission or, in certain cases, (during the term of the Fourth Licence) by the Fourth Licensee to confirm that a particular person meets the Fit and Proper Requirements
Fit and Proper Requirements	has the meaning given to that term in Condition 5.1 of the Form of Fourth Licence
Form of Fourth Licence	the template form of Fourth Licence released by the Commission with the ITA
Fourth Licence	the Licence to run the National Lottery to take effect following the expiry of the Third Licence
Game	any constituent lottery or game of the National Lottery authorised by a Section 6 Licence
Implementation Period³⁷	the period from (and including) the date of the Enabling Agreement to (but excluding) the Start Date
Incoming Licensee	the person to whom the Commission decides to award the Fourth Licence

³⁷ In theory it might be possible for there to be a gap between the expiry of the Third Licence and the start of the Fourth Licence were issues to arise which resulted in delays to the latter

Incoming Transition Plan	the incoming transition plan to be implemented by the Incoming Licensee, which is agreed in accordance with the Cooperation Agreement, and as varied from time to time in accordance with the Cooperation Agreement and the Enabling Agreement
ITA	the Invitation to Apply for the Fourth Licence issued by the Commission as part of the Competition
Licensee Contingency Protections	the contingency protections proposed by the Incoming Licensee in its Application, to be included in clause 18.2 of the Fourth Licence
National Lottery	the UK National Lottery as defined in section 1 of the Act
Outgoing Licensee	Camelot UK Lotteries Limited, the holder of the Third Licence
Resource Availability Assurance Statement	a form of confirmation from the board of directors of the Incoming Licensee regarding the financial and operational position of the Incoming Licensee, as described in clause 17.5 of the Enabling Agreement
Section 6 Licence	a licence issued under Section 6 of the Act to authorise the promotion of one or more Games
Start	the coming into effect of the Fourth Licence
Start Date	the date on which the Fourth Licence Starts
Third Licence	the Licence to run the National Lottery currently in force
Transition	the handover of the National Lottery from the Outgoing Licensee to the Incoming Licensee, the implementation by the Incoming Licensee of its Application and Incoming Transition Plan, including the elements described in paragraph 2.3 of this note
Transition Plans	each of the Incoming Transition Plan and the transition plan to be adopted and implemented by the Outgoing Licensee in accordance with the Third Licence and the Cooperation Agreement
Trustee	the person identified as the "Trustee" in the Application submitted in respect of the Incoming Licensee
VDR	the virtual data room operated by the Commission through which information in relation to the National Lottery and the Competition is made available to Applicants

Schedule 2

Indicative Timeline



1. The Outgoing Licensee will execute the Cooperation Agreement with the Commission in the early part of Phase 2 of the Competition.
2. Each Phase Two Application will include documents which will be incorporated in the Fourth Licence regime if the Application is effective.
3. A Phase Two Application will only be valid if accompanied by an executed Deed of Commitment.
4. On Award the Incoming Licensee will execute the Enabling Agreement and become a party to the Cooperation Agreement.
5. From Award to the First Confirmation Date the Outgoing Licensee and Incoming Licensee must align on the transition process.
6. From First Confirmation Date to the Final Confirmation Date the Incoming Licensee must progress implementation and, with the Outgoing Licensee, prepare for transition.
7. At Final Confirmation Date, the Incoming Licensee's Board must assure the Commission that implementation of its Application is on track.
8. From Start the Incoming Licensee must run the National Lottery in accordance with the Fourth Licence.

Schedule 3

Cooperation and Transfer Arrangements

Transfer and receipt obligations

A key component of the handover of control of the National Lottery from the Outgoing Licensee to the Incoming Licensee is the transfer of relevant items (including assets and rights, and in some instances, obligations and liabilities) from the Outgoing Licensee to the Incoming Licensee.

In addition to general obligations of cooperation with each other and with the Commission, the Third Licence places obligations on the Outgoing Licensee to transfer certain of these items, and the Enabling Agreement places obligations on the Incoming Licensee in relation to the receipt of those items.

The Cooperation Agreement provides a framework within which the Outgoing Licensee and the Incoming Licensee will cooperate in order to:

- identify the items which are to transfer;
- agree arrangements to manage the practical and operational aspects of the transfer; and
- implement the legal steps (including the execution of the appropriate instruments of transfer) necessary to transfer the relevant items.

