

# Regulating the National Lottery

## The Third National Lottery Licence

July 2021

# Section 5

## **The Third Licence**

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## 1. Grant of Licence

- 1.1 The Commission in exercise of the powers conferred on it by section 5 of the National Lottery Act hereby grants the Licensee this Licence subject to the terms and conditions attached hereto, to run the National Lottery and the Licensee agrees to run the National Lottery on the terms and conditions of the Licence.
- 1.2 The Licence shall have effect from 1 February 2009 and (unless extended, suspended or revoked pursuant to the terms of the National Lottery Act and/or this Licence (as the case may be)) shall have effect until 31 July 2023<sup>12</sup>.
- 1.3 Pursuant to section 8(3)(b) of the National Lottery Act, and subject to this Condition 1, the following Conditions and Schedules may only be varied with the consent of the Licensee:
- (a) Conditions 1, 3, 5.1, 5.9, 5.22 – 5.25, 11, 11A, 14.1, 15.15 (except 15.15(f)), 15.18(c) and (d), 15.20, 16, 18.1, 18.2 (except (a) – (c)), 18.3, 18.5, 18.6, 18.7-18.9, 18.11, 18.12, 18.15 – 18.19, 18.21 – 18.23, 18.25, 18.27, 18.28, 18.30 – 18.37, 23, 25, 27 – 29 and Schedules 2, 5, Schedule 8 Parts 2 and 3, Schedule 10 Parts 1 and 3, Schedule 12 Part 3 and Schedule 15 Part 1;<sup>3</sup>
  - (b) Schedule 1 and Schedule 8 Part 1 provided always that nothing in this Condition 1.3 shall prevent the Commission from varying Schedule 1 or Schedule 8 Part 1 where that variation arises as a result of:
    - (i) a permitted variation by the Commission to another Condition or Schedule; or
    - (ii) the grant of a licence under section 6 of the National Lottery Act;
  - (c) Conditions 15.12, 15.15A, 15.16, 15.17, 15.18(a) and (b) and 21.15 but only in respect of any of the following levels of endeavour imposed by those Conditions on the Licensee:
    - (i) a best endeavours obligation;
    - (ii) an all reasonable endeavours obligation; or
    - (iii) a reasonable endeavours obligation,and, in respect of Conditions 15.15A and 21.15 in respect of the exclusion provided for in respect of gaming software or any generally available business application software;
  - (d) Condition 18.24, except that nothing in this Condition 1.3 shall prevent the Commission from varying the date on which the Successor Licensee takes possession of the Transferring Assets, provided that such date is no earlier than the date of the expiry or revocation of the Licence; and
  - (e) Condition 21.13(g) but only in respect of the exclusion provided for in respect of gaming software or any generally available business application software.
- 1.4 If the Commission varies any of Conditions 18.4, 18.10, 18.13 or 18.14 and as a direct result of that variation the Licensee incurs costs or expenses over and above those that it would have incurred but for the variation then to the extent that such costs are:
- (a) reasonably and properly incurred; and
  - (b) reasonably evidenced in writing by the Licensee on an open book basis, such evidence and further related information being provided to the Commission by the Licensee as may be requested,

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<sup>1</sup> Licence varied by consent on 5 March 2012

<sup>2</sup> Licence varied by consent with effect from 31 March 2021

<sup>3</sup> Licence varied by consent on 5 March 2012

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

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

## **2. Definitions and interpretation**

### **Interpretation**

- 2.1 In this Licence expressions shall have the meanings set out in Schedule 1.
- 2.2 In this Licence, unless the context otherwise requires:
- (a) references to Conditions, Parts, Schedules and paragraphs in this Licence shall be construed as references to the Conditions of, Parts of, Schedules to and paragraphs of this Licence;
  - (b) references to persons includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
  - (c) the headings are inserted for convenience only and do not affect the construction of the Licence;
  - (d) references to one gender include all genders;
  - (e) words importing the plural include the singular and vice versa;
  - (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re enacted;
  - (g) any statement qualified by the expression to the best knowledge of the Licensee or so far as the Licensee is aware or any similar expression is deemed to include (and be limited to) an additional statement that it has been made after due and careful enquiry;
  - (h) any reference to a document in the agreed form is to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties);
  - (i) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term;
  - (j) references to the words "include", "includes" or "including" are to be construed without limitation; and
  - (k) the giving of any approval or consent by the Commission shall not constitute any representation or acknowledgement that the subject matter of the approval or consent complies with Law.
- 2.3 A reference to this Licence includes all Schedules to this Licence.
- 2.4 Unless expressly stated, words or expressions used in this Licence to which a meaning is given for the purpose of Part I of the National Lottery Act shall have the same meaning as in the National Lottery Act and in every provision of this Licence which provides for or entitles the Commission to make any inspection or to have access to any premises or to require information or to take copies of any documents or other things, "the Commission" includes any representative of, or adviser to, the Commission as well as any member of its Staff who has been authorised by it (whether generally or specially) to make the inspection or have the access or take the copies referred to in this Licence.

- 2.5 Any consent, approval, agreement, determination, nomination or notification required under this Licence to be given by the Commission shall be effective only if in writing and where, pursuant to these Conditions the Commission agrees, specifies or allows anything, it shall do so in writing.
- 2.6 Any acceptance or approval by the Commission or by any Independent Person or other third party, of any Process, Procedure, Technology Specification, test, audit, operation or equipment is no warranty as to its quality or whether such Process, Procedure, Technology Specification, test, audit, operation or equipment is Fit for Purpose or as to any other thing. The Commission accepts no liability for any Loss suffered by the Licensee or any other person in placing reliance in such acceptance or approval or otherwise arising out of such acceptance or approval, whether or not resulting from any negligent or wrongful act or omission or breach of statutory duty by or on behalf of the Commission.
- 2.7 All actions which are to be performed, or obligations which are to be discharged, by the Licensee in connection with this Licence shall be performed at the Licensee's own cost unless expressly specified to the contrary in the Licence.

### **3. Commencement**

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

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

it will constitute a breach of the Licence.

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

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

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

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

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

3.5 Subject to receiving all necessary approvals and consents from the Commission the Licensee shall implement the initiatives set out in Schedule 2 Part 3 by the relevant date set out in Schedule 2 Part 3 or such other date as the Commission may agree.

3.6 To the extent not implemented prior to the date of the Licence, and subject to Condition 3.10, the Licensee shall implement those parts of the Bid envisaged in the Bid as being delivered at or before the commencement of the Licence:

- (a) so as to enable the Licensee to comply with the Licence with effect from the date of the Licence;
- (b) in accordance with such Conditions or Schedules (or parts thereof) as are relevant to the conduct of such implementation;
- (c) in accordance with any other Condition or Schedule (or part thereof) that the Commission may reasonably require; and
- (d) so as to ensure that the Commission shall have the same rights in relation to any arrangements for implementation made prior to the date of the Licence as it would have if such arrangements had been made on or after the date of the Licence.

3.7 At such time, on or after the date of the Licence, as the Licensee considers it has complied with the requirements of Condition 3.6, the Licensee shall so notify the Commission in writing. The Licensee shall provide all such reasonable cooperation and assistance as the Commission requests in order to enable it to assess the accuracy of such notice.

3.8 The Commission may at any time within 2 calendar months of receipt of the Licensee's notice under Condition 3.7 (or such longer period as shall be reasonable in the circumstances where the Licensee fails to provide reasonable cooperation and assistance in accordance with Condition 3.7) notify the Licensee of any respects in which it considers that the Licensee has not, or may not have, satisfied the requirements of Condition 3.6. Any purported failure by the Licensee to comply with a requirement of Condition 3.6 which, where the Licensee has served a notice under Condition 3.7, is not raised by the Commission in a notice served in accordance with this Condition 3.8 shall not be capable of constituting a breach of Condition 3.6.

- 3.9 To the extent not implemented prior to the date of the Licence, and subject to Condition 3.10, the Licensee shall implement the Bid in accordance with the Bid Transition Plan.
- 3.10 To the extent that an instance of non-compliance by the Licensee with Condition 3.6 and/or Condition 3.9 is notified to the Commission by the Licensee in writing, such instance shall not be a breach of Condition 3.6 and/or Condition 3.9 (as applicable) to the extent that the Commission has expressly so agreed in writing (whether before or after the commencement of the Licence).



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

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

## 5. Service requirements

### Fit for Purpose

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

### Compliance with Standards

- 5.2 The Licensee shall comply with and (where available and, if the Commission deems it appropriate) pursue certification (within such timescale as the Commission may specify) for the following standards and codes of practice in respect of its Technology Operation (Standards)<sup>4</sup>: 567891011121314
- (a) ISO 9001:2015 (Quality Management Systems – Requirements);
  - (b) ISO 20000:2012 (Information Technology – Service Management – Part 1: Specification);
  - (c) ISO 20000:2012 (Information Technology – Service Management – Part 2: Code of Practice);
  - (d) ISO 20000:2012 (Information Technology – Security Techniques – Information Security Management Systems – Requirements);
  - (e) ISO 27001:2017 (Information Security Management System (ISMS));
  - (f) ISO 22301:2012 Business Continuity Management Systems
- 5.3 The Licensee shall ensure that its Technology Operation is consistent with:
- (a) W3C/WAI Web Content Accessibility Guidelines;
  - (b) Best Industry Practice;
  - (c) its own established policies and practices; and
  - (d) any other generally accepted international, European Union or British standards determined by the Commission.
- 5.4 A reference to any of the Standards shall include any equivalent Standard which, in the Commission's opinion, updates, replaces or supersedes it. The Licensee shall keep the Commission fully informed about changes to, replacements of, or development to, the Standards.

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<sup>4</sup> Waiver of obligation to comply with condition 5.2 granted until 8 October 2016

<sup>5</sup> Extension of time limited waiver to Condition 5.2 of the Section 5 Licence, until 7 March 2017

<sup>6</sup> Extension of time limited waiver to Condition 5.2 of the Section 5 Licence until 31 December 2017

<sup>7</sup> Extension of time limited waiver to Condition 5.2 of the Section 5 Licence until 31 January 2018

<sup>8</sup> Extension of time limited waiver to Condition 5.2 of the Section 5 Licence until 9 February 2018

<sup>9</sup> Extension of time limited waiver to Condition 5.2 of the Section 5 Licence until 28 February 2018

<sup>10</sup> Extension of time limited waiver to Condition 5.2 of the Section 5 Licence until 30 April 2018

<sup>11</sup> Extension of time limited waiver to Condition 5.2 of the Section 5 Licence until 31 July 2018

<sup>12</sup> Extension of time limited waiver to Condition 5.2 of the Section 5 Licence until 24 August 2018

<sup>13</sup> Extension of time limited waiver to Condition 5.2 of the Section 5 Licence until 31 March 2019

<sup>14</sup> Licence varied by consent to reflect an update to the ISO compliance standards with effect from 13 November 2019.

- 5.5 The Licensee shall comply with any directions the Commission may make from time to time concerning the application of Standards and practices as set out in Conditions 5.2 and 5.3.
- 5.6 In connection with Conditions 5.1, 5.2 and 5.3, the Licensee shall provide the Commission with:
- (a) information concerning the scope and implementation of the relevant measures in the form and within the timescale specified by the Commission and shall implement any changes to these measures as directed by the Commission;
  - (b) copies of any certification reports prepared by external bodies in respect of the Standards as soon as these reports become available;
  - (c) the Licensee's own assessment of any adverse comments contained in a certification report prepared by an external body and the Licensee's plans to rectify the areas of concern in the form and within the timescale specified by the Commission; and
  - (d) information concerning any other issue specified by the Commission in the form and within the timescale specified by the Commission.
- 5.7 The Licensee shall discuss with the Commission any conflict that the Licensee reasonably believes that there is or will be between any Standards, or between any Standard and any other provision of this Licence and shall comply with the Commission's decision on the resolution of that conflict.
- 5.8 If the United Kingdom elects to join the European Monetary Union, the Licensee shall ensure that the Technology Solution is Euro-Compliant.<sup>15</sup>

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

- 5.9 The Licensee shall maintain all Licensee Assets in reasonably good condition and shall ensure that Licensee Assets<sup>161718</sup>:
- (a) are Fit for Purpose;
  - (b) are adequately supported;
  - (c) are not sold or otherwise disposed of during the term of the Licence unless this is done in the ordinary course of business; and
  - (d) have a life expectancy of two years from the end of the Licence in accordance with the requirements in this Condition 5.9.

#### **Processes and Procedures**

- 5.10A The Licensee shall:
- (a) identify all Processes from time to time, and promptly document them in one or more Procedures;
  - (b) ensure that all Processes and Procedures are Fit for Purpose; and
  - (c) establish a register of Processes and Procedures (in accordance with Condition 10.4).

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<sup>15</sup> Text in grey disapplied with effect from 26 May 2021

<sup>16</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 28 July 2009.

<sup>17</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 25 September 2009.

<sup>18</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 27 October 2009.

5.10B If the Commission deems that a Process is not Fit for Purpose, it may require:

- (a) the Licensee to make changes to it (and accordingly to any Procedure relating to it) or
- (b) the Process to be suspended until changes shall have been carried out, and where the Process is necessary for the promotion of a Constituent Lottery, that such Constituent Lottery shall not be promoted until appropriate changes have been made.

5.11 Each Procedure shall:

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

### Key Procedures

5.12A<sup>19</sup>

- (a) The Commission may designate a Procedure a Key Procedure.
- (b) The Licensee shall ensure compliance with each Key Procedure in every respect.<sup>20212223242526272829303132</sup>
- (c) If a Key Procedure requires the Licensee to comply with other Procedures, such other Procedures shall be designated by the Licensee in the Key Procedure as mandatory, and the Licensee shall not be regarded as complying with the Key Procedure unless it complies with each of the Procedures designated as mandatory in the Key Procedure.
- (d) Where the Licensee deletes or replaces a Procedure that has been designated by the Commission as a Key Procedure, it shall notify the Commission and shall provide such information as the Commission may require in order to determine whether to designate any other Procedure as a Key Procedure.

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<sup>19</sup> Waiver of a reporting requirement in relation to a certain Key Procedure for a period of six months from 27 November 2015. Waiver extended for a further six months, granted on 27 May 2016.

<sup>20</sup> Waiver of reporting requirement in relation to a certain Key Procedure for a period of three months from 21 December 2015. Waiver extended for a further three months on 21 March 2016. Waiver extended for further six months on 27 May 2016.

<sup>21</sup> Waiver until 30 April 2018 in relation to a reporting deadline under Condition 5.12A (b)

<sup>22</sup> Waiver granted on 19 March 2020 in relation to a reporting requirement required on 20 March 2020.

<sup>23</sup> Waiver of a reporting requirement in relation to a certain Key Procedure due to COVID 19.

<sup>24</sup> Waiver of a reporting requirement in relation to a specific Key Procedure due to COVID 19.

<sup>25</sup> Waiver of a reporting requirement in relation to a specific Key Procedure due to COVID 19.

<sup>26</sup> Waiver of a reporting requirement in relation to a specific Key Procedure due to COVID 19.

<sup>27</sup> Waiver of a reporting requirement in relation to a specific Key Procedure due to COVID 19.

<sup>28</sup> Waiver of a reporting requirement in relation to a specific Key Procedure due to COVID 19

<sup>29</sup> Waiver of a reporting requirement in relation to a specific Key Procedure due to COVID 19.

<sup>30</sup> Extension of a waiver of a reporting requirement in relation to a specific Key Procedure due to COVID 19 on 25 February 2021.

<sup>31</sup> Further extension of a waiver of a reporting requirement in relation to a specific Key Procedure due to COVID 19 on 24 March 2021.

<sup>32</sup> Waiver of a requirement in relation to a specific Key procedure for FY2020/21 given on 14 April 2021.

## Approved Procedures

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

- (a) submit a proposed or existing Procedure, or prepare and submit a new Procedure, to the Commission for approval<sup>33343536373839</sup>;
- (b) submit a Process to testing by the Licensee or an Independent Person to determine whether the Process conforms to the relevant Procedure;
- (c) procure the audit by an Independent Person of the functionality of a Process;
- (d) in relation to the testing of a Process in Condition 5.12B(b), adopt, or procure the adoption by the Licensee or by the Independent Person of a testing methodology, testing scope, acceptance criteria and a form of testing report and certificate approved in advance by the Commission;
- (e) in relation to the audit of a Process in Condition 5.12B(c), procure the adoption by the Independent Person of audit terms of reference, an audit methodology and a form of audit report and certificate approved in advance by the Commission;
- (f) not, pending approval of a Procedure by the Commission or the issue of a testing or audit certificate in relation to a Process satisfactory to the Commission:
  - (i) carry out that Process or any other related Process (whether in whole or part); or
  - (ii) perform any National Lottery service to the extent that the Process or any other related Process is a necessary part of that service,in either case, except in accordance with any conditions determined by the Commission;
- (g) amend a Procedure or Process (whether or not previously submitted for approval, testing or audit), and submit the amended Procedure or Process for approval, testing or audit in accordance with Condition 5.12B(a), 5.12B(b) or 5.12B(c); and
- (h) ensure all Processes are conducted in conformity with Procedures and/or with any testing or audit certificate, in each case approved by the Commission<sup>40</sup>.

5.12C If the Commission is not satisfied with the results of any test or audit carried out pursuant to Conditions 5.12B(b) and 5.12B(c), it may require the test or audit to be carried out again forthwith, either by the Commission or by a person nominated by it and in a manner specified by it.

5.12D Where the Commission directs the Licensee that a Procedure should be submitted for approval under 5.12B(a), the Procedure shall cease to be a Key Procedure.

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<sup>33</sup> Waiver of the obligation for CUKL to comply with the requirement in respect of a certain Approved Procedure for the period between 1 September 2014 until 30 April 2015.

<sup>34</sup> Waiver of obligation for CUKL to comply with the requirement in respect of a certain Approved Procedure until 29 May 2015

<sup>35</sup> Waiver of obligation for CUKL to comply with the requirement in respect of a certain Approved Procedure until 31 July 2015

<sup>36</sup> Waiver of obligation for CUKL to comply with the requirement in respect of a certain Approved Procedure until 31 August 2015.

<sup>37</sup> Waiver of obligation for CUKL to comply with the requirement in respect of a certain Approved Procedure until 30 September 2015.

<sup>38</sup> Extension of waiver of the requirement for CUKL to comply with the Condition 5.12B(a) for an Approved Procedure between the period of 1 September 2014 until 31 October 2015.

<sup>39</sup> Extension of waiver of the requirement for CUKL to comply with the Condition 5.12B(a) for an Approved Procedure between the period of 1 September 2014 until 31 December 2015.

<sup>40</sup> Waiver of certain requirements in relation to PPSS testing as set out in Approved Procedure EN-P-25 given on 25 February 2011. The waiver is limited to the period to 03 June 2011.

- 5.12E The Commission may from time to time vary any determination to require the preparation or approval of a Procedure or to require a Process, or part of a Process, to be tested or audited.

### Testing the Technology Solution<sup>41</sup>

- 5.13A Prior to implementing any changes to the Technology Solution (excluding routine maintenance and emergency changes), the Licensee shall notify the Commission of the scope and impact of the change(s) in a format and within a timescale agreed by the Commission.
- 5.13B Save in relation to Condition 5.13G(a), it shall be a matter for the Licensee to decide whether any proposed changes to the Technology Solution should be submitted to testing or review by the Licensee or by an Independent Person.
- 5.13C The Licensee shall provide the Commission with the results of any test or review carried out pursuant to Condition 5.13B, together with such further information regarding the test or review process as may be required by the Commission.
- 5.13D Whether or not the Licensee carries out any testing or review pursuant to Condition 5.13B, save for those in relation to Condition 5.13G(a), it shall provide the Commission with a certificate signed by a key member of the Licensee's Staff that it is satisfied that any changes made to the Technology Solution are in compliance with the Licensee's obligations under Condition 5.1 .
- 5.13E If directed by the Commission, the Licensee shall not implement a proposed change to the Technology Solution or shall implement the change on such conditions as the Commission sees fit<sup>42</sup>.
- 5.13F The Licensee shall provide the Commission with information relating to the efficacy of the testing and review arrangements, in a manner and format and at such frequency as agreed by the Commission.
- 5.13G The Licensee shall:
- (a) ensure that no Draw takes place unless the relevant elements of the Technology Solution used in connection with the Draw have, as directed by the Commission, been reviewed, tested or audited by an Independent Person and the Commission has had an opportunity to review the scope of the periodic testing of the relevant elements of the Technology Solution and the results of the testing and the Licensee has altered the testing if required to comply with the Commission's specifications<sup>4344454647</sup>;
  - (b) ensure that no Draw in a Constituent Lottery takes place unless the Commission has had an opportunity to review the scope of the periodic testing of all relevant elements of the Technology Solution and the results of that testing and the Licensee has altered the testing if required to comply with the Commission's specifications; and
  - (c) demonstrate to the Commission's satisfaction that the integrity of the Technology Operation has been maintained at all times, including in relation to:

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<sup>41</sup> By agreement, the original Condition 5.13 was varied and replaced by revised Condition 5.13 with effect from 10 January 2012.

<sup>42</sup> Waiver of the obligation on Camelot to comply with the draw machine testing programme previously agreed with the Commission, solely insofar as it relates to Dream Number draw machines in the period to 1 May 2010 given on 16 December 2010.

<sup>43</sup> Waiver of requirements to allow Camelot in relation to it trialing Monopoly Second Chance Draw Scratchcard

<sup>44</sup> Short term Waiver to allow three Camelot staff to be trained and used to carry out adjudication duties if the Independent Persons are unavailable given on 16 March 2020.

<sup>45</sup> Short term waiver to allow three Camelot staff to carry out adjudication duties if the Independent Persons are unavailable due to COVID-19, given on 29 April 2020.

<sup>46</sup> Extension to waiver given on 29 April 2020 to allow three Camelot staff to carry out adjudication duties if the Independent Persons are unavailable due to COVID-19, given 30 June 2020.

<sup>47</sup> Extension to waiver given on 30 June 2020 to allow three Camelot staff to carry out adjudication duties if the Independent Persons are unavailable due to COVID-19, given 25 August 2020.

- (i) the operation of all games in conformance with the published rules for those games;
- (ii) the accurate recording of wagers placed, production of National Lottery tickets, identification of winning wagers, validation of winning tickets, calculation and payment of prizes, management of Player, Distributor and other financial information, transfer of funds;
- (iii) the accurate recording of all interactive plays; and
- (iv) the prevention of the placement of new wagers after a Draw has closed, or the placement of wagers for which payment was required and has not been received, or the double placement of wagers, the double payment or non-payment of prizes, or the unauthorised disclosure of Confidential Information.

5.13H In relation to its obligations under Condition 5.13G (c), if directed by the Commission, the Licensee shall

- (a) procure the audit by an Independent Person of the functionality of any element of the Technology Operation;
- (b) in relation to the audit by an Independent Person referred to in Condition 5.13H (a), procure the adoption by the Independent Person of audit terms of reference, an audit methodology and a form of audit report and certificate approved in advance by the Commission;
- (c) provide the Commission with the results of any audit carried out pursuant to Condition 5.13H (a).

#### **Independent Verification System**

5.14 The Licensee shall:

- (a) establish, operate and maintain in pursuance of its obligations under Conditions 5.10(b) and 5.14(e) an Independent Verification System which possesses the functionality specified by the Commission;
- (b) establish, operate and maintain a separate copy of the Independent Verification System for the use of the Commission, which possesses the functionality specified by the Commission and which is maintained independently of the system referred to in Condition 5.14(a);
- (c) provide the hardware, communications links, other infrastructure, materials, facilities and support to allow the Commission to operate the system referred to in Condition 5.14(b) in the manner it considers necessary;
- (d) ensure that the Commission and its representatives and advisers and the Trustees have such access to the Independent Verification System as the Commission may specify;
- (e) ensure that the Independent Verification Systems referred to in Conditions 5.14(a) and 5.14(b) are capable of performing end-of-day financial auto-balancing between the gaming systems and the Independent Verification Systems for the categories of data specified by the Commission, including:
  - (i) ticket sales by game and day;
  - (ii) Subscriptions paid, by game, day and Subscriber;
  - (iii) prizes to be paid by game, tier and day;
  - (iv) prizes paid by game, tier and day;
  - (v) Player account closing balances by day and Player; and
  - (vi) any other categories of data as may be specified by the Commission;

- (f) establish and operate an automated interface which will extract from its gaming systems and deliver in real time to the Commission all transaction records containing data relating to the categories referred to in Condition 5.14(e) in a format, and subject to security arrangements approved by the Commission from time to time;
- (g) ensure that the Independent Verification Systems referred to in Condition 5.14(a) and 5.14(b) are independently tested in such manner and frequency as the Commission may specify;
- (h) ensure that the test reports for the Independent Verification Systems referred to in Condition 5.14(a) and 5.14(b) are submitted to the Commission in such format and timescale as it may specify;
- (i) ensure that the Independent Verification Systems referred to in Condition 5.14(a) and 5.14(b) are modified in such manner and timescale as the Commission may specify; and
- (j) provide assistance required by the Commission to enable it to process the data referred to in Condition 5.14(e) using the Independent Verification System referred to in Condition 5.14(b) or to enable the Commission to operate its own Independent Verification System in such manner as the Commission may specify.<sup>48</sup>

## **Security**

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

- (a) ensure the security of all equipment, systems, data, ticket materials and other consumables used in connection with the National Lottery and any Constituent Lottery and all proceeds arising from any Constituent Lottery and Ancillary Activity so as to minimise opportunities for theft, fraud or misuse; and
- (b) maintain a register of any security breaches as part of the log of Incidents referred to in Condition 10.7(e) and record all breaches in it within 14 days of becoming aware of them and make this register available to the Commission for inspection at all times. A copy of the register of security breaches in a format acceptable to the Commission shall be delivered to the Commission on the expiry or revocation of the Licence.

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

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

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

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<sup>48</sup> Waiver of requirements to allow Camelot in relation to it trialing Monopoly Second Chance Draw Scratchcard



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

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

- 5.19 Without limiting its obligations under Conditions 5 or 10, the Licensee shall:
- (a) develop, maintain, test and implement the BC and DR Plans in accordance with their terms and, on request, submit the BC and DR Plans to the Commission for review and amend or update the BC and DR Plans as directed by the Commission from time to time; and
  - (b) test the BC and DR Plans on an annual basis and, on request, submit the results of these tests to the Commission for review.

### **Secure Areas**

- 5.20 Without limiting its obligation under Condition 5.1, the Licensee shall:
- (a) in relation to an area in premises occupied by the Licensee or some other person, which is necessary to be kept secure to maintain the security of the National Lottery or any Constituent Lottery, designate that area as a secure area (Secure Area); and
  - (b) ensure that an appropriate level of security is maintained in or over Secure Areas<sup>4950</sup>.  
and that no person gains access to or enters or leaves a Secure Area unless it is a person whose name is on the register for the Secure Area kept under Condition 5.21(c) or is supervised by such a person.<sup>5152</sup>
- 5.21 The Licensee shall:
- (a) maintain a register of Secure Areas together with a description of each Secure Area and make the register and description available to the Commission for inspection at all times. The Licensee shall notify the Commission of any changes to the register of Secure Areas within 14 days after the end of the month in which the change occurs;
  - (b) ensure that the right to access a Secure Area is only granted to persons who should be entitled to such access;
  - (c) keep a register of persons who have been granted the right of access to each Secure Area;
  - (d) notify the Commission each month of any changes to the register of persons who may enter each Secure Area; and
  - (e) remove any person from the register whom the Commission determines should be removed, keep a record of all persons who enter each Secure Area together with the times and dates on which each person enters and leaves the Secure Area and maintain a record of cases where a person whose name is not on the register referred to above enters a Secure Area without supervision and shall make such record available to the Commission at any time.<sup>53</sup>

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<sup>49</sup> Waiver of requirements to amend the secure areas register to record that the cleaning staff would have access to premises for a short period and while under supervision given on 5 May 2009.

<sup>50</sup> Waiver of requirements to amend the secure areas register to record that the cleaning staff would have access to premises for a short period and while under supervision given on 13 November 2009.

<sup>51</sup> Text in grey disapplied by agreement with effect from 6 July 2010.

<sup>52</sup> Waiver of requirements to amend the secure areas register to record that the cleaning staff would have access to premises for a short period and while under supervision given on 28 May 2009.

<sup>53</sup> Text in grey disapplied by agreement with effect from 6 July 2010.

## Player access

5.22 In this Condition 5.22:

- (a) any reference to a date is a reference to one of the dates specified in the table below; and
- (b) “the minimum” for each date means the minimum number of Retail Outlets at which Draw-based Facilities are available specified in the table in relation to that date.<sup>5455</sup>

Year of Licence (End of Financial Year)	Minimum Number of Outlets
1	26,500
2	27,000
3	27,500
4	36,700
5	36,700
6	36,700
7	36,700
8	36,700
9	36,700
10	36,700
11	36,700
12	36,700
13	36,700
14	36,700
15	36,700

5.23 The Licensee shall ensure that the minimum number of Retail Outlets at which Draw-based Facilities are available on each period end date is at least equal to the number specified in the table set out in Condition 5.22.<sup>565758</sup>

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<sup>54</sup> Licence varied by consent on 5 March 2012

<sup>55</sup> Licence varied by consent with effect from 31 March 2021

<sup>56</sup> The Commission has waived this commitment in so far as it requires terminal numbers in excess of 27,500 during year 4, as detailed in Condition 5.22. Waiver given on 5 March 2012.

<sup>57</sup> Licence varied by consent on 29 March 2019.

<sup>58</sup> Licence varied by consent on 07 February 2020

- 5.24 Save where the Commission agrees with the Licensee that it is not practical so to do, the Licensee shall ensure that at all times during the Licence there is at least one Retail Outlet at which Draw-based Facilities are available in each Postcode District<sup>5960616263646566676869707172737475</sup>.
- 5.25 For the purpose of Condition 5.24, Draw-based Facilities shall be treated as being available at a Retail Outlet on any date if:
- (a) they have been installed at that Retail Outlet and are capable of being used to produce or activate tickets online on that date; or if
  - (b) they are installed at that Retail Outlet and were capable of being used to produce or activate tickets online at some time during the period of two weeks before that date but are not capable of being used on that date, either:
    - (i) because they were being repaired or tested on that date; or
    - (ii) because the Retail Outlet was not normally open for business on that date,
 but are capable of being used thereafter; or
  - (c) they are installed at that Retail Outlet but are not capable of being used on that date solely because of:

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<sup>59</sup> Waiver of the obligation on Camelot to site National Lottery terminals in postcode districts AB13, BH3, CO8, EH18 and IP10 due to the difficulty experienced by Camelot in identifying suitable outlets given on 2 February 2010.

<sup>60</sup> Waiver of the requirement for Camelot to ensure that there is a Retail Outlet in the following Postcode Districts: AB13, BH3, CO8, EH18 and IP10 given on 3 February 2010. Waiver to remain in force until 31 January 2012.

<sup>61</sup> Waiver of the obligation on Camelot to site National Lottery terminals in Postcode Districts : BH3, CO8, IP10 and W1G given on 3 September 2012.

<sup>62</sup> Waiver of the obligation on CUKL to site National Lottery terminal for Draw Based Games in Postcode District: BH3, CO8 and IP10 given on 20 February 2014.

<sup>63</sup> Waiver of obligation on CUKL to site National Lottery terminal for Draw Based Games in Postcode District: W1G given on 10 October 2014

<sup>64</sup> Waiver of obligation on CUKL to site National Lottery terminal for Draw Based Games in Postcode District: EH18 given on 10 April 2015

<sup>65</sup> Waiver of obligation on CUKL to site National Lottery terminal for Draw Based Games in Postcode District: EC2R given on 25 November 2015

<sup>66</sup> Extension of waiver of obligation on CUKL to site National Lottery terminal for Draw Based Games in Postcode Districts: BH3, CO8, IP10, W1G and EH18 given on 25 November 2015

<sup>67</sup> Waiver of obligation for EX21 and SW1X, along with Extension of waiver of obligation on CUKL to site National Lottery terminal for Draw Based Games in Postcode Districts: BH3, CO8, IP10, and EH18 given on 04 November 2016

<sup>68</sup> Waiver of obligation for AB13 and SN26, along with Extension of waiver of obligation on CUKL to site National Lottery terminal for Draw Based Games in Postcode Districts: SW1X, BH3, CO8, IP10, and EX21 given on 27 October 2017

<sup>69</sup> Waiver of obligation on CUKL to site National Lottery terminal for Draw Based Games in Postcode District EH18 given on 25 Jan 2018

<sup>70</sup> Extension of waiver of obligation on CUKL to site National Lottery terminal for Draw Based Games in Postcode Districts: AB13, BH3, CO8, EH18, EX21, IP10, SN26 and SW1X given on 17 October 2018.

<sup>71</sup> Extension of waiver of obligation on CUKL to site National Lottery terminal for Draw Based Games in Postcode Districts: AB13, BH3, CO8, EH18, EX21, IP10 and SN26 given on 30 October 2019.

<sup>72</sup> Temporary waiver of obligation on CUKL to have at least one Retail Outlet open in all Postcode Districts during Covid-19 restrictions given on 5 May 2020.

<sup>73</sup> Extension to waiver on 5 May 2020 of the obligation on CUKL to have at least one Retail Outlet open in all Postcode Districts during Covid-19 restrictions specifically EC1N, WC1E and EC2Y given on 30 June 2020.

<sup>74</sup> Extension to waiver on 30 June 2020 of the obligation on CUKL to have at least one Retail Outlet open in all Postcode Districts during Covid-19 restrictions specifically WC1E and EC2Y given on 30 June 2020.

<sup>75</sup> Extensions of two waivers given on 30 October 2019 and 29 July 2020 of obligation on CUKL to site and have operational a National Lottery terminal for Draw Based Games in Postcode Districts: AB13, BH3, CO8, EC2Y, EH18, EX21, IP10, SN26 and WC1E.

- (i) the failure of the equipment located on a satellite; or
- (ii) the loss of the hub site due to any act of God, war, fire, flood, riot, industrial action, strike, tempest or other event outside the reasonable control of the Licensee or the operator of the hub site (but excluding a failure wholly or partly due to the non-repair of or failure to maintain the hub site),

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

## Property

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

5.26 (a) The Licensee shall ensure that any premises occupied for the purpose of operating the National Lottery are Fit for Purpose.

(b) The Licensee requires the prior written consent of the Commission before it can occupy premises outside of the UK.<sup>7677</sup>

## Compliance with Law

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

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

## Technology maintenance and improvement

5.29 In complying with Condition 5.9, the Licensee shall:

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

5.30 The Licensee shall:

- (a) on an ongoing basis:
  - (i) review the Technology Operation to determine the Licensee's ongoing compliance with its obligations under the Licence; and

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<sup>76</sup> By agreement, the original Condition 5.26 disapplied and replaced by revised Condition 5.26 with effect from 6 July 2010.

<sup>77</sup> Licence varied by consent on 26 May 2021.

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

## **6. Prohibition of activities not related to the National Lottery**<sup>7879808182</sup>

- 6.1 The Licensee shall not without the Commission's prior written approval undertake any activity (for the avoidance of doubt "activity" in this context includes investments in shares and securities) other than the running of the National Lottery.
- 6.2 The Licensee shall not without the Commission's prior written approval use or permit the use of any Lottery IP, Licensee Assets or Licensee Subcontract, Series Subcontract or Sub Series Subcontract for any purpose other than the running of the National Lottery<sup>8384</sup>.
- 6.3 The Licensee shall not without the Commission's prior written approval undertake any Ancillary Activity. The Commission may give or withhold consent to any Ancillary Activity subject to such conditions as it may specify<sup>85</sup>.
- 6.4 The Commission hereby consents to the Ancillary Activities listed in Schedule 4 Part 1 subject to the conditions set out in this Condition 6 and to the further conditions set out in Schedule 4 Part 2.
- 6.5 The Licensee shall ensure that the operations of the National Lottery or of the Licensee shall not be prejudiced by any Ancillary Activity or any combination of Ancillary Activities. If at any time in the opinion of the Commission any Ancillary Activity jeopardises or may jeopardise any aspect of the operations of the National Lottery or of the Licensee it may require the Licensee to suspend or cease such Ancillary Activity forthwith by notice to the Licensee.
- 6.6 The Licensee shall ensure that any agreement relating to an Ancillary Activity is on terms that to the extent permitted by Law the Commission shall not be liable to any third party for any Loss and the Licensee shall indemnify the Commission, its Staff and agents against any Loss arising from any Ancillary Activity.
- 6.7 The Licensee shall ensure (unless the Commission has agreed in writing otherwise) that any agreement relating to an Ancillary Activity is on terms that it shall discontinue with immediate effect on the expiry or earlier revocation of the Licence for whatever reason and that no compensation will be payable by the Commission or by any Successor Licensee as a result of such discontinuance.
- 6.8 The Licensee shall ensure that any agreement relating to an Ancillary Activity is on an arm's length commercial basis.
- 6.9 The Licensee shall ensure that any Ancillary Activity (including for the avoidance of doubt any promotional activities associated with such Ancillary Activity) are appropriate and in accordance with the reputation and image of the National Lottery.
- 6.10 Without prejudice to the requirement for the Commission's prior written approval of any Ancillary Activity the Licensee shall notify the Commission prior to the commencement of any Ancillary Activity.
- 6.11 The Licensee shall notify the Commission of the suspension or termination of any Ancillary Activity in advance where reasonably practicable and in any other case as soon as reasonably practicable

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<sup>78</sup> Waiver of Condition 6 in respect of Camelot's arrangements with Camelot Global Services Limited given on 1 February 2009.

<sup>79</sup> Waiver of Condition 6 in respect of Camelot's arrangements for the sharing of staff with Camelot Global Services Limited given on 15 May 2009. Waiver withdrawn on 22 July 2010.

<sup>80</sup> Waiver of Condition 6 until 13 December 2019 of the requirement for CUKL to list the BBC contract as an Ancillary Activity

<sup>81</sup> Waiver of Condition 6 until 30 January 2021 of the requirement for CUKL to list the BBC contract as an Ancillary Activity

<sup>82</sup> Waiver of Condition 6 until 30 January 2022 of the requirements for CUKL to list the BBC Contract as an Ancillary Activity.

<sup>83</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 28 July 2009.

<sup>84</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 25 September 2009.

<sup>85</sup> Short term waiver of the obligations on Camelot in relation to a certain Key Licensee Subcontract for a period of 12 weeks given on 13 April 2018.

following such suspension or termination. Where the suspension or termination is unplanned the notification shall explain the reasons for the suspension or termination. Where the Ancillary Activity is suspended and is planned or expected to resume the notification shall include details of the planned or expected resumption of the Ancillary Activity including its timing.

- 6.12 For the purpose of seeking the Commission's consent for any Ancillary Activity the Licensee shall provide the Commission with such information as the Commission shall require including:
- (a) confirmation that the Licensee has satisfied itself that any agreements relating to the Ancillary Activity and the arrangements for the Ancillary Activity when taken as a whole will comply with the Licence;
  - (b) information as to the costs and revenues of the Ancillary Activity and any share of such costs or revenues which is to be paid or received by the Licensee;
  - (c) information as to the projected impact of the Ancillary Activity on the financial position and resources of the Licensee; and
  - (d) information about any party other than the Licensee which is to have any interest in the Ancillary Activity including information as to the standing and reputation of that party<sup>86</sup>.
- 6.13 The Licensee shall provide to the Commission within three months after the end of the Financial Year a report on the Ancillary Activities undertaken in that Financial Year which shall include:
- (a) a list of all such Ancillary Activities;
  - (b) confirmation that all such Ancillary Activities are in compliance with the Licence; and
  - (c) such other information as the Commission may specify from time to time.
- 6.14 The Licensee shall provide to the Commission on at least an annual basis or more frequently, as may be required by the Commission, a statement containing details of the income and expenditure incurred in relation to Ancillary Activities and the amounts due to the NLDF and OLDF arising from Ancillary Activities and the amounts to be used in adjusting the Secondary Contribution calculation.<sup>87</sup> The statement shall:
- (a) be in writing; and
  - (b) contain a certificate signed by the chief executive and one other director (if at the time of such signature there shall be no such appointee as chief executive then such certificate shall be signed by two directors) that, having taken all reasonable steps to verify the statement, the statement gives a true and fair view of the income and expenditure incurred in relation to Ancillary Activities and the amounts due to the NLDF and OLDF arising from Ancillary Activities and the amounts to be used in adjusting the Secondary Contribution calculation.<sup>88, 89, 90</sup>
- 6.15 The Licensee shall make Ancillary Activity Payments in accordance with Schedule 5.

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<sup>86</sup> Waiver of the obligation on Camelot to provide information about third parties with whom they conducted Ancillary Activities during the Second Licence period on the basis that they were known to the Commission given on 1 February 2009.

<sup>87</sup> Licence varied by consent on 16 October 2020.

<sup>88</sup> Waiver of the requirement for the annual statements required under the Licence to be signed by Camelot's CE and one other director given on 7 March 2011. Statements can instead be signed by Camelot's CE and the senior executive responsible for Finance. The waiver only applies to the current financial year.

<sup>89</sup> Waiver of the requirement for the certificate relating to the annual statements required under the Licence to be signed by Camelot's CE and one other director given on 29 June 2012. The certificate can instead be signed by Camelot's CE and the senior executive (in post at the time of waiver) responsible for Finance on an on-going basis subject to the Licensee's Board approval.

<sup>90</sup> Licence varied by consent on 16 October 2020.

## 7. Consumer protection<sup>9192</sup>

### Player protection strategies

- 7.1 The Licensee shall adopt, maintain and implement a strategy to prevent play on the National Lottery by persons aged under 18. Such strategy shall first have been approved by the Commission and shall in particular deal with game research and design, marketing, public information and education, accessibility, staff and Distributor training, monitoring and support for the treatment of problem gamblers aged under 18. The Licensee shall publish the strategy, as approved by the Commission, on the National Lottery website ([www.national-lottery.co.uk](http://www.national-lottery.co.uk) (or such website address as the Licensee shall use from time to time)).<sup>93</sup>
- 7.2 Schedule 7 shall apply in relation to the approval, monitoring, review and amendment of the strategy referred to in Condition 7.1.
- 7.3 The Licensee shall adopt, maintain and implement a strategy to prevent excessive play on the National Lottery. Such strategy shall first have been approved by the Commission and shall in particular deal with game research and design, marketing, public information and education, accessibility, staff and Distributor training, monitoring and support for the treatment of problem gamblers. The Licensee shall publish the strategy, as approved by the Commission, on the National Lottery website ([www.national-lottery.co.uk](http://www.national-lottery.co.uk) (or such website address as the Licensee shall use from time to time)).
- 7.4 Schedule 7 shall apply in relation to the approval, monitoring, review and amendment of the strategy referred to in Condition 7.3.
- 7.5 If, following the launch of any Constituent Lottery, the promotion of that Constituent Lottery has, in the opinion of the Commission, alone or together with any other factor (including the promotion of any other Constituent Lottery) resulted in or is likely to result in:
- (a) excessive participation in Constituent Lotteries by any person or group of persons;
  - (b) excessive participation in Constituent Lotteries generally; or
  - (c) play on the National Lottery by persons aged under 18<sup>94</sup>,
- the Commission may require the Licensee to suspend the promotion of or sale of tickets or Subscriptions for that Constituent Lottery (from such date and for such period as the Commission may specify or indefinitely).

### Access to games

- 7.6 The Licensee shall ensure that at all times at least one active Draw-based Game is promoted in which:
- (a) tickets can be purchased at every Retail Outlet in the United Kingdom and the Isle of Man and such other countries as the Commission in its absolute discretion may specify at which Draw-based Facilities are available; and
  - (b) persons may participate by purchasing tickets other than at a Retail Outlet.<sup>95</sup>

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<sup>91</sup> Various waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain specified subcontractors given on 1 February 2009..

<sup>92</sup> Waiver of the requirement for Camelot to submit documents to the Commission for approval on the basis that the only changes being made were to a) Camelot's name and b) the cost of calls from a BT line given on 17 August 2010.

<sup>93</sup> Licence varied by consent to reflect the change of Age to Play from 16 to 18 which is applicable from 22 April 2021.

<sup>94</sup> Licence varied by consent to reflect the change of Age to Play from 16 to 18 which is applicable from 22 April 2021.

<sup>95</sup> Text in grey disapplied by agreement with effect from 6 July 2010.



- 7.7 Save with the consent of the Commission:
- (a) the Licensee shall ensure that no tickets in a Constituent Lottery are given away free or sold for less than the full price applicable in accordance with the rules of the relevant Constituent Lottery (whether in connection with the advertisement or the marketing of the National Lottery or any Constituent Lottery or otherwise) unless:
- (i) a payment reflecting the full price of the relevant ticket has been made to the Licensee, or to the relevant Independent Section 6 Licensee or to the Distributor who sells the ticket either in cash or by means of a cheque or charge card, debit card or credit card or such other payment method as may be approved by the Commission from time to time; or if such payment is not made;
  - (ii) the price of the ticket applicable in accordance with the rules of the relevant Constituent Lottery is counted in full in the aggregate value of sales when calculating the Licensee's Basic Primary Contribution in accordance with the provisions of Schedule 8; and <sup>96</sup>
- (b) the Licensee shall not, and shall ensure that no Independent Section 6 Licensee or any Distributor shall, lend any monies to any person for the purpose (or which he has any reason to believe may be used for the purpose) of making any payment for any ticket, whether by the person to whom any money is lent or any other person.
- 7.8 Save to the extent and in the circumstances otherwise agreed by the Commission, the Licensee shall ensure that no Distributor shall, in effecting such sale or issue, act as the agent of the purchaser of such ticket or entry or Player in any Constituent Lottery, but each such Distributor shall act as the agent of the Licensee or the relevant Independent Section 6 Licensee in effecting any such sale and receiving any sale proceeds therefor.
- 7.9 Where the Licensee operates a registration scheme it shall not make any charge to a Player for registering unless the proposed charge has been approved by the Commission. A "registration scheme" means a scheme whereby:
- (a) a Player may register his name and address, with or without details of his bank account; and
- (b) where the player has provided details of his bank account (and therefore in principle will be able to purchase tickets via the scheme), when any ticket is purchased by that Player and the Player gives details of his registration when purchasing his ticket, any prize is paid directly to the Player or to his bank account without the need for the Player to make any communication in order to establish his claim to the prize (subject to applicable prize claim rules in respect of higher tier prizes).
- 7.10 Unless the Commission agrees otherwise, the Licensee shall not, and shall procure that none of its Group Companies shall, be engaged or involved in any manner of capacity in the use, provision or promotion of any premium charge telephone numbers or lines for any purpose connected with the National Lottery or any Constituent Lottery or Ancillary Activity save for numbers which do not require a bill payer to pay more than the Basic Rate for a telephone call.<sup>9798</sup>
- 7.11 The Licensee shall only be entitled to accept tickets through the Interactive Systems if they are from Registered Players.<sup>99100101</sup>
- 7.12 The Licensee shall use its best endeavours to ensure that such System Limits as the Commission shall have determined after consultation with the Licensee shall be applied at all times by the Interactive Systems. For the purposes of this Condition 7.12, "System Limits" means limitations

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<sup>96</sup> Licence varied by consent on 27 September 2010.

<sup>97</sup> Licence varied by consent on 7 July 2017.

<sup>98</sup> Waiver in relation to transition of Camelot's customer service telephone numbers

<sup>99</sup> Waiver of requirement in relation to a payment method, waiver extended on 17 June 2016

<sup>100</sup> Waiver of requirement in relation to a payment method on 10 November 2017

<sup>101</sup> Extension of the waiver of requirements for CUKL in relation to PAP payment methods given on 6 November 2018

applied by the Interactive System which regulate the number of, or the amounts expended on, tickets.

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

7.13<sup>102</sup> The Licensee shall not allow more than two Draws to take place in any period of two hours. This restriction applies in relation to:

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

#### **New Distributor channels**

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

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

7.15 The Licensee shall adopt and maintain and shall at all times comply with a code of practice which is first approved by the Commission concerning the availability of top prizes for all Scratchcard Lotteries. Schedule 7 shall apply in relation to the approval, review and amendment of such code. The Licensee shall publish the code, as approved by the Commission, on the National Lottery website ([www.national-lottery.co.uk](http://www.national-lottery.co.uk) (or such website address as the Licensee shall use from time to time)). <sup>103104105</sup>

#### **Player documents**

7.16<sup>106</sup> The Licensee shall adopt, maintain and comply with the terms and conditions, rules, procedures and game specific rules (as may be appropriate) for each Constituent Lottery. Such terms and

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<sup>102</sup> Licence varied by consent on 05 November 2009.

<sup>103</sup> Waiver of the obligation to submit revised Code of Practice on Top Prize Management for review until 28 May 2016

<sup>104</sup> Waiver of the obligation to submit revised Code of Practice on Top Prize Management for review until 30 April 2017 (extended)

<sup>105</sup> Waiver of the obligation to submit revised Code of Practice on Top Prize Management for review until 23 April 2021.

<sup>106</sup> Licence varied by consent on 13 July 2010.

conditions, rules, procedures and game specific rules shall be subject to the prior written approval of the Commission<sup>107,108,109,110,111,112,113,114,115,116</sup>.

- 7.17A<sup>117</sup> (a) The Licensee shall not make any amendments to the terms and conditions, rules, procedures or game specific rules for any Constituent Lottery unless it has secured the Commission's prior written consent to the proposed amendments<sup>118</sup>.
- (b) Save with the Commission's prior written consent, the Licensee shall not waive compliance with the terms and conditions, rules, procedures or game specific rules for any Constituent Lottery as approved by the Commission<sup>119,120</sup>.
- (c) For the avoidance of doubt, this Condition shall not affect any exercise by the Licensee of its discretion where specifically provided by the terms and conditions, rules, procedures and game specific rules for each Constituent Lottery.
- 7.17B<sup>121</sup> (a) Prior to issuing an amended version of the terms and conditions, rules, procedures or game specific rules for any Constituent Lottery the Licensee shall submit to the Commission proposals relating to :
- (i) the manner in which the amendments will be brought to the attention of those Players who will be affected by them; and
- (ii) where appropriate, the manner in which any Players who will be affected by the amendments will be required to signify whether they accept the amended terms and conditions, rules, procedures or game specific rules.
- (b) The Commission may approve the Licensee's proposals or may specify alternative requirements. The Licensee shall comply with the proposals as approved or the requirements as specified by the Commission<sup>122</sup>.

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<sup>107</sup> Waiver of the obligation to ensure, where players purchased a Lotto ticket and decided not to play Dream Number, that the Dream Number was shown on that ticket alongside the words 'Not Entered' given on 14 July 2009.

<sup>108</sup> Waiver of obligation on Camelot to comply with their Game Specific Rules in relation to one specific prize payment given on 31 January 2019

<sup>109</sup> Waiver of obligation on Camelot to comply with their Game Specific Rules in relation to one specific prize payment given on 31 January 2019

<sup>110</sup> Waiver of obligation on Camelot to comply with their Game Specific Rules in relation to one specific prize payment given on 13 December 2019

<sup>111</sup> Waiver to pause Minicom service during Covid-19 lockdown in place until 30 September 2020.

<sup>112</sup> Extension of time limited waiver to pause Minicom service until the end of Covid-19 restrictions given on 29 September 2020.

<sup>113</sup> Waiver of the requirement for Camelot to comply with this condition in respect of updating player documents to remove all references to the EU Online Dispute Resolution platform until 28 February 2021.

<sup>114</sup> Extension of the requirement for Camelot to comply with this condition in respect of updating player documents to remove all references to the EU Online Disputes Resolution platform given until 31 May 2021.

<sup>115</sup> Extension to a waiver of the requirement for Camelot to comply with this condition in respect of updating player documents to remove all references to the EU Online Dispute Resolution platform given until 31 August for digital documents and 30 November for retail documents.

<sup>116</sup> Extension of the waiver to pause the Minicom service given on 02 July 2021 until 30 September 2021.

<sup>117</sup> Licence varied by consent on 13 July 2010.

<sup>118</sup> Licence varied by consent on 20 December 2016.

<sup>119</sup> Waiver of Player Guide (Version 20) to allow misalignments to remain in market until September 2014.

<sup>120</sup> Waiver of Condition 7.17A(b) in relation to player prize claims due to Covid 19 restrictions.

<sup>121</sup> Licence varied by consent on 13 July 2010.

<sup>122</sup> Waiver of Condition 7.17B(b) in relation to the issue of the Lotto Interactive Game Procedures, Thunderball Interactive Game Procedures, Lotto HotPicks Interactive Game Procedures and the Lotto Plus 5 Interactive Game Procedures given on 20 April 2011.

- 7.18 Notwithstanding any approval provided under this Condition 7 and without prejudice to the provisions of Schedule 7, the Commission reserves the right to require the Licensee at any time to make any amendments (which it shall in its absolute discretion consider appropriate) to the terms and conditions, rules, procedures and game specific rules for any Constituent Lottery. Following consultation with the Licensee, the Commission shall provide the Licensee with such notice of its requirements as it shall deem necessary in its absolute discretion.
- 7.19 The Licensee shall ensure that any changes to the terms and conditions, rules, procedures and game specific rules for each Constituent Lottery shall take effect on the same date and at the same time as against all Players in any Constituent Lottery, regardless of the medium on which a Player purchases or otherwise acquires his ticket.<sup>123124125126127128129</sup>
- 7.20 The Licensee shall procure that each and every Distributor complies with the terms and conditions, rules, procedures and game specific rules for each Constituent Lottery.
- 7.21 The Licensee shall:<sup>130131132133</sup>
- (a) adopt, maintain and comply with the Player Guide (which has first been approved by the Commission) where tickets are bought from Distributors<sup>134135136137138139140</sup>;
  - (b) adopt, maintain and comply with the Service Guide (which has first been approved by the Commission) for the games which are played interactively via the Interactive Systems; and<sup>141142</sup>
  - (c) adopt, maintain and comply with the Subscription Guide (which has first been approved by the Commission) where tickets are bought by Subscription<sup>143144145</sup> via the Interactive Platform<sup>146</sup>,
- and Schedule 7 shall have effect in relation to the approval, review and amendment of the documents referred to in this Condition 7.21.

