ROSS Framework – Grantee Benchmarking Survey

**Organisation Heritage Lottery Fund**

**REF HLF240**

**Department** Business Improvement Unit

**Title of procurement** Grantee benchmarking survey

**Brief description of supply** To undertake the delivery of a grantee baseline survey to enable HLF to understand the perception of the ROSS framework amongst the recipients of HLF funding

**Estimated value of tender** Up to £15,000 including VAT and expenses

**Estimated duration** To be completed by 14th December 2018

**Name of HLF Contacts** Leo Seymour, ROSS Framework Manager (E-mail: [Leo.Seymour@hlf.org.uk](mailto:Leo.Seymour@hlf.org.uk))

Hollie Cook, Business Support Officer (E-mail: [hcook@hlf.org.uk](mailto:hcook@hlf.org.uk))

**Timetable** **Response deadline:** Friday September 7th 2018

**Clarification & negotiation meetings:** Wednesday 19th September

**Confirmation of contract:** Friday September 21st

**Completion of research:** Friday 14th December 2018

Full timetable can be found on page 11.

# 1. Overview

* 1. The Heritage Lottery Fund (HLF) was set up in 1994 under the National Lottery Act and distributes money raised by the National Lottery to support projects involving the national, regional and local heritage of the United Kingdom. We operate under the auspices of the National Heritage Memorial Fund (NHMF). Since April 2013 we have been operating under our current Strategic Framework: ‘A lasting difference for heritage and people’. See the [HLF website](http://www.hlf.org.uk/aboutus/whatwedo/Pages/StrategicFramework2013to2018.aspx) for more details.
  2. HLF invests in the full breadth of the UK’s heritage and, through our funding, we aim to make a lasting difference for heritage and people. This is reflected in the outcomes for heritage, people and communities which underpin our grant-making.
  3. **Overview of requirements:** HLF procures a framework of specialists, entitled “Consultants” who provide mentoring, monitoring and expert advice to HLF funded projects across the UK. Consultants are commissioned across all of the key stages of our grant development assessment and monitoring phases. The framework is known as the Register of Support Services (“ROSS”) and is split into 5 different Lots with Consultants covering different areas of heritage expertise. HLF spend approximately £2.2million each year on the framework.

We are inviting proposals from suitable suppliers to undertake the delivery of a baseline survey to enable HLF to understand the perception of the ROSS Framework amongst the recipients of HLF funding (“Grantees”) who receive support from the framework.

The objectives and purpose of the survey is to:

* Obtain measurable data against which HLF can benchmark subsequent surveys. The survey will give us a benchmark and subsequent survey(s) will demonstrate whether the grantees’ experience and perception of the service provided by our ROSS Consultants has improved or deteriorated in a number of different areas.
* Provide a unique insight into areas of improvement that we need to act on in order to get the most out of the ROSS Framework for the recipients of HLF funding.
  1. **Themes we want to explore with respondents:** The survey should cover a number of metrics around grantees’ perceptions of the value ROSS Consultants add to HLF funded projects. This will allow HLF to monitor the performance of the ROSS Framework and the data can support any proposed changes to the way that we deploy ROSS Consultants in the future.

As a minimum, the survey should cover the following themes with the grantees:

* How important do grantees rate the contribution of the ROSS consultant to the development/delivery of their project?
* When and how does a ROSS intervention add the most value from a Grantee perspective?
* In what area(s) of a ROSS commission is there most room for improvement from a Grantee perspective?
* What types of projects/Grantees does a ROSS Consultant add least value to?
* What works and what doesn’t work with a ROSS Consultant?

HLF have not undertaken this survey previously.

* 1. **Survey populations:** The target population consists of approximately 700 active HLF funded projects across all regions of the UK who receive support from our ROSS framework. On average projects receive 4 – 4.5 days’ worth of ROSS Consultant support each year.