Selection of assets

The Third Licence provides for the Incoming Licensee to select certain Licensee Assets which are to be transferred from the Outgoing Licensee to the Incoming Licensee³⁸ on the Start Date of the Fourth Licence. The Cooperation Agreement provides a process for those to be identified.

As part of this, pursuant to the Third Licence,³⁹ the Commission may require the Outgoing Licensee to arrange an Asset Survey. The Commission considers that it will facilitate the process of Transition for the Asset Survey to be both:

- as targeted as possible, to ensure that the time and cost associated with undertaking the Asset Survey is proportionate to the scope of the items which will be transferred by the Outgoing Licensee; and
- useful for the Incoming Licensee, where the results of the Asset Survey might help it to determine which items it should require are transferred to it.

To achieve this, the Cooperation Agreement provides that:

- the Outgoing Licensee will confirm, by the First Information Date, the list of items which the Incoming Licensee could require are transferred to it⁴⁰;

³⁸ Third Licence Conditions 18.20 and 18.24

³⁹ Third Licence Condition 18.18 – the independent final asset survey will assess whether Licensee Assets have been and are being maintained by the Outgoing Licensee in accordance with its obligations under Condition 5.9 of the Third Licence

⁴⁰ Cooperation Agreement, Clause 6.2 provides that the list should be prepared by reference to the First Reference Date, which is 30 Business Days before the Incoming Licensee executes the Deed of Adherence to the Cooperation Agreement

- based on that information, by the First Scope Date, the Incoming Licensee will confirm its Initial List⁴¹ of items it intends the Outgoing Licensee to transfer; and
- based on that Initial List, the Outgoing Licensee will (having obtained the necessary approvals from the Commission⁴²) arrange for the Asset Survey to be completed in respect of the items included in the Initial List.

Once it has been completed, the Asset Survey will be provided to the Commission, and we confirm our intention is to provide a copy of this to the Incoming Licensee⁴³.

There are certain limited circumstances in which the Incoming Licensee may make changes to its Initial List⁴⁴, including based on the results of the completed Asset Survey.

The Cooperation Agreement provides for a similar process to take place closer to the Start Date,⁴⁵ by which the information provided by the Outgoing Licensee will be updated and for the “Final List” of items to transfer⁴⁶ to be provided by the Incoming Licensee.

Based on the Final List, the Commission may require the Outgoing Licensee to undertake rectification or maintenance work to ensure that the assets included on the Final List comply with the standards required by the Third Licence⁴⁷.

Categories of assets

The Third Licence identifies a number of categories of Licensee Assets⁴⁸. In relation to certain of those categories, it provides for specific methods or steps which need to be taken in connection with the transfer of those items. This reflects the fact that there are likely to be different legal and operational considerations associated with the transfer of different types of item.

These “Categories” are described in Schedule 3 of the Cooperation Agreement, and various provisions of the Cooperation Agreement are structured around these Categories, to ensure that the nuances associated with the transfer of each category of item are identified and considered as part of the cooperation exercise.

Required Information

As part of the Competition, information in relation to the National Lottery operation (including the various assets which are owned by the Outgoing Licensee and used in the operation of the National Lottery) will be made available to Applicants via the VDR.

However, the Commission appreciates that:

- given the length of time between the Competition and the Start Date, information which was provided to Applicants during the Competition may need to be updated during the Implementation Period;

⁴¹ Cooperation Agreement, Clause 6.3; The list of Items to Potentially Transfer which are identified by the Incoming Licensee as being items which it intends to request to be Transferring Items (see definitions in Cooperation Agreement)

⁴² Third Licence Condition 18.19(a) and Cooperation Agreement, clauses 6.4 to 6.6

⁴³ Cooperation Agreement, Clause 6.6 of the CA. The Commission is seeking feedback from Applicants on the proposed timing of the Asset Survey as part of Phase One Applications.

⁴⁴ Cooperation Agreement, Clause 6.9

⁴⁵ No later than the Final Information Date (clause 6.7 of the Cooperation Agreement)

⁴⁶ Cooperation Agreement, Clause 6.7 to 6.9

⁴⁷ Cooperation Agreement, Clause 6.10, Condition 18.19 of the Third Licence

⁴⁸ Third Licence, Schedule 1

- certain information is particularly sensitive and so it would not be appropriate to disclose it until the Incoming Licensee has signed the Enabling Agreement and executed a Deed of Adherence to the Cooperation Agreement; and
- there may be detailed information in relation to certain items which are not required to be disclosed to Applicants as part of the Competition, but which will need to be provided to the Incoming Licensee in order to ensure that there is as little risk of disruption as possible to the National Lottery when it is handed over at the Start of the Fourth Licence.