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<sup>123</sup> Short term waiver of Condition 7.19 granted on 10 October 2016 to allow Camelot time to print and distribute misalignments in player guide. Extension to waiver granted on 08 December 2016 until 28 February 2017.

<sup>124</sup> Waiver in relation to transition of Camelot's customer service telephone numbers

<sup>125</sup> Waiver to permit temporarily a misalignment between the Lotto Retail Game Procedure and version 17 of the Lotto Online Game Procedure. The two different versions of the Lotto Game Procedures can remain in market until the launch of the Fabric Lotto game change.

<sup>126</sup> Waiver to allow misalignment between the Set For Life Retail Game Procedures and the Set For Life Online Game Procedures as of 17 May 2019.

<sup>127</sup> Waiver to allow misalignment between Set For Life retail and online player documents until 30 April 2020

<sup>128</sup> Waiver to allow misalignment between Set For Life retail and online player documents until 30 November 2020

<sup>129</sup> Waiver of Condition 7.19 between 7 September 2020 and 10 October 2020 due to publication of game procedures.

<sup>130</sup> Waiver to pause Minicom service during Covid-19 lockdown in place until 30 September 2020.

<sup>131</sup> Extension of time limited waiver to pause Minicom service until the end of Covid-19 restrictions given on 29 September 2020.

<sup>132</sup> Waiver to allow the misalignment in the Player Guide to remain in market as of 4 November 2020

<sup>133</sup> Extension of the waiver to pause the Minicom service given on 02 July 2021 until 30 September 2021.

<sup>134</sup> Waiver of the obligation to ensure that the wording of the Player Guide as issued accords with the version of the Player Guide as approved by the Commission. This reflected that some minor errors had appeared in the printed text. Waiver given on 17 July 2009.

<sup>135</sup> Waiver of the requirement to submit a revised Player Guide (Version 15) for Commission approval given on 27 October 2009.

<sup>136</sup> Waiver of the obligation on Camelot to seek Commission approval of a revised Player Guide given on 5 March 2010.

<sup>137</sup> Waiver to allow a misalignment to remain in market in relation to the Bespoke Player Guide relating to scratchcards.

<sup>138</sup> Waiver to allow misalignments to remain in market in relation to the Full Player Guide (Version 20).

<sup>139</sup> Waiver to allow a misalignment in the bespoke Player Guide to remain in market as of 4 December 2014

<sup>140</sup> Waiver to allow a misalignment in the bespoke Player Guide to remain in market as of 27 August 2015

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<sup>142</sup> Licence varied by consent 6 November 2019

<sup>143</sup> Licence varied by consent on 8 February 2021

<sup>144</sup> Waiver of requirement for the Subscription Guide to refer to all types of Subscriptions

<sup>145</sup> Waiver extension for the Subscription Guide to refer to all types of Subscriptions

<sup>146</sup> Varied by consent, effective from 6 July 2015

7.22 The Player Guide shall contain the following information:

- (a) all possible methods of participating together with the price of a ticket for each method, any arrangements for ticket cancellation, and any Drawbreak arrangements;
- (b) a statement as to the odds of winning the various prizes, and the likely proportion of the face value of tickets which is expected to be paid in prizes;<sup>147</sup>
- (c) the methods of determining whether the ticket is a winning ticket;
- (d) the methods of claiming any prize and the period within which prizes must be claimed; and
- (e) the minimum age of persons to whom tickets in a Constituent Lottery can be sold.<sup>148149</sup>

#### **Player information – Retail Outlets**

7.23 The Licensee shall ensure that copies of the terms and conditions, rules, procedures and game specific rules of each Constituent Lottery are available for reference purposes at every Retail Outlet where the tickets for such Constituent Lotteries are available for sale at the Retail Outlet in question.<sup>150</sup>

7.24 The Licensee shall ensure that the current Player Guide can be accessed without charge at every Retail Outlet.<sup>151152153</sup>

7.25<sup>154</sup> The terms and conditions, rules, procedures, game specific rules of each Constituent Lottery and the Player Guide shall contain:<sup>155</sup>

- (a) the name and address of the registered or principal office of the promoter of each Constituent Lottery referred to in the document;
- (b) a telephone number from which further information about each Constituent Lottery referred to in the document can be obtained at the Basic Rate for a telephone call;
- (c) a telephone number to which complaints about each Constituent Lottery referred to in the document can be made at the Basic Rate for a telephone call; and
- (d) the minimum age of persons to whom tickets in each Constituent Lottery referred to in the document can be sold.<sup>156</sup>

7.26 If the Retail Outlet is situated in Wales or the Distributor offers tickets on sale to participants in Wales the terms and conditions, rules, procedures, game specific rules for each Constituent Lottery and the Player Guide shall be available in Welsh as well as in English.

7.27<sup>157</sup> The Licensee shall ensure that every ticket contains the following information:<sup>158</sup>

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<sup>147</sup> Waiver of the requirement for Camelot to comply with this condition in respect of the UK Millionaire Maker game only

<sup>148</sup> Licence varied by consent to reflect the change of Age to Play from 16 to 18 which is applicable from 22 April 2021.

<sup>149</sup> Waiver to allow the misalignment of the new Player Guide for the period 1 March 2021-21 April 2021.

<sup>150</sup> Text in grey disappplied by agreement with effect from 10 July 2013

<sup>151</sup> Waiver of the requirement for Camelot to allow Camelot to trial a laminated Players Guide.

<sup>152</sup> Extension of time limited waiver to Condition 7.24 of the Section 5 Licence, until 8 November 2016

<sup>153</sup> Condition varied with consent on 4 November 2016

<sup>154</sup> Licence varied by consent 7 July 2017.

<sup>155</sup> Waiver in relation to transition of Camelot's customer service telephone numbers

<sup>156</sup> Waiver of the requirement for Camelot to ensure the name and address, telephone number and minimum age are included within the Game Procedures Template.

<sup>157</sup> Text in grey disappplied by agreement with effect from 6 July 2010.

<sup>158</sup> Waiver in relation to transition of Camelot's customer service telephone numbers

- (a) the name of the Constituent Lottery, and clear indication that this Constituent Lottery forms part of the National Lottery;
- (b) the price applicable in accordance with the rules of the relevant Constituent Lottery;
- (c) the minimum age of persons to whom a ticket can be sold;
- (d) any cancellation arrangements;
- (e) how the Player can ascertain whether the ticket is a winning ticket;
- (f) how the Player can claim a prize and the period within which prizes must be claimed;
- (g) a statement as to where the rules of the Constituent Lottery can be obtained;
- (h) a local call rate telephone number from which further information about the Constituent Lottery may be obtained at the Basic Rate<sup>159</sup>; and
- (i) the name of the promoter of the Constituent Lottery.

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

- (a) each such notice shall be appropriate for the method of effecting sales at Retail Outlets;
- (b) each such notice shall comprise a statement to the effect that it is unlawful to sell tickets to any person aged under 16 and shall state a telephone number which members of the public may call at a local call rate to report the details of any Distributor whom they believe has or may have sold tickets unlawfully; and
- (c) the notices described in this Condition 7.28 shall be displayed at Retail Outlets on a basis which shall be subject to the prior written approval of the Commission.<sup>160</sup>

7.29 The Licensee shall ensure that at every Retail Outlet there shall be prominently displayed a notice advising Players how to find out how many prizes in each tier remain unclaimed in any game offering a fixed number of prizes, including the relevant telephone number at the Basic Rate.<sup>161162</sup>

7.30 Unless the Commission agrees otherwise, the Licensee shall ensure that at every outlet with Draw-based Facilities there shall be displayed a notice containing information of Sales Break times for all relevant Constituent Lotteries on sale.<sup>163</sup>

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

7.31 The Licensee shall ensure that:

- (a) the current Player Guide;
- (b) the current Service Guide;

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<sup>159</sup> Licence varied by consent 7 July 2017.

<sup>160</sup> Text in grey disappplied by agreement with effect from 6 July 2010.

<sup>161</sup> Licence varied by consent 7 July 2017.

<sup>162</sup> Waiver in relation to transition of Camelot's customer service telephone numbers

<sup>163</sup> Text in grey disappplied by agreement with effect from 6 July 2010.

- (c) the current Subscription Guide<sup>164</sup>;
- (d) the procedures for each interactive instant win game, while the game remains on sale on the National Lottery website; and
- (e) other than as provided by paragraph 7.31(d) above, the rules, game specific rules, procedures and terms and conditions of all Constituent Lotteries (whether played interactively or at Retail Outlets or by Subscription) that are in force from time to time,<sup>165</sup>  
are accessible to the public, on the National Lottery website (www.national-lottery.co.uk (or such website address as the Licensee shall use from time to time)); and
- (f) the price per ticket for each Constituent Lottery available on the Interactive Platform is visible to the public on the Interactive Platform.

7.32<sup>166</sup> Every document required to be made available pursuant to Condition 7.31 shall contain:<sup>167</sup>

- (a) the name and address of the registered or principal office of the promoter of each Constituent Lottery referred to in the document;
- (b) a telephone number from which further information about each Constituent Lottery referred to in the document can be obtained at the Basic Rate;
- (c) a telephone number to which complaints about each Constituent Lottery referred to in the document can be made at the Basic Rate; and
- (d) the minimum age of persons to whom tickets in each Constituent Lottery referred to in the document can be sold<sup>168</sup>.

7.33 The Licensee shall ensure that the following information is available via the Interactive Platform to each Registered Player (except to those Registered Players that have purchased tickets only via Pingit) where tickets or Subscriptions are available for sale:<sup>169170</sup>

- (a) the balance in the Registered Player's Account at any given time<sup>171172173</sup>;
- (b) a record of the Registered Player's Transaction History;<sup>174175176</sup> and
- (c) any information so required by the Commission in its discretion.

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<sup>164</sup> Waiver of the requirement to have a Subscription Guide (known as the Direct Debit Guide) for the launch of the new internet platform.

<sup>165</sup> Waiver of the requirement for Camelot to publish the Rules for Draw Based Games played at Retailers (18<sup>th</sup> edition) and the EuroMillions Game Procedures (Retailer version) on the National Lottery website until the launch of the new platform

<sup>166</sup> Licence varied by consent 7 July 2017.

<sup>167</sup> Waiver in relation to transition of Camelot's customer service telephone numbers

<sup>168</sup> Waiver of the requirement for Camelot to ensure the name and address, telephone number and minimum age are included within the Game Procedures Template.

<sup>169</sup> Licence varied by consent 6 November 2019

<sup>170</sup> Licence varied by consent on the 8 February 2021

<sup>171</sup> Waiver of requirement in relation to a payment method, waiver extended 17 June 2016

<sup>172</sup> Waiver of requirement in relation to a payment method on 10 November 2017

<sup>173</sup> Extension of the waiver of requirements for CUKL in relation to PAP payment methods given on 6 November 2018

<sup>174</sup> Waiver of requirement in relation to a payment method, waiver extended 17 June 2016

<sup>175</sup> Waiver of requirement in relation to a payment method on 10 November 2017

<sup>176</sup> Extension of the waiver of requirements for CUKL in relation to PAP payment methods given on 10 November 2017

- 7.34 The Licensee shall advise the Commission of changes to player-facing screens accessible via the Interactive Platform on a basis to be specified by the Commission after consulting with the Licensee.<sup>177</sup>
- 7.35 The Commission reserves the right to require the Licensee at any time to make any amendments it shall in its absolute discretion consider appropriate to the content of any player-facing screen via the Interactive Platform.

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

- 7.36 Unless the Commission otherwise allows in any particular case, the Licensee shall give or send a copy of the:
- (a) terms and conditions, rules, procedures and game specific rules of any Constituent Lottery; and/or
  - (b) the current Player Guide, the current Service Guide or the current Subscription Guide,
- to any person who requests such information within 21 days of such request being received by the Licensee.
- 7.36 In response to any reasonable request for information about the National Lottery or any Constituent Lottery, the Licensee shall provide the information requested.<sup>178</sup>
- 7.37 If requested by any person, the information provided under Condition 7.36 shall be provided in Welsh or in any other language as the Commission may from time to time determine.<sup>179</sup>

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

- 7.38 The Licensee shall ensure that material is available for reference purposes:
- (a) at each Retail Outlet; and
  - (b) on the National Lottery website (www.national-lottery.co.uk (or such website address as the Licensee shall use from time to time)),
- stating the percentages of the NLDF and the OLDF which are allocated (after the allocation referred to in section 22(2) of the National Lottery Act) for the matters referred to in section 22(3) of the National Lottery Act.
- 7.39 The Licensee shall, if requested by any person, provide that person within 21 days of the receipt of the request, information stating the amount which was paid to the NLDF, and if applicable the OLDF in the most recent Financial Year.<sup>180</sup>

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

- 7.40 The Licensee shall take all reasonable steps to ensure that information regarding the National Lottery is accessible to persons with visual and/or hearing impairments.
- 7.41 Unless the Commission agrees otherwise, the Licensee at least annually shall undertake or commission research to ensure that the provision of any service, materials or information, or any strategy, required by this Condition 7 takes account of Players' and relevant others' needs and views.

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<sup>177</sup> Text in grey disapplied by agreement with effect from 6 July 2010.

<sup>178</sup> By agreement, the original Condition 7.36 disapplied and replaced by revised Condition 7.36 with effect from 6 July 2010.

<sup>179</sup> Text in grey disapplied by agreement with effect from 6 July 2010.

<sup>180</sup> Text in grey disapplied by agreement with effect from 6 July 2010.



## Player information - reliability

- 7.42 The Licensee shall ensure that any material and its content (whether in printed or electronic form) designed to promote a Constituent Lottery or to encourage a Player to enter into or play in a Constituent Lottery, or to enable a Player to play a Constituent Lottery<sup>181</sup> including:<sup>182183184185</sup>
- (a) the player-facing screens on the Interactive Platform;
  - (b) any application form for use by Players or prospective Players in any registration scheme; and/or
  - (c) any playslip (being a preformatted card or equivalent electronic format provided by the Licensee for a Constituent Lottery, bearing an area which enables a Player to make a selection of numbers for a game),
- is accurate and does not mislead Players and is compatible with the terms and conditions, rules, procedures and game specific rules of the relevant Constituent Lottery. For the purposes of this Condition 7.42, the term “play” shall mean all the stages of a game including submitting an entry, purchasing a ticket, establishing whether a prize has been won, the amount thereof<sup>186</sup> and obtaining the prize.<sup>187</sup>

## Prize payment

- 7.43 The Licensee shall ensure that:
- (a) any material and its content (whether in printed or electronic form) designed to inform Players of the estimated or actual jackpot for any Draw is accurate, and in the case of any factual statements is true and capable of independent verification or confirmation<sup>188</sup>;
  - (b) all Players in a Constituent Lottery are able to find out without payment to the Licensee and without undue inconvenience whether they have won a prize;
  - (c) all prizes in every Constituent Lottery are paid to the persons who have claimed them in accordance with the rules of the Constituent Lottery<sup>189190191192,193194</sup>;
  - (d) the validation and payment of prizes to winners under Constituent Lotteries shall be made promptly and shall not unduly inconvenience such winners; and
  - (e) the winners of prizes which are in excess of £50,000 in value under a Constituent Lottery are provided with appropriate sources of legal and financial advice.

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<sup>181</sup> Licence varied, effective 5 June 2015

<sup>182</sup> Waiver in relation to transition of Camelot's customer service telephone numbers

<sup>183</sup> Waiver to pause Minicom service during Covid-19 lockdown in place until 30 September 2020.

<sup>184</sup> Extension of time limited waiver to pause Minicom service until the end of Covid-19 restrictions given on 29 September 2020.

<sup>185</sup> Extension of the waiver to pause the Minicom service given on 02 July 2021 until 30 September 2021.

<sup>186</sup> Licence varied, effective 5 June 2015

<sup>187</sup> Waiver of requirement in relation to Monopoly Second Chance Draw Scratchcard and existing wording in the Player Guide

<sup>188</sup> Licence varied, effective 5 June 2015

<sup>189</sup> Waiver of obligation on Camelot to comply with their Game Specific Rules in relation to one specific prize payment given on 31 January 2019

<sup>190</sup> Waiver of obligation on Camelot to comply with their Game Specific Rules in relation to one specific prize payment given on 31 January 2019

<sup>191</sup> Waiver of obligation on Camelot to comply with their Game Specific Rules in relation to one specific prize payment given on 12 March 2019

<sup>192</sup> Waiver of obligation on Camelot to comply with their Game Specific Rules in relation to one specific prize payment given on 14 June 2019

<sup>193</sup> Waiver of obligation on Camelot to comply with their Game Specific Rules in relation to one specific prize payment given on 13 December 2019

<sup>194</sup> Waiver of the obligation on Camelot to comply with their Game Specific Rules in relation to one specific prize payment given on 12 February 2021.

- 7.44 The Licensee shall ensure that Distributors (except to those Registered Players that only purchase tickets using Pingit) only pay prizes to individuals who are entitled to claim them.<sup>195</sup>
- 7.45 The Licensee shall carry out and shall require that all Distributors and others responsible for the payment of prizes (whether in cash or otherwise) on its behalf shall carry out such identity checks and other security measures as the Licensee shall in its discretion from time to time deem reasonable and appropriate in relation to the payments of any particular prize amount.
- 7.45A If any person claims any right to payment of any prize in respect of any lost or stolen ticket on the reverse of which the name and address section shall have been completed, and in respect of which a prize has previously been paid, and if the Commission:
- (a) is of the opinion that the Licensee or any relevant Distributor or other person responsible for the payment of the prize has not properly carried out the identity checks and security measures referred to in Condition 7.45; and
  - (b) directs the Licensee to make payment to the claimant of any amount not exceeding the amount of the relevant prize,
- the Licensee shall (notwithstanding any provisions of the rules, terms and procedures for Draw-based Games which might otherwise entitle the Licensee to decline to pay a prize by reason of prior payment to another claimant) pay the claimant at its own cost the amount so directed by the Commission to be paid.
- 7.46 The Licensee shall (after due and careful investigation) ensure from its own resources that in the event that:
- (a) a prize winning ticket in any game in a Constituent Lottery shall be demonstrated to have been fraudulently, negligently or erroneously cancelled by the Licensee or by a Distributor, the Licensee shall pay to the bearer of such ticket an amount equal to the prize to which the bearer of that ticket would have been entitled but for such cancellation; and
  - (b) a prize in respect of any game in a Constituent Lottery shall be demonstrated to have been paid to a person who, in accordance with the rules of such Constituent Lottery, was not entitled to purchase a ticket for such game and as a result of such payment the prize payments to any other prize winner in the same game is reduced, the Licensee shall use all reasonable endeavours to identify the prize winner or winners whose prize or prizes have been reduced by such wrongful prize payment and pay to the prize winner or winners the amount by which the relevant prize or prizes had been reduced.
- 7.47 The Licensee shall advise the Commission as soon as is reasonably practicable of circumstances likely to give rise to any claim by Players in respect of cancelled tickets in the circumstances of Condition 7.46(a) and of all additional payments made by the Licensee to prize winners in the circumstances of Condition 7.46(b).

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

- 7.48 Save as is otherwise required by Law, the Licensee shall not disclose (other than to the Commission or, where necessary, a Licensee Subcontractor) the identity of any person who has won a prize in any Constituent Lottery or who the Licensee is aware is, or is likely to be, entitled to any share in or part of any such prize without the prior written consent of that person. For the purpose of this Condition 7.48, a sound made by a lottery terminal to indicate that a winning ticket has been presented in a Constituent Lottery and/or the presentation of a prize entitlement message, shall not of itself constitute disclosure of a person's identity.<sup>196</sup>
- 7.49 The Licensee shall ensure that, save as is otherwise required by Law, the Licensee Subcontractor shall not disclose (other than to the Commission) the identity of any person who has won a prize in any Constituent Lottery or who the Licensee Subcontractor is aware is, or is likely to be, entitled to any share in or part of any such prize without the prior written consent of that person. For the

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<sup>195</sup> Licence varied by consent 6 November 2019

<sup>196</sup> Licence varied by consent on 10 July 2013, effective 19 August 2013.

purpose of this Condition 7.49, a sound made by a lottery terminal to indicate that a winning ticket has been presented in a Constituent Lottery and/or the presentation of a prize entitlement message, shall not of itself constitute disclosure of a person's identity.<sup>197</sup>

## **Player services**

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

## **Complaints Procedure and Alternative Dispute Resolution<sup>198</sup>**

### **7.50A**

- (a) The Licensee shall put into effect a written procedure for handling Player complaints ( the 'Complaints Procedure') and shall ensure that information about the Complaints Procedure:
- (i) is set out in the relevant Games Rules for all Constituent Lotteries;<sup>199</sup>
  - (ii) is readily accessible on the Licensee's website, and
  - (iii) includes details of how to make a complaint to the Licensee, including the relevant contact details.
- (b) The Licensee shall ensure that Players are given a copy of the Complaints Procedure on request, and that all complaints are handled in accordance with the Complaints Procedure.
- (c) The Complaints Procedure shall include, at the conclusion of the Licensee's internal procedures, an arrangement for Players to be able to refer any Player Dispute which has not been resolved to the Player's satisfaction (whatever the amount at issue) to Alternative Dispute Resolution ('ADR') by an ADR Entity. The Licensee may have arrangements with more than one ADR Entity, and Players may be directed to different ADR Entities depending on the nature and subject matter of the Player Dispute, but Players shall not be entitled to refer the same Player Dispute to more than one ADR Entity.
- (d) The Licensee may not refuse to refer disputes to ADR on the grounds that it considers the complaint to be frivolous or vexatious..
- (e) The services of any ADR Entity shall be free of charge to the Player and shall not be subject to terms which restrict, or purport to restrict, the Player's right to bring legal proceedings against the Licensee.
- (f) Where a Player Dispute is referred to ADR, the terms of the ADR shall provide that, where the amount in dispute does not exceed £10,000 and the Player has accepted the decision of the ADR Entity, the Licensee shall accept the decision of the ADR Entity.
- (g) Subject to (f) above the decision of the ADR Entity in respect of a Player Dispute referred to it shall not be binding on the Player or Licensee.
- (h) The Licensee shall arrange for a copy of each ADR Entity decision to be provided to the Commission, in such format and within such timescale as the Commission may from time to time specify.

### **7.51 The Licensee shall:**

- (a) voice-record all telephone calls to and from the telephone numbers referred to in Conditions 7.25 and 7.32;

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<sup>197</sup> Licence varied by consent on 10 July 2013, effective 19 August 2013.

<sup>198</sup> Licence varied by consent on 7 August 2015

<sup>199</sup> Waiver of requirement for Camelot to comply with this licence condition until 30 November 2015

- (b) ensure that it is made clear at the start of each call that the call is being recorded and why it is being recorded; and
- (c) retain a record of all calls for one year from the date that the call was made<sup>200</sup>.

7.52 Intentionally left blank.

#### **Advertising and promotions<sup>201</sup>**

7.53 The Licensee shall comply with all industry regulations set out in the UK Code of Broadcast Advertising (BCAP Code), the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code), the Advertising Standards Authority, Ofcom, Clearcast, the Radio Advertising Clearance Centre, the Direct Marketing Association and any other relevant industry bodies in respect of the National Lottery, every Constituent Lottery and Ancillary Activities.

7.54 The Licensee shall ensure that when it enters into an agreement with a third party which is associated with the promotion of the National Lottery or any Constituent Lottery, that such promotion is fair to participants and appropriate in terms of maintaining the reputation of the National Lottery.

7.55 All advertising (save for the following agreed exceptions) must feature a National Lottery Logo. The agreed exceptions are as follows;

- (a) Third party promotions which use a coupon, if it is not possible to reproduce National Lottery Logos due to technical restrictions;
- (b) Any advertising which appears on Ceefax and/or Teletext;
- (c) Interactive promotional assets such as game badges and promotional spots which are clickable graphics that appear on the National Lottery website or that of a third party partner; and
- (d) Where National Lottery Logos cannot be reproduced accurately due to space constraints.

Any other exceptions to this such as where technical restrictions preclude an accurate representation, will require the prior approval of the Commission.

7.56 Intentionally left blank.

7.57 Intentionally left blank.

7.58 Intentionally left blank.

7.59 Intentionally left blank.

7.60 The Licensee shall:

- (a) ensure that any material produced by it which is designed to encourage or encourages<sup>202</sup> the purchase of tickets in a Constituent Lottery is accurate, and in the case of any factual statements is true and capable of independent verification or confirmation;
- (b) use its best endeavours to ensure that any material produced by any Licensee Subcontractor at the request of or with the consent of the Licensee which is designed to encourage the purchase of tickets in a Constituent Lottery is accurate, and in the case of any factual statements is true and capable of independent verification or confirmation; and
- (c) for the avoidance of doubt, where any factual statement is not capable of independent verification or confirmation, ensure that such statement shall not be included in any such advertisement

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<sup>200</sup> Licence varied by consent on 29 July 2009.

<sup>201</sup> Licence varied by consent on 01 June 2011.

<sup>202</sup> Licence varied, effective 5 June 2015

produced by itself and shall use its best endeavours to ensure that such a statement shall not be included in any such advertisement produced by a Licensee Subcontractor at the request of or with the consent of the Licensee.

- 7.61 The Licensee shall ensure that, and shall use its best endeavours to ensure that any Licensee Subcontractor ensures that<sup>203204205</sup>:
- (a) no unsolicited telephone calls, unsolicited facsimile transmissions, spam emails or sms messages are used with a view to encouraging the purchase of tickets in a Constituent Lottery;
  - (b) no advertisement for the National Lottery or any Constituent Lottery includes the name of, or any images which are identifiable with, any person to whom or any object or event in respect of which money has been distributed under the provisions of section 25(1) and 25(1A) of the National Lottery Act without the consent of that person or a person who is properly authorised by the relevant distributing body; and
  - (c) save where the Licensee's regional offices use such information for promotional purposes and such information is already properly in the public domain neither the Licensee nor any Licensee Subcontractor shall use the identity or image of or any reference to any such person, object or event as is described in Condition 7.61(b) for any publicity or promotional or other such purpose whether connected with the National Lottery or any Constituent Lottery or otherwise without the consent of such person or of the person to whom such money was distributed or of the relevant distributing body.

#### **Corporate Communication<sup>206</sup>**

- 7.62 The Licensee will ensure that any corporate advertising and public relations communications it initiates do not misrepresent or convey any misleading impression as to the Licensee's role as operator of the National Lottery. In particular:
- (a) The Licensee will ensure that communications required under the terms of its licences are not used for corporate publicity.
  - (b) The Licensee will use its best endeavours to ensure that the media and other third parties represent its role correctly.
  - (c) The Licensee should not seek to associate its corporate name, image or logo with the National Lottery, in a way which does not specify the Licensee's role, or suggest that it owns the National Lottery name, or any of the National Lottery Logo(s), or that the Licensee is responsible for the distribution of funds to the Good Causes.

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<sup>203</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 28 July 2009.

<sup>204</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 25 September 2009.

<sup>205</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 27 October 2009.

<sup>206</sup> Licence varied by consent on 01 June 2011.

## 8. Retailer commission and retailer management

### Retailer commission

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

- (a) 6% of the value of sales made by that retailer in respect of any Scratchcard Game;
- (b) 5% of the value of sales by that retailer in respect of any other Constituent Lottery; and
- (c) 5% of the value Lotto "match 2" prizes, being free Lotto Lucky Dip tickets, that are validated by the retailer<sup>207</sup>.

The Licensee shall ensure that retailers' prize payment commission shall be as follows<sup>208209210</sup>:

Prize Level	Commission Due												
Scratchcard Prizes up to and including £10	Nil												
Scratchcard Prizes over £10 and up to and including £500	1 % of the value of any prize paid by that retailer												
Draw-based Game Prizes up to and including £30	Nil												
Draw-Based Game Prizes over £30 and up to and including £500	1% of the value of any prize paid by that retailer												
Prizes over £500 and up to and including £50,000	<div>In each 12 month period from 1<sup>st</sup> February 2013 to 31<sup>st</sup> January 2018 a payment to the Post Office, such payment being dependant on the number of prize payments made as detailed below:<sup>211</sup><table><tr><td>No of prize payments</td><td>Payments</td></tr><tr><td>Up to 25,000</td><td>£200,000</td></tr><tr><td>25,001 – 50,000</td><td>£500,000</td></tr><tr><td>50,001 – 60,000</td><td>£600,000</td></tr><tr><td>60,001 – 70,000</td><td>£700,000</td></tr><tr><td>Over 70,000</td><td>£800,000</td></tr></table></div>	No of prize payments	Payments	Up to 25,000	£200,000	25,001 – 50,000	£500,000	50,001 – 60,000	£600,000	60,001 – 70,000	£700,000	Over 70,000	£800,000
No of prize payments	Payments												
Up to 25,000	£200,000												
25,001 – 50,000	£500,000												
50,001 – 60,000	£600,000												
60,001 – 70,000	£700,000												
Over 70,000	£800,000												
Prizes of £50,000 and above	Nil												

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<sup>207</sup> Licence varied by consent on 21 November 2018

<sup>208</sup> Licence varied by consent on 9 March 2009

<sup>209</sup> Licence varied by consent on 7 May 2013, effective from 5 October 2013.

<sup>210</sup> Short term waiver of licence granted on 28 September 2017 in relation to a Licensee Subcontractor

<sup>211</sup> Licence varied by consent effective from 1 February 2013

- 8.2 During the term of the Licence, the Licensee shall not (unless otherwise agreed by the Commission in respect of short term tactical arrangements) materially change a retailer's remuneration unless the Commission has first received a notice in writing from the Licensee stating the basis of such remuneration or change to remuneration and any percentage commission relevant thereto and the terms of any other incentive arrangements 25 Business Days prior to the change. Any such notice shall include:
- (a) the Licensee's reasons for proposing to change a retailer's remuneration;
  - (b) the estimated effect of the proposed change on ticket sales, contributions to good causes and the Licensee's financial position; and
  - (c) such other information as the Commission shall request.
- 8.3 Within 10 Business Days of receipt of a notice from the Licensee to materially change a retailer's remuneration the Commission may by notice in writing to the Licensee require the Licensee to suspend arrangements proposed for such a change to enable reasonable time for further dialogue with the Licensee. Following such dialogue the Commission may by notice in writing to the Licensee require the Licensee not to change the retailer's remuneration, subject to such conditions as the Commission may specify.

#### **Retailer management**

- 8.4 The Licensee shall:
- (a) ensure that clear and fair criteria are specified and applied for retailers to qualify for selection and de-selection. These criteria shall reflect the requirements in Condition 5.24 and be consistent with ensuring reasonable community access to Retail Outlets with Draw-based Facilities;
  - (b) make the criteria referred to at Condition 8.4(a) available upon request;
  - (c) provide means that encourage retailers to transmit operational queries to it quickly and shall ensure that it deals with such queries quickly and effectively; and
  - (d) conduct or procure the conduct of such tests of retailers, as the Commission may require, to establish whether sales have been or are being made or are likely to be made by retailers to purchasers under the age of 18<sup>212</sup>. The coverage of such tests may be determined by the Commission, but not less than 9,000 prior to 1 April 2013 and 11,600 tests to 31 July 2023 which must be carried out in respect of each Financial Year. For any part Financial Year a pro-rata calculation will be used to work out the number of tests. For Financial Years 2022-2023 and 2023-2024 this condition is satisfied if 15,466 tests in aggregate have been carried out for Financial Years 2022-23 and 2023-2024 and the number of tests in Financial Year 2023-2024 is at least 1,150. The number of such tests may be increased by the Commission subject to the Licensee's agreement (not to be unreasonably withheld) if the Commission can show grounds for such increase.<sup>213214215216217218219</sup>

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<sup>212</sup> Licence varied by consent to reflect the change of Age to Play from 16 to 18 which is which is applicable from 22 April 2021.

<sup>213</sup> Licence varied by consent on 5 March 2012

<sup>214</sup> Temporary waiver of the MIRR Q16 Report provided for Q1 FY20/21 reporting period, provided on 15 July 2020.

<sup>215</sup> Extension to waiver of MIRR Q16 Report provided for Q2 FY20/21 reporting period, provided on 14 September 2020.

<sup>216</sup> Extension to existing waiver of MIRR Q16 Report provided on 14 December 2020, until 15 January 2021.

<sup>217</sup> Extension to existing waiver of MIRR Q16 Report and associated visits for FY20/21 provided on 13 January 2021.

<sup>218</sup> Licence varied by consent with effect from 31 March 2021

<sup>219</sup> Waiver of MIRR Q16 Reports for Q1 and Q2 of FY21/22 provided on 26 March 2021.

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

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

- 9.1 The Licensee shall adopt, maintain and implement a strategy in connection with handling proposals submitted by third parties for games for inclusion in the National Lottery. The strategy shall first have been approved by the Commission and shall cover the procedures according to which the Licensee will evaluate such proposals and the criteria according to which it will reach decisions.
- 9.2 The strategy shall also cover the handling of any proposal that is submitted as, or which becomes, an application to the Licensee for agreement under section 1(3)(b) of the National Lottery Act for an application to be made to the Commission for a licence under section 6 of the National Lottery Act.
- 9.3 The Licensee shall co-operate with, assist and act reasonably in all its dealings with persons who are considering making or have made such proposals or applications to it.
- 9.4 Schedule 7 shall apply in relation to the approval, monitoring, review and amendment of the procedures referred to in Condition 9.1.<sup>220</sup>

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<sup>220</sup> Text in grey disapplied by agreement with effect from 30 July 2010.



## 10. Information and reporting<sup>221</sup>

### General obligations

- 10.1 The Licensee shall in the manner, format and timescale specified by the Commission, provide the Commission and its representatives and advisers with access to members of the Licensee's Staff and to Licensee Information for the purpose of:
- (a) allowing the Commission to carry out its duties and exercise its powers under the National Lottery Act;
  - (b) verifying the Licensee's compliance with the Licence and all licences granted under section 6 of the National Lottery Act; and
  - (c) allowing the Commission to prepare for Reletting.
- 10.2 In connection with its obligations in Condition 10.1, the Licensee shall within the timescale specified by the Commission:
- (a) make available or deliver to the Commission and its representatives and advisers (including to the Trustees if the Commission shall so specify) such Licensee Information as it shall request;
  - (b) provide the same level and means of access (including secure electronic access in real time) to the Licensee Information as is available to the Licensee's Staff or any other party involved in the operation of the Technology Solution;
  - (c) prepare and present the Licensee Information or its contents in such format or manner (including aggregated and disaggregated form) as the Commission may require, and shall provide such assistance as the Commission may require in connection with the verification of the Licensee Information;
  - (d) obtain any third party consents that are required to allow the Licensee Information or its contents to be available to the Commission or used or published by it; and
  - (e) make appropriately skilled and qualified or experienced members of the Licensee's Staff available to attend meetings with the Commission or its advisers and representatives in order to assist with the collation or verification of the Licensee Information,
- in each case, notwithstanding the confidential nature (if any) of the Licensee Information.
- 10.3 In connection with its obligations in Condition 10.1, the Licensee shall, having received reasonable prior notice, allow the Commission and its advisers and representatives such access to the premises of the Licensee as is necessary to enable the Commission to inspect or take copies of Licensee Information. The Licensee shall allow the Trustees such access if so specified by the Commission.
- 10.4 In connection with its obligations in Condition 10.1, the Licensee shall establish and keep up to date on a monthly basis the following registers in the format specified by the Commission:
- (a) Licensee Assets;
  - (b) Licensee Subcontracts, Series Subcontracts and Sub Series Subcontracts;
  - (c) Key Licensee Subcontracts;
  - (d) Property Interests;

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<sup>221</sup> Various waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain specified subcontractors given on 1 February 2009.

- (e) Licensee Databases;
- (f) IP as set out in Condition 21.1;
- (g) Processes and Procedures as set out in Condition 5.10A;
- (h) Secure Area registers in accordance with Condition 5.21;
- (i) Incident log in accordance with Conditions 5.15(b) and 10.7;
- (j) Retail Outlets and all premises from which tickets for the National Lottery and any Constituent Lottery are sold;
- (k) members of the Licensee's Staff;
- (l) risk register in accordance with Condition 14.24; and
- (m) any other register notified by the Commission from time to time,  
and each register shall form part of the Licensee Information.

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

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

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

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

10.5A The Licensee shall:

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

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

- (a) any Licensee Information;

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

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

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

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

### Incident reports

<sup>222</sup>10.7 In the event of any incident occurring or being anticipated or reasonably suspected that might reasonably be expected to adversely affect the proper running, reputation or image of the National Lottery or the interests of the Players (**Incident**) including:

- (i) any fraud or attempted fraud or breach or attempted breaches of data security; or
- (ii) any material defect in any system of internal control of the Licensee; or
- (iii) any material matter to indicate that the Licensee has not kept a proper set of books and records and operated an adequate system of internal financial control,  
  
the Licensee shall:
  - (a) immediately inform the Commission of the Incident as soon as it became or should reasonably have become aware of it;
  - (b) within such timescale specified by the Commission, provide the Commission with a written report detailing the nature, cause and impact or likely impact of the Incident, the action taken by the Licensee to address or minimise its immediate or anticipated consequences and the action taken or proposed by the Licensee to ensure that the Incident does not recur or that the risk of recurrence is minimised<sup>223224225</sup>;
  - (c) allow the Commission and its advisers such access to the premises of the Licensee as is necessary to enable the Commission to assess the impact or likely impact of the Incident and whether the action taken or proposed by the Licensee is adequate to ensure the proper running, reputation or image of the National Lottery;
  - (d) make appropriately skilled, qualified and experienced members of the Licensee's Staff available to attend meetings with the Commission and its advisers or representatives in order to assist the Commission in understanding the nature, cause and impact or likely impact of the Incident and whether the action taken or proposed by the Licensee is adequate to ensure the proper running, reputation or image of the National Lottery; and

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<sup>222</sup> Various waivers of the obligations under on Camelot to reflect certain provisions of the licence in its contracts with certain specified subcontractors given on 25 June 2012.

<sup>223</sup> Short term waiver of this obligation for 3 months commencing 1<sup>st</sup> September 2018

<sup>224</sup> Extension of the short term waiver of this obligation for 3 months commencing 1<sup>st</sup> December 2018

<sup>225</sup> Extension of the short term waiver of this obligation for 3 months commencing 1<sup>st</sup> March 2019

- (e) maintain a log of all Incidents<sup>226227228</sup>.

### **Licensee Subcontractors**

- 10.8 In connection with its obligations in Conditions 10.1 and 10.7, the Licensee shall ensure that the Commission and its representatives and advisers shall be<sup>229230231232233234</sup>:
- (a) allowed access to any premises of any Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor where required by the Commission;
  - (b) provided by Licensee Subcontractors, Series Subcontractors and Sub Series Subcontractors with any information in such format and within such timescale specified by the Commission (including any information which the Commission considers necessary to determine whether the National Lottery is run and every Constituent Lottery promoted with all due propriety and that the Conditions and all codes of practice referred to herein have been and are being complied with); and
  - (c) permitted to conduct interviews with any Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor or any of its Staff (including interviews for the purpose of determining whether the National Lottery is run and every Constituent Lottery promoted with all due propriety and that the Conditions and all codes of practice referred to herein have been and are being complied with).

### **Provision of facilities**

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

### **Management and operational information**

- 10.10 Without prejudice to the generality of Condition 10.1, the Licensee shall provide the Commission and its representatives and advisers with information relating to the management and running of the National Lottery or any Ancillary Activity, including the matters in Condition 10.12, and shall

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<sup>226</sup> Short term waiver of this obligation for 3 months commencing 1<sup>st</sup> September 2018

<sup>227</sup> Extension of the short term waiver of this obligation for 3 months commencing 1<sup>st</sup> December 2018

<sup>228</sup> Extension of the short term waiver of this obligation for 3 months commencing 1<sup>st</sup> March 2019

<sup>229</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 28 July 2009.

<sup>230</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 25 September 2009.

<sup>231</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 27 October 2009.

<sup>232</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 6 November 2009.

<sup>233</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 14 December 2009.

<sup>234</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contract with a subcontractor given on 31 March 2011.

provide it in the manner and format and on a monthly basis or such other frequency specified by the Commission, notwithstanding the confidential nature (if any) of the information<sup>235236237238239240241242243244245246247</sup>.

10.11 For the purposes of Condition 10.10:

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

10.11A The Licensee shall:

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

10.12 The matters referred to in Condition 10.10 are:

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- <sup>235</sup> Waiver of the incident reporting requirements as set out in the Management Information and Reporting Requirements specified by the Commission under Condition 10.10. Revised incident reporting requirements substituted for a trial period given on 23 September 2010.
  - <sup>236</sup> Extension of the waiver of the incident reporting requirements as set out in the Management Information and Reporting Requirements specified by the Commission under Condition 10.10. Camelot required to report in accordance with revised incident reporting requirements during a trial period given on 4 November 2010.
  - <sup>237</sup> Waiver of the requirement to submit certain specified contact centre reports in the period to 31 December 2010 given on 11 November 2010.
  - <sup>238</sup> Extension of the waiver of the incident reporting requirements as set out in the Management Information and Reporting Requirements specified by the Commission under Condition 10.10 given on 2 December 2010. Camelot required to report in accordance with revised incident reporting requirements during an extended trial period.
  - <sup>239</sup> Extension of the waiver of the requirement to submit certain specified contact centre reports given on 23 December 2010. Waiver extended to 31 January 2011.
  - <sup>240</sup> Extension of the waiver of the incident reporting requirements as set out in the Management Information and Reporting Requirements specified by the Commission under Condition 10.10 given on 25 February 2011. Camelot required to report in accordance with revised incident reporting requirements during an extended trial period, ending 3 May 2011
  - <sup>241</sup> Extension of the waiver of the incident reporting requirements as set out in the Management Information and Reporting Requirements specified by the Commission under Condition 10.10 given on 3 May 2011. Camelot required to report in accordance with revised incident reporting requirements during an extended trial period, ending 30 June 2011
  - <sup>242</sup> Permanent waiver of the incident reporting requirements as set out in the Management Information and Reporting Requirements specified by the Commission under Condition 10.10 given on 1 July 2011. Camelot required to report in accordance with revised incident reporting requirements.
  - <sup>243</sup> Waiver until 12 April 2017 in relation to a reporting requirement under Condition 10.12
  - <sup>244</sup> Waiver until 12 May 2017 in relation to a reporting requirement under Condition 10.12
  - <sup>245</sup> Waiver of certain annual financial reporting sign-off requirements for 2016/17 under Condition 10.12
  - <sup>246</sup> Waiver until 2 April 2018 in relation to a reporting deadline under Condition 10.12
  - <sup>247</sup> Waiver of annual reporting requirements due to COVID 19 given on 3 June 2020.

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

## **Performance standards**

- 10.13 The Commission may, after consulting with the Licensee, including consulting as to which of the following standards and targets can properly be applied:
- (a) specify standards of performance on any matter referred to in Condition 10.12 or any other matter in relation to the running of the National Lottery and any Constituent Lottery and the Licensee shall comply with these standards; and
  - (b) specify targets of performance on any matter referred to in Condition 10.12 or any other matter in relation to the running of the National Lottery and any Constituent Lottery.
- 10.14 In respect of the Licensee's performance of the targets specified under Condition 10.13(b), the Commission may review that performance and, after consulting with the Licensee, specify new or amended standards of performance which the Licensee shall comply with.
- 10.15 In connection with its obligations in Condition 10.13, the Licensee shall:
- (a) keep adequate records of the levels of performance achieved in respect of each standard of performance and performance target specified by the Commission;
  - (b) report monthly to the Commission on its performance in such manner and format as the Commission may specify; and
  - (c) publish in such manner and format as the Commission may specify a report containing details of the matters specified in Condition 10.12 for the Financial Year to which the report relates and such report shall contain in respect of each determined matter:
    - (i) a comparison between the level of performance achieved and the performance standard or performance target established for it in respect of the Financial Year to which the report relates; and
    - (ii) a statement of the expected level of performance in the next Financial Year following that to which the report relates.
- 10.16 The first report referred to in Condition 10.15(c) shall relate to the first Financial Year in which tickets for any Constituent Lottery are sold and be published within four months of the end of that Financial Year, and each subsequent report shall be published within four months of the end of the Financial Year to which it relates.

## **Banking records**

- 10.17 No proceeds received by the Licensee in respect of sales of National Lottery tickets or Ancillary Activities shall be deposited or paid into any bank account unless the bank where the account is to be maintained provides appropriate money transmission facilities.
- 10.18 The Licensee shall keep records of every financial transaction or financial event relating to the participation of Players in any Constituent Lottery to which the Licensee, or any other person acting in the capacity of agent to the Licensee is a party, in a form in which it is reasonably practicable to inspect and analyse<sup>248</sup>.
- 10.19 The Licensee shall preserve all records required to be kept pursuant to Condition 10.18 for two years after the date of termination, expiry or revocation of this Licence and provide the Commission with access to such records for inspection by the Commission at any time. The Licensee may, during the two year period, seek the consent of the Commission to dispose of records and such consent may be granted on such terms and conditions as the Commission shall determine. At the

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<sup>248</sup> Waiver to allow the destruction of application log files given on 14 April 2010.

end of the two year period, the Licensee may destroy the records unless the Commission has required that they be delivered up to it.<sup>249</sup>.

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

#### **Accounts**

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

#### **Player correspondence**

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

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<sup>249</sup> Waiver to allow the destruction of application log files given on 14 April 2010.



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

- 11.1 The Licensee shall comply with the provisions of Schedules 5, 8, 10,11 and 15 (which contain provisions requiring payments to be made to the Secretary of State and information to be provided to the Commission).<sup>250</sup>
- 11.2 Without prejudice to any right of the Secretary of State under sections 9(3) or 10A(14) of the National Lottery Act, if the Licensee fails to pay to the Secretary of State any amount specified in Schedules 5, 8, 10,11 and 15 by the dates specified in those Schedules, it shall pay out of the proceeds of the Constituent Lotteries interest to the Secretary of State at the rate specified in Condition 11.4 on any amount unpaid from the date when the amount should have been paid to the date when it is paid inclusive.<sup>251</sup>
- 11.3 For the purposes of this Condition 11, if a payment is not made by 3.00 p.m. on any Business Day it shall be deemed to have been made on the next Business Day and payment shall be treated as made only when credited to the account specified by the Commission pursuant to Condition 11.5.
- 11.4 For the purposes of Condition 11.2, the interest rate shall be 3% above the base rate for the time being of National Westminster Bank plc or such other clearing bank as the Commission may from time to time determine.
- 11.5 The Licensee shall make the payments to the Secretary of State referred to in Schedules 5, 8, 10, 11 and 15 by CHAPS transfer or other direct transfer (as determined by the Commission) to a bank and for the credit of such account as is specified by the Commission Secretary of State<sup>252</sup>. All payments made hereunder will be made net of any withholding or other taxes, unless the Licensee obtains clearance from the HM Revenue and Customs enabling all such payments to be made gross.<sup>253</sup>

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<sup>250</sup> Licence varied by consent on 5 March 2012.

<sup>251</sup> Licence varied by consent on 5 March 2012.

<sup>252</sup> By agreement, text in grey disappplied and replaced by the words 'Secretary of State' with effect from 6 July 2010.

<sup>253</sup> Licence varied by consent on 5 March 2012.

## 11A Promotion of the National Lottery

- (1) The Licensee shall be liable to fund one third (33.33%) of the NLPU actual spend in respect of each Period, to the extent that such NLPU actual spend does not exceed the relevant Cap referred to in Condition 11A(2).
- (2)
  - (a) Subject to Condition 11A(2)(b) to (d) below, the Cap in respect of the NLPU actual spend and the NLPU anticipated spend in respect of each Period shall be as follows:
    - i. £0.5 million (including VAT) (the **First Cap**) in the First Period;
    - ii. £3 million (including VAT) (the **Second Cap**) in the Second Period; and
    - iii. £3 million (including VAT) (the **Subsequent Cap**) in each Subsequent Period,each (as reduced or increased pursuant to Condition 11A(2)(b) to (d) below) being a **Cap** and, together, the **Caps**.
  - (b) The Caps shall be reduced proportionately in respect of the Period to which that Cap is applicable to the extent that the NLPU is inoperative for any part or all of that Period.
  - (c) The First Cap may only be increased following agreement between the Licensee and the NLPU's management board, and subject to Commission approval.
  - (d) The Second and Subsequent Cap may be increased either (i) by agreement between the Licensee and the NLPU's management board, subject to Commission approval or (ii) without the agreement of the Licensee, to the extent only of the NLPU under spend (if any) for the immediately preceding Period.
- (3) The Licensee shall within 4 weeks of receiving notification of the NLPU anticipated spend in respect of a Period:
  - (a) pay BIG the amount of the NLPU anticipated spend to the extent that such NLPU anticipated spend does not exceed the relevant Cap referred to in Condition 11A(2); and, thereafter
  - (b) make adjustments to the Basic Primary Contribution for the relevant Weekly Payment in accordance with Schedule 8 Part 2 paragraph 6.1(a).
- (4) Upon the receipt of a statement from BIG that has been approved by the NLPU's management board containing (i) details of the NLPU actual spend in respect of the relevant Period and, where appropriate, (ii) notice requiring the Cap in respect of the current Period to be increased by up to the amount of the NLPU under spend in respect of the immediately preceding Period, the Licensee shall:
  - (a) calculate the Reconciled Amount;
  - (b) forthwith (and, in any event before 30 June in the Period immediately following the relevant Period, or, if later, within five (5) working days of receipt of the statement referred to above) notify the Commission of the Reconciled Amount and of the date of the Weekly Payment (being the next Weekly Payment following such notification or such other date as the Commission and the Licensee shall agree) in which it is intended that the adjustment, if any, in paragraph 4 (c) below is to be made, and;
  - (c) make the following adjustments on the Weekly Payment date referred to in paragraph (4)(b) above to reflect the Reconciled Amount. In the case of a NLPU over spend the Licensee shall pay BIG the Reconciled Amount and make the necessary adjustment to the Basic Primary Contribution for the next relevant Weekly Payment in accordance with Schedule 8 Part 2 paragraph 6.1 (b) or, in the case of a NLPU under spend, the Licensee shall (except to the extent that the NLPU management board has given the Licensee the notice referred to above requiring the Cap in respect of the current Period to be increased by up to the amount of the NLPU under spend in respect of the immediately preceding Period) be entitled to reimbursement from BIG of any part of the NLPU under spend which

has not been used to increase the Cap as aforesaid and shall following such reimbursement make adjustment to the Basic Primary Contribution for the relevant Weekly Payment in accordance with Schedule 8 Part 2 paragraph 6.1 (c).

- (5) The Licensee shall, at its discretion, review the obligations relating to this Condition 11A annually and shall, where relevant, advise the Commission of its conclusions.

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

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

12.1 The Licensee shall:

- (a) ensure that the memorandum and articles of association which were notified to and approved by the Commission prior to the commencement of the Licence are in force on the commencement of the Licence;
- (b) ensure that any shareholders' agreements and any Finance Agreements notified to and approved by the Commission prior to the commencement of the Licence are in force on the commencement of the Licence;
- (c) not without the prior written consent of the Commission make any material change to its articles of association, shareholders' agreements or Finance Agreements<sup>254</sup>;
- (d) (i) ensure that on the commencement of the Licence its equity level and debt facility profile are as agreed to by the Commission prior to the commencement of the Licence; and  
  
(ii) ensure that at all times it has immediately available cash deposits (excluding, for the avoidance of doubt, amounts standing to the credit of any Trust Account) and/or undrawn, committed and available debt finance facilities which together total not less than £25,000,000 for use in exceptional circumstances, provided that where an exceptional circumstance arises such that any such debt finance facility has to be drawn down (having first exhausted such cash deposits) the Licensee shall have a period of six weeks in which to put in place such replacement facilities as are required to enable it to comply with this Condition;
- (e) not without the prior written consent of the Commission make material changes to its equity level or any material changes to its debt facility profile;
- (f) ensure that the arrangements made with Connected Parties which were notified to and approved by the Commission prior to the commencement of the Licence are in force on the commencement of the Licence;
- (g) not without the prior written consent of the Commission make material changes to the arrangements it agreed with Connected Parties and which were approved by the Commission prior to the commencement of the Licence;
- (h) notify the Commission promptly on becoming aware of any default or potential default under any Finance Agreements.

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

### Provision of information about directors, shareholders and others<sup>255</sup>

12.2 The Licensee shall in the manner, format and time limits specified by the Commission, provide the Commission and its advisers with such information as the Commission may from time to time request with a view to determining whether any person who is managing the Licensee's business

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<sup>254</sup> Licence varied by consent on 30 June 2010.

<sup>255</sup> Waiver of the requirements under Conditions 12.2-12.8 for WHSmith plc and its directors to undergo fit and proper vetting given on 9 December 2011.

or for whose benefit the Licensee's business is being carried on is in the Commission's opinion fit and proper<sup>256257258</sup>.