The Grantee Benchmarking Survey should be set up to ensure HLF get a fair representation from the target population. The survey should therefore include respondents from:

* A range of grant sizes.
* A range of low, medium and high risk projects.
* Where the grantee is in the grant lifecycle.
* The type of grantee (for example Local Authority, voluntary sector, quasi-public body)
* The heritage area being funded
* The different framework lots
* A good geographical spread

We will provide the full survey population and contact details to the winning bidder along with the above information for each project.

Bidders should price for the survey and follow up contact sufficient to generate a response rate of at least 50%.

We also expect the preferred supplier to input into how best we categorise the respondents (whilst including the above criteria as a minimum) to ensure we get the most valuable data out of the survey.

# Survey Methodology

* 1. **Survey approach:** We welcome proposals from bidders for preferably an online survey. HLF’s identity as survey sponsor will be revealed.

The preferred bidder is required to distribute the survey questionnaire, and manage and collate responses to the survey from the respondents/Grantees.

We would expect to develop a suitable survey questionnaire with the preferred supplier that ensures we get the most valuable data. We have included some sample questions and ideas as to what should be included in section 1.4

HLF will supply contact details and other relevant information per Grantee contact including a brief description of the application/project where relevant.

Details of the frequency and form of contact between the contractor and Grantees is for the contractor to propose. However we would anticipate that one suitable approach might be as follows:

* Grantees to be e-mailed a questionnaire and given two weeks from the date of despatch to complete and return.
* After 2 weeks, a reminder email should be sent to non-respondents giving them a further 2 weeks to either complete and return the questionnaire or make contact with an explanation for late/no participation.
* A second reminder by telephone should be made after a further 2 weeks.
* Following this, in the event that there is still no response, this should be noted and returned to HLF.

We welcome different approaches to the above as part of your tender responses.

If the contact named on the contact sheet has been replaced by another – provided this person is sufficiently familiar with the ROSS support – they should complete the survey instead.

HLF is keen to have details of any ‘new’ contacts the contractor obtains – because these will be needed for other research projects.

# Outputs and compilation of results

* 1. We will require the Contractor to provide the following:
* A draft final report in word outlining the results and analysis of the survey, including recommendations for HLF.
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* Any other reports as set out here or agreed between HLF and the contractor;
* A set of research data, to be stored in a readily accessible electronic format such as Excel.
  1. The contractor should break the results from the survey down according to the following sub-sets as a minimum:
* Grant size
* Level of risk of project (high, medium or low)
* Where the grantee is in the grant lifecycle.
* The type of grantee (for example Local authority, voluntary sector, quasi-public body).
* The heritage area being funded.
* Framework Lot
* Geographic area
  1. Deliverables: A project plan with specific deliverables and timetable will be agreed with the successful supplier. However, HLF expects the following deliverables in accordance with the following timetable as a minimum:

|  |  |
| --- | --- |
| **Deliverable/Key Milestones\*** | **Due date** |
| Inception Meeting to agree plans, including reporting structures, learning events and a communication and dissemination strategy | Tuesday September 25th |
| Make arrangements to contact all relevant grantees. | Within 10 working days of inception meeting |
| Fortnightly updates on response rates and any recommendations to ensure outcomes are achieved. | Every 2 weeks after grantees are initially contacted |
| A draft final report in Word outlining the results and analysis of the survey, including recommendations for HLF. | November 2018 |
| A final report in Word outlining the results and analysis of the survey, including recommendations for HLF.  Any other reports as agreed between HLF and the contractor  A set of research data, to be stored in a readily accessible electronic format such as Excel | 14th December 2018 |