As a consequence, the Cooperation Agreement sets out, for each Category, a description of the “Required Information” to be provided by the Outgoing Licensee to the Incoming Licensee, at certain points prior to the Start Date, to ensure that each of them has the information they need to prepare for, and implement, an orderly handover of the National Lottery.

Instruments of Transfer

In order to implement the legal transfer of the relevant assets:

- in relation to certain Categories including, for example, Licensee Subcontracts or Lottery Databases, the Third Licence requires that items within those Categories are transferred on substantially the same terms as the deeds of transfer or assignment set out in the Third Licence⁴⁹; and
- in relation to other Categories including, for example, Property Interests, the Third Licence sets out certain terms which must be included in the form of transfer document entered into between the Outgoing Licensee and the Incoming Licensee if items within those Categories are transferred, but otherwise the transfer will be on such terms as the Commission may direct⁵⁰.

In respect of each Category of items, the Cooperation Agreement also sets out⁵¹ certain corresponding actions to be taken by each of the Outgoing Licensee and the Incoming Licensee in order to implement the legal mechanics of the transfer of items (by the Outgoing Licensee) and the receipt of those items (by the Incoming Licensee), including the execution of the transfer documentation described above. These are described in the Cooperation Agreement (and, for the Incoming Licensee, in the Enabling Agreement) as “Transfer Mechanics” and “Receipt Mechanics”.

Operational and practical aspects of transfer

In order to ensure the continuity and orderly handover of control of the National Lottery, it will be crucial that the various practical and operational aspects of the transfer of the National Lottery operation (including the operation of any asset) are properly understood, and that there is alignment between the Outgoing Licensee and the Incoming Licensee as to how this can be achieved, in order to minimise any disruption to the National Lottery.

The Cooperation Agreement therefore provides a structure for this to be worked through, and planned for, by requiring that the Outgoing Licensee and the Incoming Licensee agree a Transfer Plan, which will set out the operational actions which need to be undertaken by each of them in order to implement the Transfer Mechanics and the Receipt Mechanics in a way which ensures the relevant items are transferred efficiently and without disruption to the National Lottery.

⁴⁹ Third Licence Conditions 18.16, 18.23 and 21.14, and Cooperation Agreement Appendix 3

⁵⁰ Third Licence Condition 18.27(a) and (b)

⁵¹ Cooperation Agreement, Appendix 2

Schedule 4 of the Cooperation Agreement sets out a non-exhaustive list of these operational actions for each Category.

Continuing Obligations

In connection with the handover of the National Lottery to the Incoming Licensee, there may also be certain “Continuing Obligations” which arise, or fail to be discharged after the Start Date (including, for example, in respect of prize payment arrangements, the conduct of ongoing disputes or the discharge of obligations to third parties).

The Third Licence contains certain obligations on the Third Licensee in this regard⁵², in particular in connection with the transfer of conduct to the Incoming Licensee of any ongoing disputes (including the indemnification of the Incoming Licensee and the provision of security if required by the Commission)⁵³.

The Cooperation Agreement⁵⁴ provides a framework within which the Incoming Licensee and the Outgoing Licensee will cooperate to identify such obligations and, where the Commission directs, to propose and put in place arrangements for the orderly discharge of those obligations. To a large extent, the process of identifying the relevant obligations, the provision of information in relation to those obligations and the process of agreement between the Incoming Licensee and the Outgoing Licensee in relation to the practical and operational aspects of the discharge of those obligations mirrors the process described above in relation to the transfer of items from the Outgoing Licensee to the Incoming Licensee on the Start Date.

Transition Assistance Services

The Third Licence envisages the Outgoing Licensee providing certain “transition assistance services” to the Incoming Licensee to ensure a successful transfer of the National Lottery, with no or minimal disruption or deterioration to service delivery quality to the Commission or members of the public⁵⁵.

As with the transferring items and arrangements in respect of continuing obligations described above, the Cooperation Agreement⁵⁶ provides a framework within which the Outgoing Licensee and the Incoming Licensee will agree the scope of, and plans to implement, those transition assistance services.

⁵² Third Licence Condition 18.31 and 18.32

⁵³ Third Licence Condition 18.3 – 18.36

⁵⁴ Cooperation Agreement, clause 7

⁵⁵ Third Licence Condition 18.13(c) and 18.14(c) and (d)

⁵⁶ Cooperation Agreement, clause 9

Appendix 1

Key Dates

"**Cooperation Request**" means a request made for a Cooperation Direction accordance with the terms of the Cooperation Agreement.