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

12.4 The Licensee shall<sup>259260261262</sup>:

(a) not allow any person to become<sup>263</sup>:

(i) a director of the Licensee or any subsidiary of the Licensee;

(ii), a qualifying direct shareholder as defined in Condition 12.5(f) of the Licensee and any person who is a Connected Party to any such person<sup>264</sup>;

(iii) a party to any Key Licensee Subcontract and any person who is a Connected Party in relation to any such person<sup>265266267268269270271272273274275</sup>; or

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

without the prior consent of the Commission; and

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<sup>256</sup> Waiver of the obligation for certain contractors to undergo vetting given on 1 February 2009.

<sup>257</sup> Waiver of the obligation for certain contractors to undergo vetting given on 24 March 2009.

<sup>258</sup> Waiver of the obligations for certain contractors to undergo vetting given on 3 May 2018.

<sup>259</sup> Waiver of the obligation for certain contractors to undergo vetting given on 1 February 2009.

<sup>260</sup> Waiver of the obligation for certain contractors to undergo vetting given on 24 March 2009

<sup>261</sup> Waiver to allow Camelot to submit vetting forms in relation to a contractor after rather than before their appointment given on 12 February 2009

<sup>262</sup> Waiver of the obligation for certain contractors to undergo vetting given on 01 December 2016.

<sup>263</sup> The Commission waived the obligation on Camelot to secure the vetting of certain Key Licensee Subcontractors or their Connected Parties on the basis that they have previously been vetted as Camelot employees given on 30 March 2011.

<sup>264</sup> Waiver of the requirement for an individual to complete vetting prior to appointment to the board of companies in the OTPP group. The individual will not be involved in the management or operation of the National Lottery given on 2 August 2010.

<sup>265</sup> Waiver of the requirement for Commission consent prior to appointing WHSmith plc as a Key Licensee Subcontractor given on 9 December 2011

<sup>266</sup> Waiver of the vetting requirements for a contractor given on 23 January 2015

<sup>267</sup> Waiver of the vetting requirements for a contractor given on 10 April 2015

<sup>268</sup> Waiver of the vetting requirements for two contractors given on 29 June 2015

<sup>269</sup> Waiver of the vetting requirement for a contractor given on 6 August 2015

<sup>270</sup> Waiver of vetting requirements for a contractor given on 22 September 2015

<sup>271</sup> Waiver of vetting requirements for a contractor given on 2 November 2015

<sup>272</sup> Waiver of vetting requirements for a contractor given on 13 April 2018

<sup>273</sup> Waiver of vetting requirements for a contractor given on 3 May 2018

<sup>274</sup> Waiver of vetting requirements for a contractor given on 28 February 2019

<sup>275</sup> Waiver of vetting requirements for a contractor given on 9 March 2021

- (b) notify the Commission in writing upon a person referred to in Condition 12.4(a) becoming or ceasing to be a Connected Party within 14 days<sup>276</sup>.

12.5 A "Connected Party" in relation to any person means<sup>277278279280</sup>:

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

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

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

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

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<sup>276</sup> Waiver of vetting requirements for a contractor given on 13 April 2018

<sup>277</sup> Waiver of the vetting requirements in relation to certain group companies given on 1 February 2009.

<sup>278</sup> Waiver of the vetting requirements set out in the Third Licence insofar as they apply to members of the Ontario Teachers' Pension Plan Board (OTPP) who do not exercise control over any aspect of the management of OTPP's investment in Camelot given on 30 June 2010.

<sup>279</sup> Waiver of vetting requirements for the parent companies of three contractor given on 12 December 2019.

<sup>280</sup> Waiver of the vetting requirements relating to a parent company a contractor given on 10 July 2020.

- 12.7 It shall be presumed (unless the contrary is demonstrated to the satisfaction of the Commission) that an agreement, arrangement or understanding of the type referred to in Condition 12.6 exists between any person who holds any shares in the capital of the Licensee or any interest therein and:
- (a) every person in relation to which it is a Connected Party or which is a Connected Party in relation to that person; and
  - (b) every person who is its parent, step-parent, partner, child, step-child, brother, sister, aunt, uncle, nephew or niece. In this Condition 12.7 “partner” means a spouse or any other person with whom it is living as a couple.
- 12.8 The Licensee shall procure that each Connected Party completes a declaration confirming its fit and proper status in the form provided by the Commission<sup>281282283284285286</sup>.
- 12.9 The Licensee shall:
- (a) prepare on a consistent basis in respect of each accounting year accounting statements which disclose in relation to each transaction of a description specified in the left hand column of the table below which took place during the Financial Year to which the statements relate between the Licensee and any person who is a Connected Party in relation to the Licensee:
    - (i) all of the parties to the transaction; and
    - (ii) the information in relation to that transaction in the right hand column of the table;

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

<sup>281</sup> Waiver of vetting requirements for Connected Parties relating to a contractor given on 13 April 2018.

<sup>282</sup> Waiver of vetting requirements for Connected Parties relating to a contractor given on 3 May 2018.

<sup>283</sup> Waiver of vetting requirements for Connected Parties relating to a contractor given on 28 February 2019.

<sup>284</sup> Waiver of vetting requirements for Connected Parties relating to a contractor given on 29 May 2019.

<sup>285</sup> Waiver of vetting requirements for the parent companies of three contractors given on 12 December 2019.

<sup>286</sup> Waiver of the vetting requirements relating to a parent company a contractor given on 10 July 2020.

- (b) procure that the accounting statements prepared in accordance with this Condition contain a certificate signed by the chief executive and one other director (if at the time of such signature there shall be no such appointee as chief executive then such certificate shall be signed by two directors) that, having taken all reasonable steps to verify the same, the accounting statements prepared in accordance with Condition 12.9(a) have been properly prepared in accordance with this Condition and comprise a complete list of the transactions and the statements provide a true and fair view of the transactions described in them<sup>287288289</sup> ; and
- (c) deliver to the Commission a copy of the accounting statements referred to in Condition 12.9(a) as soon as reasonably practicable, and in any event not later than three months after the end of the Financial Year to which they relate.

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<sup>287</sup> Waiver of the requirement for the annual statements required under the Licence to be signed by Camelot's CE and one other director given on 7 March 2011. Statements can instead be signed by Camelot's CE and the senior executive responsible for Finance. The waiver only applies to the current financial year.

<sup>288</sup> Waiver of the requirement for the certificate relating to the annual statements required under the Licence to be signed by Camelot's CE and one other director given on 11 July 2013. The certificate can instead be signed by Camelot's CE and the senior executive (in post at the time of the waiver) responsible for Finance on an on-going basis subject to the Licensee's Board approval.

<sup>289</sup> Waiver of the requirement for the requisite annual reports for 2017/2018 pursuant to Condition 10.12 of the Licence to be signed by Camelot's CEO and one other director given on 5 June 2018. The requisite annual reports can instead be signed by Camelot's CEO and the senior executive (in post at the time of the waiver) responsible for Finance. The waiver only applies to 2017/2018 financial year.



### **13. Vetting**

- 13.1 The Commission shall be entitled to carry out such investigations as it deems necessary and appropriate to determine whether, in its opinion, a person employed or engaged or to be employed or engaged in connection with the Licensee's business of running the National Lottery is fit and proper and the Licensee shall give the Commission all reasonable assistance in relation to such investigations.
- 13.2 Without prejudice to the generality of the foregoing, the Commission shall be entitled to determine that certain categories of the Licensee's personnel shall be subject to investigation.
- 13.3 Where a determination is made pursuant to Condition 13.2, the Commission shall notify the Licensee of its requirements in relation to those categories and the Licensee shall treat the requirements as constituting a Process and shall adopt and maintain a Procedure.
- 13.4 The Licensee shall adopt and maintain a Procedure for the activities it carries out to assist the Commission in its determination as to whether any person who is employed or engaged or to be employed or engaged in connection with the Licensee's business of running the National Lottery or for whose benefit the Licensee's business is being carried on is in the Commission's opinion fit and proper.
- 13.5 The Commission may designate the Procedure referred to in Condition 13.4 as a Key Procedure pursuant to Condition 5.12A(a), or may direct the Licensee that the Procedure should be submitted for approval pursuant to Condition 5.12B(a).

13.6 The Licensee shall comply with the Procedure described in Condition 13.4 and shall ensure that, if so required, every Licensee Subcontractor so nominated by the Commission shall so comply.<sup>290291292293294295296297298299300301302303304305306307 308309310311312313314315316317318319320321</sup>

13.7 If an individual is due to take up a position with the Licensee or has taken up a position with the Licensee before the Commission has completed its investigations under Conditions 12.2 or 13.1, the Licensee shall be required to demonstrate, on request by the Commission, that it has considered:

a) whether the individual should be prevented from carrying out any of the activities that would ordinarily fall within the job description for that role; and

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- 290 Short term waiver of the requirement granted on 15 January 2016 in relation to vetting requirements for certain contractors.
- 291 Short term waiver of the requirement granted on 31 March 2017 in relation to vetting requirements for certain employees.
- 292 Short term waiver of the requirement granted on 28 April 2017 in relation to vetting requirements for an employee.
- 293 Short term waiver of the requirement granted on 02 June 2017 in relation to vetting requirements for certain employees.
- 294 Short term waiver of the requirement granted on 06 June 2017 in relation to vetting requirements for an employee.
- 295 Short term waiver of the requirement granted on 19 June 2017 in relation to vetting requirements for an employee.
- 296 Extension to the short term waiver of vetting requirements on 06 June 2017 in relation to vetting requirements for an employee granted on 4 September 2017.
- 297 Short term waiver of the requirement granted on 29 December 2017 in relation to vetting requirements for an employee.
- 298 Short term waiver of vetting requirements on 9 February 2018 (effective from 12 February 2018) in relation to re-vetting requirements.
- 299 Short term waiver of the requirement granted on 28 March 2018 in relation to vetting requirements for an employee.
- 300 Short term waiver for (12 months till April 2019) granted on 13 April 2018 in relation to the vetting requirements for Connected Parties for a certain contractor.
- 301 Waiver of the requirements in relation to the vetting requirements for a Key Licensee Subcontractor given on 3 May 2018.
- 302 Short term waiver of the requirements relating to vetting of 2 Non-Executive Directors given on 27 November 2018 until 14 January 2019.
- 303 Short term waiver of vetting requirements on 15 January 2019 in relation to vetting requirements for an employee.
- 304 Short term waiver of vetting requirements for an employee given on 3 May 2019.
- 305 Waiver of the requirements in relation to the vetting requirements for a Key Licensee Subcontractor given on 29 May 2019.
- 306 Short term waiver of the requirement granted on 02 December 2019 in relation to vetting requirements for an employee
- 307 Short term waiver of the vetting requirements for an employee granted on the 24 January 2020.
- 308 Short term waiver of the vetting requirements for two employees provided on 2 March 2020, for 5 months.
- 309 Short term waiver of the vetting requirements for two employees provided on 16 March 2020, until 30 April 2020.
- 310 Short term waiver of the vetting requirement for 1 of Camelot's employees provided on 20 March 2020, until 31 July 2020.
- 311 Waiver of the vetting requirement for 1 of Camelot's employees given on 23 March 2020.
- 312 Waiver of the vetting requirements relating to Key Licensee Subcontractor provided on 3 July 2020, until 3 July 2021
- 313 Short term waiver of the vetting requirements for 3 of CUKL's NED's provided on 20 July 2020, until 1 December 2020.
- 314 Short term waiver of the vetting requirement for an employee given on 2 September 2020, until 24 October 2020.
- 315 Extension to short term waiver of the vetting requirement for an employee, given on 25 November 2020 until 1 February 2021.
- 316 Short term waiver of the vetting requirements for an employee given on 15 December 2020 until 01 June 2021
- 317 Short term waver of the vetting requirements for an employee given on the 18 December 2020 until 18 March 2021.
- 318 Short term waiver of the vetting requirements for an employee given on 27 January 2021 until 1 May 2021.
- 319 Short term waiver of the vetting requirements for a Board member given on 28 April 2021 until 28 October 2021.
- 320 Short term waiver of the vetting requirements for an employee given on 30 April 2021 until 1 November 2021.
- 321 Short term waiver of the vetting requirements for an employee given on 27 May 2021 until 30 September 2021.

b) whether the individual should be subject to supervision in carrying out any of the activities associated with the role.<sup>322</sup>

- 13.8 If an individual has taken up a position with the Licensee before the Commission has completed its investigations under Condition 13.1, the Licensee shall be required to demonstrate, on request by the Commission, that it has implemented any measures it considered appropriate pursuant to 13.7 (a) and (b) from the date that the individual commenced in post to the date when the Commission confirmed that its investigations had been completed.<sup>323</sup>

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<sup>322</sup> Licence varied by consent with effect from 24 September 2010.

<sup>323</sup> Licence varied by consent with effect from 24 September 2010.

## 14. Control environment

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

### Corporate governance

- 14.2 Save with the Commission's prior agreement the Licensee shall comply with the requirements of the Combined Code<sup>324325326327328 329 330 331332333</sup>
- 14.3 For the purpose of assessing the Licensee's compliance with Condition 14.2, the Commission shall consider matters which include the following:
- (a) stakeholder control of the business of the Licensee;
  - (b) the Licensee's full and frank disclosure of information in its financial statements;
  - (c) the rights and obligations of the board of directors of the Licensee;
  - (d) the composition of the board of directors of the Licensee;
  - (e) the control exercised by the board of directors of the Licensee in respect of the running of the National Lottery and any Ancillary Activity consented to by the Commission;
  - (f) the independence of the board of directors of the Licensee;
  - (g) the competence and commitment of the board of directors of the Licensee;
  - (h) the Licensee's risk assessment and control procedures;
  - (i) the Licensee's audit processes; and
  - (j) the Licensee's policies and procedures, including its policies on anti-fraud and whistle-blowing.

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<sup>324</sup> Waiver to allow Camelot to call an AGM at short notice given on 29 June 2010.

<sup>325</sup> Waiver of the obligation on Camelot to comply with certain requirements of the Combined Code given on 30 June 2010.

<sup>326</sup> Extension of a waiver of the licence requirement for Camelot to comply with certain requirements of the Combined Code given on 6 December 2010.

<sup>327</sup> Waiver of the obligations on Camelot to comply with certain requirements of the Combined Code given on 1 August 2012.

<sup>328</sup> Waiver of the obligations on Camelot to comply with certain requirements of the UK Corporate Governance Code on 11 November 2014

<sup>329</sup> Extension of waiver of the obligations on Camelot to comply with certain requirements of the UK Corporate Governance Code on 11 May 2015

<sup>330</sup> Waiver of requirement in regards to certain provision in the UK Corporate Governance Code for a limited period.

<sup>331</sup> Waiver of requirement in regard to certain provisions in the UK Corporate Governance Code until 4 April 2020.

<sup>332</sup> Waiver of an annual reporting requirement due to COVID 19 given on 3 June 2020.

<sup>333</sup> Waiver of requirement in regard to certain provisions in the UK Corporate Governance Code until end of Third Licence or until such time the UK Corporate Governance Code is amended (whichever occurs sooner).

## Reporting requirement

- 14.4 The Licensee shall submit to the Commission and publish on its website by 7 October each year<sup>334335336</sup> the Licensee's Accounts and an Annual Report, as required by the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410), including the following additional information:
- About Camelot;
  - Chairman's statement;
  - Chief Executive's Review; and
  - Report on Corporate Governance (covering the licensee's compliance with the UK Corporate Governance Code).

The Licensee shall procure a statutory auditors report on the Licensee's compliance with the UK Corporate Governance Code.<sup>337338339</sup>

The Licensee shall also publish on its website its Accounts and Annual Reports from the preceding three years.<sup>340</sup>

## Audit requirement

- 14.5 The Licensee shall ensure that it has the structures in place to deliver sound corporate governance, a review of which will form part of the Business Assurance process during the term of the Licence<sup>341342</sup>.
- 14.6 The Licensee shall ensure that copies of all internal audit reports produced during the term of the Licence, or after the expiry or revocation of the Licence in respect of matters arising during the Licence, are submitted to the Commission within 14 days of finalisation.

## System of internal control

- 14.7 The Licensee shall demonstrate that it has in place an effective system of internal control that supports a robust control environment to the satisfaction of the Commission. The Licensee shall ensure:
- (a) the effective and efficient running of the National Lottery;
  - (b) the provision of reliable financial information and reporting; and
  - (c) its compliance with the provisions of this Licence or any licence granted to it pursuant to section 6 of the National Lottery Act and any other provisions imposed under any statute which relates to the running of the National Lottery or the promotion of any Constituent Lottery.
- 14.8 The Licensee shall demonstrate that it:

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<sup>334</sup> Licence varied by consent on 1 April 2015

<sup>335</sup> Waiver to allow Camelot to delay the publication of its Accounts and Annual Report on its website for one financial year only, given on 30 September 2015. Camelot is required to publish this information by 23 October 2015.

<sup>336</sup> Waiver of an annual reporting requirement due to COVID 19 given on 3 June 2020.

<sup>337</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 28 February 2009.

<sup>338</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 25 September 2009.

<sup>339</sup> Licence varied by consent on 17 January 2013

<sup>340</sup> Licence varied by consent on 1 April 2015

<sup>341</sup> Licence varied by consent on 15 April 2019.

<sup>342</sup> Waiver to refine the classes of individuals to whom a whistleblower should disclose information given on 1 February 2009.

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

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

- (a) an audit committee composed of non-executive directors, the majority of whom are independent<sup>343344345</sup>; and
- (b) an internal audit function with a reporting line agreed with the Commission with access to the audit committee referred to in Condition 14.9(a).

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

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

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

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

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<sup>343</sup> Waiver of the requirement to ensure that the majority of non-executive directors on the audit committee are independent, provided that at least 50% are independent given on 1 February 2009.

<sup>344</sup> Further waiver of the requirement to ensure that the majority of non-executive directors on the audit committee are independent, provided that at least 50% are independent given on 3 September 2009.

<sup>345</sup> Further waiver of the requirement to ensure that the majority of non-executive directors on the audit committee are independent, provided that at least 50% are independent given on 31 March 2010.

times as the Commission shall determine. The Commission shall have the right to inspect the reconciliation process and data upon giving reasonable notice to the Licensee.

14.13 The Licensee shall establish:

- (a) a code of corporate social responsibility; and
  - (b) a code of conduct which shall provide a code for an ethical framework for all business decisions,
- and shall require the codes to be observed by all members of the Licensee's Staff and shall provide a copy of the codes to the Commission upon request.

14.14 The Licensee shall establish a procedure which encourages the Licensee's Staff and Licensee Subcontractors and their Staff to make appropriate disclosures to assist the Licensee in tackling fraud, corruption, unlawful or unacceptable conduct and any other malpractice within the organisation and in setting high standards of ethical conduct. The Licensee shall submit the procedure to the Commission for approval on the commencement of the Licence and shall make such changes to it as the Commission shall require. The Licensee shall ensure that, once approved by the Commission, the procedure is made known on a continuing basis to the Licensee's Staff. <sup>346</sup><sup>347</sup>

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

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

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

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

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

### **Reporting requirement**

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

- (a) all key risks;

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<sup>346</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 25 September 2009.

<sup>347</sup> Text in grey disappplied by agreement with effect from 30 July 2010.

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

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

#### **Audit requirement**

- 14.20 The Licensee shall ensure that its statutory auditors are appointed on terms which (in addition to any report which they are required to make under any statutory provision) require them:
- (a) to report in writing to the Licensee within three months of the end of each Financial Year on whether, in the course of any work performed by them for the Licensee, they have identified any material matters to indicate that the Licensee has not kept a proper set of books and records and operated an adequate system of internal financial control; and
  - (b) to inform the Licensee forthwith whether, in the course of their audit or from any other source or in any other way, they are aware of any irregularities, fraud, failure to comply with any provisions imposed by or under any statute, breach of Conditions contained in this Licence or misconduct by the Licensee or its officers or any member of the Licensee's Staff.
- 14.21 The Licensee shall in the manner, format and timescale specified by the Commission, provide the Commission and its representatives and advisers with copies of all reports pursuant to Condition 14.20.
- 14.22 The Licensee shall procure that its Business Assurance function delivers to it an annual statement of assurance, the form and content of which is to be agreed with the Commission, and shall provide a copy of it to the Commission if requested<sup>348</sup>.
- 14.23 The Licensee shall prepare an operating and financial review containing information including financial targets, a cost against budget analysis, and social and ethical policies and practices.

#### **Risk management**

- 14.24 The Licensee shall establish and maintain an effective risk management strategy which shall:
- (a) be endorsed by the board of directors and the chief executive of the Licensee;
  - (b) set out the Licensee's attitude to, capacity for and tolerance of risk;
  - (c) set out a framework for the management of risk;
  - (d) specify the way in which risk issues are to be considered at each level of business planning, including corporate objectives and objectives for management at functional level;
  - (e) require the maintenance of a risk register;
  - (f) contain risk evaluation criteria which are reviewed annually;<sup>349</sup> and
  - (g) enable risks to be identified and evaluated.
- 14.25 The Licensee shall establish and maintain a system to enable risks to the business objectives of the Licensee to be identified and evaluated which:

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<sup>348</sup> Licence varied by consent on 15 April 2019.

<sup>349</sup> Waiver of requirement for Camelot to undertake an annual review of the risk evaluation criteria until 29 February 2016



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

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

- (a) each level of management of the Licensee, including the board of directors, regularly reviews the risks and controls for which it is responsible;
- (b) the reviews referred to in Condition 14.26(a) are clearly monitored by and reported to the next level of management;
- (c) any need to change priorities is clearly recorded and reported; and
- (d) an appropriate level of assurance from an independent party is defined with particular reference to the role of internal audit and any other review bodies.

#### **Reporting requirement**

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

## 15. Contractors<sup>350</sup>

### Ability to subcontract

15.1<sup>351</sup> Where the Commission has previously notified the Licensee that notification of certain Licensee Subcontracts or material amendments to a Licensee Subcontract in accordance with this Condition is required, the Licensee shall:

- (a) notify the Commission of each such proposed Licensee Subcontract or proposed material amendment; and
- (b) provide the Commission with details of each such proposed Licensee Subcontract or material amendment, including the name of the Licensee Subcontractor, the nature of the Licensee Subcontract or material amendment and the value of the Licensee Subcontract or any material change in value resulting from a material amendment,

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

15.2 Upon notification of any such Licensee Subcontract or material amendment to a Licensee Subcontract under Condition 15.1, the Commission may, prior to the expiry of the applicable 28 day period, direct that:

- (a) the Licensee shall not enter into the proposed Licensee Subcontract or agree the material amendment; or
- (b) the Licensee shall only enter into the proposed Licensee Subcontract or agree the material amendment if changes specified by the Commission in writing are made to such Licensee Subcontract or material amendment.

### Management of subcontractors

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

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

15.3A<sup>352</sup> In addition to meeting its obligations under 15.3, the Licensee shall implement effective contractual management and performance arrangements with any Key Licensee Subcontractor who is an Extended Group Company, such that the interests of the Licensee and the National Lottery are fully met at all times. In particular:

- (a) all prospective Key Licensee Subcontracts, or any material changes to Key Licensee Subcontracts, shall be negotiated on an arm's length commercial basis and shall be benchmarked against the market by an independent third party;
- (b) the Licensee shall retain sufficient expertise to negotiate and manage such Key Licensee Subcontracts effectively;
- (c) Key Licensee Subcontracts shall include provisions:

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<sup>350</sup> Various waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain specified subcontractors given on 1 February 2009.

<sup>351</sup> Conditions 15.1, 15.2: Licence varied by consent with effect from 1 April 2011

<sup>352</sup> Conditions 15.3A and 15.3B: Licence varied by consent with effect from 1 April 2011

- (i) to ensure that the Licensee is not constrained if the Extended Group Company is unable to meet the Licensee's requirements and that, if the Key Licensee Subcontractor is unable to meet the Licensee's requirements in terms of the cost, quality or the timeliness of delivery of goods and/or services, the Licensee is able to obtain those goods and/or services from a third party;
    - (ii) entitling the Licensee to terminate the Key Licensee Subcontract if there is any change in the shareholders of the Extended Group Company.
  - (d) the Licensee shall ensure that arrangements are in place to identify, manage and report any conflicts of interest between the Licensee and any Extended Group Company;
  - (e) the Licensee shall ensure that appropriate arrangements are in place to monitor the performance of such Key Licensee Subcontracts.
- 15.3B The Commission and the Licensee may agree a Protocol regarding the management of Key Licensee Subcontracts between the Licensee and an Extended Group Company. The Licensee's performance in compliance with the Protocol shall be taken as evidence that its obligations under Condition 15.3 and 15.3A have been met.

#### **Designation of Key Licensee Subcontract**

- 15.4 Unless determined otherwise by the Commission a Licensee Subcontract, Series Subcontract and Sub Series Subcontract (as defined in Condition 15.14) shall be automatically designated as key **(Key Licensee Subcontract)** if it has one or more of the following characteristics:
- (a) an annual aggregate value of a minimum of £3 million, or such other higher figure as the Commission may specify<sup>353354355356357358</sup>; and/or
  - (b) it is related to the provision of any of the following (except where the provision is commodity-type in nature and easily replaced without material risk to the operation of the National Lottery):
    - (i) information technology services as related to gaming systems, network and channel provisions<sup>359</sup>;
    - (ii) marketing and/or promotion of the National Lottery;
    - (iii) business continuity and disaster recovery plans;
    - (iv) intra group Licensee Subcontracts without competitive process; and
    - (v) any other category of arrangements which the Commission may specify from time to time.
- 15.5 A Section 1(3)(b) Agreement shall be automatically designated as a Key Licensee Subcontract<sup>360</sup>.

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<sup>353</sup> Waiver of the obligation on Camelot and a specified subcontractor given on 13 February 2019.

<sup>354</sup> Waiver of the obligation on Camelot and a specified subcontractor given on 11 April 2019.

<sup>355</sup> Waiver of the obligation on Camelot and a specified subcontractor given on 1 November 2019.

<sup>356</sup> Waiver of the obligation on Camelot and a specified subcontractor given on 2 March 2020.

<sup>357</sup> Waiver of the obligation on Camelot and a specified subcontractor given on 4 March 2020.

<sup>358</sup> Waiver of the obligations on Camelot and specified subcontractors given on 11 November 2020.

<sup>359</sup> Waiver of the obligations on Camelot and a specified subcontractor given on 21 September 2020.

<sup>360</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain specified subcontractor given on 4 March 2009.

- 15.6 The Commission may at any time amend Condition 15.4 by adding or removing characteristics of Licensee Subcontracts, Series Subcontracts and Sub Series Subcontracts for designation purposes as a Key Licensee Subcontract.
- 15.7 In addition to the designation process at Conditions 15.4 and 15.5, the Commission may at any time designate a Licensee Subcontract, a Series Subcontract and a Sub Series Subcontract as a Key Licensee Subcontract, at its own discretion.
- 15.8 Where a monetary value is required at Condition 15.4 the relevant monetary value will be the maximum amount of money committed by the Licensee to the potential Key Licensee Subcontractor in the period set out at Condition 15.4.

#### Nature of subcontract and consultation

- 15.9 Intentionally left blank
- 15.10 Intentionally left blank
- 15.11 The Licensee shall provide to the Commission a copy in such form as the Commission may specify of each executed Key Licensee Subcontract.
- 15.12 On request by the Commission, where the Commission has designated a Licensee Subcontract, a Series Subcontract and a Sub Series Subcontract as a Key Licensee Subcontract pursuant to Condition 15.7, the Licensee shall use all reasonable endeavours to make or procure any amendments to the designated Licensee Subcontract, Series Subcontract and Sub Series Subcontract as the Commission may request and shall confirm to the Commission that these amendments have been made.

#### Terms of Licensee Subcontracts

- 15.13 The Licensee shall procure that the contractual provisions specified in Conditions 15.15, 15.15A and 15.16 are incorporated in all Licensee Subcontracts in the manner and to the extent described in Conditions 15.15, 15.15A and 15.16 and so to enable such contractual provisions to operate as between the Commission and the relevant Licensee Subcontractor and be enforced by the Commission against the relevant Licensee Subcontractor.
- 15.14 Where a Licensee Subcontractor has subcontracted the performance of some material part or all of its obligations under a Licensee Subcontract (**Series Subcontract**) to a third party (**Series Subcontractor**) and where a Series Subcontractor has subcontracted the performance of some material part or all of its obligations under a Series Subcontract (**Sub Series Subcontract**) to a third party (**Sub Series Subcontractor**), the Licensee shall.<sup>361362363364365</sup>
- (a) incorporate and procure that the Licensee Subcontractor incorporates the contractual provisions specified in Conditions 15.15, 15.15A and 15.16 in all Series Subcontracts in the manner and to the extent described in Conditions 15.15, 15.15A and 15.16; and
- (b) procure that the Licensee Subcontractor shall procure that the Series Subcontractor incorporates the contractual provisions specified in Conditions 15.15, 15.15A and 15.16 in all Sub Series Subcontracts in the manner and to the extent described in Conditions 15.15, 15.15A and 15.16,

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<sup>361</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 27 October 2009.

<sup>362</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 6 November 2009.

<sup>363</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 14 December 2009.

<sup>364</sup> Waiver of the obligation on CUKL to reflect certain provisions of the licence in its contract with a subcontractor given on 21 October 2014.

<sup>365</sup> Variation to the obligation on CUKL in relation to a Key Licensee Subcontract agreed on 13 April 2018.

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

15.14A<sup>366</sup> Conditions 10.4, 10.8, Condition 15 and Conditions 20.8, 20.9, 20.10, 20.11 and 20.12 shall not apply to any Series Subcontract or Sub Series Subcontract (and the relevant Series Subcontractor and Sub Series Subcontractor) in connection with Ancillary Activities except to the extent that the Series Subcontractor or Sub Series Subcontractor is an Extended Group Company.

**Mandatory flowdowns**<sup>367368369370</sup>

15.15 The Licensee shall ensure that:

- (a) every Licensee Subcontract, Series Subcontract and Sub Series Subcontract shall contain such provisions to enable the Licensee to fulfil its obligations under and comply with the Licence;
- (b)<sup>371</sup> no Licensee Subcontract, Series Subcontract or Sub Series Subcontract shall exclude the Commission's rights arising by virtue of the Contracts (Rights of Third Parties) Act 1999<sup>372</sup>;
- (c)<sup>373</sup> every Licensee Subcontract, Series Subcontract and Sub Series Subcontract which is also designated as a Key Licensee Subcontract shall contain an express provision that:
  - (i) the Licensee, or in the case of a Series Subcontract, the Licensee Subcontractor, or in the case of a Sub Series Subcontract, the Sub Series Subcontractor, can terminate, assign or novate the Licensee Subcontract, or Series Subcontract, or Sub Series Subcontract if the Commission directs that such Licensee Subcontract, Series Subcontract or Sub Series Subcontract should be terminated, assigned or novated within such period as the Commission may specify and to such parties as the Commission may specify;
  - (ii) the Commission shall be entitled to obtain and provide or procure the provision of any information from the Licensee Subcontractor, the Series Subcontractor or the Sub Series Subcontractor specified by the Commission (including any specification as to its format and timescale for delivery) to any third party for the purpose of the Competition and for the purpose of fulfilling its statutory duties;
  - (iii) the Commission's right to provide information from the Licensee Subcontractor, the Series Subcontractor and the Sub Series Subcontractor to any third party, as set out at Condition 15.15(c)(ii), shall not apply to information where the Licensee Subcontractor, the Series Subcontractor or the Sub Series Subcontractor can demonstrate to the Commission's satisfaction that:

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<sup>366</sup> Licence varied by consent with effect from 8 July 2010.

<sup>367</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors for Conditions 15.5-15.23 given on 28 July 2009.

<sup>368</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors for Conditions 15.5-15.23 given on 25 September 2009.

<sup>369</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 27 October 2009.

<sup>370</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors for Conditions 15.15 given on 4 March 2009.

<sup>371</sup> Waivers of the obligations on Camelot to reflect certain provisions of the licence in its contracts with certain specified subcontractors given on 25 June 2012.

<sup>372</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contract with a subcontractor given on 31 March 2011.

<sup>373</sup> Various waivers of the obligations on Camelot to reflect certain provisions of the licence in its contracts with certain specified subcontractors given on 25 June 2012.

- (A) the information is not required by the third party for it to carry out any instructions, as specified by the Commission, or any activities in connection with which the Commission wishes to provide the information;
  - (B) the information is confidential information of the Licensee Subcontractor, the Series Subcontractor or the Sub Series Subcontractor<sup>374</sup>; and
  - (C) the disclosure of the information would unduly prejudice the commercial interests of the Licensee Subcontractor, the Series Subcontractor or the Sub Series Subcontractor;
- (d)<sup>375</sup> every Licensee Subcontract, Series Subcontract and Sub Series Subcontract contains provisions imposing an obligation on the Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor to<sup>376</sup>:
- (i) comply with the Data Protection Act and any equivalent legislation in any country or jurisdiction where it operates other than the United Kingdom in respect of any personal data received from the Licensee under the Licensee Subcontract, Series Subcontract and Sub Series Subcontract;
  - (ii) carry out the processing of the data only in accordance with the Licensee's instructions or as is necessary to perform its obligations under the Licensee Subcontract, Series Subcontract and Sub Series Subcontract;
  - (iii) put in place appropriate technical and organisational measures against unauthorised, accidental or unlawful access to, or processing of, personal data (having regard to the state of technological development and the cost of implementing these measures); and
  - (iv) obtain the necessary consents referred to in Condition 22.2 where the Licensee Subcontractor or Series Subcontractor or Sub Series Subcontractor will be collecting personal data on the Licensee's behalf;
- (e)<sup>377</sup> every Key Licensee Subcontract contains provisions imposing an obligation on the Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor to:
- (i) ensure that the Key Licensee Subcontract shall endure or be capable of enduring for a period of at least 24 months following expiry or revocation of the Licence, provided that:
    - (A) nothing in this Condition 15.15(e)(i) shall restrict the creation of a break clause in the ordinary course or the exercise no less than 6 months prior to the expected expiry of the Licence (or, where an extension has been granted, the expiry of any such extension of the Licence) in the ordinary course of any option to terminate the Key Licensee Subcontract under such a break clause; and
    - (B) where the Key Licensee Subcontract otherwise terminates in the ordinary course no less than 6 months prior to the expected expiry of the Licence (or where an extension has been granted, the expiry of any such extension of the Licence) the obligation imposed under this Condition 15.15 (e)(i) shall be limited to ensuring that the Key Licensee Subcontract is capable of enduring for at least 24 months following revocation (and not expiry) of the Licence;
  - (ii) provide the Commission and its advisers and representatives in an electronic form, at no charge, at such times as the Commission may specify, with such information as it may

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<sup>374</sup> Variation to the obligation on CUKL in relation to a Key Licensee Subcontract agreed on 13 April 2018.

<sup>375</sup> Various waivers of the obligations on Camelot to reflect certain provisions of the licence in its contracts with certain specified subcontractors given on 25 June 2012.

<sup>376</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contract with a subcontractor given on 31 March 2011.

<sup>377</sup> Various waivers of the obligations on Camelot to reflect certain provisions of the licence in its contracts with certain specified subcontractors given on 25 June 2012

request relating to the National Lottery or the running of it or in any way concerning the Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor or as necessary for the Commission to determine whether the National Lottery and every Constituent Lottery is run with all due propriety;

- (iii) permit the Commission and its advisers and representatives to conduct any interview with it or any of its Staff or agents (including interviews to determine whether the National Lottery is run and every Constituent Lottery is promoted with all due propriety and that the Conditions and all codes of practice referred to herein have been and are being complied with);
  - (iv) put in place systems to ensure the compliance by its Staff and/or agents with the terms and obligations under the Key Licensee Subcontract;
  - (v) comply with the guidelines as set out in Condition 21.10 for the use of all Lottery IP;
  - (vi) use Lottery IP as directed by the Commission on all National Lottery related materials;
  - (vii) immediately inform the Licensee on becoming aware of any Incident;
  - (viii) immediately inform the Licensee on becoming aware of any infringement of any Lottery IP use or proposed use as specified in Condition 21.23;
  - (ix) maintain the integrity and security of the National Lottery;
  - (x) comply with obligations on confidentiality and security at least as stringent as those imposed on the Licensee under the Licence<sup>378</sup>; and
  - (xi) immediately notify the Licensee on becoming aware of any Incident which may have a material impact on the ability of the Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor to meet its obligations under the Licensee Subcontract, Series Subcontract or Sub Series Subcontract and to put in place the appropriate disaster recovery and/or business recovery plan;
- (f) every Licensee Subcontract, Series Subcontract and Sub Series Subcontract contains provisions to ensure that, the Commission, its advisers and its representatives shall be<sup>379</sup>:
- (i) allowed access on reasonable prior notice to any premises of any Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor where required by the Commission in the exercise of its statutory duties;
  - (ii) provided by any Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor with, and on reasonable prior notice allowed to inspect and take copies at any time (either on or off the premises of the Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor as the Commission may decide) of, any information, at no charge, in such format and within such timescale specified by the Commission (including any information which the Commission considers necessary to allow it to perform its statutory duties); and
  - (iii) permitted to conduct interviews on reasonable prior notice with any Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor or any of its Staff (including interviews for the purpose of determining whether the National Lottery is run and every Constituent Lottery promoted with all due propriety and that the Conditions and all codes of practice referred to herein have been and are being complied with);

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<sup>378</sup> Variation to the obligation on CUKL in relation to a Key Licensee Subcontract agreed on 28 February 2019

<sup>379</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contract with a subcontractor given on 31 March 2011.

- (g)<sup>380</sup> every Key Licensee Subcontract contains provisions imposing an obligation on the Key Licensee Subcontractor not to claim any right, title or interest in any Lottery IP (excluding gaming software or any generally available business application software) in which such Key Licensee Subcontractor has no right, title or interest (including in circumstances in which any such right, title or interest has been transferred by such Key Licensee Subcontractor pursuant to and in accordance with Condition 21.15); and
- (h) every Key Licensee Subcontract contains such other provisions specified by the Commission, following consultation with the Licensee, to perform those additional obligations which have been specified by the Commission on the Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor provided that any such additional provisions specified following execution of the Key Licensee Subcontract shall have no retrospective effect but the Licensee shall use reasonable endeavours to ensure such additional provisions are included in every Key Licensee Subcontract.

#### **Best endeavours flowdowns<sup>381</sup>**

15.15A.1. The Licensee shall use best endeavours to ensure that, save as otherwise agreed by the Commission, every Key Licensee Subcontract contains provisions imposing an obligation on the Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor to transfer in substantially the form set out in Schedule 12 Part 4(A) (**Key Licensee Subcontract Transfer**) or grant a royalty-free, payment-free, transferable, perpetual, non-exclusive licence in favour of the Commission (or such other person as the Commission may direct) of all such IP (excluding gaming software or any generally available business application software) as the Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor has to use and exploit any of the rights in that IP which are used and exploited or are capable of being used and exploited by the Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor in connection with the National Lottery or any Ancillary Activity in substantially the form set out in Schedule 12 Part 4(B) (**Key Licensee Subcontract Licence**)<sup>382383</sup>.

15.15A.2 The Licensee shall:

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

#### **Reasonable endeavours flowdowns**

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

15.17<sup>384</sup> The Licensee shall:

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

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<sup>380</sup> Waivers of the obligations on Camelot to reflect certain provisions of the licence in its contracts with certain specified subcontractors given on 25 June 2012

<sup>381</sup> Waivers of the obligations on Camelot to reflect certain provisions of the licence in its contracts with certain specified subcontractors given on 25 June 2012

<sup>382</sup> Waiver of obligation on Camelot and its Key Licensee Subcontractor given on 13 April 2018.

<sup>383</sup> Variance to this provision permitted in respect of a key licensee subcontract granted on 5 July 2018.

<sup>384</sup> Waivers of the obligations on Camelot to reflect certain provisions of the licence in its contracts with certain specified subcontractors given on 25 June 2012



obligation on the Series Subcontractor as apply to a Licensee Subcontractor under Condition 15.15(e); and

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

15.18 The Licensee shall:

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

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

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

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

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

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

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

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

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

- 15.19 If the Commission notifies the Licensee that it considers in the exercise of its statutory duties that it is appropriate that any Licensee Subcontract or Series Subcontract or Sub Series Subcontract should be terminated, assigned or novated, the Licensee shall procure that the Licensee Subcontractor or the Series Subcontractor or the Sub Series Subcontractor shall take all necessary steps at its own cost to terminate, assign or novate that Licensee Subcontract or Series Subcontract or Sub Series Subcontract within such period and to such third parties as the Commission specifies<sup>385</sup>.

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<sup>385</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contract with a subcontractor given on 31 March 2011.

15.19A<sup>386</sup> In relation to Licensee Subcontracts, Series Subcontracts or Sub Series Subcontracts relating to Ancillary Activities, Condition 15.19 shall apply only to the novation or assignment of the interest of the Licensee, Series Subcontractor or Sub Series Subcontractor under such Licensee Subcontract, Series Subcontract or Sub Series Subcontract respectively.

15.20 During the six month period prior to the expected expiry of the Licence, or, where an extension has been granted, the six month period prior to the expiry of any such extension of the Licence, the Licensee<sup>387</sup>:

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

without the Commission's prior written consent.

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

- (a) notify the Commission should a Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor, despite the Licensee's best endeavours, terminate a Licensee Subcontract, a Series Subcontract or a Sub Series Subcontract; and
- (b) if the Commission so requests, provide evidence to the Commission's satisfaction to demonstrate that best endeavours have been used.

#### **Corporate governance**

15.21 On request by the Commission, the Licensee shall ensure that any Key Licensee Subcontract contains corporate governance obligations on the Key Licensee Subcontractor that shall include the following<sup>388389</sup>:

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

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

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<sup>386</sup> Licence varied by consent with effect from 8 July 2010.

<sup>387</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contract with a subcontractor given on 31 March 2011.

<sup>388</sup> Waivers of the obligations on Camelot to reflect certain provisions of the licence in its contracts with certain specified subcontractors given on 25 June 2012.

<sup>389</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with a subcontractor given on 28 February 2019

Subcontractor, the Series Subcontractor and Sub Series Subcontractor or any of its officers or Staff<sup>390</sup>.

- 15.23 The Licensee acknowledges that each member of Staff of the Licensee Subcontractor, the Series Subcontractor and Sub Series Subcontractor who is involved in or has knowledge of any matter relevant to the relevant Licensee Subcontract, Series Subcontractor and Sub Series Subcontractor shall be entitled to disclose to any officer of the Licensee or any member of the Commission's Staff any qualifying disclosure as such disclosure is defined in section 43B of the Employment Rights Act 1996<sup>391</sup>.
- 15.24 If so required by the Commission, the Licensee shall procure that the board of any Key Licensee Subcontractor shall certify in writing to the Commission and the Licensee annually, or at such frequency as specified by the Commission, that it has carried out all reasonable enquiries necessary to satisfy itself that<sup>392393</sup>:
- (a) there are no faults in any of its software which are known to the Key Licensee Subcontractor which could affect in any way the running of the National Lottery and which have not formally been reported to the Licensee;
  - (b) all changes to software used in the National Lottery have been formally reported to the Licensee; and
  - (c) no acts or omissions on the part of the Key Licensee Subcontractor have occurred that have put, or have the potential to put, the Licensee in breach of its obligations under this Licence.
- 15.25 The Licensee shall procure that the chairs of the committees in Condition 15.21(a) shall provide an annual written report in relation to the functions of the committee, the performance of the Key Licensee Subcontract and the integrity of the Key Licensee Subcontractor to the Licensee and to the board of the Key Licensee Subcontractor<sup>394395</sup>.

#### **Variation and renewal**

- 15.26 The Licensee shall:
- (a) notify the Commission of any proposed variation to or relating to the mandatory flowdown terms and conditions of any Key Licensee Subcontracts and comply with any request by the Commission in respect of such proposed variation;
  - (b) notify the Commission prior to the expiry date of any Key Licensee Subcontract (or, if earlier, such other date on which it is likely that such Key Licensee Subcontract will terminate), and upon request by the Commission, take all reasonable steps to enter into an appropriate replacement Key Licensee Subcontract (whether with the counterparty to the existing Licensee Subcontract or not) and comply with the instructions of the Commission in relation to the incorporation of mandatory flowdown terms and conditions in such replacement Key Licensee Subcontract; and

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<sup>390</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contract with a subcontractor given on 31 March 2011.

<sup>391</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contract with a subcontractor given on 31 March 2011.

<sup>392</sup> Waivers of the obligations on Camelot to reflect certain provisions of the licence in its contracts with certain specified subcontractors given on 25 June 2012

<sup>393</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with a subcontractor given on 28 February 2019

<sup>394</sup> Waivers of the obligations on Camelot to reflect certain provisions of the licence in its contracts with certain specified subcontractors given on 25 June 2012

<sup>395</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with a subcontractor given on 28 February 2019

- (c) whether or not the Licence is continued after the Initial Expiry Date, the Licensee shall, to the extent so requested by the Commission, exercise its right to terminate any Key Licensee Subcontract on the Expiry Date.

## 16. Employees

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

- 16.1 Save where otherwise required by applicable Law or where it has been notified in writing that it is the preferred bidder for any Successor Licence, the Licensee will not be permitted without the prior written consent of the Commission:
- (a) until the expiry or revocation of this Licence to agree to pay or provide any payment or benefit to any individual employed or engaged by the Licensee:
    - (i) in connection with such individual's continuing employment or engagement with the Licensee;
    - (ii) in connection with the termination of employment or engagement of such individual; and/or
    - (iii) in connection with the expiry or revocation of this Licence,in each case which the Licensee becomes liable to pay or provide on or after the expiry or revocation of this Licence;
  - (b) in the two years preceding the expiry of this Licence to vary or purport or promise to vary any terms and conditions on which individuals are employed or engaged by the Licensee (including pension terms) other than annual salary/fee increases of no more than 3% per annum;
  - (c) in the two years preceding the expiry of this Licence to create or grant, or purport or promise to create or grant, terms or conditions of employment or engagement for any individual where the employment or engagement of such individual by the Licensee may commence on or before the expiry of this Licence if and to the extent that such terms or conditions are materially different from the terms or conditions of employment or engagement of equivalent individuals already employed or engaged by the Licensee; and
  - (d) in the two years preceding the expiry of this Licence to increase or decrease the number of individuals employed or engaged by the Licensee such that:
    - (i) the total number of individuals employed or engaged by the Licensee or the total cost per annum to the Licensee of employing and engaging such individuals is increased; or
    - (ii) the total number of individuals employed or engaged by the Licensee is decreased,in each case, by more than 5% during such two year period.
- 16.2 The Licensee shall not, without the prior consent of the Commission, at any time during the Licence and for three months after the expiry or revocation of the Licence, engage, employ, solicit or procure the engagement or employment of any member of the Commission's Staff which have been designated in writing, such designation specifying the time period for which the restriction applies.
- 16.3 The Licensee shall ensure that no Group Company shall (except with the prior consent of the Commission) at any time during the period of the Licence and for three months thereafter engage or employ, or solicit or procure the engagement or employment of any member of the Commission's Staff which have been designated in writing to the Licensee by the Commission specifying the time period for which the restriction applies.

### Redundancy Costs

- 16.4 Provided that the Licensee satisfies the Costs Expert that:
- (a) the Licensee has complied with its legal obligations relating to any redundancy exercise undertaken in the first year of the Licence; and

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

(together, the **Redundancy Obligations**)

the Commission shall ensure that an adjustment is made to the Basic Primary Contribution to take account of such of those Redundancy Costs which have, in the view of the Costs Expert, been reasonably, necessarily and properly incurred by the Licensee as a result of taking up the Licence, such adjustment to be made to the Basic Primary Contribution within 21 days of the later of: (a) such Redundancy Costs (or any part thereof) having been paid by the Licensee; and (b) the date on which any such Redundancy Costs are determined by the Costs Expert to have been reasonably, necessarily and properly incurred and notified as such by the Costs Expert to the Commission and the Licensee.<sup>396</sup>

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

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

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<sup>396</sup> Licence varied by consent on 27 September 2010.

## 17. Performance monitoring

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

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

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

### Preparation for Reletting

- 18.2 On request, the Licensee shall within the time limits specified by the Commission, provide the Commission and its representatives and advisers with access to members of the Licensee Staff, and to all books, records, systems, documents, software, scripts, Processes, Procedures, instructions, databases, information in relation to the Licensee's Staff and the Licensee's rights, powers, duties and liabilities in relation to the Licensee's Staff, information or data kept by or on behalf of the Licensee in connection with the National Lottery (including financial, operational, Player or Distributor databases, information or data, and any market research and any market research testing and methodologies conducted or prepared by or on behalf of the Licensee and any other materials specified by the Commission as being required) (collectively, the **Reletting Materials**) for the purpose of assisting the Commission and its representatives and advisers<sup>397</sup>:

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

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

- 18.3 The Commission's right to make Reletting Materials available under Condition 18.2(c) shall not apply to information belonging to the Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor (**Subcontractor Information**) where the Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor can demonstrate to the Commission's satisfaction<sup>398</sup>:

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

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

- (a) make available or deliver to the Commission and its representatives and advisers such Reletting Materials as they shall require;
- (b) prepare and present the Reletting Materials or their contents in such format or manner (including aggregated and disaggregated form) as the Commission may require, and shall provide such assistance as the Commission may require in connection with the verification of the Reletting Materials;

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<sup>397</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contract with a subcontractor given on 31 March 2011.

<sup>398</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contract with a subcontractor given on 31 March 2011.



- (c) when requested to do so, provide such confirmation in relation to the accuracy of the contents of the Reletting Materials as the Commission may require from time to time;
- (d) obtain any consents that are required to make the Reletting Materials or their contents available within the timescale specified by the Commission (including their availability for review under Condition 18.2(c)); and
- (e) make members of the Licensee Staff available to attend meetings with the Commission or its advisers and representatives in order to assist with the collation or verification of the Reletting Materials,

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

#### **Handover Period**

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

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

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

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

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

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

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

18.8 To ensure:

- (a) the continuity of, and an orderly handover of control of, the National Lottery;
- (b) the continuity of, and an orderly handover of control of, the provision of supplies or services in connection with the National Lottery;
- (c) the continuity of, and an orderly handover of control of, the operation of any asset in connection with the National Lottery; and

- (d) that the National Lottery is continued with the minimum of disruption or inconvenience to the public,
- the Licensee shall during the Handover Period and continuing for such period as the Commission may specify, co-operate with the Commission and its representatives and advisers, the Successor Licensee (if appointed) and any third parties who may submit competitive applications for, or otherwise enter into an agreement for the provision of supplies or services in connection with the National Lottery or the provision or operation of any asset in connection with the National Lottery (if appointed), and take such steps within such timescale as may be specified by the Commission (including agreeing to any amendments to the Co-operation Agreement specified by the Commission).
- 18.9 The Licensee's obligations under Condition 18.8 shall extend to the Trustees or their successor if this is specified by the Commission.
- 18.10 In connection with its obligations under Condition 18.8, the Licensee shall within the timescale specified by the Commission<sup>399</sup>:
- (a) comply with the terms of the Co-operation Agreement (including any amendments specified by the Commission), which shall be entered into in accordance with Condition 18.11 and shall annex to it the Transition Plan developed and updated under Condition 18.13;
  - (b) make updates or amendments to the Reletting Materials (and such other information as the Commission may specify) available to the Commission, the Successor Licensee and any third parties who may submit competitive applications for, or otherwise enter into an agreement for the provision of supplies or services in connection with the National Lottery or the provision or operation of any asset in connection with the National Lottery;
  - (c) make available or deliver to the Commission, the Successor Licensee and any third parties who may submit competitive applications for, or otherwise enter into an agreement for the provision of supplies or services in connection with the National Lottery or the provision or operation of any asset in connection with the National Lottery such information as the Commission may specify relating to Players' Subscriptions or accounts held by or operated on behalf of the Licensee (including Players' preferred games or numbers);
  - (d) make available or deliver to the Commission, the Successor Licensee and any third parties who may submit competitive applications for, or otherwise enter into an agreement for the provision of supplies or services in connection with the National Lottery or the provision or operation of any asset in connection with the National Lottery such information as the Commission may specify relating to transactions and prizes (including sample data and live or real time data on transactions or prizes), and assist the Commission, the Successor Licensee and any third parties who may submit competitive applications for, or otherwise enter into an agreement for the provision of supplies or services in connection with the National Lottery or the provision or operation of any asset in connection with the National Lottery in interpreting, testing, reconciling and validating any such information or data;
  - (e) make available the information referred to in Condition 18.10(b), 18.10(c) and 18.10(d) in the format(s) specified by the Commission (including real time availability);
  - (f) procure a licence and/or any necessary consents from third parties to allow the Successor Licensee to use any materials or receive any services provided to the Licensee during the Handover Period<sup>400</sup>;
  - (g) procure a licence to the Successor Licensee of the right to use prize validation software for all prizes for a period of at least 230 days or such other period as the Commission may specify following expiry or revocation of the Licence on substantially the same terms as those granted to the Licensee during the Handover Period;

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<sup>399</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain specified subcontractor given on 4 March 2009.

<sup>400</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contract with a subcontractor given on 31 March 2011.

- (h) make appropriately skilled, qualified and experienced members of the Licensee Staff available to attend such meetings with the Commission and the Successor Licensee and/or any other relevant parties as are reasonably necessary to determine those actions that are required to facilitate continuity and an orderly operational handover, including actions arising under the following:
  - (i) Licensee Subcontracts; and
  - (ii) Property Interests and any other agreements specified by the Commission;
- (i) provide suitable training and know-how to the Successor Licensee and any third parties who may submit competitive applications for, or otherwise enter into an agreement for the provision of supplies or services in connection with the National Lottery or the provision or operation of any asset in connection with the National Lottery; and
- (j) provide the Successor Licensee with copies of the Licensee's training or instructional materials and grant it a non-exclusive, payment-free and royalty-free licence to use these materials.

### **Co-operation Agreement**

- 18.11 During the Handover Period, the Licensee shall enter into the Co-operation Agreement with the Commission and/or the Successor Licensee within such period specified by the Commission.
- 18.12 The Co-operation Agreement shall deal with such matters as the Commission and the Successor Licensee may specify as being necessary to ensure compliance with Condition 18.8, including the matters referred to in Schedule 12 Part 3.

### **Transition Plan principles**

- 18.13 The Licensee shall develop, maintain and update the Transition Plan in accordance with Condition 18.15 in order to:
  - (a) enable the Licensee to cease running the National Lottery at the Expiry Date and the Successor Licensee to commence running the National Lottery in a manner consistent with the Licensee's obligations under this Condition 18;
  - (b) minimise any disruption or deterioration of the National Lottery during and after the Handover Period; and
  - (c) detail the transition assistance services that the Licensee will perform to ensure a successful transfer to the Successor Licensee with no or minimal disruption or deterioration to service delivery quality to the Commission or members of the public.
- 18.14 The Transition Plan shall, as a minimum:
  - (a) detail how the Licensee proposes to comply operationally with its obligations in this Condition 18;
  - (b) detail how the Licensee proposes to transfer the Reletting Materials (and the updates or amendments referred to in Condition 18.10(b)), databases, information or data referred to in Condition 18.2 to the Successor Licensee during and (where appropriate) after the Handover Period;
  - (c) detail the scope of the transition assistance services (including the provision of suitable training or know-how) to be provided by the Licensee, and the manner in which they will be provided, during and (where appropriate) after the Handover Period;
  - (d) set out a timetable, process, critical deliverables and critical controls for performing the transition assistance;
  - (e) describe how the Licensee will guarantee continuity of the National Lottery during the transition to the Successor Licensee, including a description of potential risks and a contingency and risk management plan;

- (f) for work or projects likely to be in progress as at the Expiry Date, detail the process for documenting the current status of the work or projects, stabilising for their continuity during transition, and providing any required training to achieve transfer of responsibility for the work or projects to the Successor Licensee and any third parties who may submit competitive applications for, or otherwise enter into an agreement for the provision of supplies or services in connection with the National Lottery or the provision or operation of any asset in connection with the National Lottery without loss of momentum or adverse impact on project timetables;
- (g) require the Licensee to provide contact details of the Licensee Staff who will liaise with the Commission in relation to the Licensee's compliance with the Transition Plan;
- (h) address the removal (if any) of Licensee Assets; and
- (i) otherwise be consistent with, and address the issues referred to in this Condition 18.

18.15 The Licensee shall:

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

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

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

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

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

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

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

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

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

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

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

- 18.20 During the Handover Period, the Commission may serve a notice on the Licensee and the Successor Licensee specifying the Licensee Assets (excluding IP) to be available for transfer by the Licensee to the Successor Licensee. Within such period as may be specified by the Commission, the Successor Licensee shall notify the Commission and the Licensee of which Licensee Assets it requires to be transferred to it by the Licensee (**Transferring Assets**).
- 18.21 Notwithstanding Condition 21.13(g) during the Handover Period, the Commission may require the Licensee to grant the Successor Licensee a payment-free, royalty-free and non-exclusive licence, in the form as specified by the Commission, to use any gaming software owned (and not merely licensed) by the Licensee for the remainder of the Handover Period and for a period of two years thereafter.
- 18.22 Notwithstanding Condition 21.13(g) during the Handover Period, the Commission may require the Licensee to use best endeavours to procure a grant to the Successor Licensee from a third party of a non-exclusive licence, on substantially the same terms as any licence granted to the Licensee by that third party, to allow use by the Successor Licensee of any gaming software developed by the third party for and on behalf of the Licensee in connection with the National Lottery or any Ancillary Activity, for the remainder of the Handover Period and for a period of two years thereafter.
- 18.23 The Licensee shall enter into an agreement with the Successor Licensee which shall be substantially in the form of the deed of transfer set out in Schedule 12 Part 2 (**Deed of Transfer for Transferring Assets**), which shall provide for the transfer of the Transferring Assets as are specified in the Deed of Transfer for Transferring Assets from the Licensee to the Successor Licensee.
- 18.24 Subject to the execution of the Deed of Transfer for Transferring Assets by the Successor Licensee, the Successor Licensee shall take possession of the Transferring Assets specified in the Deed of Transfer for Transferring Assets on the date of the Successor Licence.
- 18.25 Where the Licence:
  - (a) expires, save as prohibited by Law, no amounts shall be payable to the Licensee for the transfer of the Transferring Assets other than in respect of Scratchcard Lottery tickets, in respect of which the

amounts payable shall be agreed between the Licensee and the Successor Licensee failing which such amounts shall be determined by an Expert in accordance with Schedule 14; or

- (b) is revoked for any grounds other than Licensee Insolvency, save as prohibited by Law, the amount payable to the Licensee for the transfer of the Transferring Assets shall be at market value and such amount shall be agreed between the Licensee and the Successor Licensee failing which such amount shall be determined by an Expert in accordance with Schedule 14.

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

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

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

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

(B) the Lottery IP;

- (d) expunge or transfer, at the Commission's request, any registration of the Licensee or any sub-licensee as a permitted licensee of any Lottery IP consisting of trade marks; and
- (e) do and execute all acts, deeds, documents and things, at the Commission's request, as may be necessary or appropriate to achieve the purposes of this Condition 18.27.

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

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

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

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

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

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

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

### **Continuing Obligations**

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

18.32 The Licensee shall:

- (a) co-operate with the Commission in connection with any such discussions;
- (b) do all things necessary to ensure a smooth handover of such Continuing Obligations; and

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

### **Conduct of Ongoing Disputes**

- 18.33 The Licensee shall at such times as the Commission may determine (whether before the expiry or revocation of the Licence and/or at any time after the expiry or revocation of the Licence), provide to the Commission details of any disputes, claims or proceedings (whether actual, contingent, threatened, present or future) between the Licensee and any parties in connection with the Licence, and which are continuing or expected to be continuing as at the date of the expiry of the Licence (**Ongoing Disputes**).
- 18.34 The Commission may, by notice in writing to the Licensee and the Successor Licensee, require the Successor Licensee to assume or take over the conduct of such Ongoing Disputes as the Commission may determine.
- 18.35 If the Commission requires the Successor Licensee to assume or take over the conduct of any Ongoing Disputes in accordance with Condition 18.33, the Licensee shall do all things necessary to assign, vest in, or otherwise transfer to the Successor Licensee all claims, rights and remedies of the Licensee arising out of or in connection with those Ongoing Disputes.
- 18.36 The Licensee shall indemnify and hold harmless the Successor Licensee against any liability, claim, cost, judgment, damage or expense (including reasonable attorney's fees) that the Successor Licensee incurs or suffers as a result of having assumed the conduct of any Ongoing Dispute in accordance with this Condition 18. The Licensee shall if so directed by the Commission provide security for the performance of this obligation on terms, in a form and of an amount determined by the Commission.
- 18.37 The Licensee shall co-operate to ensure that the Successor Licensee is able to assume or take over the conduct of any proceedings and/or negotiations arising in connection with an Ongoing Dispute. Such co-operation shall include:
  - (a) the provision of all relevant documents or information in the Licensee's possession, custody or power;
  - (b) making available all personnel in the employment of the Licensee as the Successor Licensee or the Commission may request, for the purpose of providing relevant evidence and/or witness statements and for the giving of such evidence in any form of dispute resolution;
  - (c) providing all reasonable assistance to locate personnel previously, but not at the time, in the employment of the Licensee for the purpose of providing relevant evidence and/or witness statements and for the giving of such evidence in any form of dispute resolution proceedings;
  - (d) executing all formal documents, deeds, assignments or agreements which are or may be necessary in order to pursue the Ongoing Dispute or effect any settlement or agreement in respect of any Ongoing Dispute; and
  - (e) complying with any other reasonable instructions or requirements of the Successor Licensee or the Commission in respect of the conduct of any proceedings or negotiations relating to an Ongoing Dispute.



## 19. Security for Players' funds

- 19.1 The Licensee shall as soon as practicable and in any event no later than 1 February 2009 enter into arrangements in a form and substance approved by the Commission for the appointment of one or more independent Trustees approved by the Commission to be the Trustees of the trust arrangements more particularly described in this Condition 19 (**Players' Trust**). These arrangements shall (unless otherwise agreed with the Commission) provide that, inter alia:
- (a) the Trustees shall hold all monies received by them under such arrangements (other than interest, which shall be treated as provided in Condition 19.1(e)) on trust:
    - (i) for the winners of prizes under Constituent Lotteries;
    - (ii) for Players who have made payments (or Subscriptions) for tickets; and, subject to that,
    - (iii) for the benefit of the NLDF and, if applicable, the OLF; and
    - (iv) for such other beneficiaries as the Commission may require or approve (together, the **beneficiaries**) and;
    - (v) subject to all of the foregoing, for the benefit of the Licensee;
  - (b) the Trustees shall not pay out any monies received by them other than in accordance with Procedures previously approved by the Commission which Procedures shall, inter alia, require that any such payment represents:
    - (i) reimbursement to the Licensee of prize monies properly paid to prize winners by or on behalf of the Licensee (other than prize monies paid out by Distributors and accordingly taken into account for the purposes of the calculation of the amount referred to in Condition 19.4);
    - (ii) the balance properly due to the Licensee at the start of ticket sales for the relevant Draw in respect of monies originally paid as advance payments or Subscriptions for that Draw;
    - (iii) payment of monies properly due to Players in any Constituent Lottery or persons or Players who have made payments (or Subscriptions) for tickets for any such Constituent Lottery;
    - (iv) payments of interest in accordance with Condition 19.1(e); and/or
    - (v) such other payments as the Commission shall have previously approved,and such arrangements shall provide that the Trustees shall not in any event make any payment to the Licensee if following such payment the amount standing to the credit of the Trust Account would be less than the Applicable cash Sum unless all obligations of the Licensee to all of the beneficiaries shall have been settled in full<sup>401</sup>;
  - (c) the Applicable Cash Sum and any Guaranteed Sum referred to in Condition 19.3 shall be available to the beneficiaries in the event of the insolvency or other default of the Licensee or on the occurrence of any other event as a result of which the charges referred to in Condition 19.8 shall become enforceable (**Enforcement Event**) provided that once all the amounts due to the beneficiaries have been paid in full then, if there shall be any remaining surplus amount outstanding, such surplus amount shall be refunded in the following order of priority:
    - (i) first, to any issuer of any guarantee or indemnity to the extent that it has made any payment under any guarantee or indemnity issued by it in accordance with Condition 19.3(a)(ii)(C) (and, for the avoidance of doubt, the Licensee shall not thereafter be required to arrange

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<sup>401</sup> Varied by consent on 16 May 2012

or maintain in place any bank or other guarantees or indemnities in respect of any **Guaranteed Sum**, each of which may thereupon or thereafter be cancelled in full); and

- (ii) second, the balance of such amount (if any) to the Licensee;<sup>402</sup>
- (d) the Trustees shall be entitled to invest funds standing to the credit of the Trust Account subject to such safeguards and restrictions as shall be specified from time to time by the Commission;
- (e) interest or other income earned by the investment of funds standing to the credit of the Trust Account shall be applied in the following order<sup>403</sup>:
- (i) **firstly**, to the Trustee: the fees, costs, expenses and other amounts which are due and payable to the Trustee pursuant to the Trust Deed, together with interest provided that the Commission reserves its right to approve or disapprove the contracted level of any such fees and expenses; and in or towards payment of any taxes or duties paid or payable on any income received in, or deriving from, the Trust Accounts (including any lottery duty or taxes);
- (ii) **secondly**, to the EuroMillions Trustee, the fees, costs, expenses and other amounts which are due and payable to the EuroMillions Trustee pursuant to the EuroMillions Trust Deed together with interest thereon as provided in the EuroMillions Trust Deed;
- (iii) **thirdly**, to the Account Bank all bank charges and other costs and fees which are due and payable to the Account Bank in respect of the maintenance and operation of the Trust Accounts;
- (iv) **fourthly**, to the Auditors, the fees, costs and expenses, which are due to the Auditors regarding the verification of the receipts and payments made into and out of the Trust Accounts, in respect of the preparation of the Monthly Auditors' Certificates and in respect of any accounts required to be produced pursuant to the Trust Deed (including, without limitation, the accounts prepared);
- (v) **fifthly**, to Camelot: the out of pocket expenses (if any) incurred by Camelot in respect of the Players Trust Accounts (provided that such legal and auditors' fees incurred by Camelot in establishing such Players Trust shall not exceed £200,000 in aggregate and the Commission reserves its right to approve or disapprove such fees and expenses); repayment of any amount paid by Camelot pursuant to the provisions of Clause 13.4 of the Trust Deed which has not previously been repaid to Camelot; any amounts payable by way of licence fees for the Software paid by Camelot to IGT Global Solutions Corporation, Elsym Consulting Inc. or any Software Licensor pursuant to the provisions of Clause 16.2; of the Trust Deed<sup>404 405</sup>
- (vi) **sixthly**, to Camelot: any amount payable as compensation for the non-payment of each Non-Reimbursed Amount on any Reimbursement Date, which shall be calculated by applying the Rate of Interest to each such Non-Reimbursed Amount in respect of the actual number of days for which each such Non-Reimbursed Amount remains outstanding; and any overdraft cost incurred by Camelot where Camelot has properly made a Prize Payment but the cheque in respect of such Prize Payment has cleared after the cut-off time for that day's Reimbursement Certificate;
- (vii) **seventhly**, to Camelot the Camelot Advance Sales Trust Account Interest Entitlement Cash Amount;
- (viii) **eighthly**, to Camelot, the Negative Interest Amount (if any) payable pursuant to Clause 13.9(c) of the Trust Deed; and
- (viii) **ninthly**, to NLDF, the NLDF Interest Amount (subject to Clauses 13.7 and 13.8 of the Trust Deed), save that if an amount equal to any Relevant Tax shall be payable to Camelot pursuant to Clause 13.7 of the Trust Deed such amount shall be paid to Camelot.

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<sup>402</sup> Varied by consent on 16 May 2012

<sup>403</sup> Varied by consent on 5 October 2020.

<sup>404</sup> Waiver to to allow Camelot to withhold a specific interest payment, given on 20 April 2020.

<sup>405</sup> Extension of the existing waiver to to allow Camelot to withhold a specific interest payment, given on 13 January 2021.

(x) **tenthly**), subject to the foregoing, any balance shall be paid within 28 days after the end of each Financial Year to the NLDF, and if applicable the OLDF;

- (f) the Trustees shall as soon as reasonably practicable provide such information to the Commission concerning the arrangements and their operation as the Commission may at any time request (but only to the extent that such information is in the possession or under the control of the Trustees), including statements of receipts, payments and the amounts from time to time standing to the credit of the Trust Account;
- (g) the Commission shall be entitled from time to time by written notice to the Licensee and the Trustees to remove any Trustee of the Players' Trust and to appoint another or others in its or their stead; and
- (h) appropriate arrangements approved by the Commission shall be made:
  - (i) for the regular delivery to the Trustees of details of the beneficiaries and the amounts due to them; and
  - (ii) to enable the Trustees and/or any receiver or administrator appointed by the Trustees to have access to any information and rights to use any element of the Technology Solution, so as to ensure that the Trustees or any receiver or administrator appointed by them will be able properly to discharge their duties on the occurrence of an Enforcement Event. Such access and rights shall be at no cost to the Trustees or any receiver or administrator appointed by them.<sup>406</sup>

19.2 The Licensee shall not agree or consent to any variation, addition, waiver or suspension of any arrangements constituting the Players' Trust or any change in the identity of the Trustees at any time without the prior approval of the Commission<sup>407408</sup>.

19.3<sup>409</sup> The Licensee shall (a) either:

- (i) pay into the Trust Account the **Full Cash Sum** to be held on the trusts declared under the Players' Trust;
- OR
- (ii)
  - (A) Pay into the Trust Account the **Partial Cash Sum** to be held on the trusts declared under the Players' Trust; and
  - (B) on the occurrence of an Enforcement Event (as determined by the Trustees (acting reasonably)) or the termination of the Licence (other than by reason of the revocation of the Licence pursuant to the terms of the National Lottery Act), pay into the Trust Account the **Guaranteed Sum** (or such lesser amount thereof as shall be required by the Trustees of the Players' Trust) to be held on the trusts declared under the Players' Trust; and
  - (C) procure the issuance in favour of the Trustees of the Players' Trust of such bank or other guarantees or indemnities (in a form previously approved by the Commission and supported where applicable by any counter-indemnity required to be given by the Licensee in favour of any issuer of such guarantee or indemnity) in the amount of the Guaranteed Sum, such Guaranteed Sum (or such lesser amount thereof as shall be required by the Trustees of the Players' Trust) to be paid to the Trust Account in accordance with the terms of any such bank or other guarantee or indemnity and to be held on the trusts declared under the Players' Trust on the occurrence of either an Enforcement Event (as determined by the Trustees (acting reasonably)) or the termination of the Licence (other than by reason of the revocation of the Licence

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<sup>406</sup> Varied by consent on 16 May 2012

<sup>407</sup> Approval in relation to the treatment of funds in Prize Reserved Trust No.1 on 11 November 2020

<sup>408</sup> Approval in relation to the treatment of funds in Prize Reserved Trust No.4 on 23 November 2020

<sup>409</sup> Varied by consent on 16 May 2012

pursuant to the terms of the National Lottery Act), provided that the Licensee has failed to comply with its obligations under Condition 19.3(a)(ii)(B);

- (b) be entitled to receive the difference between the Full Cash Sum and the Partial Cash Sum, in the event that after satisfying Condition 19.3(a)(i) it elects to comply with Condition 19.3(a)(ii) and does comply with Condition 19.3(a)(ii)(C). The Licensee shall be required to pay the difference between the Full Cash Sum and the Partial Cash Sum, but shall no longer be required to maintain in place any guarantee or indemnity for the Guaranteed Sum, in the event that after satisfying Condition 19.3(a)(ii), it elects to comply with Condition 19.3(a)(i) and does so comply; and
- (c) ensure that any bank or other guarantee or indemnity that is put in place pursuant to Condition 19.3(a)(ii)(C) above (each an "Original Guarantee") is either renewed or replaced with a new bank or other guarantee or indemnity (in each case in the amount of the Guaranteed Sum) (any such new bank or other guarantee or indemnity a "Replacement Guarantee") not later than the date (hereinafter the "Replacement Date") falling six months prior to the date on which (absent any other reason that would otherwise cause any such Original Guarantee to expire or be discharged) such Original Guarantee is scheduled to expire, such Replacement Guarantee to become immediately effective from the Replacement Date. Where the Licensee procures the issuance of a Replacement Guarantee in accordance with this Condition 19.3(c), it shall no longer be required to maintain in place the Original Guarantee from the Replacement Date. In the event that the Licensee fails to procure the issuance of a Replacement Guarantee by the Replacement Date, it shall ensure that it complies with Condition 19.3(a)(i) above with immediate effect from the Replacement Date as contemplated by Condition 19.3(b) above.

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

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

game, is to be paid out as prizes (whether in connection with the Draw or game or by way of reserve for prizes in any subsequent Draw or game)); and

- (ii) such amount as is necessary to ensure that the total funds standing to the credit of the Operational Trust Account immediately following the payment made under Condition 19.4(a)(i) and any payment made under this Condition 19.4(a)(ii); shall in aggregate be sufficient to discharge all prizes unclaimed at the close of business on the Saturday preceding the payment date in respect of any Draw conducted on or before the Saturday preceding the payment date, and the amount of prizes comprised in each pack of Scratchcard Lottery tickets settled on or prior to the Saturday preceding the payment date; and

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

- (i) the expiry of thirty clear days from the day on which the relevant Scratchcard Lottery ticket pack was activated;
  - (ii) the day on which sixty per cent by number of low tier winning Tickets in such Scratchcard Lottery ticket pack have been validated; or
  - (iii) the day on which a Retailer elects to settle such Scratchcard Lottery ticket pack by notifying the Licensee of such election through a terminal;
- (b) into the Advance Sales Trust Account or Interactive Trust Account, as appropriate, an amount equal to:
- (i) the total gross amount of all advance purchases or Subscriptions received during the week ending at the close of business on the Saturday preceding the payment date (or such other period as the Commission may require) for all National Lottery tickets for games the Draw for which is to take place after the Saturday preceding the payment date; and
  - (ii) such amount as is necessary to ensure that the total funds standing to the credit of the Advance Sales Trust Account and Interactive Trust Account immediately following the payment made under Condition 19.4(b)(i) and any payment under this Condition 19.4(b)(ii) shall in aggregate be sufficient to repay all advance and Subscription payments not allocated to a particular game at the close of business on the Saturday preceding the payment (or such other period as the Commission may require); and
- (c) into such other account forming part of the Players' Trust such further amount(s) as the Commission shall require.
- 19.5 Where the Licensee credits or agrees to credit or treat any person as having paid any amount by way of Subscription or advance payment, the Licensee shall at that time be treated as having received such Subscription or advance payment amount (whether or not it has in fact received such amount in whole or part).
- 19.6 The Licensee shall be responsible for all costs, charges, fees and expenses of the setting up and operation of the said arrangements constituting the Players' Trust insofar as not covered by the interest earned by investment of the funds standing to the credit of the Trust Account as provided above (subject to a right of reimbursement out of interest subsequently so earned).
- 19.7 The Licensee shall provide such regular reports and/or notifications to the Commission as the Commission may require in respect of all payments to and receipts from the Trust Account, such further information as to the calculation of each such amount as the Commission may from time to time specify (which shall be provided in such form, whether written, electronic or otherwise, as the Commission may require) and in relation to the Players' Trust generally and the Licensee shall further arrange that the bank at which the Trust Account is held shall also provide such information and shall allow such access to information concerning the Trust Account as the Commission may require.
- 19.8 The Licensee shall, no later than 1 February 2009 charge, assign or otherwise ensure (whether by way of declaration of trust or otherwise) in favour of the Trustees:

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

19.9 The Licensee shall, where after a pack of National Lottery tickets has been activated and has become a settled pack and the relevant payment has been made under Condition 19.4 in respect of all the National Lottery tickets comprised in it and the Licensee shall have cancelled or repurchased from the relevant Distributor some or all of the tickets comprised in that pack (and, if such cancellation or repurchase is as a result of the cancellation or withdrawal of a Scratchcard Lottery, the Commission shall have given its prior consent) be entitled to receive from the Trustees out of the Trust Account an amount equal to the payment made in respect of the cancelled or repurchased tickets provided that such payment to the Licensee shall not be made if the amount remaining in the Trust Account would be less than the **Applicable Cash Sum**) or would thereafter not comply with Condition 19.4(b)<sup>410</sup>.

19.10 The Licensee shall:

- (a)<sup>411</sup> notify the Trustees at least two weeks in advance (or if it shall become aware of such date less than two weeks in advance, then promptly upon becoming aware of it) of each date on which any ticket sales payment to be made under Schedule 8 will fall on a day other than a Wednesday and of any determination by the Commission under paragraph 8.1 of Schedule 8 as to any proportion of any payment to be postponed (and shall authorise the Commission to do so on its behalf if and whenever the Commission wishes to do so);and
- (b) except as required by any mandatory provision of the arrangements constituting the Players' Trust, not exercise in any relevant week any right to withdraw monies from the Retailers' Collection Account if the aggregate of:
  - (i) the remaining balance standing to the credit of such account after such withdrawal; and
  - (ii) the value of any funds withdrawn from the Retailers' Collection Account invested in accordance with Condition 19.1(d) the maturity dates for which fall prior to the due dates for payment of the next succeeding payment to the NLDF and, where applicable, the OLDF and to the Players' Trust in the same relevant week,

would be insufficient to meet those payments.

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

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

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<sup>410</sup> Licence varied by consent with effect from 16 May 2012.

<sup>411</sup> Licence varied by consent with effect from 29 September 2011.

- 19.12 The Licensee shall pay into the Prize Reserve Trust Account on or before the issue of any ticket which is issued without full payment by a third party payer (that is, not being the Licensee, any subsidiary of the Licensee, or any person on behalf of the Licensee or such subsidiary) of the full price payable in accordance with the rules and procedures of the relevant Constituent Lottery, an amount equal to the relevant percentage (as defined for the purposes of Condition 19.4) of such full price of that ticket or, if no relevant percentage shall be calculable in respect of any Constituent Lottery, such percentage as the Commission shall specify.
- 19.13 The Licensee shall make such further payments into the Players' Trust at such times as the Commission shall require in order to ensure that the rights and interests of the beneficiaries are fully protected at all times.

## 20. Confidentiality and freedom of information<sup>412</sup>

### Confidentiality

- 20.1 The Licensee shall not disclose any Confidential Information to any third party.
- 20.2 Condition 20.1 shall not apply:
- (a) to any disclosure of information by the Licensee that is expressly permitted or required by the Licence, including where the Licensee is disclosing Licensee Information under Condition 10 or Reletting Materials under Condition 18;
  - (b) to any disclosure of information by the Licensee that is reasonably required for the exercise or implementation of its rights or the performance of its obligations under the Licence;
  - (c) to any disclosure of information which is already or has become generally available and in the public domain otherwise than as a result of a breach of this Licence or any other duty or obligation of confidentiality;
  - (d) to any disclosure of information necessary to enable a determination to be made in relation to Ongoing Disputes or proceedings under the National Lottery Act;
  - (e) to any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the Licensee or the rules of any stock exchange or governmental or regulatory authority having the force of Law;
  - (f) to any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the Licensee;
  - (g) to any provision of information to the Trustees or the Trustees' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Licensee to enable it to carry out its obligations under the Licence, to that person but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
  - (h) to any disclosure for the purpose of:
    - (i) the examination and certification of the Licensee's accounts;
    - (ii) any examination by the Comptroller and Auditor General;
    - (iii) any inspection by an independent auditor in accordance with this Licence; or
    - (iv) the provision of information to any appropriate government department or minister for any purpose related to or ancillary to the Licence and/or the National Lottery; or
  - (i) to any disclosure of information for which the Licensee obtains the express prior written consent of the Commission.
- 20.3 Subject to Condition 18.3, the Commission may disclose any information (including Confidential Information) that it may so decide to disclose, which shall include:
- (a) any disclosure by the Commission of information relating to the Licence and such other information as may be required for the purpose of Reletting; and

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<sup>412</sup> Various waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain specified subcontractors given on 1 February 2009..



- (b) any disclosure of information by the Commission to any department, office or agency of the government or their respective advisers or to any person engaged in providing services to the Commission for any purpose related to or ancillary to the Licence and/or the National Lottery.
- 20.4 To the extent that the Licensee is entitled, compelled or required to disclose Confidential Information to a third party (including any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor) in accordance with this Condition 20, it shall as far as is practicable:
- (a) do so on the basis that the Confidential Information remains confidential; and
  - (b) prevent the third party from making any disclosure of the Confidential Information to any other third party without the express prior written consent of the Commission.
- 20.5 The Licensee undertakes (for itself and as trustee and agent for any Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor) that if it or any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor becomes aware that it or they may become compelled or required to disclose any Confidential Information then it, and where appropriate they, shall<sup>413414415416417418419</sup>:
- (a) inform the Commission of such fact or obligation as soon as practicable and shall use all reasonable endeavours to do so before any Confidential Information is disclosed;
  - (b) use all reasonable endeavours to give full details of any proposed disclosure to the Commission before any Confidential Information is disclosed;
  - (c) use all reasonable endeavours to ensure that any such disclosure of Confidential Information will be limited to the minimum amount of Confidential Information required to satisfy any such disclosure obligation; and
  - (d) use all reasonable endeavours to co-operate with the Commission, have due regard to the views and opinions of the Commission, take such steps as the Commission may require in order to mitigate the effects of, or avoid the requirement for, any such disclosure, and assist the Commission in any appropriate action which the Commission may decide to take.
- 20.6 The Licensee shall not make use of the Licence, any information issued or provided by or on behalf of the Commission in connection with the Licence, or any Confidential Information otherwise than for the purpose of the running of the National Lottery, except with the express prior written consent of the Commission.

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<sup>413</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 28 July 2009.

<sup>414</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 25 September 2009.

<sup>415</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 27 October 2009.

<sup>416</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 6 November 2009.

<sup>417</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 14 December

<sup>418</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contract with a subcontractor given on 31 March 2011.

<sup>419</sup> Variation to the obligation on CUKL in relation to a Key Licensee Subcontract agreed on 28 February 2019

20.7 The Licensee undertakes for itself and as trustee and agent for any Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor that<sup>420421422423424425</sup>:

(a) on expiry or revocation of this Licence; or

(b) if the Commission so requests in writing,

the Licensee, any Extended Group Company and any Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor shall, on the Commission's request, return any Confidential Information in their possession or in the possession of any of their professional advisers, including any copies thereof, and shall destroy all notes or memoranda or other stored information of any kind prepared by the Licensee, any Extended Group Company, any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor or any of their professional advisers relating to any of the Confidential Information and, if required by the Commission, provide written confirmation of its compliance with this Condition 20.7.<sup>426</sup>

#### **Freedom of information**<sup>427428429430431432</sup>

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

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

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<sup>420</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 28 July 2009.

<sup>421</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 25 September 2009.

<sup>422</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 27 October 2009.

<sup>423</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 6 November 2009.

<sup>424</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 14 December 2009.

<sup>425</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contract with a subcontractor given on 31 March 2011.

<sup>426</sup> Licence varied by consent with effect from 8 July 2010.

<sup>427</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors for Conditions 20.8-20.12 given on 28 July 2009.

<sup>428</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors for Conditions 20.8-20.12 given on 25 September 2009.

<sup>429</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors for Conditions 20.8-20.12 given on 27 October 2009

<sup>430</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors for Conditions 20.8-20.12 given on 6 November 2009.

<sup>431</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors for Conditions 20.8-20.12 given on 14 December 2009.

<sup>432</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contract with a subcontractor for Conditions 20.8-20.10 and 20.12 given on 31 March 2011.

- (a) provide the Commission with a copy of any such information in the form that the Commission requires as soon as practicable and in any event within ten Business Days (or such other period as the Commission may specify) of the Commission's request; and
  - (b) provide all necessary assistance as requested by the Commission in connection with any such information, to enable the Commission to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 20.10 Subject to Condition 20.7, the Licensee undertakes for itself and as trustee and agent for any Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor that any information held on behalf of the Commission (for the purposes of section 3(2)(b) of the FOIA and regulation 3(2)(b) of the EIR) by the Licensee or by any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor shall be either returned to the Commission after the Expiry Date or retained for disclosure for at least two years after the Expiry Date.
- 20.11 To the extent that the Licensee or any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor hold any information on behalf of the Commission (for the purposes of section 3(2)(b) of the FOIA and regulation 3(2)(b) of the EIR), the Licensee shall have the same obligations in respect of such information as it does in respect of Licensee Information under Conditions 10.1 to 10.3 and, where such information is held by any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor, under Condition 10.8.
- 20.12 The Licensee acknowledges and shall procure that any Licensee Subcontractor, Series Subcontractor and Sub Series Subcontractor shall acknowledge that the Commission may, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA and regulation 16 of the EIR, be obliged under the FOIA or the EIR to disclose information concerning the Licensee, any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor, the Competition or the National Lottery generally without consulting with the Licensee or any Licensee Subcontractor, Series Subcontractor or Sub Series Subcontractor<sup>433</sup>.

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<sup>433</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contract with a subcontractor given on 31 March 2011.

## 21. Intellectual Property<sup>434</sup>

### IP register

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

### Licence of Lottery IP

- 21.2 Subject to the provisions of this Licence, the Commission hereby grants to the Licensee for the duration of this Licence the royalty-free, payment-free, exclusive and non-transferable right:
- (a) to copy, publish and otherwise use any Lottery IP; and
  - (b) to license or permit others to copy, publish and use Lottery IP,
- only in connection with the running and promotion of the National Lottery or any approved Ancillary Activity, provided that such use is not detrimental to the interests of Players or damaging to the image or reputation of the National Lottery or in conflict with the interests of the National Lottery and provided always that such right shall not take effect in respect of any item of Lottery IP which is not owned absolutely by the Commission at the date of this Licence until it shall be so owned.
- 21.3 If the Commission requires at any time during this Licence, the Licensee shall grant a sub-licence to the Commission or its nominee in respect of all Lottery IP in substantially the form set out in Schedule 13 Part 1 (**Lottery IP Licence**), subject to any third party rights that may exist therein.
- 21.4 If the Licensee wishes to use the Lottery IP for a use other than the running or the promotion of the National Lottery, prior written consent from the Commission is required.
- 21.5 The Licensee shall amend any materials containing the Lottery IP in such manner and within such timescale as the Commission may specify.

### Sub-licences of Lottery IP

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

### National Lottery Logos

- 21.8 The Licensee shall ensure that, when used in connection with or containing information about the National Lottery or any Constituent Lottery, except with the prior approval of the Gambling Commission:
- (a) the relevant National Lottery Logo appears on all National Lottery tickets; point of sale material; Retail Outlet equipment; notices indicating where National Lottery tickets can be purchased; any National Lottery or any Constituent Lottery web sites; all electronic sales channels capable of displaying the National Lottery Logo; advertisements; sponsorship by or for the Licensee; all

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<sup>434</sup> Waiver of the requirement for Camelot to submit documents to the Commission for approval on the basis that the only changes being made were to a) Camelot's name and b) the cost of calls from a BT line given on 17 August 2010.

correspondence by the Licensee; and all documents accessed by or made available to or sent to any person (whether or not required to be made available under Condition 7)<sup>435</sup>.

- (b) when the relevant National Lottery Logo appears on any corporate advertising or stationery of the Licensee, the Licensee shall include wording demonstrating that the Licensee is the operator of the National Lottery; and
- (c) the Licensee complies with any further direction the Commission may specify.

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

### Guidelines on use of Lottery IP

21.10 The Licensee shall:

- (a) unless and to the extent otherwise agreed by the Commission in respect of a particular item or class of Lottery IP, submit guidelines for approval by the Commission relating to the use and mode of display of any Lottery IP, its level of prominence and relationship to other logos or products and shall comply (and procure that every person licensed or otherwise permitted by it to use any Lottery IP shall comply, and shall use best endeavours to enforce such compliance) with all guidelines. The Licensee shall update such guidelines prior to any new logo or design being used in relation to the National Lottery or any Constituent Lottery or product and any update shall be subject to the Commission's approval. The Licensee shall make such amendments to the guidelines or update submitted to the Commission as the Commission shall require for its approval; and
- (b) seek approval from the Commission where the proposed use of any Lottery IP does not comply with the guidelines<sup>436437438439440441442443</sup>.

### Developed IP<sup>444</sup>

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

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

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<sup>435</sup> Waiver of the requirement that Camelot should show the game logos, in the format approved, on Sky Active given on 1 February 2009

<sup>436</sup> Limited waiver of the requirement that Camelot should comply with the Lottery IP Guidelines given on 20 April 2018

<sup>437</sup> Extension of the limited waiver of the requirement that Camelot should comply Lottery IP Guidelines given on 31 October 2018

<sup>438</sup> Approval for the 25<sup>th</sup> Anniversary Logo Guidelines and a waiver not to comply with existing Logo Guidelines from 20 May 2019 to May 2020

<sup>439</sup> Time limited waiver of the requirement that Camelot should comply with the Logo Guidelines given on 14 October 2019 and to expire 03 January 2020

<sup>440</sup> Time limited waiver of the requirement that Camelot should comply with the Logo Guidelines given on 03 January 2020 and to expire 31 March 2020

<sup>441</sup> Time limited waiver of the requirement that Camelot should comply with the Logo Guidelines given on 03 January 2020 and to expire 30 April 2020

<sup>442</sup> Waiver to cover use of a logo not captured under the Brand Guidelines given on 11 June 2021 until 30 September 2021.

<sup>443</sup> Waiver to cover use of a logo not captured under the Brand Guidelines given on 16 June 2021 until 30 September 2021

<sup>444</sup> Waiver of requirement in relation to the People's Projects logo

- (c) the Commission has the right under the Licensee's contract with the relevant third party to receive a payment-free transfer of the third party's rights in the Developed IP if the Commission requests a transfer.

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

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

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

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

21.13 The items referred to in Condition 21.12 include:

- (a) Developed IP;
- (b) any Sign, internet domain name or name of any Constituent Lottery;
- (c) design or get up of any ticket or other thing integral to the playing or entering into of any Constituent Lottery, including rules and procedures, leaflets or other materials;
- (d) any codes of practice;
- (e) descriptions or specifications prepared by or on behalf of the Licensee or any Independent Section 6 Licensee relating to the Draw or determination of winners procedures;
- (f) any databases; and
- (g) any other works including software (other than gaming software or any generally available business application software), designs, inventions or databases which the Commission specifies to be available for use for the purpose of running the National Lottery or promoting any Constituent Lottery or of carrying on any Ancillary Activity (or for use by an applicant for a licence to do any such thing) which are currently used or exploited or are capable of being used or exploited by the Licensee in connection with the National Lottery or any Ancillary Activity.

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

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

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

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

in favour of, the Commission or its nominee of all such IP as the transferor or licensor has to use and exploit any of the rights comprised within the items referred to in Condition 21.13 which are currently used or exploited or are capable of being used or exploited by the Licensee in connection

with the National Lottery or any Ancillary Activity and which shall be specified by the Commission (whether any of such rights are used or exploited or capable of being used or exploited by the Licensee or any other person for any other purpose or in any other connection or not).

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

- 21.16 Save for such interest as is granted to the Licensee under this Licence or which may be granted to another person pursuant to and in accordance with Condition 21.6, the Licensee shall not claim any right, title or interest in any Lottery IP.
- 21.17 Except with the prior consent of the Commission, the Licensee shall not (and shall use its best endeavours to procure that no other person shall) use, copy, publish, or register, or seek to register or use as a trade or service mark, patent, copyright, internet domain name, design or other IP or any item of Lottery IP (save as required pursuant to or permitted by Condition 21.18 or pursuant to a licence or permission granted in accordance with Condition 21.6).

### **Registration of IP**

- 21.18 The Licensee shall register or seek to register, in the Commission's name, any Sign as a trade or service mark, or register or seek to register any internet domain name, with the prior consent of the Commission, and maintain any such registration made provided that:
- (a) the Licensee provides the Commission with such information as the Commission may require in the form and manner specified by it. The Licensee shall deliver such information to the Commission within one month of such application being filed or such Sign or internet domain name being registered; and
- (b) notwithstanding the provisions of Condition 21.20 which shall apply in any event, the Licensee shall do and execute all such acts, deeds, documents and things in relation to such applications and/or registrations and maintenance of registrations as the Commission shall require (including applying for registration in the name of the Commission, or amending or withdrawing any application or registration or making no use of the item in question).
- 21.19 Where any item of Lottery IP is capable of registration (whether as a trade or service mark, patent, copyright, domain name or otherwise), the Licensee shall do and execute all such acts, deeds, documents and things necessary in relation to such registration to be made in the name of the Commission (including applying for registration in the name of the Commission or as it may direct or amending or withdrawing any application or making no use of the item in question pending such registration).
- 21.20 In complying with Conditions 21.18 and 21.19, the Licensee shall use all skill and care in carrying out the required formalities and follow best practice (including the employment of reputable trade mark agents or other agents).
- 21.21 The Licensee shall not (and shall use its best endeavours to procure that no other person shall) do any act or thing to prevent or impede any registration of any Lottery IP nor seek to impeach the rights of any owner, holder or applicant for registration of such rights pursuant to any requirement of the Commission under Condition 21.19.
- 21.22 The Licensee shall immediately notify the Commission on becoming aware of any internet domain names or IP the ownership or use of which would benefit the running of the National Lottery. The Commission and the Licensee shall consult to agree appropriate action to be taken in respect thereof.

### **Infringement**

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

were effected), or which might entitle the Commission or the Licensee to take action in respect of passing off, unfair competition or any similar rights.

- 21.24 On confirmation from the Commission that it has not authorised such use or infringement, the Licensee shall:
- (a) promptly issue written warnings to and use its best endeavours to obtain undertakings from the other person against such use or infringement;
  - (b) promptly notify the Commission if it is unable to stop such use or infringement without issuing proceedings and shall propose enforcement measures to the Commission or its duly authorised representatives for approval; and
  - (c) follow the approved enforcement measures and have daily control for such enforcement measures subject to any request made by the Commission as part of its approval.
- 21.25 The Licensee shall, at the request of the Commission and under the Commission's direction, commence legal proceedings in the Licensee's own name (unless the Commission specifies otherwise) without the Commission being joined as a party thereto in connection with any infringement or alleged infringement, or passing off, or unfair competition, or claim or counterclaim in respect of the registration of any Lottery IP or any part of it or them as the Commission may require. The Commission shall not be obliged to bring or defend any such proceedings nor to become a party to any such proceedings even if it has concurrent rights of action with the Licensee.
- 21.26 All damages or other monies (including payment of costs recovered from third parties) in respect of any infringement or other breach of any rights in respect of any Lottery IP shall be applied firstly, towards reimbursement of any costs properly incurred by the Commission and/or the Licensee in pursuing the matter in question and, if the monies recovered are insufficient to discharge all such costs, they shall be divided between the Commission and the Licensee in proportion to the costs incurred by each of them; and secondly, in payment to the Secretary of State absolutely.
- 21.27 Any such proceedings or claims shall be issued on such basis and using such legal and other advisers and counsel as the Licensee shall determine with the approval of the Commission. The Licensee shall (and shall procure that any such counsel or other advisers or agents shall) provide such information, and report in relation to such proceedings, as the Commission shall require from time to time and the Commission shall be entitled at any time to require that such counsel and/or advisers and/or agents of the Licensee shall take such steps as it shall direct in relation to any such proceedings or claims. The Licensee shall allow the Commission full access to all documents in its possession or control in relation to such proceedings or claims.
- 21.28 If, after approval is received of the approved enforcement measures, there is a material change in relation to such proceedings the Licensee shall immediately notify the Commission and do all such things and take all actions as the Commission may request.
- 21.29 Notwithstanding Condition 21.27, the Licensee shall in any event indemnify the Commission against any costs and expenses (including legal expenses) incurred by the Commission as a result of or in connection with the Commission directing any proceedings or claims brought by the Licensee under Condition 21.25.



## 22. Data protection<sup>445446447</sup>

- 22.1 The Licensee shall ensure that and shall ensure that any Licensee Subcontractor shall ensure that all processing of personal data incorporated in any database maintained by or on behalf of the Licensee in connection with the running of the National Lottery or any Constituent Lottery or any Ancillary Activity shall be carried out in compliance with the Data Protection Act and any equivalent legislation in any country or jurisdiction other than the United Kingdom where:
- (a) the National Lottery or any Constituent Lottery or any Ancillary Activity takes place or activities in relation to the National Lottery or any Constituent Lottery or any Ancillary Activity; or
  - (b) it is necessary for the Licensee to comply.
- 22.2 The Licensee shall ensure and procure that any Licensee Subcontractor shall ensure that all necessary prior consents are obtained from data subjects whose personal data is contained in any database referred to in Condition 22.1 as shall be necessary to permit use or transfer of or access to these databases and all information contained therein by the Commission or its nominee (including the Successor Licensee) in connection with the running of the National Lottery or any Constituent Lottery or any Ancillary Activity (including any use, access or transfer required by the Commission or its advisers or representatives in connection with the Competition or preparations for it). For the avoidance of doubt, the necessary consents shall be obtained when personal data is first collected or obtained from the data subjects so as to allow that transfer or access to take place within the timescale specified by the Commission.

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<sup>445</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 28 July 2009.

<sup>446</sup> Waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain subcontractors given on 27 October 2009

<sup>447</sup> Waivers of the obligations on Camelot to reflect certain provisions of the licence in its contracts with certain specified subcontractors given on 25 June 2012

## **23. Licence extensions**

### **Extension of the Licence**

23.1 Intentionally left blank.

### **Licensee investment opportunities**

- 23.2 If the Licensee wishes to propose a Licensee Investment it must serve a Licensee Notice of Investment Opportunity (which shall include the implementation plans) on the Commission which shall set out:
- (a) the proposed Licensee Investment in sufficient detail to enable the Commission to evaluate it in full (for the avoidance of doubt, such detail shall include the costs of the Licensee Investment, the Licensee's assessment of the impact of the proposed Licensee Investment upon returns to good causes, the savings which will be made by the Licensee as a consequence of the Licensee Investment, and the benefits that the Licensee Investment will have for the National Lottery);
  - (b) the Licensee's reasons for proposing the Licensee Investment;
  - (c) any implications of the Licensee Investment for the Licensee, the National Lottery and/or the Commission; and
  - (d) proposals for the means of jointly financing the proposed investment, and the basis on which this has been calculated.
- 23.3 The Commission shall have the right to determine and provide to the Licensee, further details of the procedure which shall apply to the proposal by the Licensee of a Licensee Investment.
- 23.4 The Commission may in its absolute discretion require the Licensee to propose a Licensee Investment in accordance with Condition 23.2 and the Licensee shall co-operate with the Commission in providing such a proposal.
- 23.5 The Commission shall consult with the Licensee and shall evaluate the Licensee Notice of Investment Opportunity in its absolute discretion and may propose modifications or accept or reject the Licensee Notice of Investment Opportunity.
- 23.6 If the Commission proposes modifications to the Licensee Notice of Investment Opportunity, the Licensee shall consult with the Commission and shall evaluate the modifications and may either reject the modifications and withdraw the Licensee Notice of Investment Opportunity without any obligation to proceed, or accept the modifications to the Licensee Notice of Investment Opportunity.
- 23.7 If the Commission accepts the Licensee Notice of Investment Opportunity (with or without modification), the Licensee shall issue a final version of the Licensee Notice of Investment Opportunity (which shall be modified as may be necessary to meet the Commission's concerns). The final version of the Licensee Notice of Investment Opportunity shall be subject to the approval of the Commission prior to issue.
- 23.8 The parties shall enter into any agreements necessary to amend this Licence and/or any other documents necessary to give effect to such Licensee Investment, and the Licence shall continue on the terms set out in the Licence, or such other terms as the Licensee and the Commission may agree and the Licensee Investment shall be implemented in accordance with the implementation plans as set out in the Licensee Notice of Investment Opportunity.

### **Extension to facilitate handover**

- 23.9 To facilitate the handover of the National Lottery to a Successor Licensee or where the Commission, in its absolute discretion, considers that the competitive environment is not conducive to a Competition, or where the Commission considers, in its absolute discretion, that the Competition may take longer than it originally envisaged, the Commission may, in its absolute discretion, require the Licensee to continue to run the National Lottery on the terms set out in this Licence by extending the duration of the Licence for a period of six months, subject to a maximum of two such extensions, and the Licensee shall be obliged so to act provided that written notice of

such requirement is given to the Licensee by the Commission no later than three months prior to the Expiry Date.

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

- (a) reasonably and properly incurred; and
- (b) reasonably evidenced in writing by the Licensee on an open book basis, such evidence and further related information being provided to the Commission by the Licensee as may be requested, the recovery of such costs or expenses shall be provided for under an arrangement then to be agreed as between the Commission and the Licensee.

23.11 If the parties cannot agree the sum to be provided for in favour of the Licensee under Condition 23.10(b), or the mechanism under which such sums will be recovered by the Licensee, the parties agree to refer the matter to an Expert for determination in accordance with Schedule 14.<sup>448</sup>

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<sup>448</sup> Licence varied by consent on 5 March 2012.

## **24. No waiver**

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

## **25. Severability**

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

## **26. Governing Law and jurisdiction**

- 26.1 This Licence shall be governed by and construed in accordance with English law.
- 26.2 Subject to Condition 26.3, the Commission and the Licensee irrevocably agree that the English courts shall have exclusive jurisdiction in relation to any legal action or proceedings arising out of or in connection with the Licence (***Proceedings***) and waive any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.
- 26.3 The Commission and the Licensee agree that Condition 26.2 shall operate for the benefit of the Commission and accordingly, the Commission shall be entitled to take Proceedings in any other court or courts having jurisdiction.

## **27. Third party rights**

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

## 28. Notices

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

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

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

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

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

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

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

28.4 The addresses, fax numbers and electronic mail addresses of the parties for the purpose of this Condition 28 are as follows:<sup>449</sup>

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<sup>449</sup> Licence varied by consent on 30 January 2013



**The Gambling Commission**

Address: Victoria Square House

Victoria Square

Birmingham

B2 4BP

Fax: +44 (0) 121 230 6720

For the attention of: Jenny Williams, Chief Executive

Electronic mail address: [jwilliams@gamblingcommission.gov.uk](mailto:jwilliams@gamblingcommission.gov.uk)

**The Licensee**

Address: Camelot UK Lotteries Limited

Tolpits Lane

Watford

Hertfordshire

WD18 9RN

Fax: 01923 425427

For the attention of: John Dillon, Company Secretary<sup>450</sup>

Electronic mail address: [john.dillon@camelotgroup.co.uk](mailto:john.dillon@camelotgroup.co.uk)

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

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

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

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<sup>450</sup> Licence varied by consent with effect from 25 August 2010.

## **29. Survival**

29.1 Conditions 5.17, 6.6, 6.13, 6.14, 7.45 – 7.49, 7.51, 10.7, 10.17 – 10.22, 11, 12.9, 14.4, 14.6, 15.19, 16.2, 16.3, 18, 19, 20.1, 20.2, 20.4 – 20.11, 22, 24, 25, 26, 27, 28 and 29 together with Schedules 5, 8, 9, 10, 11, 15, Parts 1 – 3 of Schedule 12, and 14 shall survive the expiry or revocation of this Licence.

29.2 The provisions of this Licence shall survive:<sup>451</sup>

(a) for the purpose of enforcement;

(b) for the purpose of interpretation; and

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

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<sup>451</sup> Licence varied by consent on 5 March 2012.

## Schedule 1<sup>452453454</sup>

### Definitions

#### Condition 2

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

**Account** means, in relation to a Registered Player (other than a Subscriber, and other than a Registered Player that has used only Pingit to buy tickets), the notional account described as an account maintained by such Registered Player via the Interactive Systems;<sup>455456</sup>

**ADR Entity** is defined as:

- (a) a person offering alternative dispute resolution services whose name appears on the list maintained by the Gambling Commission in accordance with The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, and
- (b) whose name appears on the list of providers that meet the Gambling Commission's additional standards found in the document 'Alternative dispute resolution (ADR) in the gambling industry – standards and guidance for ADR providers'.<sup>457</sup>

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

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

**Ancillary Activity** means:

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

and includes the exploitation of any IP, Licence Assets, Licensee Subcontract, Series Subcontract or Sub Series Subcontract by a third party whether or not in return for payment to the Licensee and whether or not

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<sup>452</sup> Various waivers of the obligation on Camelot to reflect certain provisions of the licence in its contracts with certain specified subcontractors given on 1 February 2009 .

<sup>453</sup> Waiver of the Commission's rights, if any, in the word 'EuroMillions'.

<sup>454</sup> Licence varied by consent on 7 July 2017.

<sup>455</sup> Licence varied by consent on 6 November 2019.

<sup>456</sup> Licence varied by consent on 8 February 2021.

<sup>457</sup> Licence varied by consent to reflect an update of the ADR definition on 18 December 2019.

such exploitation directly contributes to or forms part of the running of the National Lottery. Without prejudice to the generality of this definition Ancillary Activity shall include:

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

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

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

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

**Applicable Cash Sum** means £20,000,000 (or such other amount as shall be agreed with the Commission).

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

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

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

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

**Basic Rate** means the simple cost of connection of a telephone call, which does not provide the Licensee with a contribution to its costs or revenues. As at May 2017, this includes geographic telephone numbers or telephone numbers which are always set at the same rate, which usually begin with the prefix 01, 02 or 03.

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

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

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

**Bid** means the written application made by the Licensee to the Commission under section 5 of the National Lottery Act, as so modified and clarified during the course of the Bid Competition;

**Bid Competition** means the competition held by the Commission for the award of a licence under Section 5 of the National Lottery Act to run the National Lottery from 1 February 2009 to 31 January 2019 (unless extended, suspended or revoked pursuant to the terms of the National Lottery Act and/or the Licence (as the case may be));

**Bid Transition Plan** means the parts of the Bid relating to transition from the Previous Licence to the Licence, including in particular Chapter 9 of the Bid;"

**BIG** means the Big Lottery Fund;

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

**Cap(s)** has the meaning set out in Condition 11A(2)(a);

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

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

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

**Combined Code** means the Combined Code on Corporate Governance 2008 or, when it becomes applicable to the Licensee, the UK Corporate Governance Code 2010 (as amended) and any subsequent revision to, or successor of, these codes<sup>458</sup>;

**Commission** means the Gambling Commission, being the body established to regulate the National Lottery or such other body as may carry out such functions from time to time;

**Competition** means the Reletting process;

**Complaints Procedure** means the Licensee's written procedure for handling Player complaints, available via the website.<sup>459</sup>

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

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

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

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

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<sup>458</sup> Licence varied by consent with effect from 8 July 2010.