"**EA**" means the Enabling Agreement

"**IL**" means Incoming Licensee

"**GC**" means the Commission

"**OL**" means Outgoing Licensee

Capitalised terms used in this Appendix 1 shall have the meaning given to that term in the Enabling Agreement or the Cooperation Agreement (as applicable).

1. Key Date	2. When it Occurs	3. What Occurs on that Date				
		Transition Plan Activities	Transfer Activities	Transition Assistance Services Activities	Other Cooperation Activities	Enabling Agreement Readiness
First Reference Date: [30 Business Days] prior to the Adherence Date						
First Information Date	10 Business Days after date of EA/Adherence Date	<ul style="list-style-type: none"> Proposed Initial Transition Plans exchanged 	<ul style="list-style-type: none"> OL provides details of Items to Potentially Transfer (by reference to the facts, matters and circumstances in existence as at the First Reference Date) Each of IL and OL provide a list of the obligations they consider should be Continuing Obligations 	<ul style="list-style-type: none"> Each of OL and IL provide details of the Transition Assistance Services which might be reasonably required 	<ul style="list-style-type: none"> Each of OL and IL provide Cooperation Requests to the Commission 	<ul style="list-style-type: none"> Incoming Licensee provides to the Commission a chart setting out its legal and beneficial ownership, organisation and management Incoming Licensee provides to the Commission an executed copy of the Approved Form Trust Implementation Agreement

1. Key Date	2. When it Occurs	3. What Occurs on that Date				
		Transition Plan Activities	Transfer Activities	Transition Assistance Services Activities	Other Cooperation Activities	Enabling Agreement Readiness
First Initial Checkpoint	45 Business Days after date of EA/Adherence Date	n/a	<ul style="list-style-type: none"> GC to provide Statement of Continuing Obligations 	<ul style="list-style-type: none"> Deadline for OL and IL to agree Initial Transition Assistance Services Scope 	n/a	<ul style="list-style-type: none"> IL provides GC with full details of all Critical Function Employees (who are not members of Transferring Licensee Staff) or members of Transition Staff who have not already been confirmed as fit and proper by the GC GC proposes initial CG S6 Application Timetable GC provides initial Ancillary Activity Timetable IL provides to the GC information in respect of Lottery Subcontracts in order that GC can identify Designated Lottery Subcontracts
First Scope Date	60 Business Days after date of EA/Adherence Date	n/a	<ul style="list-style-type: none"> Initial List provided by IL 	<ul style="list-style-type: none"> GC approves or imposes Initial Transition Assistance Services Scope 	<ul style="list-style-type: none"> GC provides proposals for Cooperation Directions for review by Joint Transition Governance Board 	<ul style="list-style-type: none"> Following consultation with IL, GC confirms CG S6 Application Timetable and Ancillary Activity Timetable
Second Initial Checkpoint	75 Business Days after date of EA/Adherence Date	<ul style="list-style-type: none"> Deadline for OL and IL to agree Initial Transition Plans (including Joint Action Plan) 	<ul style="list-style-type: none"> OL to provide proposed scope of Asset Survey and proposed identity and terms of engagement of Independent Surveyor Deadline for OL and IL to agree Initial Continuing Obligations Plan Deadline for OL and IL to agree Initial Transfer Plan 	<ul style="list-style-type: none"> Deadline for OL and IL to agree Initial Statement of Transition Assistance Services 	n/a	<ul style="list-style-type: none"> IL confirms to GC and OL which members of Transferring Licensee Staff it intends will be Lottery Supervisors or Critical Function Employees for the purposes of Fit and Proper Checks IL provides proposed Required Standard Terms IL provides board resolution in accordance with clause 19 of the EA

1. Key Date	2. When it Occurs	3. What Occurs on that Date				
		Transition Plan Activities	Transfer Activities	Transition Assistance Services Activities	Other Cooperation Activities	Enabling Agreement Readiness
First Confirmation Date	90 Business Days after date of EA/Adherence Date	<ul style="list-style-type: none"> GC approves or imposes Initial Transition Plans (including Joint Action Plan) 	<ul style="list-style-type: none"> GC confirms scope of Asset Survey GC approves or imposes Initial Continuing Obligations Plan GC approves or imposes Initial Transfer Plan 	<ul style="list-style-type: none"> GC approves or imposes Initial Statement of Transition Assistance Services 	<ul style="list-style-type: none"> GC may issue Cooperation Directions 	<ul style="list-style-type: none"> [5 Business Days prior to this date, IL must provide a Resource Availability Assurance Statement] GC notifies IL of any amendments to be made to Proposed Required Standard Terms GC notifies IL of any Lottery Subcontracts, or categories of Lottery Subcontract, which are Designated Lottery Subcontracts