<sup>459</sup> Licence varied by consent on 7 August 2015

- (b) information the nature of which implies that it is confidential, or which is imparted to the Licensee in circumstances that imply it is confidential, including information the disclosure of which would, or would be likely to, prejudice the National Lottery, the Competition, the commercial interests of any person, trade secrets, the IP of the Commission and all personal data within the meaning of the Data Protection Act;<sup>460</sup>

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

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

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

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

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

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

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

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

**Data Protection Act** means the Data Protection Act Legislation;<sup>461</sup>

**Data subjects** means data subjects as defined in the Data Protection Act or any substitute or replacement legislation;

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

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

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

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

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<sup>460</sup> Licence varied by consent on 26 May 2021

<sup>461</sup> Licence varied by consent on 26 May 2021

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

**Distributor** means any person authorised by the Licensee who sells or offers for sale any National Lottery tickets, other than the Licensee and excluding Barclays Bank plc;<sup>462</sup>

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

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

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

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

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

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

**Euro-Compliant** means in relation to the provision of the National Lottery, that any element of the Technology Solution is capable of processing any data denominated in the Euro in the same manner as it does for the pound (and vice versa) in compliance with the terms laid down by the Bank of England or other applicable Law and respects euro currency formatting conventions and requirements (including the Euro symbol), in each case, without any loss of performance or functionality;<sup>463</sup>

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

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

**Extended Group Company** means any subsidiary or immediate, intermediate or ultimate holding company of the Licensee from time to time and any subsidiary of any such immediate, intermediate or ultimate holding company from time to time, "subsidiary" and "holding company" having the meanings set out in section 1159 of the Companies Act 2006;<sup>464</sup>

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

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

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

**First Period** means the period from the grant of the Licence to 31 March 2009

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

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

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<sup>462</sup> Licence varied by consent on 6 November 2019

<sup>463</sup> Text in grey disappplied with effect from 26 May 2021

<sup>464</sup> Licence varied by consent with effect from 8 July 2010.

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

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

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

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

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

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

**Group Company** means the Licensee and any direct or indirect subsidiary of the Licensee from time to time. "Subsidiary" has the meaning set out in section 1159 of the Companies Act 2006;<sup>465</sup>

<sup>466</sup>**Guaranteed Sum** means £21,000,000 (or such other amount as shall be agreed with the Commission).

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

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

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

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

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

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

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

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

**Interactive Account Terms and Conditions** means the terms and conditions (and variations thereof, including for those that have purchased tickets via Pingit) which shall be approved by the Commission in accordance with Condition 7.16 of the Licence as varied from time to time by agreement in writing between the Licensee and the Commission upon and subject to which Players are, inter alia, allowed to become Registered Players, and, subject to the Rules for Draw-based Games Played Interactively and the Interactive Draw-based Game Procedures, purchase tickets; <sup>467</sup><sup>468</sup>

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<sup>465</sup> Licence varied by consent with effect from 8 July 2010.

<sup>466</sup> Licence varied by consent with effect from 16 May 2012

<sup>467</sup> Licence varied by consent on 6 November 2019

<sup>468</sup> Licence varied by consent on 26 February 2021



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

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

**Interactive Platform** means the system established and operated by the Licensee on the internet<sup>469</sup>;

**Interactive Systems** mean those elements of the Technology Solution which enable a Player to register, to manage its Account, to purchase tickets or to apply for Subscriptions without the involvement of a Distributor or other intermediary, including internet websites, interfaces with banks and relevant authentication agencies, mobile phone systems and any terminal networks which may be used by a Player for such purposes<sup>470</sup>;

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

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

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

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

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

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

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

**Key Procedure** means a Procedure which has been designated a Key Procedure pursuant to Condition 5.12A;

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

- (a) laws, by-laws, common law or other legislation made by any legislative, judicial, regulatory or administrative body or agency (or any sub-division of them) of the United Kingdom which has rule making power or whose directives, decisions, instructions, rulings, laws or regulations are directly enforceable against the Licensee or against the Commission in relation to the National Lottery or the running of the National Lottery and all rules, regulations, ordinances, orders, notices, directives, guidance notes and circulars promulgated pursuant to the same to the extent legally effective; and<sup>471</sup>
- (b) any authoritative judicial or legally effective administrative interpretation of each of the foregoing;

**Licence** means this licence;

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

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<sup>469</sup> Licence varied by consent on 2 October 2009

<sup>470</sup> Licence varied by consent on 2 October 2009

<sup>471</sup> Licence varied by consent on 26 May 2021

**Licensee** means Camelot UK Lotteries Limited<sup>472473</sup> company number 02822203 of Tolpits Lane, Watford, Hertfordshire WD18 9RN;

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

**Licensee Information** means all books, records, systems, documents, software, scripts, Processes, Procedures, instructions, databases, information in relation to the Licensee's Staff and the Licensee's rights, powers, duties and liabilities in relation to the Licensee's Staff, information or data kept by or on behalf of the Licensee in connection with the National Lottery (including financial, operational, Player or Distributor databases, information or data, and any market research conducted by or on behalf of the Licensee) and any other information the Commission may require concerning the Licensee or its business or affairs<sup>474</sup>;

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

**Licensee Investment** Licensee Investment means an investment by the Licensee which is authorised by the Commission in accordance with Condition 23 of the Licence on the basis that it represents a significant, unanticipated investment opportunity arising during the period of the Licence that may have the capacity to enhance the National Lottery in a way that benefits both good causes and the Licensee and which would not be undertaken in the absence of the agreements entered into in accordance with Condition 23.8. For the avoidance of doubt, a Licensee Investment does not include any investment or expenditure required to ensure the Licensee's compliance with the terms of this Licence;<sup>475</sup>

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

**Licensee Subcontract** means:

- a) any agreement including any software licence entered into by the Licensee and a third party(ies) in connection with the National Lottery
- b) save where the Commission agrees otherwise, any agreement relating to an Ancillary Activity which the Licensee has agreed with an Extended Group Company;<sup>476</sup>

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

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

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

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

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

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

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

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<sup>472</sup> Licence varied by consent with effect from 5 July 2010.

<sup>473</sup> Licence varied by consent with effect from 5 August 2010

<sup>474</sup> Waiver to allow the destruction of test backups given on 22 October 2009.

<sup>475</sup> Licence varied by consent on 5 March 2012.

<sup>476</sup> Licence varied by consent with effect from 8 July 2010.

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

**month** means calendar month;

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

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

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

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

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

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

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

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

**NLPU** means the National Lottery Promotions Unit being a unit maintained jointly by the Licensee, the Department for Culture, Media and Sport and the lottery distributing bodies for the raising of public awareness of, and support for, the benefits of the distribution of funding from the proceeds of the National Lottery;

**NLPU actual spend** means, in respect of a Period, the actual amount that is spent in running the NLPU in such Period as certified in the statement referred to in Condition 11A(4);

**NLPU anticipated spend** means, in respect of a Period, the amount that is anticipated to be required for the running of the NLPU in such Period provided that a statement of anticipated spend may only be accepted by the Licensee as NLPU anticipated spend if it has evidence that such spend has been determined and certified by the NLPU's management board.

**NLPU over spend** means, in respect of a Period, the difference between the NLPU anticipated spend and, if more, the NLPU actual spend in such Period;

**NLPU under spend** means the difference between the NLPU anticipated spend and, if less, the NLPU actual spend in any one Period;

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

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

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

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

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

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

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

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

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

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

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

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

<sup>477</sup>**Partial Cash Sum** means £5,000,000 (or such amount as shall be agreed with the Commission).

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

**Period** means, for the purposes of Condition 11A, the First Period, Second Period or Subsequent Period;

**personal data** means personal data as defined in the Data Protection Act or any substitute or replacement legislation;

**Pingit** means the Barclays Bank plc's proprietary smartphone payments application, Barclays Pingit;<sup>478</sup>

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

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

**Player Dispute** means any complaint made by a Player which relates to the Player's financial entitlement as a result of his participation in a Constituent Lottery<sup>479</sup>

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

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

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

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

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

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

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

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

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

**Procedure** means a document explaining or describing a Process or part of a Process;

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<sup>477</sup> Varied by consent on 16 May 2012

<sup>478</sup> Licence varied by consent on 6 November 2019

<sup>479</sup> Licence varied by consent on 7 August 2015

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

**processing** means in the context of Conditions 15 and 22 processing as defined in the Data Protection Act or any substitute or replacement legislation;

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

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

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

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

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

**Reconciled Amount** means, in respect of a Period (a) the sum of (i) the amount paid pursuant to Condition 11A(3) by the Licensee in respect of NLPU anticipated spend, plus (ii) the amount of NLPU under spend (if any, and to the extent not previously reimbursed to the Licensee by BIG pursuant to Condition 11A(4)(c)) in respect of the immediately preceding Period, less (b) the NLPU actual spend to the extent to which such NLPU actual spend did not exceed the relevant Cap, which reconciled amount may, for the avoidance of doubt, be a negative figure;

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

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

**Registered Player** means a Player registered in the Licensee's records as a Player of the Constituent Lotteries in accordance with the Interactive Account Terms and Conditions or a Player registered as purchasing a Subscription via the Interactive Systems in accordance with the terms and conditions for Draw-based Games as described by Condition 7.16 of the Licence;<sup>480</sup>

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

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

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

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

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

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

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

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

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

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<sup>480</sup> Waiver granted on 5 August 2016

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

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

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

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

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

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

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

**Second Period** means the period from 1 April 2009 to 31 March 2010;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Subsequent Period** means a Financial Year following the first Financial Year;

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

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

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

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

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

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

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

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

**Technology Processes**<sup>481</sup> means all activities associated with the provision and operation of technology forming part of the running of the National Lottery, Constituent Lottery and Ancillary Activity, including:

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

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

**Technology Specification**<sup>482</sup> means any written specification for the level of resilience, reliability, security, availability of service and quality assurance of any element of the Technology Solution;

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<sup>481</sup> By agreement, the original definition of Technology Processes varied and replaced by revised definition of Technology Processes with effect from 10 January 2012.

<sup>482</sup> By agreement, the original definition of Technology Specification varied and replaced by revised definition Technology Specification with effect from 10 January 2012.

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

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

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

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

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

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

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

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

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

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

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

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



## Schedule 2

### Condition 3

#### Part 1

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

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

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

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

## **Schedule 2**

### **Condition 3**

#### **Part 2**

#### **Financial penalties**

- 1.1 In the event that the Licensee does not have the facilities and/or games in place in accordance with Condition 3.1, the Licensee may be required to pay a financial penalty of a sum not exceeding £10,000,000 per week for a maximum period of five weeks.
- 1.2 In determining any financial penalty payable by the Licensee in accordance with paragraph 1.1, the Commission shall have regard to the matters set out in section 10A of the National Lottery Act, Direction 10 of the Directions to the Commission under Section 11 of the National Lottery Act and the following matters:
  - (a) where retail coverage is less than the minimum set out in Schedule 2 Part 1 for the periods specified in Condition 3.1, the Commission shall have regard to:
    - (i) the proportion of the minimum number of Distributors not able to provide service on each day; and
    - (ii) whether some turnover may come from distribution channels other than the Distributors or from other Distributors;
  - (b) where the number of facilities and/or games is less than the minimum set out in Schedule 2 Part 1, the Commission shall have regard to:
    - (i) the proportion of revenue that the Commission had expected to be contributed to good causes by the facilities and/or games that were not in place for the periods specified in Condition 3.1; and
    - (ii) whether the sales of another game or through other facilities may be higher as people who would have played the game which was not available for the periods specified in Condition 3.1 have instead played another game which is available or played through other facilities;
  - (c) the extent of disruption caused by the delay, for example whether the delay affects all or part of the National Lottery, and whether this is in all or part of the United Kingdom;
  - (d) the extent to which the delay was caused by circumstances within the Licensee's control;
  - (e) the extent to which the delay was reasonably foreseeable and/or potentially preventable;
  - (f) the extent to which the Licensee notified the Commission promptly of the risk of delay; and
  - (g) the extent to which the Licensee took all appropriate actions to mitigate the consequences.
- 1.3 The Commission may determine that the Licensee, if it so chooses, may pay the amounts set out in paragraph 1.1 over the duration of the Licence.
- 1.4 If the Licensee fails to pay any amount specified in Schedule 2 Part 2 by the period specified in section 10A(12) of the National Lottery Act, it shall pay interest for the period and at the rate specified in section 10A(13) of the National Lottery Act. For the avoidance of doubt, any such interest will be additional to sums payable under paragraph 1.1.

## Schedule 2

### Condition 3

#### Part 3

1. The Licensee shall implement the following initiatives<sup>483484485</sup>:

- (a) Syndicate Manager Tool
- (b) Communities
- (c) Systems Play for Lotto

by 31 December 2011 in accordance with Chapter 19.5 of the Licensee's written application for the grant of the Licence, submitted on 9 February 2007, or in a modified form for which the Commission's prior consent has been obtained.<sup>486</sup>

2. The Licensee shall implement Enterprise Series Direct (ES Direct), the new channels platform responsible for handling all non-retailer channels such as web, mobile, third-party channels, etc, in accordance with Chapter 12 of the Licensee's written application for the grant of the Licence, submitted on 9 February 2007, as soon as reasonably practicable and in any event by 29 March 2009.

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<sup>483</sup> Waiver, until 29 February 2012, of the requirement on Camelot to implement the Syndicate Manager Tool, Communities and Systems Play given on 15 December 2011.

<sup>484</sup> Waiver, until 31 March 2012, of the requirement on Camelot to implement the Syndicate Manager Tool, Communities and Systems Play given on 28 February 2012.

<sup>485</sup> Permanent waiver of the requirement on Camelot to implement the Syndicate Manager Tool, Communities and Systems Play given on 19 March 2012.

<sup>486</sup> Licence varied by consent on 23 October 2009.

## **Schedule 3**

### **Handover from the Previous Licensee**

#### **Condition 4**

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

- (a) to pay prizes in respect of any Constituent Lottery claimed before the expiry of the Previous Licence which have, at the commencement of this Licence, not yet been paid, if the claim period (as determined by the relevant rules of the Constituent Lottery) has not expired at the date of expiry of the Previous Licence;
- (b) to pay prizes in respect of any Constituent Lottery claimed after the expiry of the Previous Licence and the commencement of this Licence if the claim period (as determined by the relevant rules of the Constituent Lottery) has not expired at the date of expiry of the Previous Licence;
- (c) to make payments to the Secretary of State in accordance with Part 3 of Schedule 8 to this Licence for prizes eligible to be claimed (in accordance with the relevant rules of the Constituent Lottery) prior to expiry of the Previous Licence but which have not been claimed in accordance with the relevant rules of the Constituent Lottery and which accordingly are Unclaimed Prizes;
- (d) to make payments to the Secretary of State in accordance with Part 3 of Schedule 8 to this Licence at such time as prizes claimed (in accordance with the relevant rules of the Constituent Lottery) prior to expiry of the Previous Licence become Unpaid Prizes;
- (e) to ensure that the payments referred to in (a), (b), (c) and (d) above and any costs associated with such payments are correctly attributed to the Previous Licence or to this Licence, as the case may be;
- (f) for the continued conduct of disputes, claims or proceedings (whether actual, contingent, threatened, present or future) between the Licensee and its Players and Distributors in connection with the Previous Licence, and which are continuing or expected to be continuing, as at the date of expiry of the Previous Licence;
- (g) to ensure that any payments and costs associated with such payments arising out of such disputes, claims or proceedings referred to in (f) above are correctly attributed to the Previous Licence or to this Licence, as the case may be;
- (h) to ensure a smooth transition between the Previous Licence and this Licence in respect of the service provided to Registered Players;
- (i) to ensure the continued provision of the EuroMillions game referred to in Schedule 2 Part 1 of this Licence;
- (j) to ensure the continued provision of electronic point of sale services in Retail Outlets;
- (k) to ensure that the Players' Trust is established in fulfilment of the obligations contained in Condition 19 of this Licence;
- (l) in relation to Scratchcard Lottery tickets;
- (m) in relation to consumables; and
- (n) in relation to any other matter arising from the Previous Licence.

## Schedule 4

### Condition 6

#### Part 1<sup>487</sup>

#### Ancillary activities that the Commission has consented to

- a) The BBC agreement commencing 1 January 2017 and all changes to it agreed by Camelot and the BBC throughout the term of the Third Licence provided that such changes are consistent with the terms of the Third Licence; do not affect the Commission's rights and do not concern the level of fees payable by the BBC under the agreement<sup>488</sup>489490491;
- b) Banking Partner – presentation cheque agreement;
- c) Stalfors – ticket advertising;
- d) SLE (Services aux Loteries en Europe) Activity – payments made to/from SLE for the provision of administration services on behalf of the EuroMillions partners and any dividend payment due to Camelot from SLE;
- e) Scientific Games – Scratchcard ticket advertising
- f) Ticket Messaging that relates to the Pride of Britain Awards or the National Lottery Awards.<sup>492</sup>
- g) In accordance with the consent letter issued on 22 June 2012 permitting the licensing of IIWG software by CUKL to CGSL and thereafter to third parties<sup>493</sup>
- h) L4 bid activity in accordance with the Ancillary Activity undertakings letter dated 16 October 2020<sup>494</sup> and updated on 5 March 2021.<sup>495</sup>

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<sup>487</sup> Licence varied by consent on 04 February 2010

<sup>488</sup> Licence varied by consent on 28 October 2009.

<sup>489</sup> Licence varied by consent on 16 November 2012 effective on 01 January 2013

<sup>490</sup> Licence varied by consent on 28 October 2009.

<sup>491</sup> Licence varied by consent on 13 April 2017.

<sup>492</sup> Added to the Licence by agreement with effect from 6 July 2010.

<sup>493</sup> Licence varied by consent on 25 June 2012.

<sup>494</sup> Licence varied by consent on 16 October 2020.

<sup>495</sup> Licence varied by consent on 18 March 2020.

## **Schedule 4**

### **Condition 6**

#### **Part 2**

#### **Further Conditions relating to Ancillary Activities**

## Schedule 5

### The Ancillary Activity Payment<sup>496</sup>

#### Conditions 6 and 11

- 1.1 In respect of each Financial Year the Ancillary Activity Payment shall comprise an amount equal to the percentage rate of the net profits shown in the relevant column of Table 1 and shall be paid in accordance with paragraph 1.3 below<sup>497</sup>.

**Table 1 – Ancillary Activity Payments<sup>498499</sup>**

Ancillary Activity	Percentage Rate	NLDF/OLDF
Banking Partner – cheque presentation	80%	NLDF
Stralfors – ticket advertising	80%	NLDF
SLE (Services aux Loteries en Europe) Activity – payments made to/from SLE for the provision of administration services on behalf of the EuroMillions partners and any dividend payment due to Camelot from SLE	0%	NLDF
Scientific Games – ticket advertising	80%	NLDF
<b>Camelot Global Services Limited – payments made by way of royalties for use of Interactive Instant Win Games software</b>	100%	NLDF

- 1.2 In respect of each Financial Year, the net loss of the L4 Bid Ancillary Activity is included in the Ancillary Activity Payments calculation and is therefore not deductible for the purposes of secondary contribution<sup>500</sup>.
- 1.3 The Ancillary Activity Payment shall be paid within 14 days after the statement referred to in Condition 6.14 has been submitted to the Commission<sup>501</sup>.

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<sup>496</sup> Licence varied by consent on 04 February 2010

<sup>497</sup> Licence varied by consent on 18 March 2021.

<sup>498</sup> Licence varied by consent on 16 November 2012 effective on 01 January 2013

<sup>499</sup> Licence varied by consent on 13 April 2017

<sup>500</sup> Licence varied by consent on 16 October 2020

<sup>501</sup> Licence varied by consent on 18 March 2021

## **Schedule 6**

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## **Schedule 7<sup>502503</sup>**

### **Codes of practice and strategies**

#### **Conditions 7, 9, 13 and 14**

- 1.1 In this Schedule, “code” means a code of practice or guide prepared pursuant to Conditions 7 or 13 or the procedure referred to in 14.14 and “strategy” means a strategy prepared pursuant to Condition 7 and Condition 9.
- 1.2 The Commission may approve a code in the form in which it was submitted to it or may make modifications to it before approving it.
- 1.3 At least once in each calendar year and at any other time when directed by the Commission, the Licensee shall review each code and strategy and the manner of its operation to determine whether amendments should be made to it.
- 1.4 The Licensee shall submit the results of the review carried out pursuant to paragraph 1.3 to the Commission as soon as reasonably practicable.
- 1.5 The Licensee shall submit any amendments to the code or strategy (whether arising from a review carried out under paragraph 1.3 or otherwise) to the Commission for approval and thereupon paragraph 1.2 shall apply taking references in that paragraph to the code or strategy as references to amendments to the code or strategy.

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<sup>502</sup> Waiver of the obligation on Camelot to review its codes and strategies during 2009 on the basis that they were reviewed and approved shortly prior to the start of the Third Licence on 1 February 2009.

<sup>503</sup> Waiver of the requirement to submit an annual review of the Code of Practice on Top Prize Management (COTPM) until 28 May 2016

## Schedule 8

### Primary and Secondary Contributions

Conditions 7, 11 and 19

#### Part 1

#### Definitions and interpretation

1.1 In this Schedule the following terms shall have the meanings ascribed below:

**Additional Prize Funding**<sup>504</sup> shall have the meaning given to it in the Trust Deed;

**aggregate value of National Lottery tickets sold** means the total of the face value of tickets sold in each Financial Year or any relevant period in each Financial Year determined/adjusted in accordance with the provisions of paragraph 1.2(a), (b), (c) and (d) but excluding any Consented Free Ticket issued in that year;

**Basic Primary Contribution** means the amount of the Primary Contribution calculated in accordance with the provisions of paragraph 2 but before any adjustment is made in accordance with the provisions of paragraph 6;

**Breakage**<sup>505</sup> means, subject to paragraph 1.2(e) in respect of each Game Type the aggregate amount of the difference between:

- (a) the aggregate amount of Prize Payments in respect of a Constituent Lottery prior to the rounding down of such Prize Payments in accordance with the rules of that Constituent Lottery (if appropriate); and
- (b) the aggregate amount of Prize Payments in respect of a Constituent Lottery after such rounding down (if appropriate);

**Consented Free Ticket** means a ticket or play in a Constituent Lottery which, with the Commission's consent, has been given away free in accordance with the rules of the relevant Constituent Lottery;

**Final Payment Day** means, in relation to each Financial Year, the day 28 July<sup>506</sup>;

**Game Type** means one of the following categories: Retailer Distributed Draw-Based Games; Non-Retailer Distributed Draw-Based Games; Scratchcard Games; or Interactive Instant Win Games;

**Gross Sales Retention** means, for each Game Type and in each Financial Year or any Relevant Period in each Financial Year, the amount calculated in accordance with paragraph 2.4;

**Instant Win Game** means any National Lottery game, the result of which is determined at the point of purchase of the ticket;

**Interactive Instant Win Game** means any Instant Win Game where tickets are sold by means that do not require Players to attend personally at the premises;

**Lottery Duty** means the amount due from the Licensee by way of lottery duty pursuant to the Finance Act 1993;

**net value of National Lottery tickets sold** means the aggregate value of National Lottery tickets sold, for each Game Type and in each Financial Year or any Relevant Period in each Financial Year, less (i) 12% of such value; (ii) Prize Payments; (iii) Gross Sales Retention; and (iv) Retailer Commission;

**NLDF Contribution** means the Primary Contribution less the OLDF Contribution;

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<sup>504</sup> Licence varied by consent on 9 February 2009

<sup>505</sup> Licence varied by consent on 9 February 2009

<sup>506</sup> Licence varied by consent on 1 April 2015

**NLDF Weekly Payment** means that proportion of the Weekly Payment that is paid into the NLDF;

**Non-Retailer Distributed Draw-Based Game** means any Draw-based Game where tickets are sold by means that do not require Players to attend personally at the premises;

**OLDF Contribution** means the amount calculated by multiplying the Primary Contribution by a fraction that is determined by dividing the Olympic Lottery ticket sales by the aggregate value of National Lottery tickets sold;

**OLDF Weekly Payment** means that proportion of the Weekly Payment that is paid into the OLDF;

**Olympic Lottery ticket sales** means the total of the face value of tickets sold in respect of all Olympic Lotteries in each Financial Year or any Relevant Period in each Financial Year determined/adjusted in accordance with the provisions of paragraphs 1.2(a), (b), (c) and (d) but excluding any Consented Free Ticket issued in that year in respect of any Olympic Lottery;

**Primary Contribution** means the amount calculated in accordance with the provisions of paragraph 2 and adjusted pursuant to paragraph 6 to be paid to the Secretary of State by the Licensee in respect of each Financial Year (or part thereof) and determined in accordance with the provisions of this Schedule 8;

**Prize Payments** means, subject to paragraph 1(2)(e), in respect of each Game Type the aggregate of all amounts in each Financial Year or any Relevant Period in each Financial Year which, in accordance with the rules of any Constituent Lottery, has been determined as capable of being paid as a prize (whether or not they have been paid) and shall include any Breakage in respect of the relevant Game Type provided that such Breakage shall only constitute Prize Payments at the time such Breakage first arises and not at the time that such Breakage is subsequently used to provide any Additional Prize Funding, in each case in accordance with the Trust Deed<sup>507</sup>;

**Prize Pay-out Ratio** means a deemed prize pay-out which is specified in the licence under section 6 of the National Lottery Act for the relevant Constituent Lottery;

**Relevant Period** means that part of a Financial Year that ends with the Relevant Saturday or on the last day of that Financial Year;

**Relevant Saturday** means the Saturday before the Weekly Payment Day for the Relevant Week in question;

**Relevant Week** means, in relation to any Weekly Payment Day, the period of seven days ending on the Saturday before that Weekly Payment Day;

**Retailer Commission** means payments to Distributors for the service of selling tickets and paying prizes in relation to Retailer Distributed Draw-Based Games and Scratchcard Games where Players are required to attend personally at the premises and, subject to the prior written consent of the Commission in respect of (a) the identity of the third party or parties (which may be given on an individual basis or by class) and (b) the amount of the payment, payments to third parties for the service of paying prizes in relation to those Games where Players have attended personally at a Distributor to purchase their ticket;

**Retailer Distributed Draw-Based Game** means any Draw-based Game where tickets are sold to Players who attend personally at the premises;

**Scratchcard Game** means any Instant Win Game where tickets are sold to Players who attend personally at the premises;

**Secondary Contribution** means the amount described at and determined in accordance with paragraph 4 to be paid to the Secretary of State by the Licensee;

**Unclaimed Prize** means, on any date, a prize or part of a prize which has not been claimed by any person so entitled within the timescale allowed by and in accordance with the rules of any Constituent Lottery;

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<sup>507</sup> Licence varied by consent on 9 February 2009

**Unclaimed Prize Payment Date** means, in respect of any Unclaimed Prize, the date which is the first Weekly Payment Day after the end of the timescale allowed by and in accordance with the rules of any Constituent Lottery for the claim of any prize;

**Unpaid Prize** means, on any date any prize which has been claimed by the relevant prize winner and a payment has attempted to have been made by way of any method or process and the Licensee has not been able to effect payment to the proposed recipient of such amount by the Unpaid Prize Date;

**Unpaid Prize Date** means, in respect of any Unpaid Prize, the date which is the seventh anniversary of the earliest of:

- (a) the date which has been determined in accordance with the regulations of a Constituent Lottery; or
- (b) the Expiry Date,

provided that, where a cheque or payment instruction has been issued in respect of any prize, the Unpaid Prize Date will be the later of the seventh anniversary of (a) or (b) and the seventh anniversary of the date of issue of any cheque or payment instruction in respect of that prize;

**Weekly Payment** means the payment to be made in each week by the Licensee to the Secretary of State in accordance with the provisions of paragraph 7; and

<sup>508</sup>**Weekly Payment Day** means, subject to paragraph 8, each Wednesday or, if a Wednesday is not a Business Day in England and Wales, the next Business Day in England and Wales.

1.2 For the purposes of this Schedule:

- (a) in determining the value of National Lottery tickets sold:
  - (i) the value of all National Lottery tickets sold in the Financial Year or other Relevant Period in question shall be taken into account whether or not the Licensee receives the consideration for any tickets sold save that:
    - (A) a National Lottery ticket which has been properly cancelled in accordance with Procedures shall not be treated as sold; and
    - (B) a National Lottery ticket which was comprised in a pack of tickets which has been activated but the sale of which ticket has subsequently been cancelled or which ticket has been repurchased prior to such pack becoming a settled pack shall not be treated as sold provided that, if such cancellation or repurchase is as a result of the cancellation or withdrawal of a Scratchcard Lottery, the Commission shall have given its prior consent to such cancellation or repurchase;
  - (ii) a National Lottery ticket shall be treated as sold at the higher of the price at which it is actually sold and the price at which it should have been sold to a Player in accordance with the rules of the Constituent Lottery; and
  - (iii) a National Lottery ticket which appears (whether as a result of the inspection of any record, the drawing of an inference from a statistical sampling operation, or any other process) to have been generated or created in respect of which there is no record of a sale nor proof that it has not been sold shall be treated as having been sold at the price at which it should have been sold in accordance with the rules of the Constituent Lottery;
- (b) a National Lottery ticket shall be treated as sold on the date on which it is sold (or in the case of a pack of tickets, the date on which such pack became a settled pack) by or on behalf of the Licensee or the relevant Independent Section 6 Licensee (whether or not it has subsequently been sold by a Distributor or other agent or intermediary to any person who participates or intends to participate in the relevant Constituent Lottery) and, in the case of payments made in advance or by subscription, shall be treated as sold at the time when the relevant part of such payment is

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<sup>508</sup> Licence varied by consent with effect from 29 September 2011.

transferred out of the Trust Account to the Licensee (or for its benefit) in accordance with the provisions referred to in Condition 19.1(b)(ii);

- (c) where after a pack of tickets has been activated and has become a settled pack and the related ticket sales payment has accordingly been made in respect of all the tickets comprised in it, the Licensee or Independent Section 6 Licensee shall cancel or repurchase from the relevant Distributor some or all of the tickets comprised in that pack (with the prior consent of the Commission in the case of any such cancellation or repurchase made as a result of the cancellation or withdrawal of a Scratchcard Lottery), the Licensee shall be credited with the amount of the ticket sales payment made in respect of such cancelled or repurchased tickets and its obligation in respect of the ticket sales payment due in the next (and, if necessary, subsequent) weeks shall be reduced accordingly;
- (d) save where expressly provided otherwise a ticket shall be treated as sold whether it is issued pursuant to a sale or otherwise or given away free or sold for less than the full price applicable in accordance with the rules of the relevant Constituent Lottery and whether with or without full payment by a third party payer (that is, not being the Licensee, or any Group Company, or any person on behalf of the Licensee or such Group Company) of the full price payable in accordance with the rules and procedures of the relevant Constituent Lottery;
- (e) in determining the respective values of Prize Payments (including for the avoidance of doubt any related Breakage) in respect of any Draw-based Game, the Licensee shall calculate the total Prize Payment value in respect of each Draw in respect of such Draw-based Game and shall allocate that total Prize Payment value between the Game Types of Retailer Distributed Draw-Based Games and Non Retailer Distributed Draw-Based Games in the same proportion in which the gross value of tickets sold in respect of that Draw is attributable to Retailer Distributed Draw-Based Games and Non-Retailer Distributed Draw-Based Games respectively<sup>509</sup>; and
- (f) any reference to a paragraph is to a paragraph in this Schedule.

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<sup>509</sup> Licence varied by consent on 9 February 2009.

## **Schedule 8**

### **Primary and Secondary Contributions**

**Conditions 7, 11 and 19**

#### **Part 2**

#### **Calculation of the Primary and Secondary Contribution**

- 2.1 The Primary Contribution shall be calculated by adjusting the Basic Primary Contribution in accordance with paragraph 6 and be paid to the Secretary of State in accordance with the provisions of Part 3 of this Schedule 8.
- 2.2 The Basic Primary Contribution shall be calculated, for each Game Type and each Financial Year, by applying the percentage represented by 100 minus the retention rate shown in the relevant column of Table 1 to any portion of the net value of National Lottery tickets sold that falls between the relevant lower tranche boundary and the relevant upper tranche boundary, subject to adjustment of the tranche boundaries, if appropriate, in accordance with the provisions of paragraph 3.
- 2.3 The net value of National Lottery tickets sold shall be calculated, for each Game Type and each Financial Year, by deducting from the aggregate value of National Lottery tickets sold:
- (a) 12 per cent. of such value;
  - (b) Prize Payments;
  - (c) the Gross Sales Retention; and
  - (d) Retailer Commission.
- 2.4 The Gross Sales Retention shall be calculated by applying, for each Game Type and for each Financial Year, the retention rate shown in the relevant column of Table 2, to any portion of the aggregate value of National Lottery tickets sold that falls between the relevant lower tranche boundary and the relevant upper tranche boundary, subject to adjustment of the tranche boundaries, if appropriate, in accordance with the provisions of paragraph 3.
- 2.5 The provisions of paragraphs 2.2 to 2.4 are reproduced as a formula in Appendix I to this Schedule 8 and in the case of any conflict between the provisions of this paragraph 2 and the formula, the provisions of the formula shall prevail.<sup>510</sup>

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<sup>510</sup> Clauses 2.1, 2.2, 2.3, 2.4 and 2.5 varied by consent on March 2012.

**Table 1: Parameters – Net Sales Retention<sup>511</sup>**

	Retailer Distributed Draw-Based Games			Non-Retailer Distributed Draw-Based Games			Scratchcard Games			Interactive Instant Win Games		
	Tranche Boundaries		Retention Rate (%)	Tranche Boundaries		Retention Rate (%)	Tranche Boundaries		Retention Rate (%)	Tranche Boundaries		Retention Rate (%)
	Lower (£m)	Upper (£m)		Lower (£m)	Upper (£m)		Lower (£m)	Upper (£m)		Lower (£m)	Upper (£m)	
1	0	290	43.18	0	56	43.18	0	37	43.18	0	6	43.18
2	290	726	1.40	56	89	0.92	37	59	1.97	6	9	1.61
3	726	907	3.05	89	270	1.22	59	91	2.60	9	27	2.13
4	907	1,100	3.54	270	361	1.85	91	122	3.95	27	35	3.23
5	1,100	1,500	6.00	361	451	2.82	122	152	6.03	35	44	4.95
6	1,500	n/a	3.54	451	n/a	3.27	152	n/a	6.98	44	n/a	5.73

<sup>511</sup> Licence varied by consent on 5 March 2012

**Table 2: Parameters – Gross Sales Retention**

	Retailer Distributed Draw-Based Games			Non-Retailer Distributed Draw-Based Games			Scratchcard Games			Interactive Instant Win Games		
	Tranche Boundaries		Retention Rate (%)	Tranche Boundaries		Retention Rate (%)	Tranche Boundaries		Retention Rate (%)	Tranche Boundaries		Retention Rate (%)
	Lower (£m)	Upper (£m)		Lower (£m)	Upper (£m)		Lower (£m)	Upper (£m)		Lower (£m)	Upper (£m)	
1	0	1,000	0.58	0	200	2.37	0	550	1.84	0	150	2.62
2	1,000	2,150	0.61	200	600	2.20	550	700	1.93	150	200	2.48
3	2,150	3,000	1.60	600	1,000	2.17	700	800	2.21	200	300	3.66
4	3,000	3,500	2.46	1,000	1,600	3.41	800	1250	3.46	300	600	3.95
5	3,500	n/a	2.64	1,600	2,300	3.78	1250	2000	4.00	600	n/a	4.43
6				2,300	n/a	4.08	2000	n/a	4.64			



- 3.1 On 1 April 2010 and on 1 April in each subsequent year, each tranche boundary shown in the relevant columns of table 1 and table 2 shall be adjusted by the application of the following formula:

$at = at-1 (100 + CPI)$

100

Where:

*at* is the adjusted relevant tranche boundary in Financial Year *t* before making the adjustments in paragraph 3.3. For the first adjustment, on 1 April 2010, *at-1* will be the relevant tranche boundary as shown in table 1 or table 2; and CPI is the percentage change (whether positive or negative), rounded to four decimal places, in the Consumer Prices Index in the 12 months to the previous February.

- 3.2 For the purposes of this paragraph 3 “Consumer Prices Index” means the Consumer Prices Index published by the Office for National Statistics or, if there is a material change in the basis of the index and the Commission determines that the Consumer Prices Index referred to above should not be used for the purposes of this Schedule 8, such other index as the Commission may determine.
- 3.3 The tranche boundaries applicable in any Financial Year as adjusted in paragraph 3.1 shall be pro-rated to take account of the number of days in that year on which the Licensee is licensed to sell National Lottery tickets. The resulting amounts in £ million shall be rounded to one decimal place.<sup>512</sup> 4.1 The Secondary Contribution shall be calculated in accordance with this paragraph and be paid to the Secretary of State in accordance with the provisions of Part 3 of this Schedule 8.
- 4.2 The Secondary Contribution shall be calculated with reference to the difference in each Financial Year between the Licensee’s Adjusted Profit Before Interest and Tax (“APBIT”) as defined in paragraph 4.5 and its Theoretical Profit Before Interest and Tax (“TPBIT”) as defined in paragraph 4.6.
- 4.3 The Licensee shall treat the Secondary Contributions as tax deductible and if the Secondary Contributions are tax deductible and if the APBIT exceeds the TPBIT in any Financial Year, then the Secondary Contribution for that Financial Year shall be based on the difference between these two measures and calculated as:

(a) For the period from 1 February 2009 to 31 March 2012:

28% of any part of the difference that lies between 0% and 10% of the TPBIT; plus

50% of any part of the difference that lies between 10% and 20% of the TPBIT; plus

80% of any part of the difference that is in excess of 20% of the TPBIT.

(b) For the period from 1 April 2012 to 31 July 2023:

28% of any part of the difference that is in excess of 20% of the TPBIT<sup>513</sup>.

- 4.4 If Secondary Contributions are, for whatever reason, not tax deductible and if the APBIT exceeds the TPBIT in any Financial Year, then the Secondary Contribution for that Financial Year shall be based on the difference between these two measures and calculated as:

(a) For the period from 1 February 2009 to 31 March 2012:

(1 minus the Effective Tax Rate) multiplied by 28% of any part of the difference that lies between 0% and 10% of the TPBIT; plus

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<sup>512</sup> Clauses 3.1, 3.2, and 3.3 varied by consent on 5 March 2012.

<sup>513</sup> Licence varied by consent with effect from 31 March 2021

(1 minus the Effective Tax Rate) multiplied by 50% of any part of the difference that lies between 10% and 20% of the TPBIT; plus

(1 minus the Effective Tax Rate) multiplied by 80% of any part of the difference that is in excess of 20% of the TPBIT

(b) For the period from 1 April 2012 to 31 July 2023:

(1 minus the Effective Tax Rate) multiplied by 28% of any part of the difference that is in excess of 20% of the TPBIT

where: (i) the Effective Tax Rate equals:

Total tax charge (including deferred tax)

Profit Before Tax (as shown in the audited financial statements for the Financial Year)

and where: (ii) Profit Before Tax is calculated prior to any provision or charge for the Secondary Contribution, and also excludes any profits which are subject to ancillary contributions to good causes and the associated ancillary contributions.<sup>514</sup>

4.5 The APBIT is calculated with reference to Profit Before Interest and Tax in the audited financial statements for any Financial Year, subject to the following adjustments:

(a) Profit Before Interest and Tax is calculated:

(i) prior to any provision or charge for the Secondary Contribution, and also excludes any profits which are subject to ancillary contributions to good causes and the associated ancillary contributions, and includes any net losses which are included in the Ancillary Activity Payments calculation, and<sup>515</sup>

(ii) prior to any adjustment for Profit Alignment Contribution (as defined in Schedule 10 Part 4 "Marketing investment from NLDF and Profit Alignment Contribution").

(b) Profit Before Interest and Tax is adjusted (if necessary) as if prepared in accordance with the accounting policies adopted by the Licensee in its accounts as at 31 March 2006;

(c) in respect of the Financial Year from 1 February 2009 to 31 March 2010, with reference to the audited financial statements for the year ended 31 March 2009, an adjustment will be made to exclude revenue received and expenditure incurred prior to 1 Feb 2009; and

(d) in respect of the Financial Year from 1 April 2023 to 31 July 2023, with reference to the audited financial statements for the year ended 31 March 2024, an adjustment will be made to exclude revenue received and expenditure incurred after 1 August 2023, unless the expenditure incurred is as a direct result of acting as Licensee.<sup>516</sup>

4.6 The TPBIT for each Financial Year is calculated as 1:<sup>517</sup>

£12 million; plus

0.6% of any part of reported National Lottery ticket sales in the Licensee's audited financial statement for any Financial Year that lies between £3,000 million and £4,000 million; plus

1.2% of any part of reported National Lottery ticket sales in the Licensee's audited financial statement for any Financial Year that lies above £4,000 million.

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<sup>514</sup> Licence varied by consent with effect from 31 March 2021

<sup>515</sup> Licence varied by consent on 16 October 2020

<sup>516</sup> Licence varied by consent with effect from 31 March 2021

<sup>517</sup> Clause 4.6 varied by consent on 7 October 2010 with retrospective effect from 1 February 2009.

- 4.7 For the purpose of calculating Secondary Contributions, the 14 months from 1 February 2009 and the 4 months to 31 July 2023 shall each be treated as a Financial Year, and the monetary amounts used to calculate the TPBIT in paragraph 4.6 shall be pro-rated to take account of the number of days during those periods on which the Licensee is licensed to sell National Lottery tickets.<sup>518519</sup>
- 5.1 If during any Relevant Period, Lottery Duty is less than 12% of the aggregate value of National Lottery tickets sold, the Basic Primary Contribution shall be increased by an amount equal to the difference between the Lottery Duty payable and the amount that would have been payable as Lottery Duty if Lottery Duty had remained at 12%.
- 5.2 If during any Relevant Period Lottery Duty is more than 12% of the aggregate value of National Lottery tickets sold, the Basic Primary Contribution shall be decreased by an amount equal to the difference between the Lottery Duty payable and the amount that would have been payable as Lottery Duty if Lottery Duty had remained at 12%.
- 5.3 If during any Relevant Period there is a change in the rate of VAT or in the VAT regime, then the Basic Primary Contribution shall be adjusted by an amount equal to the additional VAT cost or decrease in VAT cost such that the Licensee will be cost neutral to such a change.
- 5.3A The Licensee shall provide to the Commission on a quarterly basis, no later than 60 days following the Quarter in which adjustments to the Basic Primary Contribution have been made pursuant to paragraph 5.3 above, a certificate signed by the Director of Finance (or, in his absence, the Chief Executive) confirming that such adjustments:<sup>520521522523524525526</sup>
- (a) have been calculated in accordance with the process previously agreed by the Commission; and
  - (b) fully and accurately reflect the amount necessary to ensure that the impact of a relevant change in the rate of VAT or the VAT regime is cost neutral to the Licensee.<sup>527</sup>
- 6.1 The adjustments to be made to the Basic Primary Contribution are as follows:<sup>528</sup>
- (a) a reduction in the Weekly Payment of an amount equal to 66.67% of the NLPU anticipated spend to the extent paid by the Licensee pursuant to Condition 11A(3)(a);
  - (b) a reduction to reflect 66.67% of the NLPU over spend paid by the Licensee to BIG, as referred to in Condition 11A(4)(c);
  - (c) an addition to reflect 66.67% of the NLPU under spend reimbursed to the Licensee by BIG, as referred to in Condition 11A(4)(c);

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<sup>518</sup> Clauses 4.1, 4.2, 4.3, 4.4, 4.5, 4.6 and 4.7 varied by consent on 5 March 2012

<sup>519</sup> Licence varied by consent with effect from 31 March 2021

<sup>520</sup> Clauses 5.1, 5.2, 5.3 and 5.3A varied by consent on 27 September 2010.

<sup>521</sup> Temporary waiver of clause 5.3A granted on 22 March 2017.

<sup>522</sup> Temporary waiver given on 15 March 2020 in relation to reporting requirements due to COVID-19.

<sup>523</sup> Temporary waiver given on 28 May 2020 in relation of a reporting requirement required on 29 May 2020, due to COVID-19.

<sup>524</sup> Temporary waiver given on 24 August 2020 in relation of a reporting requirement required on 26 August 2020, due to COVID-19.

<sup>525</sup> Temporary waiver given on 24 August 2020 in relation of a reporting requirement required on 26 August 2020, due to COVID-19

<sup>526</sup> Extension to waiver provided on 26 August 2020 of a reporting requirement (MIRR Q20), extended until the end of the COVID-19 restrictions.

<sup>527</sup> Clauses 5.1, 5.2, 5.3 and 5.3A varied by consent on 5 March 2012.

<sup>528</sup> Clause 6.1 varied by consent on 27 September 2010.

- (d) the addition or deduction of such amounts as are necessary to reflect any change in Lottery Duty calculated in accordance with the provisions of paragraph 5;
- (e) the addition or deduction of such amounts as are necessary to reflect a change in the rate of VAT or in the VAT regime pursuant to paragraph 5.3; 2
- (f) the deduction of any such amounts as are necessary to cover Redundancy Costs in accordance with Condition 16.4 of the Licence; and
- (g) any other adjustments that are agreed between the Licensee and the Commission..<sup>529</sup>

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<sup>529</sup> Clause 6.1 varied by consent on 5 March 2012.

## Schedule 8

### Primary and Secondary Contributions

Conditions 7, 11 and 19

#### Part 3

#### Payment

- <sup>530</sup>7.1 Subject to the provisions of paragraphs 8, 9 and 10, on each Weekly Payment Day the Licensee shall pay to the Secretary of State out of the proceeds of the Constituent Lotteries the Weekly Payment, which shall be an amount (after making allowance for any adjustments in accordance with paragraph 6) equal to:
- (a) the proportion of Primary Contribution calculated by applying the tranche boundaries and Prize Payments adjusted in respect of any Relevant Period in accordance with paragraph 2.1 less the aggregate Weekly Payments already made by the Licensee pursuant to this Part 3 of Schedule 8;
  - (b) the Unclaimed Prizes in the Relevant Week less amounts previously paid in that Relevant Week in respect of Unclaimed Prizes;<sup>531</sup>
  - (c) Unpaid Prizes (if any) in the Relevant Week less amounts previously paid in that Relevant Week in respect of Unpaid Prizes;<sup>532</sup> and
  - (d) an interest amount for one day on the value of the Weekly Payment amounts calculated in paragraph 7.1(a) inclusive, at an interest rate of 1% above the base rate for the time being of National Westminster Bank plc or such other clearing bank as the Commission may from time to time specify.<sup>533</sup>
- <sup>534</sup>7.2 The Weekly Payment shall be made in two parts, one to the NLDF and the other to the OLDF. The payment to the NLDF shall be the Weekly Payment less the amount paid to the OLDF. The amount (if relevant) to be paid to the OLDF shall be equal to:
- (a) the proportion of the OLDF Contribution, being the proportion of Primary Contribution as calculated in paragraph 7.1(a) above before deducting the aggregate Weekly Payments already made by the Licensee, multiplied by Olympic Lottery ticket sales in the Relevant Period and then divided by the aggregate value of National Lottery tickets sold in the Relevant Period, less the aggregate Weekly Payments already made to the OLDF in that Financial Year;
  - (b) the amount of the Unclaimed Prizes as set out in paragraph 7.1(b) above, where these prizes relate to Olympic Lotteries;
  - (c) the amount of the Unpaid Prizes as set out in paragraph 7.1(c) above, where these prizes relate to Olympic Lotteries; and
  - (d) the proportion of the interest amount as calculated in paragraph 7.1(d) above, multiplied by the amount in 7.2(a), divided by the sum of paragraph 7.1(a) above<sup>535</sup>.
- 7.3 In the event that exceptional circumstances prevent the Licensee from verifying the accuracy of its calculation of the Weekly Payment in any week and, as a result, a shortfall could occur in the

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<sup>530</sup> Licence varied by consent with effect from 29 September 2011.

<sup>531</sup> Licence varied by consent with effect from 28 May 2012.

<sup>532</sup> Licence varied by consent with effect from 28 May 2012.

<sup>533</sup> Licence varied by consent with effect from 28 May 2012.

<sup>534</sup> Licence varied by consent with effect from 29 September 2011.

<sup>535</sup> Licence varied by consent with effect from 28 May 2012.

relevant Weekly Payment, the Licensee shall notify the Commission in writing and, following such notification, may pay instead of the Weekly Payment such sum as the Licensee shall estimate will at least equal its payment obligations under the Licence. If the Licensee shall subsequently determine that the estimated sum is in excess of its actual obligation in respect of the relevant Weekly Payment, the Licensee shall notify the Commission in writing of such determination and, not less than five Business Days after such notification, may withhold from the relevant Weekly Payment such sum as shall equal the excess.

- 7.4 The Licensee shall procure that any notification to the Commission provided for in paragraph 7.3 is accompanied by appropriate documentary evidence of the potential shortfall or excess, and the Licensee shall forthwith upon being so requested by the Commission provide any such further information as the Commission shall require in relation to the subject matter of the notification.
- 7.5 The notification and the provision of documentary evidence to the Commission in accordance with the provisions of paragraphs 7.3 and 7.4 shall not be taken to imply any consent by the Commission to the relevant payment or withholding of any sum by the Licensee.
- <sup>536</sup>7.6 The Licensee shall review the interest rate in paragraph 7.1(d) above annually, and provide a proposal to the Commission by 31 January each year in respect of the rate to be applied for the following Financial Year.
- <sup>537</sup>8.1 If a Monday or a Tuesday is not a Business Day in England and Wales, the payment which would otherwise have been due on the Weekly Payment Day which immediately follows may be postponed to the next day which is a Business Day in England and Wales, or if both Monday and Tuesday are not Business Days in England and Wales then the payment may be postponed to the next but one day which is a Business Day in England and Wales.
- 9.1 For the purposes of calculating the Weekly Payment:
- (a) the tranche boundaries shown in Table 1 and Table 2 applicable in any Relevant Period of a Financial Year (adjusted in accordance with paragraph 3) shall be pro-rated to take account of the number of days in that Relevant Period on which the Licensee is licensed to sell National Lottery tickets and Prize Payments shall be the actual Prize Payments with respect to the Relevant Period; and
- (b) any such tickets which were comprised in a pack shall not be treated as sold for the purpose of this paragraph until the date on which the relevant pack has become a settled pack.
- <sup>538</sup>10.1 In this paragraph 10:
- (a) "overpayment" means the amount (if any) by which the aggregate of NLDF Weekly Payments during any Financial Year exceeds the NLDF Contribution for that Financial Year or the amount (if any) by which any payment made to the NLDF in respect of any Financial Year under Schedules 8 or 10 to this Licence exceeds the amount which should have been paid to the NLDF under those Schedules, in respect of that Financial Year;
- (b) "underpayment" means the amount by which the aggregate of the NLDF Weekly Payments for that Financial Year falls short of the NLDF Contribution for that Financial Year or the amount (if any) by which any payment made to the NLDF in respect of any Financial Year under Schedules 8 or 10 to this Licence falls short of the amount which should have been paid under those Schedules in respect of that Financial Year;
- (c) "OLDF overpayment" means the amount by which the aggregate of the OLDF Weekly Payments during any Financial Year exceeds the OLDF Contribution for that Financial Year or the amount (if any) by which any payment made to the OLDF in respect of any Financial Year under Schedule 8 to this Licence exceeds the amount which should have been paid to the OLDF under that Schedule, in respect of that Financial Year; and

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<sup>536</sup> Licence varied by consent with effect from 29 September 2011.

<sup>537</sup> Licence varied by consent with effect from 29 September 2011.

<sup>538</sup> Licence varied by consent with effect from 18 August 2014.

- (d) "OLDF underpayment" means the amount by which the aggregate of the OLDF Weekly Payments for that Financial Year falls short of the OLDF Contribution for that Financial Year or the amount (if any) by which any payment made in respect of any Financial Year under Schedule 8 to this Licence falls short of the amount which should have been paid under that Schedule in respect of that Financial Year.
- 10.2 An overpayment shall be deducted from the payment to be made by the Licensee on such date as the Commission may specify, which date shall be no earlier than the first Weekly Payment Day after the Final Payment Day for the Financial Year in respect of which the overpayment arose. The Licensee shall notify the Commission in writing of the amount of an overpayment, and the circumstances in which it has arisen, at least twelve Business Days prior to the date that it intends to make the deduction of that overpayment such date being subject to Commission approval pursuant to paragraph 10.10
- 10.3 If an overpayment is greater than the payment which falls to be made on the Weekly Payment Day referred to in paragraph 10.2, the balance shall be deducted from the payment which falls to be made on the following Weekly Payment Day and this procedure shall be repeated until the overpayment has been offset in full against payments which would otherwise fall to be made pursuant to paragraph 7.
- 10.4 If the final payment made by the Licensee to the NLDF or, if applicable, the OLDF under the terms of any licence granted under section 5 of the National Lottery Act to the Licensee results in an overpayment, then the amount of such overpayment shall be deducted from the payment which falls to be made by the Licensee on such date as may be specified by the Commission, which date may be the first Weekly Payment Day after the overpayment arose or any other date after the relevant Final Payment Day. The Licensee shall notify the Commission in writing of the amount of an overpayment at least twelve Business Days prior to the date that it intends to make the deduction of that overpayment such date being subject to Commission approval pursuant to paragraph 10.10
- 10.5 An underpayment shall be added to the payment which falls to be made by the Licensee on the first Weekly Payment Day after the Final Payment Day for the Financial Year in respect of which the underpayment arose or shall be made on such other date after the relevant Final Payment Day as may be specified by the Commission. The Licensee shall notify the Commission in writing of the amount of an underpayment, and the circumstances in which it has arisen, at least ten Business Days prior to the date that it intends to make the additional payment.
- 10.6 An OLDF overpayment shall be deducted from the OLDF Weekly Payment made into the OLDF which falls to be made by the Licensee on the same day as the overpayment or underpayment, as may be applicable, set out in paragraphs 10.2 and 10.5. The Licensee shall notify the Commission in writing of the amount of an OLDF overpayment, and the circumstances in which it has arisen, at least twelve Business Days prior to the date that it intends to make the deduction of that OLDF overpayment such date being subject to Commission approval pursuant to paragraph 10.10.
- 10.7 An OLDF underpayment shall be added to the OLDF Weekly Payment made into the OLDF which falls to be made by the Licensee on the same day as the overpayment or underpayment, as may be applicable, set out in paragraphs 10.2 and 10.5.
- 10.8 The Licensee shall procure that any notification to the Commission provided for in paragraphs 10.2, 10.4 or 10.6 is accompanied by appropriate documentary evidence of the overpayment or OLDF overpayment, and the Licensee shall forthwith upon being so requested by the Commission provide any such further information as the Commission shall require in relation to the subject matter of the notification.
- 10.9 The notification and the provision of documentary evidence to the Commission in accordance with the provisions of paragraphs 10.2, 10.4, 10.6 and 10.8 shall not be taken to imply any consent by the Commission to the relevant overpayment or OLDF overpayment being deducted by the Licensee.
- 10.10 The Commission will notify the Licensee within ten Business Days of receiving notification in accordance with paragraph 10.2, 10.4 or 10.6 if it is unable to approve the date proposed by the Licensee for deduction of an overpayment or OLDF overpayment and shall inform the Licensee what further reasonable period of time it requires to reach a decision and specify a date.

- 11.1 On the Final Payment Day for each Financial Year the Licensee shall pay to the Secretary of State, out of the proceeds of the Constituent Lotteries, the amounts (if any) of (i) the Secondary Contribution and (ii) the Profit Alignment Contribution (as defined in Schedule 10 Part 4 "Marketing investment from NLDF and Profit Alignment Contribution"). The relevant amounts can be paid separately or in one lump sum.



## Schedule 8

### Primary and Secondary Contributions

Conditions 7, 11 and 19

#### Part 4

#### Information

<sup>539</sup>12.1 The Licensee shall deliver to the Commission, or its representatives or advisers (as nominated by the Commission) on a weekly basis and within two days of each Weekly Payment Date a report in writing setting out the Weekly Payment Date and containing details of:

- (a) the Weekly Payment and how it has been calculated in accordance with paragraph 7 of Schedule 8 Part 3;
- (b) the relevant Primary Contribution amount (used to calculate the Weekly Payment) and how it has been calculated in accordance with Schedule 8;
- (c) the relevant Unclaimed Prize amount (used to calculate the Weekly Payment) and how it has been calculated in accordance with Schedule 8;
- (d) the relevant Unpaid Prize amount (used to calculate the Weekly Payment) and how it has been calculated in accordance with Schedule 8;
- (e) the relevant interest amount (used to calculate the Weekly Payment) and how it has been calculated in accordance with Schedule 8;
- (f) the proportion of the Weekly Payment paid to the OLDF and how it has been calculated;
- (g) the proportion of the Weekly Payment paid to the NLDF and how it has been calculated;
- (h) the amount of the Unclaimed Prizes referred to in paragraph 12.1(c) above which relate to Olympic Lotteries;
- (i) the amount of the Unpaid Prizes referred to in paragraph 12.1(d) above which relate to Olympic Lotteries;
- (j) any other payments made to the NLDF or the OLDF;
- (k) any adjustments made to the Weekly Payment; and
- (l) any other information as specified by the Commission

13.1 The Licensee shall, in respect of each Financial Year, furnish to the Gambling Commission a statement containing details by Game Type of:

- a) the aggregate value of all National Lottery tickets, as defined in 1.1 of Schedule 8;
- b) the amount of Lottery Duty charged in respect of the tickets referred to in sub-paragraph (a) above;
- c) the Prize Payments;
- d) the estimated value of all prizes capable of being claimed in respect of tickets sold, as reported in a) above, the relevant date for which had not occurred by the end of the Financial Year. For the

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<sup>539</sup> Licence varied by consent with effect from 29 September 2011.

purposes of this sub-paragraph the estimation of the value of prizes capable of being claimed shall be carried out by reference to the Prize Payout Ratio by which such prizes will be ascertained;

- e) the amount included in (d) above in the statement furnished pursuant to Part 4 of this Schedule for the previous Financial Year;
- f) the aggregate value of Retailer Commission payable;
- g) the Gross Sales Retention;
- h) the net sales retention;
- i) the Primary Contribution;
- j) the aggregate of the payments made in the Relevant Periods pursuant to paragraph 7.1(a) of Part 3 of this Schedule;
- k) the amount by which the Primary Contribution falls short of or exceeds the aggregate of the payments made in the Relevant Periods (pursuant to this Schedule);

13.2 Within this statement the Licensee shall also, in respect of each Financial Year, furnish to the Gambling Commission:

- <sup>540</sup>a) the details of its calculations of any adjustments referred to in paragraph 12.1(k) of part 4 of this schedule;
- b) any other overpayments, underpayments or adjustments (if any)(as defined in paragraph 10.1 of part 3 of this schedule) to be deducted or made, subject to the agreement of the Gambling Commission;
- c) the calculation of the Secondary Contribution, if any;
- d) the face value of the Consented Free Tickets;
- e) the Olympic Lottery ticket sales; and
- f) the calculation of the Profit Alignment Condition (as defined in Schedule 10 Part 4 "Marketing investment from NLDF and Profit Alignment Contribution"), if any.

13.3 The statement referred to in paragraph 13.1 and 13.2 above shall be in writing; and contain a certificate signed by the Chief Executive and one other director (if at the time of such signature there shall be no such appointee as Chief Executive then such certificate shall be signed by two directors) that, having taken all reasonable steps to verify the same, such statement gives a fair and accurate view of the matters contained in the statement<sup>541542543</sup>.

13.4 The statement referred to in paragraph 13.1 and 13.2 shall be furnished to the Gambling Commission by 1 July after the end of the Financial Year to which it relates. The Licensee shall, following delivery of the statement referred to above give to the Gambling Commission such further

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<sup>540</sup> Licence varied by consent with effect from 29 September 2011.

<sup>541</sup> Waiver of the requirement for the annual statements required under the Licence to be signed by Camelot's CE and one other director given on 7 March 2011. Statements can instead be signed by Camelot's CE and the senior executive responsible for Finance. The waiver only applies to the current financial year

<sup>542</sup> Waiver of the requirement for the certificate relating to the annual statements required under the Licence to be signed by Camelot's CE and one other director given on 11 July 2013. The certificate can instead be signed by Camelot's CE and the senior executive (in post at the time of the waiver) responsible for Finance on an on-going basis subject to the Licensee's Board approval.

<sup>543</sup> Waiver of the requirement for the requisite annual reports for 2017/2018 pursuant to Condition 10.12 of the Licence to be signed by Camelot's CEO and one other director given on 5 June 2018. The requisite annual reports can instead be signed by Camelot's CEO and the senior executive (in post at the time of the waiver) responsible for Finance. The waiver only applies to 2017/2018 financial year.

information relating to the matters described in the statement as the Gambling Commission may require.

## APPENDIX I TO SCHEDULE 8

### Formula for calculating the Basic Primary Contribution

The Basic Primary Contribution for each Financial Year and for each Game Type  $j$  shall be the following amount in pounds:

$$\frac{(100-R_{1,j}^1)}{100} N_{1,j} + \frac{(100-R_{2,j}^1)}{100} N_{2,j} \text{ and so on to } \frac{(100-R_{x,j}^1)}{100} N_{x,j}$$

where:

$R_{i,j}^1$  is the retention rate shown in Table 1 for tranche  $i$  and Game Type  $j$ ; and

$N_{i,j}$  is the net value of National Lottery tickets sold for Game Type  $j$  falling within tranche  $i$ . It is calculated as follows:

$$\begin{aligned} \text{if } N_j < L_{i,j}^1, & \text{ then } N_{i,j} = 0 \\ \text{if } L_{i,j}^1 \leq N_j \leq U_{i,j}^1, & \text{ then } N_{i,j} = N_j - L_{i,j}^1 \\ \text{if } N_j > U_{i,j}^1, & \text{ then } N_{i,j} = U_{i,j}^1 - L_{i,j}^1 \\ \text{if } N_j > L_{x,j}^1, & \text{ then } N_{x,j} = N_j - L_{x,j}^1 \end{aligned}$$

where:

$x$  is the highest tranche number for that game type;

$L_{i,j}^1$  is the lower tranche boundary for tranche  $i$  and Game Type  $j$  as shown in Table 1 and adjusted in accordance with paragraph 3;

$U_{i,j}^1$  is the upper tranche boundary for tranche  $i$  and Game Type  $j$  as shown in Table 1 and adjusted in accordance with paragraph 3; and

$N_j$  is the net value of National Lottery tickets sold for Game Type  $j$ . It is calculated as follows:

$$N_j = (0.88S_j - P_j - R_j - G_j)$$

where:

$S_j$  is the aggregate value of National Lottery tickets sold for Game Type  $j$ ;

$P_j$  is the Prize Payments for Game Type  $j$ ;

$R_j$  is

for Retailer Distributed Draw-Based Games and Scratchcard Games:

- (a) the value of Retailer Commission that is payable by the Licensee in respect of  $WS_j$  and
- (b) the value of Retailer Commission that is payable by the Licensee to Distributors (or such other party, subject to the prior written consent of the Commission) in the Relevant Period for the service of paying prizes to Players. If the Licensee receives a rebate in respect of Retailer Commission previously paid to a Distributor (or such other agreed party), a corresponding reduction will be made to the figure for the Retailer Commission payable during the subsequent Relevant Period.

for all other Game Types, zero.

$WS_j$  is the value of National Lottery tickets sold for Game Type  $j$  in the Financial Year or the Relevant Period, as determined in accordance with paragraph 1.2(a), 1.2(b) omitting the reference to payments in advance or by subscription, 1.2(c), 1.2(d) and 1.2(e).

$G_j$  is the Gross Sales Retention for Game Type  $j$ . It is calculated as follows:

$$G_j = \frac{R_{1,j}^2}{100} S_{1,j} + \frac{R_{2,j}^2}{100} S_{2,j} \text{ and so on to } \frac{R_{x,j}^2}{100} S_{x,j}$$

where:

$R_{i,j}^2$  is the retention rate shown in Table 2 for tranche  $i$  and Game Type  $j$ ; and

$S_{i,j}$  is the aggregate value of National Lottery tickets sold for Game Type  $j$  falling within tranche  $i$ . It is calculated as follows:

$$\begin{aligned} \text{if } S_j < L_{i,j}^2, \text{ then } & S_{i,j} = 0 \\ \text{if } L_{i,j}^2 \leq S_j \leq U_{i,j}^2, \text{ then } & S_{i,j} = S_j - L_{i,j}^2 \\ \text{if } S_j > U_{i,j}^2, \text{ then } & S_{i,j} = U_{i,j}^2 - L_{i,j}^2 \\ \text{if } S_j > L_{x,j}^2, \text{ then } & S_{x,j} = S_j - L_{x,j}^2 \end{aligned}$$

where:

$x$  is the highest tranche number for that game type;

$L_{i,j}^2$  is the lower tranche boundary for tranche  $i$  and Game Type  $j$  as shown in Table 2 and adjusted in accordance with paragraph 3;

$U_{i,j}^2$  is the upper tranche boundary for tranche  $i$  and Game Type  $j$  as shown in Table 2 and adjusted in accordance with paragraph 3; and

$S_j$  is as defined above.

## Schedule 9

### Accounts

#### Condition 10

- 1.1 The Licensee shall at such monthly or other intervals as may be agreed with the Commission, prepare and submit management accounts to the Commission in a form notified by the Commission to the Licensee.
- 1.2 The Licensee shall produce annual accounts for each Financial Year in accordance with the Companies Act 1985 and all other statutory requirements and in conformity with International Financial Reporting Standards and shall procure that they shall be so prepared and audited and delivered to the Commission within 14 days of their approval at the relevant Board meeting, and in any event within six months after the end of each Financial Year. This submission would not necessarily need to include the additional Annual Report information required under Condition 14.4.<sup>544545546547</sup>

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<sup>544</sup> Waiver of the requirement to submit full audited accounts in respect of the Licensee for a period of six months from year end 2011/12. The waiver was agreed on 30 June 2012 with an end date of the 30 September 2012.

<sup>545</sup> Waiver of the requirements to submit full audited accounts in respect of the Licensee for a period of four months from year end 2012/13. The waiver was agreed on 28 June 2013 with an end date of the 28 October 2013.

<sup>546</sup> Waiver of the requirement to submit full audited accounts in respect of the Licensee for YE 2013/14. The waiver was agreed on 30 June 2014 with an end date of 30 September 2014.

<sup>547</sup> Licence varied by consent on 1 April 2015

## Schedule 10

### Condition 11

#### Part 1

#### Minimum marketing expenditure

1.1 The Licensee shall ensure that the minimum marketing expenditure inclusive of VAT (to the extent that it is not recoverable) during the term of the Licence is not less than the higher of the two figures set out in paragraphs 1.1(a) and 1.1(b) in absolute terms, save that for the Financial Years 2018/19 and 2019/20<sup>548</sup>, the minimum level of marketing required is as set out in Schedule 10 Part 4 ("Marketing investment from NLDF").

(a) The minimum absolute amount (**floor**) of expenditure to be spent by the Licensee in all years and at all levels of actual sales is as set out in Table 1.1(a) below:

**Table 1.1(a) - Floor marketing expenditure inclusive of VAT (to the extent that it is not recoverable)**<sup>549550551552</sup>

Financial Year	To 31/03 /2010		2010/ 2011	2011/ 2012	2012/ 2013	2013/ 2014	2014/ 2015	2015/ 2016	2016/ 2017	2017/ 2018	2018/ 2019	2019/ 2020	2020/ 2021	2021/ 2022	2022/ 23	To 31/07 /2023	Total
Floor £m	59.8		55.4	50.9	51.3	53.4	55.0	56.6	58.3	60.9	61.9	63.9	73.9	72.0	70.3	23.4	867.0

(b) The annual expenditure inclusive of VAT (to the extent that it is not recoverable), allowing for variation in any Financial Year according to specific marketing activities, is as set out in Table 1.1(b) below:

**Table 1.1(b) - Minimum marketing expenditure inclusive of VAT (to the extent that it is not recoverable) as a percentage of aggregate value of total ticket sales**<sup>553554555556</sup>

	Feb 2009 - Mar 2014	April 2014 - March 2018
Average annual expenditure inclusive of VAT (to the extent that it is not recoverable) as a percentage of aggregate value of total ticket sales	1.22*	1.07**

\* Less an amount which may be carried forward up to a maximum of 15m

\*\* Plus any amount carried forward from the period up to 14 March 2014

	April 2020 – July 2023
Annual expenditure inclusive of VAT (to the extent that it is not recoverable) as a percentage of aggregate value of total ticket sales	1.07***

\*\*\*The annual expenditure can be reduced to recoup the balance carried forward at 31 March 2020 which is the balance carried forward at 31 March 2018 less any offset made in the Financial Year 2019/20 under

<sup>548</sup> A Final Notice of Investment Opportunity under Condition 23 was approved on 06 September 2018. Schedule 10 Part 1 paragraphs 1.1(a) and 1.1(b) have been disapplied for Financial Years 2018/19 and the 2019/20 and the revised marketing expenditure requirements are set out in Schedule 10 Part 4.

<sup>549</sup> Table 1.1 (a) varied by consent on 05 March 2012.

<sup>550</sup> Table 1.1 (a) varied by consent on 22 July 2020.

<sup>551</sup> Table 1.1 (a) varied by consent on 26 March 2021.

<sup>552</sup> Table 1.1 (a) varied by consent with effect from 31 March 2021.

<sup>553</sup> Table 1.1 (b) varied by consent on 05 March 2012.

<sup>554</sup> Table 1.1 (b) varied by consent on 23 October 2013.

<sup>555</sup> Table 1.1 (b) varied by consent on 22 July 2020.

<sup>556</sup> Table 1.1 (b) varied by consent with effect from 31 March 2021.

*Schedule 10 Part 4 paragraph 1.10. For Financial Years 2021/2022 and 2022/2023 the reduction must be whichever is the lower of either: the balance carried forward at 31 March 2020 less the write off sum of £3.6m and any previous reductions; or £4.2m.<sup>557</sup>*

- 1.2 If the marketing expenditure incurred by the Licensee is less than the minimum marketing expenditure calculated in accordance with paragraph 1.1 above, the Licensee shall pay to the Secretary of State an amount equal to the difference on the Final Payment Date in respect of that Financial Year.
- 1.3 If the Licence is extended in accordance with Condition 23, the minimum marketing expenditure in respect of the period of extension shall be as agreed between the Commission and the Licensee.
- 1.4 For the avoidance of doubt, the “marketing expenditure” referred to in this Schedule:
  - (a) shall only be allowable if it is:
    - (i) discretionary expenditure directed at advertising or promoting the National Lottery or any Constituent Lottery, including media advertising, sponsorship, retail and consumer promotions or public relations, and production costs for such advertising and promotion;
    - (ii) necessary expenditure paid to external companies for services in respect of paragraph 1.4(a)(i), including agency, consultant, legal and insurance fees;
    - (iii) expenditure to manage the effectiveness of the advertising and promotion referred to in paragraph 1.4(a)(i), including market research, and media audits; or
    - (iv) expenditure directed at any form of new channel marketing including internet and mobile telephony<sup>558</sup>; or
    - (v) any item of additional marketing expenditure which is specifically agreed by the Commission in accordance with the Protocol for this provision<sup>559560</sup>, and
  - (b) shall not be allowable, if it:
    - (i) includes any expenditure by the Licensee for solely corporate objectives;
    - (ii) includes any of the Licensee's corporate overheads, including marketing staff costs such as employee salaries, bonuses, benefits and related costs<sup>561562563564565</sup>; or
    - (iii) is integral to playing the National Lottery, including communications via new channels (including internet and mobile telephony) that are play-related<sup>566</sup>.
- 1.5 If the Commission requires the Licensee to pay for, or contribute to, any other marketing expenditure, the minimum marketing expenditure will, as the Commission deems appropriate, be adjusted in line

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<sup>557</sup> Licence varied by consent on 26 March 2021

<sup>558</sup> Licence varied by consent on 2 October 2009

<sup>559</sup> Licence varied by consent on 13 December 2012 and effective from 1 April 2013.

<sup>560</sup> Agreement to allow certain costs to be treated as Minimum Marketing Expenditure.

<sup>561</sup> Waiver to allow Camelot to include certain costs within Minimum Marketing Expenditure given on 1 February 2009.

<sup>562</sup> Waiver to allow Camelot to allow certain staff costs within Minimum Marketing Expenditure until 31 August 2012 given on 21 May 2012.

<sup>563</sup> Extension to waiver to allow Camelot to include certain staff costs within Minimum Marketing Expenditure until 30 September given on 18 August 2012.

<sup>564</sup> Further extension to waiver to allow Camelot to include certain staff costs within Minimum Marketing Expenditure until 31 October 2012.

<sup>565</sup> Further extension to waiver to allow Camelot to include certain staff costs within Minimum Marketing Expenditure until 31 March 2013.

<sup>566</sup> Licence varied by consent on 2 October 2009



with the relevant adjustment to the retention under paragraph 6 of Schedule 8. For the avoidance of doubt 'any other marketing expenditure' does not include any marketing spend required under Schedule 10 Part 4.

- 1.6 Subject to the Commission's prior agreement, marketing expenditure incurred by an Independent Section 6 Licensee may be classified as allowable marketing expenditure.
- 1.7 The Licensee shall notify the Commission if, during the term of the Licence, the Licensee changes the marketing activities that it performs in-house from those agreed with the Commission prior to the commencement of the Licence, including by:
  - (a) outsourcing activities to a marketing agency; or
  - (b) doing those activities currently outsourced in-house.

## Schedule 10

### Condition 11

#### Part 2

#### Information

- 1.1 The Licensee shall in respect of each Financial Year:
- (a) deliver to the Commission a statement containing details of the marketing expenditure incurred by it during the Financial Year; and
  - (b) deliver to the Commission a statement containing details of marketing expenditure incurred during the Financial Year which is financed by NLDF under the Condition 23 marketing investment<sup>567</sup> and calculated in accordance with the Marketing Investment Key Procedure designated under Condition 5.12A: and
  - (c) where the Commission has determined under Schedule 10 Part 1 that marketing expenditure incurred by an Independent Section 6 Licensee shall be taken into account, ensure that a statement containing details of the marketing expenditure incurred by the Independent Section 6 Licensee during the Financial Year is delivered to the Commission.
- 1.2 Any statement referred to in paragraph 1.1 shall:
- (a) be in writing; and
  - (b) contain a certificate signed by the chief executive of the Licensee and one other director (if at the time of such signature there shall be no such appointee as chief executive then such certificate shall be signed by two directors) that, having taken all reasonable steps to verify the statement, the statement gives a true and fair view of the marketing expenditure, in accordance with Part 3 and <sup>568</sup>Part 1 paragraph 1.4 (a)(v) of this Schedule, that has been incurred by the relevant licensee<sup>569570</sup>.
- 1.3 In paragraph 1.2 “relevant licensee” means the licensee by whom the marketing expenditure was incurred.
- 1.4 The statements referred to in paragraph 1.1 shall be furnished to the Commission by 1 July after the end of the Financial Year to which they relate.
- 2.1 The Licensee shall, following delivery of the statements referred to in paragraph 1.1, provide to the Commission such further information relating to the matters described in the statements as the Commission may require.

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<sup>567</sup> Final Notice of Investment Opportunity under Condition 23 approved on 6 September 2018

<sup>568</sup> Licence varied by consent on 13 December 2012, effective on 01 April 2013.

<sup>569</sup> Waiver of the requirement for the annual statements required under the Licence to be signed by Camelot's CE and one other director given on 7 March 2011. Statements can instead be signed by Camelot's CE and the senior executive responsible for Finance. The waiver only applies to the current financial year.

<sup>570</sup> Waiver of the requirement for the certificate relating to the annual statements required under the Licence to be signed by Camelot's CE and one other director given on 29 June 2012. The certificate can instead be signed by Camelot's CE and the senior executive (in post at the time of waiver) responsible for Finance on an on-going basis subject to the Licensee's Board approval.

## Schedule 10

### Condition 11

#### Part 3

#### Heads of marketing expenditure

1.1 Marketing expenditure shall be allowable on the following items:

- (a) all forms of advertising of the National Lottery and any Constituent Lottery, including television, radio, outdoor poster sides, newspaper and magazine advertising, internet advertising, other advertising through new media distribution channels and any other form of advertising, but excluding any form of communication integral to playing the National Lottery, and any agency, consultancy and legal fees and insurance costs in respect of the foregoing;
- (b) any sponsorship activity to support the National Lottery brand, provision of the National Lottery website, media audits, media buying and planning, broadcast consultants and any agency, consultancy and legal fees and insurance costs in respect of the foregoing;
- (c) all forms of media production costs, payments to agencies, direct mail advertising including production costs, point of sale material (but not including semi-permanent material which will be in place over several years), printed and digital media material to communicate how to play the National Lottery and National Lottery marketing messages, design including brand and game design (but not including delivery and storage of Scratchcard Lottery tickets), new game development costs (but excluding costs in relation to operational technology development and any recurring intellectual property or content fees associated with ongoing game sales), and any agency, consultancy and legal fees and insurance costs in respect of the foregoing<sup>571</sup>;
- (d) all forms of retail and consumer promotions for the National Lottery or any Constituent Lottery (including materials and contributions to promotions organised by Distributors, manufacturers or other persons), including sales promotions, press promotions, cross product promotions, “free” ticket promotions paid for by the Licensee (but excluding “free” ticket promotions paid for by the NLDF and by third parties) and Distributor promotions, all forms of promotions undertaken by third parties, all forms of advertising and promotion undertaken by Independent Section 6 Licensees, trade communications, merchandise in connection with broadcast and promotions, Distributor literature, including Distributor’s handbook and second chance Draw promotions, and any agency, consultancy and legal fees and insurance costs in respect of the foregoing;
- (e) all forms of public relations activity in relation to the National Lottery or any Constituent Lottery (but excluding public relations activity relating to the Licensee), including public relations agency costs and expenses, regional public relations costs, winners’ publicity, press conferences and news releases, journalists’ briefings and excursions, photography, production of National Lottery literature, such as syndicate packs, details of National Lottery Good Cause Awards etc., and any agency, consultancy and legal fees and insurance costs in respect of the foregoing;
- (f) all forms of market research carried out in relation to promoting the National Lottery or any Constituent Lottery (but excluding any research relating only to the Licensee, e.g. corporate identity), including new game development research, research in respect of the National Lottery brand and impact, advertising tracking research, advertising effectiveness studies, game effectiveness research, research to understand the National Lottery and wider market and potential future market scenarios; and
- (g) all forms of new channel marketing, including production of, and payments for, outbound advertising or promotional messages through new channels such as the internet, mobile telephony and smartcards, and including all costs of consumer promotions through new channels, and payments for cross-selling from other internet web sites and mobile and network providers (but excluding any costs of communication integral to purchasing a National Lottery ticket or inbound communication from consumers or retailers, and excluding third party costs associated with the

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<sup>571</sup> Licence varied up to 31 August 2012 by consent on 21 May 2012.

ongoing provision of a game through new channels such as the internet, mobile telephony, or smartcards), and any agency, consultancy and legal fees and insurance costs in respect of the foregoing<sup>572</sup>.

## Schedule 10

### Part 4<sup>573</sup>

#### Definitions

In this Part the following terms will have the meanings ascribed below.

**NLDF Measure** means:

- i) The NLDF sum shown in the Licensee's Statement of Comprehensive Income within the Licensee's audited financial statements (as required in accordance with Schedule 9), and which is calculated in accordance with the Marketing Investment Key Procedure designated under Condition 5.12A; plus any Unclaimed Prizes paid to NLDF during that Financial Year in accordance with Schedule 8 Part 3. This amount is then adjusted as follows:
- ii) deduct any Profit Alignment Contribution included in the NLDF sum in i) above;
- iii) deduct the amount of financing due from NLDF under the Condition 23 marketing investment<sup>575</sup> for that Financial Year calculated in accordance with the Marketing Investment Key Procedure designated under Condition 5.12A and as reported pursuant to Schedule 10 Part 2;
- iv) deduct the amount of financing due from NLDF under the Condition 23 retail investment for that Financial Year calculated in accordance with the Retail Investment Key Procedure designated under Condition 5.12A .
- v) deduct any amounts reclaimed by the Licensee during that Financial Year in respect of the NLP in accordance with Condition 11A and included in the annual statement furnished under Schedule 8 Part 4;
- vi) deduct any VAT recovered by the Licensee in respect of marketing expenditure reported under Schedule 10 Part 2 and not included in the NLDF sum in i) above.

**Profit After Tax** means the sums shown in the Licensee's audited financial statements for Financial Years 2018/19 and 2019/20 (as required in accordance with Schedule 9) and, as adjusted (if necessary), as if prepared in accordance with the financial reporting standards and accounting policies adopted by the Licensee in its audited financial statements as at 31 March 2018.

**Profit Alignment Contribution** means the sum calculated under this Schedule 10 Part 4

**Provisional Profit After Tax** is calculated as Profit After Tax in the Licensee's audited financial statements for Financial Years 2018/19 and 2019/20, prior to any provision or charge for the Profit Alignment Contribution.

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<sup>572</sup> Licence varied by consent on 2 October 2009

<sup>573</sup> A Final Notice of Investment Opportunity under Condition 23 was approved on 6 September 2018. Schedule 10 Part 4 sets out agreed requirements which apply for the investment period 1 April 2018 to 31 March 2020. These are in addition to Schedule 10 Part 1, Part 2 and Part 3 provisions apart from Part 1 paragraphs 1.1a) and 1.1b) which are disapplied for Financial Years 2018/19 and 2019/20.

<sup>574</sup> Licence varied by consent on 6 September 2019

<sup>575</sup> Final Notice of Investment Opportunity under Condition 23 approved on 6 September 2018

## Schedule 10

### Condition 11

#### Part 4<sup>576</sup>

### Marketing investment from NLDF and Profit Alignment Contribution

#### Profit Alignment Contribution

- 1.1 The intention of the Profit Alignment Contribution is to provide (in the circumstances detailed) an additional payment to the Secretary of State. Nothing in this Schedule 10 Part 4 does or is intended to (adversely) impact Primary Contributions or Secondary Contributions (or indeed, any other payment to the Secretary of State).
- 1.2 The Licensee shall, in respect of Financial Years 2018/19 and 2019/20 only, provide the Commission with a statement (in accordance with Schedule 8 Part 4) setting out the Licensee's Provisional Profit After Tax and the NLDF Measure.
- 1.3 In the event that the NLDF Measure in either Financial Year 2018/19 or 2019/20 is equal to or lower than £1,646.3m, and the Licensee's Provisional Profit After Tax for the same Financial Year is higher than £68.4m, then the Licensee's Profit After Tax for the same Financial Year, which it can retain, will be capped at a maximum of £68.4m. The excess over £68.4m will require a Profit Alignment Contribution for the relevant Financial Year. The Licensee will be required to account for the Profit Alignment Contribution by way of a pre-tax adjustment to its payment to NLDF (as performed by the Licensee in respect of its Secondary Contributions obligation).
- 1.4 The Licensee shall treat the Profit Alignment Contribution as tax deductible. If the Profit Alignment Contribution is tax deductible, and the NLDF Measure in either Financial Year 2018/19 or 2019/20 is:
  - a) equal to or lower than £1,646.3m; and
  - b) the Licensee's Provisional Profit After Tax for the same year is higher than £68.4mthen the Profit Alignment Contribution will be calculated as the difference between the Provisional Profit After Tax and £68.4m, divided by (1 minus the Effective Tax Rate).
- 1.5 In the event that the Profit Alignment Contribution is, for any reason, not tax deductible and the NLDF Measure in either Financial Year 2018/19 or 2019/20 is:
  - c) equal to or lower than £1,646.3m; and
  - d) the Licensee's Provisional Profit After Tax for that Financial Year is higher than £68.4mthen the Profit Alignment Contribution shall be calculated as the difference between the Provisional Profit After Tax and £68.4m.
- 1.6 A worked example of how Profit Alignment Contribution is calculated is as follows:
  - a) Provisional Profit After Tax is £70.0m, the NLDF Measure is £1,630m, and the Effective Tax Rate is 19%.

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<sup>576</sup> A Final Notice of Investment Opportunity under Condition 23 was approved on 6 September 2018. Schedule 10 Part 4 sets out agreed requirements which apply for the investment period 1 April 2018 to 31 March 2020. These are in addition to Schedule 10 Part 1, Part 2 and Part 3 provisions apart from Part 1 paragraphs 1.1a) and 1.1b) which are disapplied for Financial Years 2018/19 and 2019/20.

- b) As the Provisional Profit After Tax is higher than £68.4m and the NLDF Measure is lower than £1,646.3m, the sum of £1.6m (i.e. £70m minus £68.4m) will be used to calculate Profit Alignment Contribution.
- c) If the Profit Alignment Contribution is not tax deductible, the Profit Alignment Contribution will be £1.6m.
- d) If the Profit Alignment Contribution is tax deductible, as is expected, the Profit Alignment Contribution will be £2.0m (i.e. £1.6m / (1 – 19%)).

1.6 The Profit Alignment Contribution shall be paid to the Secretary of State in accordance with Schedule 8 Part 3 paragraph 11.1.

#### Fixed levels of marketing

1.7 For the Financial Years 2018/19 and 2019/20 the Licensee will commit to marketing expenditure in amounts at least equal to the amounts detailed below:

- a) Financial Year 2018/19 – the sum of £83.5m (inclusive of VAT, to the extent that it is not recoverable). Such sum shall comprise of: £73.1m minimum marketing expenditure; a contribution of £0.4m marketing investment to support Lotto and EuroMillions; and an additional investment of £10m for a television show associated with any Constituent Lottery.
- b) Financial Year 2019/20 – the sum of £85.2m (inclusive of VAT, to the extent that it is not recoverable). Such sum shall comprise of: £74.8m minimum marketing expenditure; a contribution of £0.4m to marketing investment to support Lotto and EuroMillions; and an additional investment of £10m for a television show associated with any Constituent Lottery.

1.8 In a restricted number of instances, these fixed levels of marketing may be revisited in accordance with the Marketing Investment Key Procedure designated under Condition 5.12A.

1.9 In the event that the Licensee's marketing expenditure is less than £83.5m in Financial Year 2018/19 and £85.2m in Financial Year 2019/20, any shortfall will be paid to the Secretary of State in accordance with Schedule 10 Part 1 paragraph 1.2.

1.10 The minimum marketing expenditure levels of £73.1m in Financial Year 2018/19 and £74.8m in Financial Year 2019/20 are based on an assumed aggregate value of sales of £6,833.5m in Financial Year 2018/19 and £6,994.7m in Financial Year 2019/20. In the event that the actual aggregate value of sales in either Financial Year is higher than the figures set out in this paragraph, the additional aggregate sales value above the assumed value will be multiplied by 1.07% and this amount will be spent by the Licensee as additional minimum marketing expenditure by the end of Financial Year 2019/20 or offset against the spend carried forward 31 March 2018 under Schedule 10, Part 1, Paragraph 1.1(b)<sup>577</sup>. Otherwise, the shortfall will be paid over to the Secretary of State in accordance with Schedule 10 Part 1 paragraph 1.2.

1.11 For the avoidance of doubt, paragraph 1.10 above is intended to ensure that the special provisions detailed in this Schedule 10 Part 4 do not inadvertently result in a lower minimum marketing expenditure than would have applied had the Tables in Schedule 10 Part 1 been applicable in the Financial Years 2018/19 and 2019/20.

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<sup>577</sup> Varied by consent on 22 July 2020

## Schedule 11

### Lost and stolen Scratchcard Lottery tickets

#### Condition 11

- 1.1 The Licensee shall require all Distributors and Carriers of Scratchcard Lottery tickets to make payments to the Licensee in respect of any Scratchcard Lottery tickets which are lost or stolen while in their custody or control. For the purposes of this Schedule, (**Carrier**) shall mean any person who delivers Scratchcard Lottery tickets on the Licensee's behalf.<sup>578</sup>
- 1.2 The Licensee shall pay:
- (a) in respect of all Constituent Lotteries other than Olympic Lotteries, to the NLDF out of the proceeds of all such Constituent Lotteries; and
  - (b) in respect of Olympic Lotteries, to the OLDF out of the proceeds of all such Olympic Lotteries,
- an amount equal to all monies received by it from Distributors or Carriers in accordance with paragraph 1.1 (after the deduction of costs reasonably incurred in recovering the same). The Licensee shall make such payment no later than 28 days after the end of each Quarter (**Quarterly Payment Day**). For the purposes of this Schedule, "Quarter" shall mean the period from 1 April to 30 June, 1 July to 30 September, 1 October to 31 December and 1 January to 31 March or such other period as the Commission may specify from time to time.
- 1.3 The Licensee shall deliver to the Commission within 21 days of the end of the Quarter<sup>579</sup> a statement for each Constituent Lottery of:
- (a) the number of Scratchcard Lottery tickets which were reported lost or stolen;
  - (b) the monies received by the Licensee from Distributors or Carriers in accordance with paragraph 1.1;
  - (c) any costs incurred in recovering such monies received by the Licensee from Distributors or Carriers in accordance with paragraph 1.1;
  - (d) the amount paid to the NLDF in accordance with paragraph 1.2;
  - (e) the amount paid to the OLDF in accordance with paragraph 1.2;
  - (f) all Scratchcard Lottery tickets lost or stolen prior to that date for which no monies have been received by the Licensee from Distributors or Carriers in accordance with paragraph 1.1, together with details of the steps being taken to recover such monies or an explanation as to why no steps are being taken; and
  - (g) the amounts received by the Licensee from Distributors or Carriers in accordance with paragraph 1.1 but in respect of which no payment has been made by the Licensee to the NLDF or, as the case may be, the OLDF and an explanation as to why no such payment has been made.

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<sup>578</sup> Waiver of the requirement for Schedule 11, Condition 1.1 of the Third Licence. The waiver covers March/April 2020 games closures only and Quarter 1 and 2 (Good Causes) Lost and Stolen. Waiver issued on 29 May 2020.

<sup>579</sup> Licence varied by consent on 16 May 2009

## Schedule 12

### Condition 18.16

#### Part 1

#### The Licensee Subcontract Novation

THIS DEED is made on \_\_\_\_\_

#### BETWEEN:

- (1) **[Licensee Subcontractor]** (company no.) whose registered office is at [ ] (A);
- (2) **[Licensee]** (company no.) whose registered office is at [ ] (B); and
- (3) **[Successor Licensee]** (company no.) whose registered office is at [ ] (C).

#### WHEREAS:

- (A) B runs the National Lottery under a licence dated [●] (**Section 5 Licence**) granted to it by the Gambling Commission (**Commission**) under section 5 of the National Lottery etc. Act 1993 (**Act**).
- (B) [A and B] entered into an agreement on [ ] whereby [ ] [as amended by [ ]] (**Contract**).
- (C) Following the [expiry or revocation] of the Section 5 Licence, the Commission has appointed [C] to run the National Lottery as the Successor Licensee pursuant to a licence dated [●] (**Successor Licence**).
- (D) [B] wishes to be released and discharged from the Contract and the parties have agreed to the novation of the Contract and to the substitution of [C] as a party to the Contract in place of [B].

#### IT IS AGREED as follows:

### 1. Definitions and interpretation

- 1.1 Terms defined in the Section 5 Licence and not otherwise defined in this Deed shall have the same meaning as set out in the Section 5 Licence.
- 1.2 The clause headings are for ease of reference only and shall not affect the interpretation or construction of this Deed.
- 1.3 In this Deed, unless the context otherwise requires:
  - (a) references to Clauses, Schedules and paragraphs in this Deed shall be construed as references to the Clauses, Schedules and paragraphs of this Deed;
  - (b) references to persons includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
  - (c) the headings are inserted for convenience only and do not affect the construction of this Deed;
  - (d) references to one gender includes all genders;
  - (e) words importing the plural include the singular and vice versa;
  - (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re enacted;



- (g) any reference to a document in the agreed form is to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties);
- (h) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (i) reference to the words “includes” or “including” are to be construed without limitation.

## **2. Novation**

- 2.1 In consideration of the mutual undertakings contained in this Deed, and with effect from [the date of this Deed] [insert alternative date] (**Effective Date**):
- (a) [B] shall cease to be a party to the Contract and [C] shall become a party to it in place of [B];
  - (b) subject to Clause 3, [C] undertakes with [A] to accept, observe, perform and discharge all the liabilities and obligations of [B] under the Contract in substitution for [B];
  - (c) subject to Clause 3, [A] agrees to the substitution of [C] in place of [B] and that [C] may exercise and enjoy all the rights of [B] arising under the Contract in substitution for [B] as if [C] had at all times been a party to the Contract; and
  - (d) subject to Clause 3, [A] hereby releases and discharges [B] from all claims, demands, liabilities and obligations under the Contract (howsoever arising and whether arising on, before or after the Effective Date) and accepts the liabilities and obligations to it of [C] in place of [B].

## **3. Retained liabilities and obligations**

- 3.1 Nothing in this Deed shall have the effect of:
- (a) releasing [B] from any accrued but unperformed obligation, from the consequences of any breach of the Contract which is the subject of arbitration or litigation between [A] and [B], or from any liability in respect of any act or omission under or in relation to the Contract before, or as at the Effective Date; or
  - (b) obliging [C] to assume responsibility for any unperformed obligation, liability or consequence of a breach referred to in 3(a).

## **4. Further assurance**

- 4.1 Each of the parties agrees to perform (or procure the performance of) all further acts and things, and execute and deliver (or procure the execution and delivery of) such further documents, as may be required by Law or as may be necessary or reasonably desirable to implement and/or give effect to this Deed.

## **5. Counterparts**

- 5.1 This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

## **6. Force majeure**

- 6.1 Neither party shall be liable for any failure or delay in performing any of its obligations under this Deed if the failure or delay is due to any cause outside its reasonable control, and it shall be entitled to a reasonable extension of the time for performing the obligations as a result of the cause.

## **7. Supremacy of Successor Licence**

- 7.1 Each of [B] and [C] agrees with the other that, in the event of any inconsistency between any of the terms of this Deed and any of the terms of the Successor Licence, the terms of the Successor Licence shall prevail as between them, but without prejudice to [A]'s rights under this Deed and the Contract.]

## **8. Confidential Information**

- 8.1 Each of the parties shall both during and after the arrangements contemplated by this Deed have terminated:
- (a) keep confidential the terms of this Deed and all information, whether in written or any other form, which has been disclosed to it by or on behalf of the other party pursuant to its respective obligations under this Deed which by its nature ought to be regarded as confidential (including any business information in respect of the other party which is not directly applicable or relevant to the transactions contemplated by this Deed); and
  - (b) procure that its officers, employees and representatives and those of any group companies keep secret and treat as confidential all such documents and information.
- 8.2 Clause 8.1 does not apply to information:
- (a) which shall after the date of this Deed become published or otherwise generally available to the public, except in consequence of a wilful or negligent act or omission by the other party to this Deed in contravention of the obligations in Clause 8.1;
  - (b) to the extent made available to the recipient party by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the other party or which has been disclosed under an express statement that it is not confidential;
  - (c) to the extent required to be disclosed by any applicable Law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of Law, provided that the party disclosing the information shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before the disclosure shall be made and shall take all reasonable action to avoid and limit the disclosure;
  - (d) which has been independently developed by the recipient party otherwise than in the course of the exercise of that party's rights under this Deed or the implementation of this Deed;
  - (e) which, in order to perform its obligations under or pursuant to this Deed, either party is required to disclose to a third party;
  - (f) which, in order to perform its obligations under the Section 5 Licence and the Successor Licence either party is required to disclose to the Commission or to a third party approved in advance by the Commission; and
  - (g) which the recipient party can prove was already known to it before its receipt from the disclosing party.
- 8.3 The provisions of this Clause shall survive any termination of this Deed.

## **9. Notices**

- 9.1 The parties shall give any notice under, or in connection with, this Deed in writing. Notice shall be served by sending it by fax to the number set out in Clause 9.3, or delivering it by hand, or sending it by prepaid recorded delivery, special delivery or registered post, to the address set out in Clause 9.3, or by sending it by electronic mail to the address set out in Clause 9.3, and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in

accordance with the provisions of this Clause 9). Any notice so served by hand, fax, post or electronic mail shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, special delivery or registered post, at 10.00 hours on the second Business Day following the date of posting; and
- (d) in the case of electronic mail, when the email leaves the email gateway of the sender where it leaves such gateway before 17.00 hours on any Business Day or in any other case at 08.00 hours on the next Business Day after it leaves such gateway and the onus shall be on the party giving notice to prove the time that the email left its gateway,

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

9.2 References to time in this Clause 9 are to local time in the country of the addressee.

9.3 The addresses, fax numbers and electronic mail addresses of the parties for the purpose of this Clause 9 are as follows:

**The Licensee Subcontractor**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

**The Licensee**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

**The Successor Licensee**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

9.4 A party may notify the other party to this Deed of a change to its name, relevant addressee, address, fax number or electronic mail address for the purposes of this Clause 9, provided that, such notice shall only be effective on:

- (a) the date specified in the notice as the date on which the change is to take place; or

- (b) if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date following five Business Days after notice of any change has been given.
- 9.5 All notices under or in connection with this Deed shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

## **10. Entire agreement**

- 10.1 This Deed and the Section 5 Licence set out the entire agreement and understanding between the parties in respect of the subject matter of this Deed. This Clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

## **11. Severability**

- 11.1 If, and to the extent that, any provision of this Deed is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in this Deed but without invalidating any of the remaining provisions of this Deed provided that the parties shall meet to negotiate in good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Deed not so affected) so as to re-establish an appropriate balance of the interests of the parties.

## **12. Third party rights**

- 12.1 With the exception of the Commission's rights under Clause 12.2 and unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 12.2 All rights and interests exercisable by the Successor Licensee under this Deed shall be exercisable by the Commission.

## **13. Governing Law and jurisdiction**

- 13.1 This Deed shall be governed by and construed in accordance with English law.
- 13.2 The parties irrevocably agree that the English courts shall have exclusive jurisdiction in relation to any legal action or proceedings arising out of or in connection with the Licence (***Proceedings***) and waive any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

AS WITNESS this Deed has been signed by the duly authorised representatives of the parties the day and year first before written.

**SIGNED** by )  
for and on behalf of )  
**[A]** )

**SIGNED** by )  
for and on behalf of )  
**[B]** )

**SIGNED** by )  
for and on behalf of )  
**[C]** )

## Schedule 12

### Condition 18.23

#### Part 2

#### The Deed of Transfer for Transferring Assets

This **DEED** is made on \_\_\_\_\_ 200\_\_

#### BETWEEN

(1) [ ] (company no.) whose registered office is at [ ] (**Transferor**); and

(2) [ ] (company no.) whose registered office is at [ ] (**Transferee**).

#### WHEREAS

- (A) The Transferor runs the National Lottery under a licence dated [●] (**Section 5 Licence**) granted to it by the Gambling Commission (the **Commission**) under section 5 of the National Lottery etc. Act 1993 (**Act**).
- (B) The Transferor is the legal and beneficial owner of the assets set out in Schedule 1 used in the running of the National Lottery (together, the **Transferring Assets**).
- (C) Under the Section 5 Licence, the Transferee has been designated as the Successor Licensee to whom the Transferring Assets are to be assigned or transferred.
- (D) The Transferor has agreed to assign the Transferring Assets to the Transferee, on the terms and conditions set out in this Deed.
- (E) The Transferee desires to acquire, and the Transferor desires to transfer, all right, title and interest of the Transferor in and to the Transferring Assets.

**IT IS AGREED** as follows:

#### 1. Definitions and interpretation

- 1.1 Terms defined in the Section 5 Licence and not otherwise defined in this Deed shall have the same meaning as set out in the Section 5 Licence.
- 1.2 In this Deed, unless the context otherwise requires:
  - (a) references to Clauses, Schedules and paragraphs in this Deed shall be construed as references to the Clauses, Schedules and paragraphs of this Deed;
  - (b) references to persons includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
  - (c) the headings are inserted for convenience only and do not affect the construction of this Deed;
  - (d) references to one gender includes all genders;
  - (e) words importing the plural include the singular and vice versa;
  - (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re enacted;

- (g) any reference to a document in the agreed form is to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties);
- (h) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (i) reference to the word “includes” or “including” are to be construed without limitation.

## **2. Commencement**

- 2.1 This Deed shall come into force on [day] [month] [year] (**Commencement Date**).

## **3. Transfer of the Transferring Assets**

- 3.1 [In consideration of the payment of [ ] [On a payment-free basis]<sup>1</sup>, the Transferor transfers, or shall procure the transfer of, the Transferring Assets to the Transferee on [date] and its successors and assigns, subject to the terms and conditions of any licences granted to third parties, all its right, title and interest in and to the Transferring Assets.
- 3.2 The obligation of the Transferor to transfer the Transferring Assets, and of the Transferee to accept the transfer, contained in Clause 3.1, shall be subject to the condition that the Transferring Assets are transferred with such title as the Transferor enjoyed immediately prior to the transfer and the Transferee shall acquire the Transferring Assets subject to such encumbrances, restrictions, covenants, licences, agreements and arrangements as may have affected the Transferring Assets prior to the transfer.
- 3.3 Subject to Clause 3.2, title to all Transferring Assets which can be transferred on delivery shall pass on delivery [and such delivery shall take place on [insert date].]

## **4. Warranties**

- 4.1 Each party warrants that it has full authority, power and capacity to enter into and carry out its obligations under this agreement.
- 4.2 The Transferor warrants that it has the right to transfer the Transferring Assets to the Transferee.

## **5. Infringement**

- 5.1 In the event of any claim against any of the Transferring Assets the Transferor shall upon the reasonable request of the Transferee and at the Transferor's expense co-operate with and assist the Transferee in any of the aforesaid actions by, for example, providing information and documents and executing all papers and performing such other acts as reasonably may be required.

## **6. Indemnity**

- 6.1 The Transferor shall indemnify the Transferee against each and any loss, liability and cost (including legal expenses) which the Transferee suffers or incurs as a result of or in connection with any claim against the Transferee that the use of the Transferring Assets in connection with the

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<sup>1</sup> Where the Licence expires, consideration will only be necessary if Scratchcards are to be transferred. Where the Licence is revoked for grounds other than Licensee Insolvency, the amount payable for the Transferring Assets shall be market value. As a deed, no consideration is required for legal effect

Transferee's obligations under the Successor Licence, the National Lottery or any Ancillary Activity infringes the Intellectual Property or other rights of a third party.<sup>2</sup>

## **7. Further assurance**

- 7.1 The Transferor shall, at its own cost, sign all documents and do all things which may be required by Law or which the Transferee may request from time to time (including executing as soon as reasonably practicable after the date of this Deed all documents which the Transferee may require to effect the registration or recording of the assignment of the Transferring Assets to the Transferee in any relevant jurisdiction) to implement and/or give effect to this Deed and for the purpose of granting the Transferee the full benefit of and title to the assets, rights and benefits to be transferred under this Deed.

## **8. Severability**

- 8.1 If, and to the extent that, any provision of this Deed is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in this Deed but without invalidating any of the remaining provisions of this Deed provided that the parties shall meet to negotiate in good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Deed not so affected) so as to re-establish an appropriate balance of the interests of the parties.

## **9. Entire agreement**

- 9.1 This Deed and the Section 5 Licence set out the entire agreement and understanding between the parties in respect of the subject matter of this Deed. This Clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

## **10. Waivers and amendments**

- 10.1 No failure or delay by either party in exercising any right or remedy provided by Law under or pursuant to this Deed shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.
- 10.2 The rights and remedies provided for are cumulative and not exclusive of any rights and remedies provided by Law.
- 10.3 No provision of this Deed may be amended, modified, waived, discharged or terminated otherwise than by the express written agreement of the parties to this Deed nor may any breach of any provision of this Deed be waived or discharged except with the express written consent of the party not in breach.

## **11. Confidential Information**

- 11.1 Each of the parties shall both during and after the arrangements contemplated by this Deed have terminated:
- (a) keep confidential the terms of this Deed and all information, whether in written or any other form, which has been disclosed to it by or on behalf of the other party pursuant to its respective obligations under this Deed which by its nature ought to be regarded as confidential (including any business information in respect of the other party which is not directly applicable or relevant to the transactions contemplated by this Deed); and

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<sup>2</sup> This clause does not deal with tax issues and potential charges, which may or may not arise at the time of the transfer depending on legislation in force at the time of the transfer.

- (b) procure that its officers, employees and representatives and those of any group companies keep secret and treat as confidential all such documents and information.

11.2 Clause 11.1 does not apply to information:

- (a) which shall after the date of this Deed become published or otherwise generally available to the public, except in consequence of a wilful or negligent act or omission by the other party to this Deed in contravention of the obligations in Clause 11.1;
- (b) to the extent made available to the recipient party by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the other party or which has been disclosed under an express statement that it is not confidential;
- (c) to the extent required to be disclosed by any applicable Law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of Law, provided that the party disclosing the information shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before the disclosure shall be made and shall take all reasonable action to avoid and limit the disclosure;
- (d) which has been independently developed by the recipient party otherwise than in the course of the exercise of that party's rights under this Deed or the implementation of this Deed;
- (e) which, in order to perform its obligations under or pursuant to this Deed, either party is required to disclose to a third party;
- (f) which, in order to perform its obligations under the Section 5 Licence and the Successor Licence either party is required to disclose to the Commission or to a third party approved in advance by the Commission; and
- (g) which the recipient party can prove was already known to it before its receipt from the disclosing party.

11.3 The provisions of this Clause shall survive any termination of this Deed.

## **12. Notices**

12.1 The parties shall give any notice under, or in connection with, this Deed in writing. Notice shall be served by sending it by fax to the number set out in Clause 12.3, or delivering it by hand, or sending it by prepaid recorded delivery, special delivery or registered post, to the address set out in Clause 12.3, or by sending it by electronic mail to the address set out in Clause 12.3, and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this Clause 12). Any notice so served by hand, fax, post or electronic mail shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, special delivery or registered post, at 10.00 hours on the second Business Day following the date of posting; and
- (d) in the case of electronic mail, when the email leaves the email gateway of the sender where it leaves such gateway before 17.00 hours on any Business Day or in any other case at 08.00 hours on the next Business Day after it leaves such gateway and the onus shall be on the party giving notice to prove the time that the email left its gateway,

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



12.2 References to time in this Clause 12 are to local time in the country of the addressee.

12.3 The addresses, fax numbers and electronic mail addresses of the parties for the purpose of this Clause 12 are as follows:

**The Transferor**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

**The Transferee**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

12.4 A party may notify the other party to this Deed of a change to its name, relevant addressee, address, fax number or electronic mail address for the purposes of this Clause 12, provided that, such notice shall only be effective on:

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

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

**13. Third party rights**

13.1 With the exception of the Commission's rights under Clause 13.2 and unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

13.2 All rights and interests exercisable by the Transferee under this Deed shall be exercisable by the Commission.

**14. Force majeure**

14.1 Neither party shall be liable for any failure or delay in performing any of its obligations under this Deed if the failure or delay is due to any cause outside its reasonable control, and it shall be entitled to a reasonable extension of the time for performing the obligations as a result of the cause.