1. Key Date	2. When it Occurs	3. What Occurs on that Date				
		Transition Plan Activities	Transfer Activities	Transition Assistance Services Activities	Other Cooperation Activities	Enabling Agreement Readiness
Ongoing (Subject to Governance Process)	From First Confirmation Date to Final Information Date	<ul style="list-style-type: none"> • OL and IL must provide any information potentially relevant to updating Transition Plans, which then go through the Change Control Process • OL and IL must cooperate with view to updating Transition Plans (including Joint Action Plan) 	<ul style="list-style-type: none"> • Results of Asset Survey to be provided within 60 Business Days from First Confirmation Date • OL must provide any update to Initial List/Required Information • Initial List can be updated by the IL following results of Asset Survey • IL can identify any missing or incorrect items or actions • OL and IL implement and regularly update Initial Continuing Obligations Plan • OL and IL regularly update and prepare for the implementation of the Initial Transfer Plan 	<ul style="list-style-type: none"> • OL and IL must provide any information potentially relevant to updating the Initial Statement of Transition Assistance Services which then go through the Change Control Process 	<ul style="list-style-type: none"> • OL and IL can make Cooperation Requests as a Change Proposal • GC may impose changes to, or additional, Cooperation Directions as required 	<ul style="list-style-type: none"> • IL notifies GC of any information which may be relevant to an assessment of whether the Trustee meets the Trustee Requirements and the Account Bank meets the Account Bank Requirements • IL keeps GC updated as to any newly identified Lottery Beneficiaries, Lottery Supervisors or Critical Function Employees, any additional members of Transition Staff, or any changes to information in relation to those categories of people, for the purposes of Fit and Proper Checks • IL identifies any Lottery Subcontracts which it proposes to categorise as Minor Lottery Subcontracts for the Commission to confirm such status • IL provides to the GC information in respect of Lottery Subcontracts in order that GC can identify Designated Lottery Subcontracts • IL informs GC of any changes which are required to be made to the Approved Form Documents or any matter or document listed in Schedule 4 • At least once every six months, the Incoming Licensee provides to the Commission a chart setting out its legal and beneficial ownership, organisation and management

1. Key Date	2. When it Occurs	3. What Occurs on that Date				
		Transition Plan Activities	Transfer Activities	Transition Assistance Services Activities	Other Cooperation Activities	Enabling Agreement Readiness
Second Reference Date: [30 Business Days] prior to the Final Information Date						
Final Information Date	60 Business Days before FCD	<ul style="list-style-type: none"> Proposed Final Transition Plans exchanged 	<ul style="list-style-type: none"> OL provides updated details of Items to Potentially Transfer (by reference to the facts, matters and circumstances in existence as at the Second Reference Date) 	<ul style="list-style-type: none"> Each of OL and IL propose any amendments to the Initial Statement of Transition Assistance Services 	n/a	<ul style="list-style-type: none"> Copies of all documents, and a description of all matters in Part A and Part B of Schedule 4 to be provided to the Commission for approval
First Final Checkpoint	45 Business Days before FCD	n/a	n/a	n/a	n/a	<ul style="list-style-type: none"> IL must demonstrate that the Licence Contingency Protections have been established IL to provide details of Estimated Annual Payment and Weekly Payment Schedule for Licence Year 1 It is intended that S6 approval process for Start Date Committed Games concludes by this date in accordance with timetables It is intended that approval process for Application Ancillary Activities concludes by this date in accordance with the Ancillary Activity Timetable Co-Branding Applications in respect of any proposed use or association of the National Lottery Brand with any other brand on and from the Start Date must be submitted on or before this date
Last Scope Date	30 Business Days before FCD	n/a	<ul style="list-style-type: none"> IL provides Final List GC notifies OL and IL of any new Continuing Obligations 	n/a	n/a	n/a