## 15. Governing Law and jurisdiction

- 15.1 This Deed shall be governed by and construed in accordance with English law.
- 15.2 The parties irrevocably agree that the English courts shall have exclusive jurisdiction in relation to any legal action or proceedings arising out of or in connection with the Licence (***Proceedings***) and waive any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

## 16. Counterparts

- 16.1 This Deed may be entered into in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

**IN WITNESS WHEREOF** the parties have executed this document as a Deed as of the day and year first written above.

**EXECUTED AS A DEED BY** )  
[TRANSFEROR] )  
acting by two Directors or a Director )  
and Company Secretary )

**EXECUTED AS A DEED BY** )  
[TRANSFeree] )  
acting by two Directors or a Director )  
and Company Secretary )

**SCHEDULE 1**

**TRANSFERRING ASSETS**

## **Schedule 12**

### **Condition 18**

#### **Part 3**

#### **Co-operation Agreement**

The Co-operation Agreement shall provide for working arrangements to be agreed between the Licensee and the Successor Licensee to ensure the matters set out in Condition 18.8(a) – (d) are secured, including arrangements;

- for the exchange of information or data;
- for consultation;
- for an equitable apportionment of the costs incurred by the Licensee and the Successor Licensee arising out of the obligations arising under the Co-operation Agreement; and
- that the Licensee and the Successor Licensee will not act unreasonably in relation to their respective obligations arising under the Co-operation Agreement.

The Co-operation Agreement shall provide for

- the Licensee to give to the Commission and/or the Successor Licensee reasonable access to existing infrastructure and access to test software and systems (as the Commission may direct);
- the Licensee to give to the Commission and/or the Successor Licensee reasonable access to information or data (as the Commission may direct);
- the Licensee to give to the Commission and/or the Successor Licensee transfers of the inventory of Scratchcard Lottery tickets (and the payment referred to in Condition 18.25);
- the Licensee to give to the Commission and/or the Successor Licensee reasonable access to and copies of data relating to Player Subscriptions and on-line accounts (as the Commission may direct);
- the Licensee to give to the Commission and/or the Successor Licensee reasonable access to Distributors and any Distributor database(s) (as the Commission may direct);
- transfers of data;
- transfers of broadcasting rights;
- payment of outstanding prizes;
- the transfer of Ongoing Disputes, including provisions for the handling of claims, including obligations for the Successor Licensee to consult and have regard to the representations of the Licensee and not to act unreasonably; and including conditions relating to the effective arrangement for the recovery by the Licensee of the costs reasonably incurred and not recovered by the Licensee prior to the Ongoing Dispute being assumed or taken over by the Successor Licensee, in the event of a claim of costs awarded or settled in favour of the Successor Licensee; and
- such other matters as the Commission may specify.

## Schedule 12

### Condition 15.15A

#### Part 4(A)

#### The Key Licensee Subcontract Transfer

**DEED OF ASSIGNMENT** made on \_\_\_\_\_ 200\_\_

#### **BETWEEN**

- (1) [Licensee Subcontractor/Series Subcontractor/Sub Series Subcontractor] (company no.) whose registered office is at [ ] (**Subcontractor**); and
- (2) [The Gambling Commission of Victoria Square House, Victoria Square, Birmingham, B2 4BP (**Commission**) [or its nominee (**Nominee**)].]

#### **WHEREAS**

- (A) [●] runs the National Lottery under a licence dated [●] (**Section 5 Licence**) granted to it by the Nominee under section 5 of the National Lottery etc. Act 1993 (**Act**).
- (B) The Subcontractor has entered into a contract with [●] which is designated as a Key Licensee Subcontract pursuant to Condition 15 of the Section 5 Licence (**Subcontract**).
- (C) Pursuant to Condition 15.15A of the Section 5 Licence and the terms of the Subcontract the Subcontractor has agreed to assign to the [Commission /Nominee] all of the Intellectual Property that the Subcontractor has to use and exploit any of the rights in that Intellectual Property which are used and exploited or capable of being used or exploited by the Subcontractor in connection with the National Lottery or any Ancillary Activity on the terms and conditions set out herein.

**IT IS AGREED** as follows:

#### **1. Definitions and interpretation**

- 1.1 Terms defined in the Section 5 Licence and not otherwise defined in this Deed shall have the same meaning as set out in the Section 5 Licence.
- 1.2 In this Deed, unless the context otherwise requires:
  - (a) references to Clauses, Schedules and paragraphs in this Deed shall be construed as references to the Clauses, Schedules and paragraphs of this Deed;
  - (b) references to persons includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
  - (c) the headings are inserted for convenience only and do not affect the construction of this Deed;
  - (d) references to one gender includes all genders;
  - (e) words importing the plural include the singular and vice versa;
  - (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re enacted;
  - (g) any reference to a document in the agreed form is to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties);

- (h) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (i) reference to the word “includes” or “including” are to be construed without limitation.

## **2. Commencement**

- 2.1 This Deed shall come into force on [day] [month] [year] (**Commencement Date**).

## **3. Assignment**

- 3.1 The Subcontractor, at its own cost, assigns or shall procure the assignment to the [Commission/Nominee] and their successors and assigns, on a payment-free basis and subject to the terms and conditions of any licences granted to third parties, all its right, title and interest in and to all of the Intellectual Property that the Subcontractor has to use and exploit any of the rights in that Intellectual Property which are used and exploited or capable of being used or exploited by the Subcontractor in connection with the National Lottery or any Ancillary Activity (including, but not limited to, goodwill and statutory and common law rights attaching to the Intellectual Property including the right to sue for damages and other remedies for infringement or misuse of the Intellectual Property which may have occurred prior to the date of this Deed and to retain those damages or any account of profits) (**Subcontractor IP**).

## **4. Warranties**

- 4.1 Each party warrants that it has full authority, power and capacity to enter into and carry out its obligations under this agreement.
- 4.2 The Subcontractor warrants that:
  - (a) it owns all of the rights and interests in, and has title to, the Subcontractor IP, and is entitled to grant the assignment to the [Commission/Nominee] under Clause 3;
  - (b) each of the Subcontractor IP is valid and subsisting;
  - (c) it has not given a third party permission to use any of the Subcontractor IP nor is it under an obligation to do so;
  - (d) all application, filing, registration, renewal and other fees in respect of registrations (or applications for registration) of the Subcontractor IP have been paid;
  - (e) it has not acquiesced in the unauthorised use of the Subcontractor IP, nor is any party infringing, or likely to infringe, any of the Subcontractor IP; and
  - (f) no claim has been made by a third party which disputes the right of the Subcontractor to use any trade mark, nor is the Subcontractor aware of any circumstances likely to give rise to a claim.

## **5. Infringement**

- 5.1 In the event of any claim against any of the Intellectual Property assigned pursuant to Clause 3, including without limitation any challenge to the validity or subsistence of any of the Intellectual Property or any claim for infringement, opposition, cancellation, revocation or rectification in relation to the Intellectual Property, the Subcontractor shall upon the request of the [Commission/Nominee] and at the Subcontractor's expense co-operate with and assist the [Commission/Nominee] in any of the aforesaid actions by, for example, providing information and documents and executing all papers and performing such other acts as may be required.

## **6. Indemnity**

- 6.1 The Subcontractor shall indemnify the [Commission/Nominee] against each and any loss, liability and cost (including legal expenses) which the Commission/Nominee suffers or incurs as a result of or in connection with any claim against the Commission/Nominee that the use of the Subcontractor IP in connection with the obligations of the Commission [and the Nominee] under the Section 5 Licence, the Successor Licence, the National Lottery or any Ancillary Activity infringes the Intellectual Property rights or other rights of a third party.

## **7. Further assurance**

- 7.1 The Subcontractor shall, at its own cost, sign all documents and do all things which may be required by Law or which the [Commission/Nominee] may request from time to time (including executing as soon as reasonably practicable after the date of this Deed all documents which the [Commission/Nominee] may require to effect the registration or recording of the assignment of the Subcontractor IP to the [Commission/Nominee] in any relevant jurisdiction) and for the purpose of granting the Transferee the full benefit of and title to the assets, rights and benefits to be transferred under this Deed.

## **8. Severability**

- 8.1 If, and to the extent that, any provision of this Deed is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in this Deed but without invalidating any of the remaining provisions of this Deed provided that the parties shall meet to negotiate in good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Deed not so affected) so as to re-establish an appropriate balance of the interests of the parties.

## **9. Confidential Information**

- 9.1 Each of the parties shall both during and after the arrangements contemplated by this Deed have terminated:

- (a) keep confidential the terms of this Deed and all information, whether in written or any other form, which has been disclosed to it by or on behalf of the other party pursuant to its respective obligations under this Deed which by its nature ought to be regarded as confidential (including any business information in respect of the other party which is not directly applicable or relevant to the transactions contemplated by this Deed); and
- (b) procure that its officers, employees and representatives and those of any group companies keep secret and treat as confidential all such documents and information.

- 9.2 Clause 9.1 does not apply to information:

- (a) which shall after the date of this Deed become published or otherwise generally available to the public, except in consequence of a wilful or negligent act or omission by the other party to this Deed in contravention of the obligations in Clause 9.1;
- (b) to the extent made available to the recipient party by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the other party or which has been disclosed under an express statement that it is not confidential;
- (c) to the extent required to be disclosed by any applicable Law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of Law, provided that the party disclosing the information shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before the disclosure shall be made and shall take all reasonable action to avoid and limit the disclosure;

- (d) which has been independently developed by the recipient party otherwise than in the course of the exercise of that party's rights under this Deed or the implementation of this Deed;
- (e) which, in order to perform its obligations under or pursuant to this Deed, either party is required to disclose to a third party;
- (f) which, in order to perform its obligations under the Section 5 Licence and the Successor Licence either party is required to disclose to the Commission or to a third party approved in advance by the Commission; and
- (g) which the recipient party can prove was already known to it before its receipt from the disclosing party.

9.3 The provisions of this Clause shall survive any termination of this Deed.

## **10. Notices**

10.1 The parties shall give any notice under, or in connection with, this Deed in writing. Notice shall be served by sending it by fax to the number set out in Clause 10.3, or delivering it by hand, or sending it by prepaid recorded delivery, special delivery or registered post, to the address set out in Clause 10.3, or by sending it by electronic mail to the address set out in Clause 10.3, and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this Clause 10). Any notice so served by hand, fax, post or electronic mail shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, special delivery or registered post, at 10.00 hours on the second Business Day following the date of posting; and
- (d) in the case of electronic mail, when the email leaves the email gateway of the sender where it leaves such gateway before 17.00 hours on any Business Day or in any other case at 08.00 hours on the next Business Day after it leaves such gateway and the onus shall be on the party giving notice to prove the time that the email left its gateway,

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

10.2 References to time in this Clause 10 are to local time in the country of the addressee.

10.3 The addresses, fax numbers and electronic mail addresses of the parties for the purpose of this Clause 10 are as follows:

### **The Subcontractor**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

### **The Commission/Nominee**

Address: [ • ]



Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

10.4 A party may notify the other party to this Deed of a change to its name, relevant addressee, address, fax number or electronic mail address for the purposes of this Clause 10, provided that, such notice shall only be effective on:

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

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

## **11. Third party rights**

EITHER

Unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

OR<sup>1</sup>

11.1 With the exception of the Commission's rights under Clause 11.2 and unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

11.2 All rights and interests exercisable by the Subcontractor under this Deed shall be exercisable by the Commission.

## **12. Force majeure**

12.1 Neither party shall be liable for any failure or delay in performing any of its obligations under this Deed if the failure or delay is due to any cause outside its reasonable control, and it shall be entitled to a reasonable extension of the time for performing the obligations as a result of the cause.

## **13. Entire agreement**

13.1 This Deed and the Section 5 Licence set out the entire agreement and understanding between the parties in respect of the subject matter of this Deed. This Clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

## **14. Governing Law and jurisdiction**

14.1 This Deed shall be governed by and construed in accordance with English law.

14.2 The parties irrevocably agree that the English courts shall have exclusive jurisdiction in relation to any legal action or proceedings arising out of or in connection with the Licence (**Proceedings**) and

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<sup>1</sup> For use when a third party is the Assignee.

waive any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

## **15. Counterparts**

- 15.1 This Deed may be entered into in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

**IN WITNESS WHEREOF** this Deed has been signed by the authorised representatives of the parties on the day and year first written above.

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

## Schedule 12

### Condition 15.15A

#### Part 4(B)

#### The Key Licensee Subcontract Licence

THIS DEED is made on \_\_\_\_\_ 20[ ]

#### BETWEEN

- (1) [ ] (company no.) whose registered office is at [ ] (**Subcontractor**); and
- (2) [The Gambling Commission of Victoria Square House, Victoria Square, Birmingham, B2 4BP (**Commission**) [or its nominee (**Nominee**)].]

#### WHEREAS

- (A) [●] runs the Gambling Lottery under a licence dated [●] (**Section 5 Licence**) granted to it by the Gambling Commission under section 5 of the National Lottery etc. Act 1993 (**Act**).
- (B) The Subcontractor has entered into a contract with [●] which is designated as a Key Licensee Subcontract pursuant to Condition 15 of the Section 5 Licence (**Subcontractor**).
- (C) Pursuant to Condition 15.15A of the Section 5 Licence and the terms of the Subcontract the Subcontractor has agreed to grant a licence to the [Commission /Nominee] of all Intellectual Property that the Subcontractor has to use and exploit any of the rights in that Intellectual Property which are used and exploited or capable of being used or exploited by the Subcontractor in connection with the National Lottery or any Ancillary Activity on the terms and conditions set out herein.

IT IS AGREED as follows:

#### 1. Definitions and interpretation

- 1.1 Terms defined in the Section 5 Licence and not otherwise defined in this Deed shall have the same meaning as set out in the Section 5 Licence.
- 1.2 In this Deed, unless the context otherwise requires:
- (a) references to Clauses, Schedules and paragraphs in this Deed shall be construed as references to the Clauses, Schedules and paragraphs of this Deed;
  - (b) references to persons includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
  - (c) the headings are inserted for convenience only and do not affect the construction of this Deed;
  - (d) references to one gender includes all genders;
  - (e) words importing the plural include the singular and vice versa;
  - (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re enacted;
  - (g) any reference to a document in the agreed form is to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties);

- (h) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (i) reference to the word “includes” or “including” are to be construed without limitation.

## **2. Commencement**

- 2.1 This Deed shall come into force on [day] [month] [year] (**Commencement Date**) and shall continue until terminated in accordance with Clause 11 (**Term**).

## **3. Grant of Licence**

- 3.1 The Subcontractor grants to the [Commission /Nominee] a royalty-free, payment-free, transferable, [sub-licensable/ non sub-licensable]<sup>1</sup>, non-exclusive and perpetual licence to all Intellectual Property that the Subcontractor has to use and exploit any of the rights in that Intellectual Property which are used and exploited or capable of being used or exploited by the Subcontractor in connection with the National Lottery or any Ancillary Activity (**Subcontractor IP**).

## **4. Maintenance of Subcontractor IP**

- 4.1 The Subcontractor shall, at its own cost, take all steps required to maintain registrations for the Subcontractor IP in the relevant registries in any jurisdiction.
- 4.2 Where the [Commission/Nominee] wishes to apply to register any of the Subcontractor IP in the relevant registries in any jurisdiction for the purpose of ensuring the registration of the [Commission/Nominee] as a registered licensee of Subcontractor IP, it may ask the Subcontractor to do so on its behalf. The Subcontractor shall apply to register the relevant Subcontractor IP in its own name and all costs of filing, prosecuting, registering and maintaining the application and any resulting registration shall be paid by the Subcontractor.

## **5. Future Subcontractor IP**

- 5.1 If at any time any item becomes an item of Subcontractor IP in any manner howsoever pursuant to the Section 5 Licence, such item shall be automatically deemed to fall within the licence set out in Clause 3.

## **6. Warranties**

- 6.1 Each party warrants that it has full authority, power and capacity to enter into and carry out its obligations under this Deed.
- 6.2 The Subcontractor warrants that:
  - (a) it owns all of the rights and interests in, and has title to, the Subcontractor IP, and is entitled to grant the rights granted to the Licensee under Clause 3;
  - (b) each of the Subcontractor IP is valid and subsisting;
  - (c) it has not given a third party permission to use any of the Subcontractor IP nor is it under an obligation to do so;
  - (d) all application, filing, registration, renewal and other fees in respect of registrations (or applications for registration) of the Subcontractor IP have been paid;

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<sup>1</sup> Only the Commission to have rights to grant sub-licences. The grant to the Nominee is to be non sub-licensable.

- (e) it has not acquiesced in the unauthorised use of the Subcontractor IP, nor is any party infringing, or likely to infringe, any of the Subcontractor IP; and
- (f) no claim has been made by a third party which disputes the right of the Subcontractor to use any trade mark, nor is the Subcontractor aware of any circumstances likely to give rise to a claim.

## **7. Indemnity**

- 7.1 The Subcontractor shall indemnify the [Commission/Nominee] against each and any loss, liability and cost (including legal expenses) which the [Commission/Nominee] suffers or incurs as a result of or in connection with any claim against the [Commission/Nominee] that the use of the Subcontractor IP by the [Commission/Nominee] in accordance with this Deed infringes the Intellectual Property or other rights of a third party.

## **8. Further assurance**

- 8.1 The Subcontractor shall, at its own cost, sign all documents and do all things which may be required by Law or which the [Commission/Nominee] may request from time to time (including executing as soon as reasonably practicable after the date of this Deed all documents which the [Commission/Nominee] may require to effect the registration or recording of the grant of Sub Licence as set out in Clause 4 to the [Commission/Nominee] in any relevant jurisdiction) to implement and/or give effect to this Deed and for the purpose of granting the [Commission/Nominee] the full benefit of and title to the assets, rights and benefits to be granted under this Deed.

## **9. Ownership of rights**

- 9.1 The [Commission/Nominee] shall not at any time do or suffer to be done any act or thing which is likely to in any way prejudice the Subcontractor's title.
- 9.2 The [Commission/Nominee] shall, at the cost of the Subcontractor, on request give to the Subcontractor or its authorised representative any information as to its use of the Subcontractor IP which the Subcontractor may reasonably require and in such form as is reasonable practicable for the [Commission/Nominee].

## **10. Infringement**

- 10.1 Each party shall immediately notify the other in writing of any of the following matters which come to its attention during the Term (giving full particulars):
  - (a) infringement or suspected or threatened infringement of the Subcontractor IP whether by imitation or otherwise;
  - (b) any allegation or complaint made by any third party that any of the Subcontractor IP is invalid, that use of the Subcontractor IP infringes any third party rights or that use of the Subcontractor IP may cause deception or confusion to the public;
  - (c) any other form of attack on or claim to the Subcontractor IP, andthe [Commission/Nominee] shall not make any admissions in respect of these matters other than to the Subcontractor and at the request of the Subcontractor shall furnish the Subcontractor, at the Subcontractor's cost, with all information in its possession which may be reasonably required by the Subcontractor.
- 10.2 The Subcontractor shall have the right to decide whether or not to take action and to assume the conduct of all actions, claims and proceedings in its own name [(and not in the name of the [Commission/Nominee])] relating to the Subcontractor IP and shall bear the costs and expenses of actions, claims and proceedings.

- 10.3 The [Commission/Nominee] shall provide or procure the provision of any assistance reasonably required by the Subcontractor, at Subcontractor's cost, in connection with such claims, actions or proceedings in connection with any of the matters in Clause 10.1.
- 10.4 In the event that the [Commission/Nominee] provides such assistance as referred to in Clause 10.3, it shall, as between the parties to this Deed, be entitled to receive any compensation payments and any award of costs or damages arising out of any such actions or proceedings. The remainder of any such payments, costs or damages, shall, as between the parties, belong to the Subcontractor.

## **11. Termination**

- 11.1 The Commission/Nominee may terminate this Deed by giving to the Subcontractor not less than [ ] months' prior written notice to that effect.
- 11.2 On the occurrence of any of the following events, a party may (without prejudice to any other right or remedy) by written notice to the other party terminate this Deed with immediate effect:
- (a) if the other party commits a material breach of any material obligation under this Deed, (including a breach of any representation or warranty) and in the case of a breach which is capable of remedy fails to remedy it within thirty (30) days of receipt of notice from the first party giving particulars of such breach and requiring it to be remedied;
  - (b) a petition is presented, or a meeting is convened for the purpose of considering a resolution or any other steps are taken by any person with a view to the appointment of an administrator (whether out of court or otherwise) against or for the winding up of the other party or an administration order or a winding up order is made against or a provisional liquidator appointed with respect to the other party;
  - (c) an encumbrancer takes possession of, or a trustee or administrative receiver or similar officer is appointed in respect of, all or any part of the business or assets of the other party, or distress or any form of execution is levied or enforced upon or sued out against any such assets and is not discharged within [7] days of being levied, enforced or sued out;
  - (d) the other party is unable to pay its debts as they fall due or the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities, or it suspends or threatens to suspend making payments with respect to all or any class of its debts;
  - (e) any voluntary arrangement is proposed under section 1 of the Insolvency Act 1986 in respect of the other party;
  - (f) the other party proposes or makes any composition or arrangement or composition with, or any assignment for the benefit of, its creditors; or
  - (g) anything analogous to any of the events described in paragraphs (a) to (e), inclusive, occurs under the laws of any applicable jurisdiction.
- 11.3 For the purposes of Clause 11.2(a), a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to time of performance.

## **12. Effects of termination**

- 12.1 Upon termination of this Deed for any reason, the rights and licence granted under this Deed to the [Commission/Nominee] shall cease and determine and the [Commission/Nominee] shall without delay discontinue any and all use of the Subcontractor IP.
- 12.2 Termination of this Deed shall not release either of the parties from any other liability which at the time of termination has already accrued to the other party, nor affect in any way the survival of any other right, duty or obligation of the parties which is expressly stated elsewhere in this Deed to survive such termination.

### **13. Confidential Information**

13.1 Each of the parties shall both during and after the arrangements contemplated by this Deed have terminated:

- (a) keep confidential the terms of this Deed and all information, whether in written or any other form, which has been disclosed to it by or on behalf of the other party pursuant to its respective obligations under this Deed which by its nature ought to be regarded as confidential (including any business information in respect of the other party which is not directly applicable or relevant to the transactions contemplated by this Deed); and
- (b) procure that its officers, employees and representatives and those of any group companies keep secret and treat as confidential all such documents and information.

13.2 Clause 13.1 does not apply to information:

- (a) which shall after the date of this Deed become published or otherwise generally available to the public, except in consequence of a wilful or negligent act or omission by the other party to this Deed in contravention of the obligations in Clause 13.1;
- (b) to the extent made available to the recipient party by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the other party or which has been disclosed under an express statement that it is not confidential;
- (c) to the extent required to be disclosed by any applicable Law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of Law, provided that the party disclosing the information shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before the disclosure shall be made and shall take all reasonable action to avoid and limit the disclosure;
- (d) which has been independently developed by the recipient party otherwise than in the course of the exercise of that party's rights under this Deed or the implementation of this Deed;
- (e) which, in order to perform its obligations under or pursuant to this Deed, either party is required to disclose to a third party;
- (f) which, in order to perform its obligations under the Section 5 Licence and the Successor Licence either party is required to disclose to the Commission or to a third party approved in advance by the Commission; and
- (g) which the recipient party can prove was already known to it before its receipt from the disclosing party.

13.3 The provisions of this Clause shall survive any termination of this Deed.

### **14. Severability**

14.1 If, and to the extent that, any provision of this Deed is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in this Deed but without invalidating any of the remaining provisions of this Deed provided that the parties shall meet to negotiate in good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Deed not so affected) so as to re-establish an appropriate balance of the interests of the parties.

### **15. Waivers and amendments**

15.1 No failure or delay by the Subcontractor in exercising any right, power, privilege or remedy under this Deed shall operate as a waiver or impairment of that right, privilege, power, or remedy, nor

shall any single or partial exercise by the Subcontractor of any right, power, privilege or remedy preclude any further exercise of any other right, power, privilege or remedy.

15.2 The rights and remedies provided for are cumulative and not exclusive of any rights and remedies provided by Law.

15.3 No provision of this Deed may be amended, modified, waived, discharged or terminated otherwise than by the express written agreement of the parties to this Deed nor may any breach of any provision of this Deed be waived or discharged except with the express written consent of the party not in breach.

## **16. Third party rights**

Unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

OR<sup>2</sup>

16.1 With the exception of the Commission's rights under Clause 16.2 and unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

16.2 All rights and interests exercisable by the Subcontractor under this Deed shall be exercisable by the Commission.

## **17. Notices**

17.1 The parties shall give any notice under, or in connection with, this Deed in writing. Notice shall be served by sending it by fax to the number set out in Clause 17.3, or delivering it by hand, or sending it by prepaid recorded delivery, special delivery or registered post, to the address set out in Clause 17.3, or by sending it by electronic mail to the address set out in Clause 17.3, and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this Clause 17). Any notice so served by hand, fax, post or electronic mail shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, special delivery or registered post, at 10.00 hours on the second Business Day following the date of posting; and
- (d) in the case of electronic mail, when the email leaves the email gateway of the sender where it leaves such gateway before 17.00 hours on any Business Day or in any other case at 08.00 hours on the next Business Day after it leaves such gateway and the onus shall be on the party giving notice to prove the time that the email left its gateway,

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

17.2 References to time in this Clause 17 are to local time in the country of the addressee.

17.3 The addresses, fax numbers and electronic mail addresses of the parties for the purpose of this Clause 17 are as follows:

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<sup>2</sup> For use when a third party (Nominee) is the Licensee.



### **The Subcontractor**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

### **The Commission/Nominee**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

17.4 A party may notify the other party to this Deed of a change to its name, relevant addressee, address, fax number or electronic mail address for the purposes of this Clause 17, provided that, such notice shall only be effective on:

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

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

## **18. Governing Law and jurisdiction**

18.1 This Deed shall be governed by and construed in accordance with English law.

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

## **19. Entire agreement**

19.1 This Deed [and the Section 5 Licence] set[s] out the entire agreement and understanding between the parties in respect of the subject matter of this Deed. This Clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

## **20. Force majeure**

20.1 Neither party shall be liable for any failure or delay in performing any of its obligations under this Deed if the failure or delay is due to any cause outside its reasonable control, and it shall be entitled to a reasonable extension of the time for performing the obligations as a result of the cause.

## **21. Assignment**

- 21.1 No party shall nor shall it purport to assign, transfer, charge or otherwise deal with all or any of its rights and/or obligations under this Deed nor grant, declare, create or dispose of any right or interest in it, without the prior written consent of the other party/parties, such approval not to be unreasonably withheld or delayed.
- 21.2 If either party assigns, transfers or charges all or any of its rights and/or obligations under this Deed it shall notify the other party as soon as practicable after such assignment, transfer, or charge together with full particulars of the assignee, transferee, or chargee.

## **22. Counterparts**

- 22.1 This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have executed this document as a Deed as of the day and year first written above.

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

## Schedule 13

### Condition 21.3

#### Part 1

#### The Lottery IP Licence

**THIS DEED** is made on \_\_\_\_\_ 20[ ]

#### BETWEEN

- (1) [ ] (company no.) whose registered office is [ ] (**Licensor**); and
- (2) [The Gambling Commission of Victoria Square House, Victoria Square, Birmingham, B2 4BP (**Commission**) [or its nominee (**Nominee**)].]

#### WHEREAS

- (A) The Licensor runs the National Lottery under a licence dated [●] (**Section 5 Licence**) granted to it by the Commission under section 5 of the National Lottery etc. Act 1993 (**Act**).
- (B) The Commission is the proprietor of and beneficially entitled to certain items of Lottery IP.
- (C) Pursuant to Condition 21.2 (a) of the Section 5 Licence the Commission has granted an exclusive licence to the Licensor (subject to the terms of the Section 5 Licence) to copy, publish and otherwise use any Lottery IP for the duration of the Section 5 Licence.
- (D) Pursuant to Condition 21.3 of the Section 5 Licence, the Licensor has agreed to grant a sub-licence to the [Commission /Nominee] of all Lottery IP on the terms and conditions set out herein.

**IT IS AGREED** as follows:

#### 1. Definitions

Terms defined in the Section 5 Licence and not otherwise defined in this Deed shall have the same meaning as set out in the Section 5 Licence.

1.1 In this Deed, unless the context otherwise requires:

- (a) references to Clauses, Schedules and paragraphs in this Deed shall be construed as references to the Clauses, Schedules and paragraphs of this Deed;
- (b) references to persons includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
- (c) the headings are inserted for convenience only and do not affect the construction of this Deed;
- (d) references to one gender includes all genders;
- (e) words importing the plural include the singular and vice versa;
- (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re enacted;
- (g) any reference to a document in the agreed form is to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties);

- (h) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (i) reference to the word “includes” or “including” are to be construed without limitation.

## 2. Commencement

- 2.1 This Deed shall come into force on [day] [month] [year] (**Commencement Date**) and shall continue until terminated in accordance with Clause 11 (**Term**).

## 3. Grant of Licence

- 3.1 *The Licensor grants to the Commission a royalty-free, payment-free, non-exclusive and perpetual licence to:*

- (a) use and exploit any and/or all items of Lottery IP in any such way as the [Commission /Nominee] shall in its sole discretion see fit (including, but not limited to, the right to copy, publish, reproduce, store, broadcast, include in a cable programme, adapt, extract or re-utilise any item of Lottery IP (or any part thereof)) anywhere in the world in connection with any purpose in the course of carrying out its duties and functions generally and under the Act or in connection with and for the duration of the Section 5 Licence or any licence granted by the Commission under Section 6 of the Act or any other licence granted under the Act and to permit the Secretary of State by way of sub-licence to do all of the foregoing; and
- (b) permit the use of the Lottery IP (including such of the National Lottery Logos which the Commission shall notify to the Licensor from time to time, such logos to be automatically deemed to fall within the provisions of this Clause 3.1) by any person detailed below having a relevant association with the National Lottery:
  - (i) a distributing body referred to in Section 23 of the Act;
  - (ii) any person who has been appointed by a distributing body referred to in Section 23 of the Act to exercise on its behalf any of its functions relating to or connected with the distribution of National Lottery money in accordance with Section 25A of the Act;
  - (iii) any person who is in receipt of National Lottery funds or vouchers (as defined in the Act);
  - (iv) any public sector body;
  - (v) any government department;
  - (vi) any charity; or
  - (vii) any publisher.

*[and;*

- (c) *to grant a royalty-free, payment-free, non-transferable and non-exclusive sub-licence of Lottery IP to any third party subject to the terms of this Deed.<sup>1</sup>]*

- 3.2 The Commission shall maintain records of any permission it grants under Clause 3.1 and on request shall provide to the Licensor copies of any such permission, at the cost of the Licensor, as soon as is reasonably practicable after such grant and in such form as is reasonably practicable for the Commission.

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<sup>1</sup> Clause 3.1(c) applies where the grant of the licence is to the Commission only.

- 3.3 The Commission shall use all reasonable endeavours to:
- (a) comply with guidelines relating to the use and mode of display of any Lottery IP (as referred to in Condition 21.10 of the Section 5 Licence); and
  - (b) ensure that all persons to whom it grants permission to use the Lottery IP under Clause 3.1(b) are aware of, and comply with, the guidelines referred to under Clause 3.3(a).
- 3.4 The Licensors agree that the Commission shall have complied with its obligations under Clause 3.3(b) if, when granting permission to any person under Clause 3.1(b), the Commission:
- (a) states in such permission that the person in question shall comply with the guidelines referred to in Clause 3.3(a); and
  - (b) states in such permission that the Commission shall have the right to terminate the permission if the person in question does not comply with the guidelines referred to in Clause 3.3(a).

#### **4. Maintenance of Lottery IP**

- 4.1 The Licensors shall, at its own cost, take all steps required to maintain registrations for the Lottery IP in the relevant registries in any jurisdiction.
- 4.2 Where the Nominee wishes to apply to register any of the Lottery IP in the relevant registries in any jurisdiction for the purpose of ensuring the registration of the Nominee as a registered licensee of Lottery IP, it may ask the Licensors to do so on its behalf. The Licensors shall apply to register the relevant Lottery IP the name of the Commission and all costs of filing, prosecuting, registering and maintaining the application and any resulting registration shall be paid by the Licensors.

#### **5. Future Lottery IP**

- 5.1 If at any time on or after the Commencement Date any item becomes an item of Lottery IP in any manner howsoever pursuant to the Section 5 Licence, such item shall be automatically deemed to fall within the licence set out in Clause 3.

#### **6. Warranties**

- 6.1 Each party warrants that it has full authority, power and capacity to enter into and carry out its obligations under this agreement.
- 6.2 The Licensors warrants that
- (a) it is entitled to grant the rights granted to the [Commission/Nominee] under Clause 3;
  - (b) each of the Lottery IP is valid and subsisting;
  - (c) it has not given a third party permission to use any of the Lottery IP nor is it under an obligation to do so;
  - (d) all application, filing, registration, renewal and other fees in respect of registrations (or applications for registration) of the Lottery IP have been paid;
  - (e) it has not acquiesced in the unauthorised use of the Lottery IP, nor is any party infringing, or likely to infringe, any of the Lottery IP; and
  - (f) no claim has been made by a third party which disputes the right of the Licensors to use any Trade Mark, nor is the Licensors aware of any circumstances likely to give rise to a claim.

#### **7. Further assurance**

- 7.1 The Licensors shall, at its own cost, sign all documents and do all things which may be required by Law or which the [Commission/Nominee] may request from time to time (including executing as

soon as reasonably practicable after the date of this Deed all documents which the [Commission/Nominee] may require to effect the registration or recording of the grant of licence as set out in Clause 3 to the [Commission/Nominee] in any relevant jurisdiction) to implement and/or give effect to this Deed and for the purpose of granting the [Commission/Nominee] the full benefit of and title to the assets, rights and benefits to be granted under this Deed.

## **8. Indemnity**

- 8.1 The Licensor shall indemnify the [Commission/Nominee] against each and any loss, liability and cost (including legal expenses) which the [Commission/Nominee] suffers or incurs as a result of or in connection with any claim against the [Commission/Nominee] that the use of the Lottery IP by the [Commission/Nominee] in accordance with this Deed infringes the Intellectual Property or other rights of a third party.

## **9. Ownership of rights**

- 9.1 Neither party shall at any time do or suffer to be done any act or thing which is likely to in any way prejudice the Commission's title.
- 9.2 The [Commission/Nominee] shall, at the cost of the Licensor, on request, give to the Licensor or its authorised representative any information as to its use of the Lottery IP which the Licensor may reasonably require and in such form as is reasonably practicable for the [Commission/Nominee].

## **10. Infringement**

- 10.1 Each party shall immediately notify the other in writing of any of the following matters which come to its attention during the Term (giving full particulars):

- (a) infringement or suspected or threatened infringement of the Lottery IP whether by imitation or otherwise;
- (b) any allegation or complaint made by any third party that any of the Lottery IP is invalid, that use of the Lottery IP infringes any third party rights or that use of the Lottery IP may cause deception or confusion to the public; and
- (c) any other form of attack on or claim to the Lottery IP.

The [Commission/Nominee] shall not make any admissions in respect of these matters other than to the Licensor and at the request of the Licensor shall furnish the Licensor, at the Licensor's cost, with all information in its possession which may be reasonably required by the Licensor.

- 10.2 The Commission shall have the right to decide whether or not to request the Licensor to take action and assume the conduct of all actions, claims and proceedings in its own name [( and not in the name of the [Commission/Nominee])] relating to the Lottery IP and the Licensor shall bear the costs and expenses of actions, claims and proceedings.
- 10.3 The [Commission/Nominee] shall provide or procure the provision of any assistance reasonably required by the Licensor, at Licensor's cost, in connection with such claims, actions or proceedings in connection with any of the matters in Clause 10.1.
- 10.4 In the event that the [Commission/Nominee] provides such assistance as referred to in Clause 10.3, it shall, as between the parties to this Deed, be entitled to receive any compensation payments and any award of costs or damages arising out of any such actions or proceedings. The remainder of any such payments, costs or damages, shall, as between the parties, belong to the Licensor.

## **11. Termination**

- 11.1 The Commission/Nominee may terminate this Deed by giving to the Licensor not less than [ ] months' prior written notice to that effect.

- 11.2 On the occurrence of any of the following events, a party may (without prejudice to any other right or remedy) by written notice to the other party terminate this agreement with immediate effect:
- (a) if the other party commits a material breach of any material obligation under this Deed, (including a breach of any representation or warranty) and in the case of a breach which is capable of remedy fails to remedy it within thirty (30) days of receipt of notice from the first party giving particulars of such breach and requiring it to be remedied;
  - (b) a petition is presented, or a meeting is convened for the purpose of considering a resolution or any other steps are taken by any person with a view to the appointment of an administrator (whether out of court or otherwise) against or for the winding up of the other party or an administration order or a winding up order is made against or a provisional liquidator appointed with respect to the other party;
  - (c) an encumbrancer takes possession of, or a trustee or administrative receiver or similar officer is appointed in respect of, all or any part of the business or assets of the other party, or distress or any form of execution is levied or enforced upon or sued out against any such assets and is not discharged within [7] days of being levied, enforced or sued out;
  - (d) the other party is unable to pay its debts as they fall due or the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities, or it suspends or threatens to suspend making payments with respect to all or any class of its debts;
  - (e) any voluntary arrangement is proposed under section 1 of the Insolvency Act 1986 (as amended, re enacted or replaced from time to time) in respect of the other party;
  - (f) the other party proposes or makes any composition or arrangement or composition with, or any assignment for the benefit of, its creditors; or
  - (g) anything analogous to any of the events described in paragraphs (a) – (e), inclusive, occurs under the laws of any applicable jurisdiction.
- 11.3 For the purpose of Clause 11.2(a), a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to time of performance.

## **12. Effects of termination**

- 12.1 Upon termination of this Deed for any reason, the rights and licence granted under this Deed to the [Commission/Nominee] shall cease and determine and the Commission/Nominee shall without delay discontinue any and all use of the Lottery IP.
- 12.2 Termination of this Deed shall not release either of the parties from any other liability which at the time of termination has already accrued to the other party, nor affect in any way the survival of any other right, duty or obligation of the parties which is expressly stated elsewhere in this Deed to survive such termination.

## **13. Confidential Information**

- 13.1 Each of the parties shall both during and after the arrangements contemplated by this Deed have terminated:
- (a) keep confidential the terms of this Deed and all information, whether in written or any other form, which has been disclosed to it by or on behalf of the other party pursuant to its respective obligations under this Deed which by its nature ought to be regarded as confidential (including, without limitation, any business information in respect of the other party which is not directly applicable or relevant to the transactions contemplated by this Deed); and
  - (b) procure that its officers, employees and representatives and those of any group companies keep secret and treat as confidential all such documents and information.
- 13.2 Clause 13.1 does not apply to information:

- (a) which shall after the date of this Deed become published or otherwise generally available to the public, except in consequence of a wilful or negligent act or omission by the other party to this Deed in contravention of the obligations in Clause 13.1;
- (b) to the extent made available to the recipient party by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the other party or which has been disclosed under an express statement that it is not confidential;
- (c) to the extent required to be disclosed by any applicable Law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of Law, provided that the party disclosing the information shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before the disclosure shall be made and shall take all reasonable action to avoid and limit the disclosure;
- (d) which has been independently developed by the recipient party otherwise than in the course of the exercise of that party's rights under this Deed or the implementation of this Deed;
- (e) which, in order to perform its obligations under or pursuant to this Deed, either party is required to disclose to a third party;
- (f) which, in order to perform its obligations under the Section 5 Licence and the Successor Licence either party is required to disclose to the Commission or to a third party approved in advance by the Commission; and
- (g) which the recipient party can prove was already known to it before its receipt from the disclosing party.

13.3 The provisions of this Clause shall survive any termination of this Deed.

## **14. Severability**

- 14.1 If, and to the extent that, any provision of this Deed is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in this Deed but without invalidating any of the remaining provisions of this Deed provided that the parties shall meet to negotiate in good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Deed not so affected) so as to re-establish an appropriate balance of the interests of the parties.

## **15. Waivers and amendments**

- 15.1 No failure or delay by either party in exercising any right or remedy provided by Law under or pursuant to this Deed shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.
- 15.2 The rights and remedies provided for are cumulative and not exclusive of any rights and remedies provided by Law.
- 15.3 No provision of this Deed may be amended, modified, waived, discharged or terminated otherwise than by the express written agreement of the parties to this Deed nor may any breach of any provision of this Deed be waived or discharged except with the express written consent of the party not in breach.

## **16. Notices**

- 16.1 The parties shall give any notice under, or in connection with, this Deed in writing. Notice shall be served by sending it by fax to the number set out in Clause 16.3, or delivering it by hand, or sending it by prepaid recorded delivery, special delivery or registered post, to the address set out in



Clause 16.3, or by sending it by electronic mail to the address set out in Clause 16.3, and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this Clause 16). Any notice so served by hand, fax, post or electronic mail shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, special delivery or registered post, at 10.00 hours on the second Business Day following the date of posting; and
- (d) in the case of electronic mail, when the email leaves the email gateway of the sender where it leaves such gateway before 17.00 hours on any Business Day or in any other case at 08.00 hours on the next Business Day after it leaves such gateway and the onus shall be on the party giving notice to prove the time that the email left its gateway,

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

16.2 References to time in this Clause 16 are to local time in the country of the addressee.

16.3 The addresses, fax numbers and electronic mail addresses of the parties for the purpose of this Clause 16 are as follows:

**The Licensor**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

**The Commission/Nominee**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

16.4 A party may notify the other party to this Deed of a change to its name, relevant addressee, address, fax number or electronic mail address for the purposes of this Clause 16, provided that, such notice shall only be effective on:

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

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

## **17. Governing Law and jurisdiction**

- 17.1 This Deed shall be governed by and construed in accordance with English law.
- 17.2 The parties irrevocably agree that the English courts shall have exclusive jurisdiction in relation to any legal action or proceedings arising out of or in connection with the Licence (**Proceedings**) and waive any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

## **18. Entire agreement**

- 18.1 This Deed and the Section 5 Licence set out the entire agreement and understanding between the parties in respect of the subject matter of this Deed. This Clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

## **19. Force majeure**

- 19.1 Neither party shall be liable for any failure or delay in performing any of its obligations under this Deed if the failure or delay is due to any cause outside its reasonable control, and it shall be entitled to a reasonable extension of the time for performing the obligations as a result of the cause.

## **20. Assignment**

- 20.1 No party shall nor shall it purport to assign, transfer, charge or otherwise deal with all or any of its rights and/or obligations under this Deed nor grant, declare, create or dispose of any right or interest in it, without the prior written consent of the other party/parties, such approval not to be unreasonably withheld or delayed.
- 20.2 If either party assigns, transfers or charges all or any of its rights and/or obligations under this Deed it shall notify the other party as soon as practicable after such assignment, transfer, or charge together with full particulars of the assignee, transferee, or charge.

## **21. Third party rights**

EITHER

Unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.<sup>2</sup>

OR<sup>3</sup>

- 21.1 With the exception of the Commission's rights under Clause 21.2 and unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 21.2 All rights and interests exercisable by the Licensor under this Deed shall be exercisable by the Commission.

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<sup>2</sup> For use when the Commission is the Licensee.

<sup>3</sup> For use when a third party is the Assignee.

## 22. Counterparts

- 22.1 This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this document as a Deed as of the day and year first written above.

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

## Schedule 13

### Condition 21.6

#### Part 2<sup>580</sup>

### The Lottery IP Sub Licence

THIS SUB LICENCE is made on \_\_\_\_\_ 20[ ]

#### BETWEEN

(1) **Camelot UK Lotteries Limited**<sup>581 582</sup> (company no. 02822203) whose registered office is Tolpits Lane, Watford, Hertfordshire WD18 9RN (**Licensor**); and

(2) [ ] (company no.) whose registered office is [ ] (**Licensee**).

#### WHEREAS

- (A) The Licensor runs the National Lottery under a licence dated 1 February 2009 (**Section 5 Licence**) granted to it by the Gambling Commission (**Commission**) under section 5 of the National Lottery etc. Act 1993 (**Act**).
- (B) The Commission is the proprietor of and beneficially entitled to certain items of Lottery IP.
- (C) Pursuant to Condition 21.2 (a) of the Section 5 Licence the Commission has granted an exclusive licence to the Licensor (subject to the terms of the Section 5 Licence) to copy, publish and otherwise use any Lottery IP for the duration of the National Lottery.
- (D) Pursuant to Condition 21.6 of the Section 5 Licence, the Licensor has the right to grant a royalty-free, payment-free, non-exclusive, and non-transferable sub-licence, (**Sub Licence**) subject to the terms of Condition 21.2 (a) and the terms of the Section 5 Licence.
- (E) The Licensor has agreed to grant a Sub Licence to the Licensee of the Regulated Intellectual Property for the Permitted Purpose (as defined below) on the terms and conditions set out herein.

IT IS AGREED as follows:

#### 1. Definitions

1.1 In this Sub Licence:

"**Regulated Intellectual Property**" means the Lottery IP details of which are set out at Appendix 1 of this Sub Licence;

"**Permitted Purpose**" means [ ];

Terms defined in the Section 5 Licence and not otherwise defined in this Sub Licence shall have the same meaning as set out in the Section 5 Licence.

1.2 In this Sub Licence, unless the context otherwise requires:

- (a) references to Clauses, Schedules and paragraphs in this Sub Licence shall be construed as references to the Clauses, Schedules and paragraphs of this Sub Licence;

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<sup>580</sup> Licence varied by consent on 11 May 2009.

<sup>581</sup> Licence varied by consent with effect from 5 July 2010.

<sup>582</sup> Licence varied by consent with effect from 5 August 2010.

- (b) references to persons includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
- (c) the headings are inserted for convenience only and do not affect the construction of this Sub Licence;
- (d) references to one gender includes all genders;
- (e) words importing the plural include the singular and vice versa;
- (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re enacted;
- (g) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (h) reference to the word “includes” or “including” are to be construed without limitation.

## **2. Commencement**

- 2.1 This Sub Licence shall come into force on [day] [month] [year] (**Commencement Date**) and shall continue until terminated in accordance with Clause 7 (**Termination**).

## **3. Grant of Sub Licence**

- 3.1 The Licensor grants to the Licensee for the duration of the Section 5 Licence a royalty-free, payment-free, non-transferable, non sub-licensable and non-exclusive Sub Licence to copy publish and otherwise use any and/or all items of Regulated Intellectual Property for the Permitted Purpose.
- 3.2 The Licensee shall comply with guidelines relating to the use and mode of display of any Lottery IP forming part of the Regulated Intellectual Property (as referred to in Condition 21.10 of the Section 5 Licence).
- 3.3 All material produced by the Licensee in accordance with this Sub Licence that includes any Regulated Intellectual Property shall be supplied to the Licensor for prior approval. The Licensor shall not unreasonably withhold or delay such approval and shall use its reasonable endeavours to grant and/or obtain approval of such material within five (5) working days.

## **4. Warranties**

- 4.1 Each party warrants that it has full authority, power and capacity to enter into and carry out its obligations under this agreement.

## **5. Ownership of rights**

- 5.1 The Licensee recognises that the Commission is the owner of the Regulated Intellectual Property and shall not at any time do or suffer to be done any act or thing which is likely to in any way prejudice the Commission's title.
- 5.2 The Licensee agrees that it shall not make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of any of the Regulated Intellectual Property or the goodwill attaching to any of the Regulated Intellectual Property except under the terms of this Sub Licence and the Licensee further acknowledges that nothing contained in this Sub Licence shall give the Licensee any right, title or interest in or to the Regulated Intellectual Property save as granted under this Sub Licence.

## **6. Infringement**

- 6.1 The Licensee shall immediately notify the Licensor in writing of any of the following matters which come to its attention during the Term (giving full particulars):
- (a) infringement or suspected or threatened infringement of the Regulated Intellectual Property whether by imitation or otherwise;
  - (b) any allegation or complaint made by any third party that any of the Regulated Intellectual Property is invalid, that use of the Regulated Intellectual Property infringes any third party rights or that use of the Regulated Intellectual Property may cause deception or confusion to the public; and
  - (c) any other form of attack on or claim to the Regulated Intellectual Property.
- 6.2 The Licensee shall not make any admissions in respect of these matters other than to the Licensor and/or the Commission and at the request of the Licensor and/or the Commission shall furnish the Licensor and/or the Commission, at the Licensor's cost, with all information in its possession which may be reasonably required by the Licensor and/or the Commission.
- 6.3 The Licensee shall provide or procure the provision of any assistance reasonably required by the Licensor, at Licensor's cost, in connection with such claims, actions or proceedings in connection with any of the matters in Clause 6.1.
- 6.4 In the event that the Licensee provides such assistance as referred to in Clause 6.3, it shall not be entitled to receive any compensation payments and any award of costs or damages arising out of any such actions or proceedings.

## **7. Termination**

- 7.1 The Licensor may terminate this Sub Licence by giving to the Licensee not less than [     ] months' prior written notice to that effect.
- 7.2 The Licensee agrees that this Sub Licence shall automatically determine forthwith upon the termination (whether upon revocation, expiry or otherwise) of the Section 5 Licence and/or in the event that the Commission requires it in the exercise of its functions under the Act and/or the Licensor requires it in the exercise of its obligations under the Section 5 Licence.
- 7.3 On the occurrence of any of the following events, a party may (without prejudice to any other right or remedy) by written notice to the other party terminate this agreement with immediate effect:
- (a) if the other party commits a breach of any obligation under this Sub Licence, (including a breach of any representation or warranty).
  - (b) a petition is presented, or a meeting is convened for the purpose of considering a resolution or any other steps are taken by any person with a view to the appointment of an administrator (whether out of court or otherwise) against or for the winding up of the other party or an administration order or a winding up order is made against or a provisional liquidator appointed with respect to the other party;
  - (c) an encumbrancer takes possession of, or a trustee or administrative receiver or similar officer is appointed in respect of, all or any part of the business or assets of the other party, or distress or any form of execution is levied or enforced upon or sued out against any such assets and is not discharged within 7 days of being levied, enforced or sued out;
  - (d) the other party is unable to pay its debts as they fall due or the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities, or it suspends or threatens to suspend making payments with respect to all or any class of its debts;
  - (e) any voluntary arrangement is proposed under section 1 of the Insolvency Act 1986 (as amended, re enacted or replaced from time to time) in respect of the other party;

- (f) the other party proposes or makes any composition or arrangement or composition with, or any assignment for the benefit of, its creditors; or
  - (g) anything analogous to any of the events described in paragraphs (a) – (e), inclusive, occurs under the laws of any applicable jurisdiction.
- 7.4 The Licensor may terminate this Sub Licence if the Licensee does not comply with the guidelines referred to in Clause 3.2.
- 7.5 The Licensor may, by notice in writing to the Licensee, immediately terminate this Sub Licence where it reasonably apprehends that any of the events mentioned in Clause 7.3 are about to occur in relation to the Licensee.

## **8. Effects of termination**

- 8.1 Upon termination of this Sub Licence for any reason, the rights and licence granted under this Sub Licence to the Licensee shall cease and determine and the Licensee shall without delay discontinue any and all use of the Regulated Intellectual Property and deliver up to the Licensor all of the Regulated Intellectual Property and copies thereof in its possession, power, custody or control.
- 8.2 Termination of this Sub Licence shall not release either of the parties from any other liability which at the time of termination has already accrued to the other party, nor affect in any way the survival of any other right, duty or obligation of the parties which is expressly stated elsewhere in this Sub Licence to survive such termination.

## **9. Confidential Information**

- 9.1 Each of the parties shall both during and after the arrangements contemplated by this Sub Licence have terminated:
- (a) keep confidential the terms of this Sub Licence and all information, whether in written or any other form, which has been disclosed to it by or on behalf of the other party pursuant to its respective obligations under this Sub Licence which by its nature ought to be regarded as confidential (including, any business information in respect of the other party which is not directly applicable or relevant to the transactions contemplated by this Sub Licence); and
  - (b) procure that its officers, employees and representatives and those of any group companies keep secret and treat as confidential all such documents and information.
- 9.2 Clause 9.1 does not apply to information
- (a) which shall after the date of this Sub Licence become published or otherwise generally available to the public, except in consequence of a wilful or negligent act or omission by the other party to this Sub Licence in contravention of the obligations in Clause 9.1;
  - (b) to the extent made available to the recipient party by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the other party or which has been disclosed under an express statement that it is not confidential;
  - (c) to the extent required to be disclosed by any applicable Law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of Law, provided that the party disclosing the information shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before the disclosure must be made and shall take all reasonable action to avoid and limit the disclosure;
  - (d) which has been independently developed by the recipient party otherwise than in the course of the exercise of that party's rights under this Sub Licence or the implementation of this Sub Licence;

- (e) which, in order to perform its obligations under or pursuant to this Sub Licence, either party is required to disclose to a third party;
- (f) which, in order to perform its obligations under the Section 5 Licence and the Successor Licence either party is required to disclose to the Commission or to a third party approved in advance by the Commission; and
- (g) which the recipient party can prove was already known to it before its receipt from the disclosing party.

9.3 The provisions of this Clause shall survive any termination of this Sub Licence.

## **10. Severability**

- 10.1 If, and to the extent that, any provision of this Sub Licence is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in this Sub Licence but without invalidating any of the remaining provisions of this Sub Licence provided that the parties shall meet to negotiate in good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Sub Licence not so affected) so as to re-establish an appropriate balance of the interests of the parties.