1. Key Date	2. When it Occurs	3. What Occurs on that Date				
		Transition Plan Activities	Transfer Activities	Transition Assistance Services Activities	Other Cooperation Activities	Enabling Agreement Readiness
Second Final Checkpoint	15 Business Days before FCD	<ul style="list-style-type: none"> Deadline for OL and IL to agree Final Transition Plans (including any changes to Joint Action Plan) 	<ul style="list-style-type: none"> Deadline for OL and IL to agree Final Continuing Obligations Plan Deadline for OL and IL to agree Final Transfer Plan 	<ul style="list-style-type: none"> Deadline for OL and IL to agree Final Statement of Transition Assistance Services 	n/a	<ul style="list-style-type: none"> IL confirms that all Required Third Party Approvals have been obtained IL board determines whether it is ready to Start on and from the Start Date and notifies GC If Commission concludes that the IL will not be able to Start on the Start Date, it may defer the Start Date
Final Confirmation Date (FCD)	120 days before Expiry Date	<ul style="list-style-type: none"> GC approves or imposes Final Transition Plans (including any changes to Joint Action Plan) 	<ul style="list-style-type: none"> GC approves or imposes Final Continuing Obligations Plan GC approves or imposes Final Transfer Plan 	<ul style="list-style-type: none"> GC approves or imposes Final Statement of Transition Assistance Services 	n/a	<ul style="list-style-type: none"> [5 Business Days prior to this date, IL must provide a Resource Availability Assurance Statement]

1. Key Date	2. When it Occurs	3. What Occurs on that Date				Enabling Agreement Readiness
		Transition Plan Activities	Transfer Activities	Transition Assistance Services Activities	Other Cooperation Activities	
First Readiness Date	30 Business Days before Expiry Date	n/a	n/a	n/a	n/a	<ul style="list-style-type: none"> • Date by which the IL must obtain confirmation from the Commission that each of the documents listed in Part A and Part B of Schedule 4 is in the Approved Form • IL board confirms to the Commission that all policies, procedures etc. in Part C of Schedule 4 is in place • IL provides details of internal audit work to be completed in Licence Year 1 • IL provides written confirmation from Trustee in relation to establishment of Approved Form Trust Arrangements etc. • IL provides written confirmation from the Account Bank confirming that the bank accounts of the IL and the Trustee have been established • IL provides an up to date chart setting out its legal and beneficial ownership, organisation and management

Second Readiness Date	20 Business Days before Expiry Date	n/a	n/a	n/a	n/a	<ul style="list-style-type: none"> • GC provides details of any Lottery Beneficiary, Lottery Supervisor or Critical Function Employee who has been identified but where a Fit and Proper check has not been completed • Each Approved Form Document has been adopted or executed and is in effect or will come into effect on the Start Date • All Lottery Subcontracts which are required to be in place at the Start have been executed by the parties and is in effect or will come into effect on the Start Date • All Designated Lottery Subcontracts which are required to be in place at the Start Date have been notified to the Commission and executed by the parties and is in effect or will come into effect on the Start Date • Core Lottery IP owned by the IL is registered in the name of the Commission • IL Board provides evidence to the Commission to demonstrate that the IL (a) has implemented the Incoming Transition Plan and is ready to Start from the Start Date, or (b) has complied in all material respects with its obligations under the EA but has not fulfilled all of the requirements • Date by which IL must be registered for Lottery Duty • IL provides an assurance statement confirming they have not identified any information about any Lottery Beneficiary, Lottery Supervisor or Critical Function Employee which might
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1. Key Date	2. When it Occurs	3. What Occurs on that Date				
		Transition Plan Activities	Transfer Activities	Transition Assistance Services Activities	Other Cooperation Activities	Enabling Agreement Readiness
						be relevant to an assessment of whether that person is Fit and Proper which has not been notified to the Commission
Final Readiness Date	10 Business Days before Expiry Date	n/a	n/a	n/a	n/a	<ul style="list-style-type: none"> GC confirms whether Start can take place on the Start Date and if so, whether there will be Fully Implemented Commencement or Partially Implemented Commencement Outstanding Implementation Steps (if any) notified to IL by GC
Completion Date	Date of grant of New Licence	n/a				<ul style="list-style-type: none"> IL provides an assurance statement confirming that there is no material information about any Lottery Beneficiary, Lottery Supervisor or Critical Function Employee which might be relevant to an assessment of whether that person is Fit and Proper which has not been notified to the Commission IL provides a copy of a resolution of its Directors confirming the equity and debt profile of the IL and that the IL can enter into the New Licence IL provides confirmation from the Trustee that the Final Reserve Amount has been paid and the Security Documents have been executed