## **11. Waivers and amendments**

- 11.1 No failure or delay by either party in exercising any right or remedy provided by Law under or pursuant to this Sub Licence shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.
- 11.2 The rights and remedies provided for are cumulative and not exclusive of any rights and remedies provided by Law.
- 11.3 No provision of this Sub Licence may be amended, modified, waived, discharged or terminated otherwise than by the express written agreement of the parties to this Sub Licence nor may any breach of any provision of this Sub Licence be waived or discharged except with the express written consent of the party not in breach.

## **12. Notices**

- 12.1 The parties shall give any notice under, or in connection with, this Sub Licence in writing. Notice shall be served by sending it by fax to the number set out in Clause 12.3, or delivering it by hand, or sending it by prepaid recorded delivery, special delivery or registered post, to the address set out in Clause 12.3, or by sending it by electronic mail to the address set out in Clause 12.3, and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this Clause 12). Any notice so served by hand, fax, post or electronic mail shall be deemed to have been duly given:
- (a) in the case of delivery by hand, when delivered;
  - (b) in the case of fax, at the time of transmission;
  - (c) in the case of prepaid recorded delivery, special delivery or registered post, at 10.00 hours on the second Business Day following the date of posting; and
  - (d) in the case of electronic mail, when the email leaves the email gateway of the sender where it leaves such gateway before 17.00 hours on any Business Day or in any other case at 08.00 hours on the next Business Day after it leaves such gateway and the onus shall be on the party giving notice to prove the time that the email left its gateway,



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

12.2 References to time in this Clause 12 are to local time in the country of the addressee.

12.3 The addresses, fax numbers and electronic mail addresses of the parties for the purpose of this Clause 12 are as follows:

**The Licensor**

Address: Tolpits Lane  
Watford  
Herts WD18 9RN

Fax: 01923 425006

For the attention of: Company Secretary

**Electronic mail address:** [ • ]

**The Licensee**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

12.4 A party may notify the other party to this Sub Licence of a change to its name, relevant addressee, address, fax number or electronic mail address for the purposes of this Clause 12, provided that, such notice shall only be effective on:

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

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

**13. Governing Law and jurisdiction**

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

13.2 The parties irrevocably agree that the English courts shall have exclusive jurisdiction in relation to any legal action or proceedings arising out of or in connection with this Sub Licence (**Proceedings**) and waive any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

**14. Entire agreement**

14.1 This Sub Licence and the Section 5 Licence set out the entire agreement and understanding between the parties in respect of the subject matter of this Sub Licence. This Clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

**15. Force majeure**

15.1 Neither party shall be liable for any failure or delay in performing any of its obligations under this Sub Licence if the failure or delay is due to any cause outside its reasonable control, and it shall be

entitled to a reasonable extension of the time for performing the obligations as a result of the cause.

## 16. Assignment

- 16.1 The Licensee shall not shall it purport to assign, transfer, charge or otherwise deal with all or any of its rights and/or obligations under this Sub Licence nor grant, declare, create or dispose of any right or interest in it, without the prior written consent of the Licensor, such approval not to be unreasonably withheld or delayed. Save that the Licensee may arrange for the printing or design by third parties of literature relating to the Permitted Purpose which includes the Regulated Intellectual Property without further reference to the Licensor.

## 17. Third Party Rights

- 17.1 With the exception of the Commission's rights under Clause 17.2 and unless otherwise stated, a person who is not a party to this Sub Licence shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 17.2 All rights and interests exercisable by the Licensor under this Sub Licence shall be exercisable by the Commission.

## 18. Counterparts

- 18.1 This Sub Licence may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

IN WITNESS WHEREOF the signatures of the Parties or their duly authorised representatives on the date first written above.

Signed by ..... )  
for and on behalf of ..... )  
**CAMELOT UK LOTTERIES LIMITED**<sup>583 584</sup> )

.....  
Director/Duly Authorised Signatory

Signed by ..... )  
for and on behalf of ..... )  
[ ..... ] )

.....  
Director/Duly Authorised Signatory

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<sup>583</sup> Licence varied by consent with effect from 5 July 2010.

<sup>584</sup> Licence varied by consent with effect from 5 August 2010.

## **APPENDIX 1**

### **Regulated Intellectual Property**

[Description of Regulated Intellectual Property Licensed]

## Schedule 13

Condition 21.12(a) and 21.15(a)

### Part 3(A)

#### Form of Deed of Transfer

##### Form of Deed of Transfer

THIS DEED is made as of the [] day of [month] [year]

##### BETWEEN

- (1) [\_\_\_\_\_] (company no.) whose registered office is at [\_\_\_\_\_] (**Assignor**);
- (2) [\_\_\_\_\_] (company no.) whose registered office is at [\_\_\_\_\_] [*The Commission or its nominee*] (**Assignee**);

##### WHEREAS

- (A) [Assignor] runs the National Lottery under a licence dated [●] (**Section 5 Licence**) granted to it by the Gambling Commission under section 5 of the National Lottery etc. Act 1993 (**Act**).
- (B) The Commission is the proprietor of and beneficially entitled to certain items of Lottery IP.
- (C) Assignor owns Intellectual Property (each as described in or set out in the Schedule to this Deed and together the **Transferred IPR**).
- (D) Pursuant to Condition [21.12 (a)/Condition 21.15 (a)] Assignor has agreed to transfer such Transferred IPR on a payment free basis to Assignee on the terms and conditions contained in this Deed.
- (E) Assignee desires to acquire, and Assignor desires to transfer, all right, title and interest of Assignor in and to the Transferred IPR.

IT IS AGREED as follows:

### 1. Definitions

- 1.1 Terms defined in the Section 5 Licence and not otherwise defined in this Deed shall have the same meaning as set out in the Section 5 Licence.
- 1.2 In this Deed, unless the context otherwise requires:
- (a) references to Clauses, Schedules and paragraphs in this Deed shall be construed as references to the Clauses, Schedules and paragraphs of this Deed;
  - (b) references to persons includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
  - (c) the headings are inserted for convenience only and do not affect the construction of this Deed;
  - (d) references to one gender includes all genders;
  - (e) words importing the plural include the singular and vice versa;
  - (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re enacted;

- (g) any reference to a document in the agreed form is to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties);
- (h) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (i) reference to the word “includes” or “including” are to be construed without limitation.

## **2. Commencement**

- 2.1 This Deed shall come into force on [day] [month] [year] (**Commencement Date**).

## **3. Transfer of Transferred IPR**

- 3.1 The Assignor, at its own cost, assigns or shall procure the assignment to the [Commission/Nominee] and their successors and assigns, on a payment-free basis and subject to the terms and conditions of any licences granted to third parties, all its right, title and interest in and to all of the Transferred IPR that the Assignor has to use and exploit any of the rights comprised in the items listed in Clause 3.2 [which are currently used or exploited or capable of being used or exploited by the [Licensee/Assignor] in connection with the National Lottery or any Ancillary Activity and which shall be specified by the Commission (whether any such rights are used or exploited or capable of being used or exploited by the Assignor or any other person for any other person or in any other connection or not)]<sup>1</sup> (including, but not limited to, goodwill and statutory and common law rights attaching to the Transferred IPR including the right to sue for damages and other remedies for infringement or misuse of the Transferred IPR which may have occurred prior to the date of this Deed and to retain those damages or any account of profits.)
- 3.2 The items referred to in Clause 3.1 include:
- (a) Developed IP;
  - (b) any Sign, internet domain name or name of any Constituent Lottery;
  - (c) design or get up of any ticket or other thing integral to the playing or entering into of any Constituent Lottery, including rules and procedures, leaflets or other materials;
  - (d) any codes of practice;
  - (e) descriptions or specifications prepared by or on behalf of the [Assignee/Licensee] or any Independent Section 6 Licensee relating to the Draw or determination of winners procedures;
  - (f) any database; and
  - (g) any other works including software (other than gaming software), designs, inventions or databases which the Commission specifies to be available for use for the purpose of running the National Lottery or promoting any Constituent Lottery or of carrying on any Ancillary Activity (or for use by an applicant for a licence to do any such thing) which are currently used or exploited or are capable of being used or exploited by the [Assignee/Licensee] in connection with the National Lottery or any Ancillary Activity.

## **4. Infringement**

- 4.1 In the event of any infringement action or claim against any of the Transferred IPR made before, on or after the Commencement Date, including, without limitation, any challenge to the validity or subsistence of any of the Transferred IPR or any claim for infringement, opposition, cancellation,

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<sup>1</sup> Square brackets for use with Condition 21.15(a).

revocation or rectification in relation to the Transferred IPR, Assignor shall upon the request of Assignee and at Assignee's expense co-operate with and assist Assignee in any of the aforesaid actions by providing information and documents and executing all papers and performing such other acts as reasonably may be required.

## **5. Indemnity**

- 5.1 The Assignor shall indemnify the [Commission/Nominee/Assignee] against each and any loss, liability and cost (including legal expenses) which the Assignee suffers or incurs as a result of or in connection with any claim against the Assignee that the use of the Transferred IPR in connection with the obligations of the Commission [and the Nominee] under the Section 5 Licence, the Successor Licence, the National Lottery or any Ancillary Activity infringes the Intellectual Property rights or other rights of a third party.

## **6. Further assurance**

- 6.1 Assignor shall at its own cost sign all documents and do all things which may be required by Law or which the [Commission/Nominee/Assignee] may request from time to time (including executing as soon as reasonable practicable after the date of this Deed all documents which the [Commission/Nominee/Assignee] may require to effect the registration or recording of the assignment of the Transferred IPR to the [Commission/Nominee/Assignee] in any relevant jurisdiction) to implement and/or give effect to this Deed and for the purpose of granting the [Commission/Nominee/Assignee] the full benefit of and title to the assets, rights and benefits to be transferred under this Deed. For the avoidance of doubt, all other costs associated with the assignment or recordal of the assignment shall be borne by the Assignor.

## **7. Warranties**

- 7.1 Each party warrants that it has full authority, power and capacity to enter into and carry out its obligations under this agreement.
- 7.2 The Assignor warrants that:
- (a) it is entitled to grant the rights granted to the Assignee under Clause 3;
  - (b) each of the Transferred IPR is valid and subsisting;
  - (c) it has not given a third party permission to use any of the Transferred IPR nor is it under an obligation to do so;
  - (d) all application, filing, registration, renewal and other fees in respect of registrations (or applications for registration) of the Transferred IPR have been paid;
  - (e) it has not acquiesced in the unauthorised use of the Transferred IPR, nor is any party infringing, or likely to infringe, any of the Transferred IPR; and
  - (f) no claim has been made by a third party which disputes the right of the Licensor to use any Trade Mark, nor is the Assignor aware of any circumstances likely to give rise to a claim.

## **8. Files and records**

- 8.1 To the extent that such documents are available, Assignor will, at its own cost, make available to Assignee for inspection and provide copies of all official documents and all correspondence (including, but not limited to, correspondence between Assignor and any of Assignor's agents and legal advisers) relating to the Transferred IPR. Assignor will notify its representatives of the change of ownership in each country where the Transferred IPR is being assigned and will provide the Assignee with a list of such representatives.

## **9. Notices**

9.1 The parties shall give any notice under, or in connection with, this Deed in writing. Notice shall be served by sending it by fax to the number set out in Clause 9.3, or delivering it by hand, or sending it by prepaid recorded delivery, special delivery or registered post, to the address set out in Clause 9.3, or by sending it by electronic mail to the address set out in Clause 9.3, and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this Clause 9). Any notice so served by hand, fax, post or electronic mail shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, special delivery or registered post, at 10.00 hours on the second Business Day following the date of posting; and
- (d) in the case of electronic mail, when the email leaves the email gateway of the sender where it leaves such gateway before 17.00 hours on any Business Day or in any other case at 08.00 hours on the next Business Day after it leaves such gateway and the onus shall be on the party giving notice to prove the time that the email left its gateway,

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

9.2 References to time in this Clause 9 are to local time in the country of the addressee.

9.3 The addresses, fax numbers and electronic mail addresses of the parties for the purpose of this Clause 9 are as follows:

### **The Assignor**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

### **The Assignee**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

9.4 A party may notify the other party to this Deed of a change to its name, relevant addressee, address, fax number or electronic mail address for the purposes of this Clause 9, provided that, such notice shall only be effective on:

- (a) the date specified in the notice as the date on which the change is to take place; or

- (b) if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date following five Business Days after notice of any change has been given.
- 9.5 All notices under or in connection with this Deed shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

## **10. Legal relationship**

- 10.1 Nothing in this Deed is deemed to constitute a partnership between the parties nor constitute any party the agent of the other party for any purpose.

## **11. Confidential Information**

- 11.1 Each of the parties shall both during and after the arrangements contemplated by this Sub Licence have terminated:
  - (a) keep confidential the terms of this Sub Licence and all information, whether in written or any other form, which has been disclosed to it by or on behalf of the other party pursuant to its respective obligations under this Deed which by its nature ought to be regarded as confidential (including, without limitation, any business information in respect of the other party which is not directly applicable or relevant to the transactions contemplated by this Sub Licence); and
  - (b) procure that its officers, employees and representatives and those of any group companies keep secret and treat as confidential all such documents and information.
- 11.2 Clause 11.1 does not apply to information:
  - (a) which shall after the date of this Sub Licence become published or otherwise generally available to the public, except in consequence of a wilful or negligent act or omission by the other party to this Sub Licence in contravention of the obligations in Clause 11.1;
  - (b) to the extent made available to the recipient party by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the other party or which has been disclosed under an express statement that it is not confidential;
  - (c) to the extent required to be disclosed by any applicable Law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of Law, provided that the party disclosing the information shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before the disclosure shall be made and shall take all reasonable action to avoid and limit the disclosure;
  - (d) which has been independently developed by the recipient party otherwise than in the course of the exercise of that party's rights under this Sub Licence or the implementation of this Sub Licence;
  - (e) which, in order to perform its obligations under or pursuant to this Sub Licence, either party is required to disclose to a third party;
  - (f) which, in order to perform its obligations under the Section 5 Licence and the Successor Licence either party is required to disclose to the Commission or to a third party approved in advance by the Commission; and
  - (g) which the recipient party can prove was already known to it before its receipt from the disclosing party.
- 11.3 The provisions of this Clause shall survive any termination of this Sub Licence.



## **12. Severability**

- 12.1 If, and to the extent that, any provision of this Deed is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in this Deed but without invalidating any of the remaining provisions of this Deed provided that the parties shall meet to negotiate in good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Deed not so affected) so as to re-establish an appropriate balance of the interests of the parties.

## **13. Force majeure**

- 13.1 Neither party shall be liable for any failure or delay in performing any of its obligations under or pursuant to this Deed if the failure or delay is due to any cause outside its reasonable control, and it shall be entitled to a reasonable extension of the time for performing the obligations as a result of such cause.

## **14. Parties in interest**

- 14.1 The provisions of this Deed shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

## **15. Governing Law and jurisdiction**

- 15.1 This Deed shall be governed by and construed in accordance with English law.
- 15.2 The parties irrevocably agree that the English courts shall have exclusive jurisdiction in relation to any legal action or proceedings arising out of or in connection with the Licence (***Proceedings***) and waive any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

## **16. Entire agreement**

- 16.1 This Deed and the Section 5 Licence set out the entire agreement and understanding between the parties in respect of the subject matter of this Deed. This Clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

## **17. Third party rights**

EITHER

Unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.<sup>2</sup>

OR<sup>3</sup>

- 17.1 With the exception of the Commission's rights under Clause 17.2 and unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 17.2 All rights and interests exercisable by the Assignor under this Deed shall be exercisable by the Commission.

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<sup>2</sup> For use when the Commission is the Assignee.

<sup>3</sup> For use when the Nominee is the Assignee.

## 18. Counterparts

- 18.1 This agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this document as a Deed as of the day and year first written above.

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

## **SCHEDULE**

**Transferred IPR**

## Schedule 13

### Conditions 21.12(b) and 21.15(b)

#### Part 3(B)

#### Form of Licence

THIS DEED is made on \_\_\_\_\_ 20[ ]

#### BETWEEN

- (1) [\_\_\_\_\_] (company no.) whose registered office is at [\_\_\_\_\_] (**Licensor**); and
- (2) [\_\_\_\_\_] (company no.) whose registered office is at [\_\_\_\_\_] [*The Commission or its nominee*] (**Commission/Nominee**).

#### WHEREAS

- (A) [Licensor] runs the National Lottery under a licence dated [●] (**Section 5 Licence**) granted to it by the [Gambling Commission (**Commission**)] under section 5 of the National Lottery etc. Act 1993 (**Act**).
- (B) The Licensor is the legal and beneficial owner of intellectual property as set out in the Schedule to this Deed (**Intellectual Property**).
- (C) Pursuant to [Condition 21.12 (b)/Condition 21.15(b)] [Licensor] agrees to grant a licence to [Commission/Nominee] of all Intellectual Property on the terms and conditions contained in this Deed.

IT IS AGREED as follows:

#### 1. Definitions

- 1.1 Terms defined in the Section 5 Licence and not otherwise defined in this Deed shall have the same meaning as set out in the Section 5 Licence.
- 1.2 In this Deed, unless the context otherwise requires:
- (a) references to Clauses, Schedules and paragraphs in this Deed shall be construed as references to the Clauses, Schedules and paragraphs of this Deed;
  - (b) references to persons includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
  - (c) the headings are inserted for convenience only and do not affect the construction of this Deed;
  - (d) references to one gender includes all genders;
  - (e) words importing the plural include the singular and vice versa;
  - (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re enacted;
  - (g) any reference to a document in the agreed form is to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties);

- (h) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (i) reference to the words “includes” or “including” are to be construed without limitation.

## 2. Commencement and duration

- 2.1 This Deed commences on [\_\_\_\_\_] [the date of this Deed] (**Commencement Date**) and continues until terminated in accordance with Clause 11.

## 3. Grant of Licence

- 3.1 The Licensor grants, for the duration of the Section 5 Licence, to the [Commission/Nominee] a royalty-free, payment-free, transferable<sup>1</sup>, perpetual and exclusive licence of all Intellectual Property as the Licensor has to:

- (a) use and exploit the rights comprised in the items listed in Clause 3.2 [which are currently used or exploited or capable of being used or exploited by the [Licensee/Licensor] in connection with the National Lottery or any Ancillary Activity and which shall be specified by the Commission (whether any of such rights are used or capable of being used or exploited by the Licensor in the National Lottery or any other person for any other purpose or in any other connection or not)]<sup>2</sup> subject to the terms of this Deed. [; and]
- (b) *[grant a royalty-free, payment-free, non-transferable, non-exclusive and perpetual sub-licence to any third party.<sup>3</sup>]*

- 3.2 The items referred to in Clause 3.1 include:

- (a) Developed IP;
  - (b) any Sign, internet domain name or name of any Constituent Lottery;
  - (c) design or get up of any ticket or other thing integral to the playing or entering into of any Constituent Lottery, including rules and procedures, leaflets or other materials;
  - (d) any codes of practice;
  - (e) descriptions or specifications prepared by or on behalf of the Licensee or any Independent Section 6 Licensee relating to the Draw or determination of winners procedures;
  - (f) any database; and
  - (g) any other works including software (other than gaming software), designs, inventions or databases which the Commission specifies to be available for use for the purpose of running the National Lottery or promoting any Constituent Lottery or of carrying on any Ancillary Activity (or for use by an applicant for a licence to do any such thing) which are currently used or exploited or are capable of being used or exploited by the Licensee in connection with the National Lottery or any Ancillary Activity.
- 3.3 At the request of the [Commission/Nominee], the Licensor shall at its own cost, execute and take all steps reasonably required for the registration or recordal of any aspect of the licence granted to the [Commission/Nominee] under Clause 3.1 in the relevant registries in any jurisdiction.

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<sup>1</sup> Where the Licensee is the Nominee, any transfer is subject to approval of the Commission.

<sup>2</sup> Square brackets for use with Condition 21.15(b).

<sup>3</sup> Clause 3.1(b) only applies where the Commission is the Licensee.

- 3.4 The [Commission/Nominee] agrees that any registration or recordal made pursuant to Clause 3.3 may be cancelled by Licensor on the expiry or termination of this Deed and that it will assist Licensor, at Licensor's cost, so far as is reasonably necessary to achieve such cancellation by executing any documents reasonably required by the Licensor to effect the cancellation.

## **4. Maintenance of Intellectual Property**

- 4.1 The Licensor shall, at its own cost, take all steps required to maintain registrations for the Intellectual Property in the relevant registries in any jurisdiction.
- 4.2 Where the [Commission/Nominee] wishes to apply to register any of the Intellectual Property in the relevant registries in any jurisdiction for the purpose of ensuring the registration of the [Commission/Nominee] as a registered licensee of Lottery IP, it may ask the Licensor to do so on its behalf. The Licensor shall apply to register the relevant Intellectual Property in the name of the Commission and all costs of filing, prosecuting, registering and maintaining the application and any resulting registration shall be paid by the Licensor.

## **5. Future Lottery IP**

- 5.1 If at any time on or after the Commencement Date any item becomes an item of Intellectual Lottery in any manner howsoever pursuant to the Section 5 Licence, such item shall not automatically fall within the licence set out in Clause 3.

## **6. Warranties**

- 6.1 Each party warrants that it has full authority, power and capacity to enter into and carry out its obligations under this agreement.
- 6.2 The Licensor warrants that:
- (a) it owns all of the rights and interests in, and has title to, the Intellectual Property, and is entitled to grant the rights granted to the Licensee under Clause 3;
  - (b) each of the Intellectual Property is valid and subsisting;
  - (c) it has not given a third party permission to use any of the Intellectual Property nor is it under an obligation to do so;
  - (d) all application, filing, registration, renewal and other fees in respect of registrations (or applications for registration) of the Intellectual Property have been paid;
  - (e) it has not acquiesced in the unauthorised use of the Intellectual Property, nor is any party infringing, or likely to infringe, any of the Intellectual Property; and
  - (f) no claim has been made by a third party which disputes the right of the Licensor to use any Trade Mark, nor is the Licensor aware of any circumstances likely to give rise to a claim.

## **7. Indemnity**

- 7.1 The Licensor shall indemnify the [Commission/Nominee] against each loss, liability and cost (including reasonable legal expenses) which the [Commission/Nominee] suffers or incurs as a result of or in connection with any claim against the [Commission/Nominee] that the use of the Intellectual Property by the [Commission/Nominee] in accordance with this agreement infringes the intellectual property or other rights of a third party.

## **8. Further assurance**

- 8.1 The Licensor shall, at its own cost, sign all documents and do all things which may be required by Law or which the [Commission/Nominee] may request from time to time (including executing as soon as reasonably practicable after the date of this Deed all documents which the [Commission/Nominee] may require to effect the registration or recording of the grant of Licence as

set out in Clause 3 to the [Commission/Nominee] in any relevant jurisdiction) to implement and/or give effect to this Deed and for the purpose of granting the [Commission/Nominee] the full benefit of and title to the assets, rights and benefits to be granted under this Deed.

## **9. Ownership of rights**

- 9.1 The [Commission/Nominee] recognises that the Licensor is the owner of the Intellectual Property and shall not at any time do or suffer to be done any act or thing which is likely to in any way prejudice the Licensor's title.
- 9.2 The [Commission/Nominee] shall on reasonable request give to the Licensor, at the Licensor's cost, or its authorised representative any information as to its use of the Intellectual Property which the Licensor may reasonably require.

## **10. Infringement**

- 10.1 Each party shall immediately notify the other in writing of any of the following matters which come to its attention during the Term (giving full particulars):
- (a) infringement or suspected or threatened infringement of the Intellectual Property whether by imitation or otherwise;
  - (b) any allegation or complaint made by any third party that any of the Intellectual Property is invalid, that use of the Intellectual Property infringes any third party rights or that use of the Intellectual Property may cause deception or confusion to the public; and
  - (c) any other form of attack on or claim to the Intellectual Property; and
- the [Commission/Nominee] shall not make any admissions in respect of these matters other than to the Licensor and shall furnish the Licensor with all information in its possession which may be reasonably required by the Licensor.
- 10.2 The Commission shall have the right to decide whether or not to request the Licensor to take action and to assume the conduct of all actions, claims and proceedings in its own name (and not in the name of the [Commission/Nominee]) relating to the Intellectual Property and the Licensor shall bear the costs and expenses of actions, claims and proceedings.
- 10.3 The [Commission/Nominee] shall provide or procure the provision of any assistance reasonably required by the Licensor, at Licensor's cost, in connection with such claims, actions or proceedings in connection with any of the matters in Clause 10.1.
- 10.4 In the event that the [Commission/Nominee] takes such steps, it shall, as between the parties to this Deed, be entitled to receive any compensation payments and any award of costs or damages arising out of any such actions or proceedings. The remainder of any such payments, costs or damages, shall, as between the parties, belong to Licensor.

## **11. Termination**

- 11.1 The Commission/Nominee may terminate this Deed by giving to the Licensor not less than [ ] months' prior written notice to that effect.
- 11.2 On the occurrence of any of the following events, a party may (without prejudice to any other right or remedy) by written notice to the other party terminate this agreement with immediate effect:
- (a) if the other party commits a material breach of any material obligation under this Deed, (including a breach of any representation or warranty) and in the case of a breach which is capable of remedy fails to remedy it within thirty (30) days of receipt of notice from the first party giving particulars of such breach and requiring it to be remedied;
  - (b) a petition is presented, or a meeting is convened for the purpose of considering a resolution or any other steps are taken by any person with a view to the appointment of an administrator (whether

out of court or otherwise) against or for the winding up of the other party or an administration order or a winding up order is made against or a provisional liquidator appointed with respect to the other party;

- (c) an encumbrancer takes possession of, or a trustee or administrative receiver or similar officer is appointed in respect of, all or any part of the business or assets of the other party, or distress or any form of execution is levied or enforced upon or sued out against any such assets and is not discharged within [seven] days of being levied, enforced or sued out;
  - (d) the other party is unable to pay its debts as they fall due or the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities, or it suspends or threatens to suspend making payments with respect to all or any class of its debts;
  - (e) any voluntary arrangement is proposed under section 1 of the Insolvency Act 1986 (as amended, re enacted or replaced from time to time) in respect of the other party;
  - (f) the other party proposes or makes any composition or arrangement or composition with, or any assignment for the benefit of, its creditors; or
  - (g) anything analogous to any of the events described in paragraphs (a) to (e), inclusive, occurs under the laws of any applicable jurisdiction.
- 11.3 For the purpose of Clause 11.2(a), a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to time of performance.

## **12. Effects of termination**

- 12.1 Upon termination of this Deed for any reason, the rights and licence granted under this Deed to the [Commission/Nominee] shall cease and determine and the Commission/Nominee shall without delay discontinue any and all use of the Intellectual Property.
- 12.2 Termination of this Deed shall not release either of the parties from any other liability which at the time of termination has already accrued to the other party, nor affect in any way the survival of any other right, duty or obligation of the parties which is expressly stated elsewhere in this Deed to survive such termination.

## **13. Assignment and other dealings**

- 13.1 The Licensor agrees and acknowledges that the [Commission/Nominee] shall be entitled at any time to assign, transfer or charge all or any of its rights and/or obligations under this Deed or to sub-contract the performance of any of its obligations under this Deed, provided however that:
- (a) neither party shall have any greater liability under this Deed than it would have had in the absence of such assignment, transfer, or charge or sub-contract; and
  - (b) any such sub-contracting shall not relieve the [Commission/Nominee] from liability for the performance of the sub-contracted obligation or duty.

If the [Commission/Nominee] assigns or transfers or charges any of its rights and/or obligations under this agreement or sub-contracts the performance of any of its obligations under this agreement, the [Commission/Nominee] will notify the Licensor as soon as practicable after such assignment, transfer, or charge or sub-contracting, together with particulars of the assignee, transferee, or chargee or sub-contractor.

- 13.2 The Licensor shall from time to time upon request from the [Commission/Nominee] execute any agreements or other instruments (including, without limitation, any supplement or amendment to this agreement) which may be required in order to give effect to or perfect any assignment, transfer, or charge or sub-contracting referred to in Clause 13.1.
- 13.3 The Licensor shall not nor shall it purport to assign, transfer, charge or otherwise deal with all or any of its rights and/or obligations under this agreement nor grant, declare, create or dispose of any



right or interest in it, or sub-contract the performance of any of its obligations under this agreement without the prior written consent of the [Commission/Nominee], such consent not to be withheld or delayed.

## **14. Confidential Information**

14.1 Each of the parties shall both during and after the arrangements contemplated by this Deed have terminated:

- (a) keep confidential the terms of this Deed and all information, whether in written or any other form, which has been disclosed to it by or on behalf of the other party pursuant to its respective obligations under this Deed which by its nature ought to be regarded as confidential (including any business information in respect of the other party which is not directly applicable or relevant to the transactions contemplated by this Deed); and
- (b) procure that its officers, employees and representatives and those of any group companies keep secret and treat as confidential all such documents and information.

14.2 Clause 14.1 does not apply to information:

- (a) which shall after the date of this Deed become published or otherwise generally available to the public, except in consequence of a wilful or negligent act or omission by the other party to this Deed in contravention of the obligations in Clause 14.1;
- (b) to the extent made available to the recipient party by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the other party or which has been disclosed under an express statement that it is not confidential;
- (c) to the extent required to be disclosed by any applicable Law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of Law, provided that the party disclosing the information shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before the disclosure shall be made and shall take all reasonable action to avoid and limit the disclosure;
- (d) which has been independently developed by the recipient party otherwise than in the course of the exercise of that party's rights under this Deed or the implementation of this Deed;
- (e) which, in order to perform its obligations under or pursuant to this Deed, either party is required to disclose to a third party;
- (f) which, in order to perform its obligations under the Section 5 Licence and the Successor Licence either party is required to disclose to the Commission or to a third party approved in advance by the Commission; and
- (g) which the recipient party can prove was already known to it before its receipt from the disclosing party.

14.3 The provisions of this Clause shall survive any termination of this Deed.

## **15. Severability**

15.1 If, and to the extent that, any provision of this Deed is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in this Deed but without invalidating any of the remaining provisions of this Deed provided that the parties shall meet to negotiate in good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Deed not so affected) so as to re-establish an appropriate balance of the interests of the parties.

## **16. Waivers and amendments**

- 16.1 No failure or delay by either party in exercising any right or remedy provided by Law under or pursuant to this Deed shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.
- 16.2 The rights and remedies provided for are cumulative, may be exercised as often as such party considers appropriate and are not exclusive of any rights and remedies provided by Law.
- 16.3 No provision of this Deed may be amended, modified, waived, discharged or terminated otherwise than by the express written agreement of the parties to this Deed nor may any breach of any provision of this Deed be waived or discharged except with the express written consent of the party not in breach.

## **17. Notice**

- 17.1 The parties shall give any notice under, or in connection with, this Deed in writing. Notice shall be served by sending it by fax to the number set out in Clause 17.3, or delivering it by hand, or sending it by prepaid recorded delivery, special delivery or registered post, to the address set out in Clause 17.3, or by sending it by electronic mail to the address set out in Clause 17.3, and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this Clause 17). Any notice so served by hand, fax, post or electronic mail shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, special delivery or registered post, at 10.00 hours on the second Business Day following the date of posting; and
- (d) in the case of electronic mail, when the email leaves the email gateway of the sender where it leaves such gateway before 17.00 hours on any Business Day or in any other case at 08.00 hours on the next Business Day after it leaves such gateway and the onus shall be on the party giving notice to prove the time that the email left its gateway,

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

- 17.2 References to time in this Clause 17 are to local time in the country of the addressee.

- 17.3 The addresses, fax numbers and electronic mail addresses of the parties for the purpose of this Clause 17 are as follows:

### **The Licensor**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

## **The Commission/Nominee**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

17.4 A party may notify the other party to this Deed of a change to its name, relevant addressee, address, fax number or electronic mail address for the purposes of this Clause 17, provided that, such notice shall only be effective on:

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

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

## **18. Governing Law and jurisdiction**

18.1 This Deed shall be governed by and construed in accordance with English law.

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

## **19. Entire agreement**

19.1 This Deed and the Section 5 Licence set out the entire Deed and understanding between the parties in respect of the subject matter of this Deed. This Clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

## **20. Legal relationship**

20.1 Nothing in this agreement is deemed to constitute a partnership between the parties nor constitute any party the agent of the other party for any purpose.

## **21. Force majeure**

21.1 Neither party shall be liable for any failure or delay in performing any of its obligations under or pursuant to this Deed if the failure or delay is due to any cause outside its reasonable control, and it shall be entitled to a reasonable extension of the time for performing the obligations as a result of such cause.

## **22. Third party rights**

EITHER

Unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.<sup>4</sup>

OR<sup>5</sup>

22.1 With the exception of the Commission's rights under Clause 22.2 and unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

22.2 All rights and interests exercisable by the Licensor under this Deed shall be exercisable by the Commission.

## **23. Counterparts**

23.1 This agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this document as a deed as of the day and year first written above.

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

---

<sup>4</sup> For use when the Commission is the Assignee.

<sup>5</sup> For use when the Nominee is the Assignee.

## **SCHEDULE 1**

## Schedule 13

### Condition 21.14

#### Part 4

#### Databases Assignment

This **Deed** is made on \_\_\_\_\_ 20[ ]

#### BETWEEN

- (1) [ ] (company no.) whose registered office is at [ ] (**Assignor**);  
and
- (2) [ ] (company no.) whose registered office is at [ ]  
[The Commission/Nominee] (**Assignee**).

#### WHEREAS

- (A) [Assignor] runs the National Lottery under a licence dated [•] (**Section 5 Licence**) granted to it by the Gambling Commission under section 5 of the National Lottery etc. Act 1993 (**Act**).
- (B) The Assignor is the legal and beneficial owner of the copyright and/or database rights in the databases set out in Schedule 1 (**Databases**) and has the right to all information and data held in the Databases.
- (C) Pursuant to Condition 21.14 of the Section 5 Licence, the Assignor has agreed to assign the copyright and/or database rights in the Databases and the rights it has in the information or data held within the Databases (**Transferred Databases**) to the Assignee on the terms and conditions set out in this Deed.
- (D) The Assignee desires to acquire and the Assignor desires to transfer all right, title and interest of Assignor in and to the Transferred Databases.

**IT IS AGREED** as follows:

#### 1. Definitions

- 1.1 Terms defined in the Section 5 Licence and not otherwise defined in this Deed shall have the same meaning as set out in the Section 5 Licence.
- 1.2 In this Deed, unless the context otherwise requires:
- (a) references to Clauses, Schedules and paragraphs in this Deed shall be construed as references to the Clauses, Schedules and paragraphs of this Deed;
  - (b) references to persons includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
  - (c) the headings are inserted for convenience only and do not affect the construction of this Deed;
  - (d) references to one gender includes all genders;
  - (e) words importing the plural include the singular and vice versa;
  - (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re enacted;

- (g) any reference to a document in the agreed form is to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties);
- (h) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term; and
- (i) reference to the word “includes” or “including” are to be construed without limitation.

## **2. Interpretation**

- 2.1 The clause headings are for ease of reference only and shall not affect the interpretation or construction of this Deed.

## **3. Commencement**

- 3.1 This Deed shall come into force on [day] [month] [year] (**Commencement Date**).

## **4. Assignment of work**

- 4.1 The Assignor, at its own cost, assigns to the Assignee its successors and assigns, on a payment-free basis, all its right, title and interest in and to the Transferred Databases absolutely free from any third party loan, licence, restriction, covenants, charge or encumbrance including the right to sue for damages and other remedies for infringement or misuse of the Transferred Databases which may have occurred prior to the date of this Deed and to retain those damages.

## **5. Waiver of moral rights**

- 5.1 The Assignor expressly waives and shall procure the assignment of all moral rights in the Transferred Databases.

## **6. Infringement**

- 6.1 In the event of any infringement action or claim made against the Assignee before, on or after the Commencement Date in respect of the Transferred Databases, Assignor shall upon the reasonable request of Assignee and at Assignor's expense co-operate with and assist Assignee in any of the aforesaid actions by, for example, providing information and documents and executing all papers and performing such other acts as reasonably may be required.

## **7. Indemnity**

- 7.1 The Assignor shall indemnify the [Commission/Nominee] against each and any loss, liability and cost (including legal expenses) which the Transferee suffers or incurs as a result of or in connection with any claim against the Transferee that the use of the Transferred Databases in connection with the obligations of the Commission [and the Nominee] under the Section 5 Licence, the Successor Licence, the National Lottery or any Ancillary Activity infringes the Intellectual Property rights or other rights of a third party.

## **8. Further assurances**

- 8.1 Assignor shall at its own cost sign all documents and do all things which may be required by Law or which the [Commission/Nominee/Assignee] may request from time to time (including executing as soon as reasonably practicable after the date of this Deed all documents which the [Commission/Nominee/Assignee] may require to give effect to the assignment of the Transferred Databases to the [Commission/Nominee/Assignee] in any relevant jurisdiction) to implement and/or give effect to this Deed and for the purpose of granting the [Commission/Nominee/Assignee] the full benefit of and title to the assets, rights and benefits to be transferred under this Deed.

## **9. Files and records**

- 9.1 To the extent that such documents are available, Assignor will, at Assignor's cost, upon the request of Assignee, make available to Assignee for inspection and provide copies of all relevant documents (including, but not limited to, correspondence) relating to the Transferred Databases. Assignor will notify its representatives of the change of ownership in each country where the Transferred Databases is being assigned and will provide the Assignee with a list of such representatives.

## **10. Confidential Information**

- 10.1 Each of the parties shall both during and after the arrangements contemplated by this Deed have terminated:
- (a) keep confidential the terms of this Deed and all information, whether in written or any other form, which has been disclosed to it by or on behalf of the other party pursuant to its respective obligations under this Deed which by its nature ought to be regarded as confidential (including any business information in respect of the other party which is not directly applicable or relevant to the transactions contemplated by this Deed); and
  - (b) procure that its officers, employees and representatives and those of any group companies keep secret and treat as confidential all such documents and information.
- 10.2 Clause 10.1 does not apply to information:
- (a) which shall after the date of this Deed become published or otherwise generally available to the public, except in consequence of a wilful or negligent act or omission by the other party to this Deed in contravention of the obligations in Clause 10.1;
  - (b) to the extent made available to the recipient party by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the other party or which has been disclosed under an express statement that it is not confidential;
  - (c) to the extent required to be disclosed by any applicable Law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of Law, provided that the party disclosing the information shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before the disclosure shall be made and shall take all reasonable action to avoid and limit the disclosure;
  - (d) which has been independently developed by the recipient party otherwise than in the course of the exercise of that party's rights under this Deed or the implementation of this Deed;
  - (e) which, in order to perform its obligations under or pursuant to this Deed, either party is required to disclose to a third party;
  - (f) which, in order to perform its obligations under the Section 5 Licence and the Successor Licence either party is required to disclose to the Commission or to a third party approved in advance by the Commission; and
  - (g) which the recipient party can prove was already known to it before its receipt from the disclosing party.
- 10.3 The provisions of this Clause 10 shall survive any termination of this Deed.

## **11. Notices**

- 11.1 The parties shall give any notice under, or in connection with, this Deed in writing. Notice shall be served by sending it by fax to the number set out in Clause 11.3, or delivering it by hand, or sending it by prepaid recorded delivery, special delivery or registered post, to the address set out in



Clause 11.3, or by sending it by electronic mail to the address set out in Clause 11.3, and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this Clause 11). Any notice so served by hand, fax, post or electronic mail shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, special delivery or registered post, at 10.00 hours on the second Business Day following the date of posting; and
- (d) in the case of electronic mail, when the email leaves the email gateway of the sender where it leaves such gateway before 17.00 hours on any Business Day or in any other case at 08.00 hours on the next Business Day after it leaves such gateway and the onus shall be on the party giving notice to prove the time that the email left its gateway,

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

11.2 References to time in this Clause 11 are to local time in the country of the addressee.

11.3 The addresses, fax numbers and electronic mail addresses of the parties for the purpose of this Clause 11 are as follows:

**The Assignor**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

**The Assignee**

Address: [ • ]

Fax: [ • ]

For the attention of: [ • ]

Electronic mail address: [ • ]

11.4 A party may notify the other party to this Deed of a change to its name, relevant addressee, address, fax number or electronic mail address for the purposes of this Clause 11, provided that, such notice shall only be effective on:

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

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

## **12. Legal relationship**

- 12.1 Nothing in this Deed is deemed to constitute a partnership between the parties nor constitute any party the agent of the other party for any purpose.

## **13. Force majeure**

- 13.1 Neither party shall be liable for any failure or delay in performing any of its obligations under or pursuant to this Deed if the failure or delay is due to any cause outside its reasonable control, and it shall be entitled to a reasonable extension of the time for performing the obligations as a result of such cause.

## **14. Parties in interest**

- 14.1 The provisions of this Deed shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

## **15. Severability**

- 15.1 If, and to the extent that, any provision of this Deed is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in this Deed but without invalidating any of the remaining provisions of this Deed provided that the parties shall meet to negotiate in good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Deed not so affected) so as to re-establish an appropriate balance of the interests of the parties.

## **16. Governing Law and jurisdiction**

- 16.1 This Deed shall be governed by and construed in accordance with English law.
- 16.2 The parties irrevocably agree that the English courts shall have exclusive jurisdiction in relation to any legal action or proceedings arising out of or in connection with the Licence (**Proceedings**) and waive any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

## **17. Entire agreement**

- 17.1 This Deed and the Section 5 Licence set out the entire agreement and understanding between the parties in respect of the subject matter of this Deed. This Clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

## **18. Third party rights**

EITHER

Unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.<sup>1</sup>

OR<sup>2</sup>

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<sup>1</sup> For use when the Commission is the Assignee.

<sup>2</sup> For use when the Nominee is the Assignee.

- 18.1 With the exception of the Commission's rights under Clause 18.2 and unless otherwise stated, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 18.2 All rights and interests exercisable by the Assignor under this Deed shall be exercisable by the Commission.

## **19. Counterparts**

- 19.1 This agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have executed this document as a Deed as of the day and year first written above.

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

**EXECUTED AS A DEED BY** )  
acting by two Directors or a Director )  
and Company Secretary )

## **SCHEDULE 1**

### **The Databases**

## Schedule 14

### Expert determination

#### Conditions 18.25 and 23.10

- 1.1 Any dispute concerning the subject of Condition 18.25(a) or 18.25(b) or Condition 23.10 (***Dispute***) shall be referred to an independent person (***Expert***) who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties.
- 1.2 The Expert shall be appointed jointly by the parties, or, in default of agreement by the President or the Deputy President, for the time being of the Chartered Institute of Arbitrators, or any successor body.
- 1.3 The parties shall agree the procedure for the reference to the Expert. In default of agreement the Expert shall give directions as to the conduct of the reference giving both parties the opportunity to make such representations in writing and orally as they may reasonably require.
- 1.4 The parties shall bear their own costs in connection with the reference and the costs of the Expert shall be paid by the parties in equal proportions.
- 1.5 The Expert shall not be required to give reasons for its determination.

# Schedule 15

## Condition 11

### Part 1

## Minimum investment expenditure

### Minimum investment expenditure

1.1 The Licensee shall ensure that the minimum investment expenditure inclusive of VAT (to the extent that it is not recoverable) during the term of the Licence is not less than the amounts set out in Table 1.1 (a) for each line item (e.g. Roll-out is a line item).

**Table 1.1 (a) Minimum investment expenditure inclusive of VAT (to the extent that it is not recoverable)**<sup>23456</sup>

<i>Financial Year</i>	<i>Roll-out</i>	<i>PPOS</i>	<i>Technology</i>	<i>Technology</i>	<i>Portfolio Development</i>	<i>Other Capital Expenditure*</i>	<i>Other Capital Expenditure*</i>	<i>Retail infrastructure</i>	<i>Operating Expenditure</i>	<i>Operating Expenditure</i>
	<i>(£m)</i>	<i>(£m)</i>	<i>(£m)</i>	<i>(£m)</i>	<i>(£m)</i>	<i>(£m)</i>	<i>(£m)</i>		<i>(£m)</i>	<i>(£m)</i>
<i>2011/12</i>										
<i>2012/13</i>	<i>28.1</i>									
<i>2013/14</i>										
<i>2014/15</i>										
<i>2015/16</i>										
<i>2016/17</i>		<i>32.8</i>	<i>10.0</i>							
<i>2017/18</i>										
<i>2018/19</i>				<i>0.3</i>	<i>7.0</i>	<i>8.5</i>		<i>0.3</i>	<i>4.5</i>	
<i>2019/20</i>				<i>0.3</i>	<i>7.0</i>	<i>1.5</i>			<i>4.5</i>	
<i>2020/21</i>				<i>0.6</i>	<i>4.0</i>		<i>4.9</i>			<i>3.0</i>
<i>2021/22</i>				<i>0.3</i>	<i>2.0</i>					<i>3.0</i>
<i>2022/23</i>				<i>1.9</i>						
<i>2023/24</i>										
<i>Total</i>	<i>28.1</i>	<i>32.8</i>	<i>10.0</i>	<i>3.4</i>	<i>20.0</i>	<i>10.0</i>	<i>4.9</i>	<i>0.3</i>	<i>9.0</i>	<i>6.0</i>
<i>Relevant financial year</i>	<i>2012/13</i>	<i>2016/17</i>	<i>2018/19</i>	<i>2023/24</i>	<i>2021/22</i>	<i>2019/20</i>	<i>2021/22</i>	<i>2018/19</i>	<i>2019/20</i>	<i>2021/22</i>

<sup>1</sup> Schedule 15 incorporated into the Licence by consent on 5 March 2012

<sup>2</sup> Licence varied by consent on 3 January 2019

<sup>3</sup> Licence varied by consent on 6 September 2019

<sup>4</sup> Licence varied by consent on 21 January 2020

<sup>5</sup> Licence varied by consent on 26 March 2021

<sup>6</sup> Licence varied by consent with effect from 31 March 2021

\*Any Other Capital Expenditure which may, for the avoidance of doubt, include any additional investment expenditure which complies with Schedule 15 paragraph 1.2 and paragraph 1.4(a)(v)<sup>7</sup> on other line items above the minimum amount specified in Table 1.1 (a) in that same Financial Year.

1.2 For the purpose of this Schedule, investment expenditure (for all line items in Table 1.1(a), except for “Operating Expenditure”) is defined as:

- For assets acquired under leases: The value of the total contractual commitment, excluding interest, entered into by Camelot for acquiring or obtaining access to the asset.
- For assets not acquired under leases: The directly attributable costs incurred in acquiring the asset, as recognised in Camelot’s audited financial statements.
- The costs of any internally generated capital asset and any directly attributable costs incurred in bringing the asset into operation.

1.3<sup>8</sup> (a) If the cumulative investment expenditure incurred by the Licensee in respect of the line items Roll-out, Technology, Portfolio Development and Retail Infrastructure is less than the minimum investment expenditure by the end of the relevant financial year shown (calculated in accordance with paragraph 1.1 above), the Licensee shall pay to the Secretary of State an amount equal to the difference on the Final Payment Day in respect of that Financial Year<sup>9</sup>.

(b) In the event that the minimum investment expenditures for the line items Other Capital Expenditure and Operating Expenditure incurred by the Licensee in a Financial Year, are less than the required amount for that Financial Year (as set out in Table 1.1(a) above), the Licensee shall only pay the balance to the Secretary of State if the Total line item amount (as set out in Table 1.1(a) above), is not incurred by the end of the Relevant financial year. Such payment shall be paid on or before the Final Payment Day for that Financial Year. A worked example is provided below:

- i) Other Capital Expenditure is required to be £8.5m in the Financial Year 2018/19 and £1.5m in the Financial Year 2019/20. However, £8.3m is spent in practice in Financial Year 2018/19 and £1.5m is spent in Financial Year 2019/20.
- ii) The Total investment expenditure for Other Capital Expenditure is £10.0m to be spent by the end of the Relevant financial year, which is 2019/20.
- iii) If the outstanding £0.2m is not spent by the end of 2019/20, this would need to be paid to the Secretary of State on or before the Final Payment Date Day for that Financial Year.

1.4<sup>10</sup> For the avoidance of doubt, investment expenditure referred to in this Schedule:

(a) shall only be allowable if it relates to:

- (i) Roll-out: expenditure that is necessary to make available 8,000 additional Retail Outlets (including for the avoidance of doubt PPOS) pursuant to the Licensee Investment approved by the Commission in February 2012
- (ii) PPOS: costs associated with the provision and installation of Permanent Point of Sale equipment (including media screens and other devices) to any Retail Outlet between 2015/16 and 2016/17
- (iii) Technology: IT infrastructure costs incurred as a result of the provision of servers and additional capacity and terminal decommissioning
- (iv) Portfolio Development: all expenditure, other than that referred to in Schedule 10 and 1.4 (a)(iii) above, incurred on channel and/or game development activities (including but not

<sup>7</sup> Licence varied by consent on 3 January 2019

<sup>8</sup> Licence varied by consent on 6 September 2019

<sup>9</sup> Waiver of clause 1.3 (now 1.3(a)) was given on 27 February 2017 allowing an extension of the deadline to have executed minimum investment in PPOS equipment (defined in clause 1.1) to 30 June 2017.

<sup>10</sup> Licence varied by consent on 6 September 2019

limited to planned changes to the Technology Solution) necessary for the running of the National Lottery between 2018/19 and 2022/23

- (v) Other Capital Expenditure<sup>11</sup>: all items of investment expenditure (to support strategic initiatives and the ongoing operation of the National Lottery which will benefit the National Lottery during the Third Licence Period, including initiatives to generate a return to good causes and initiatives to enhance the integrity of the National Lottery) that are referred to in Clause 1.2 above, other than those referred to in Schedule 10, Licensee spend required under the Retail Infrastructure Investment<sup>12</sup> or those required under any other Licence Condition. In the event that the Licensee exceeds the minimum levels of expenditure detailed above in Table 1.1(a) for the line items for either Technology and/or Portfolio Development during the Financial Years 2018/19, 2019/20, 2020/21 and 2021/22 then the Other Capital Expenditure figure for that financial year shall be deemed to include the excess expenditure on these line items to the extent it meets the Other Capital Expenditure requirements under this paragraph. For avoidance of doubt Other Capital Expenditure will not include any expenditure required under Condition 5.9 Maintenance of Licensee Assets. Expenditure classified as Other Capital Expenditure will be audited to ensure compliance with the requirements of Schedule 15.<sup>13</sup>
  - (vi) Retail infrastructure: In addition to the £0.3m spend required in table 1.1(a) a £14.1m joint investment to support the expansion of retail infrastructure National Lottery into Discounters and into self-checkout was approved in February 2019. The joint investment is implemented under the Retailer infrastructure Investment Procedure designated as Key under Condition 5.12A. The Key Procedure defines eligible Retail Infrastructure spend and requires the Licensee to contribute 7.1% of the eligible spend up to a maximum of £1m .
  - (vii) Operating Expenditure: investment in retailer advocacy, primarily centred on salary related costs for Licensee staff (e.g. retail sales executives), along with other items including but not limited to recruitment costs for these staff, software licences and point of sale to the extent that any such costs can be demonstrated to the Commission that they are incremental and directly relate to retailer advocacy (and not otherwise included within Schedule 10 Part 3).
- (b) shall only be allowable if it is capable of being capitalised in accordance with International Financial Reporting Standards

## Schedule 15

### Condition 11

#### Part 2

##### Information

- 1.1 The Licensee shall<sup>14</sup>:
- (a) in respect of each Financial Year commencing on or after 1 April 2012 deliver to the Commission a statement containing details of the investment expenditure (as set out in Schedule 15 Part 1) incurred by it during the Financial Year.
  - (b) in respect of each Financial Year commencing on or after 1 April 2018 deliver to the Commission an audit certificate providing assurance the Other Capital Expenditure amount included in the paragraph

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<sup>11</sup> Licence varied by consent on 3 January 2019

<sup>12</sup> A Final Notice of Investment Opportunity under Condition 23 was approved on 13 March 2019

<sup>13</sup> Licence varied by consent on 26 March 2021

<sup>14</sup> Licence varied by consent on 3 January 2019



1.1 (a) statement complies with Schedule 15 requirements. Specifically, compliance with Part 1 paragraphs 1.1, 1.2, 1.3(b), 1.4(a) (v) and 1.4(b). This is only required if minimum investment expenditure includes investment expenditure classified as Other Capital Expenditure.

1.2 Any statement referred to in paragraph 1.1(a)<sup>15</sup> shall:

- (a) be in writing; and
- (b) contain a certificate signed by the chief executive of the Licensee and one other director (if at the time of such signature there shall be no such appointee as chief executive then such certificate shall be signed by two directors) that, having taken all reasonable steps to verify the statement, the statement gives a true and fair view of the investment expenditure that has been incurred by the Licensee.<sup>16</sup>

1.3 The statements referred to in paragraph 1.1 shall be furnished to the Commission by 1 July after the end of the Financial Year to which they relate.

2.1 The Licensee shall, following delivery of the statements referred to in paragraph 1.1, provide to the Commission such further information relating to the matters described in the statements as the Commission may require.

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<sup>15</sup> Licence varied by consent on 3 January 2019

<sup>16</sup> Waiver of the requirement for the certificate relating to the annual statements required under the Licence to be signed by Camelot's CE and one other director given on 29 June 2012. The certificate can instead be signed by Camelot's CE and the senior executive (in post at the time of waiver consent) responsible for Finance on an on-going basis subject to the Licensee's Board approval.