# \* HLF reserves the right to amend this timetable where required.

* 1. All reports must adhere to HLF’s accessibility and formatting guidance (see **Appendix A**).
  2. The initial findings will be confidential to HLF. HLF may prepare or commission summary reports and other materials for subsequent wider distribution, based on the results.
  3. All reports to include appendices as agreed between HLF and the contractor. The contents and structure of the report to be agreed in advance of writing. All reports to be supplied in electronic format and hard copy if requested.
  4. All bidders are required to adhere to all appropriate regulations and guidelines on the collection, storage, transmission and destruction of personal data ([MRS/SRA, Data Protection Act 1998: Guidelines for Social Research, April 2013](https://www.mrs.org.uk/pdf/2013-04-23%20MRS%20SRA%20-%20DP%20Guidelines%20updated.pdf)).
  5. We expect all projects we fund to adhere to the Social Research Association (SRA) ethical guidelines. If your proposal raises particular ethical issues, you must indicate what they are and what your strategy for addressing them is.

# Contract management

* 1. We expect the survey to begin in late September/early October and be completed by November. The final report shall be submitted to HLF by Friday December 14th.
  2. The anticipated budget is up to £15,000 to include all expenses and VAT. The contract will be let by the National Heritage Memorial Fund.
  3. The payment schedule will be three payments and will be made in three instalments. The first payment will be made upon signing of the contract and inception meeting. The second one upon receipt of the draft final report in November 2018, and the final payment upon HLF’s receipt of an approved final copy of the report in December 2018.
  4. The contract will be based on the HLF standard terms and conditions which are appended at the end of this document (**Appendix B**). We have also included a non-disclosure agreement (**Appendix C**) for your signature.
  5. The research will be managed on a day to day basis for HLF by Leo Seymour, ROSS Framework Manager and Hollie Cook, Business Support Officer.

# Award Criteria

* 1. **Tender response:** Your written response for undertaking the work should include:
* An executive summary
* Contact details including name, address, telephone and email details
* Quality of the Project Team: - details of the project team and who will be directly involved, with brief CVs of those managing the projects.
* A statement of your understanding of HLF’s requirements
* Technical Proposal: methodology for delivering the survey with a timetable, including intermediate milestones such as response targets. The methodology should also include a statement about the number of technicians and other IT resources that will be allocated to the survey and how the associated outputs will be delivered to a suitable standard. In addition, the proposal should consider the best means to avoid possible risks of non-completion and how to maximise response rates for the survey.
* Track record: Details of your track record of undertaking similar surveys in the public sector.
* Proposals for dealing with people with disabilities should that arise and associated costs.
* Proposals for dealing with people wanting to respond to the surveys in Welsh and associated costs.
* Pricing Schedule: - A lump sum cost will need to be calculated to show how you would meet our brief to achieve the minimum 50% response rates. In addition please provide a breakdown of the overall pricing regime (including daily rates). The pricing of the bid should reflect actual costs as the contract will not be subject to indexation. Please see Table A Schedule of Charges.
* A statement confirming whether you pay your staff the living wage.

The response should be no more than 12 A4 pages (6 pages front and back including brief CVs). Please use Arial font size 12.

* 1. **Weightings:** Your Bid will be scored out of 100.

**65% of the marks will be awarded to Quality and 35% to Price**

**Qualitative scoring sub-sections**

Each of the scored sections carry a weighting to be applied in the scoring matrix. These have been allocated by the selection team and are shown below.

| **Headings** | **% Weighting** |
| --- | --- |
| Quality of the project team | 15 |
| Understanding of HLF’s requirements | 5 |
| Quality of technical proposal | 30 |
| Track record of undertaking similar public sector surveys | 10 |
| Proposal for dealing with people with respondents who wish to respond in Welsh and proposal for dealing with people with disabilities | 5 |
| Pricing schedule | 35 |
| Total score | 100 |

* 1. **Quality questions scoring methodology:** The qualitative information submitted by Tenderers will be evaluated and scored in accordance with the principles set out below:

| Score | Word descriptor | Description |
| --- | --- | --- |
| 0 | Poor | No response or partial response and poor evidence provided in support of it. Does not give the HLF confidence in the ability of the Bidder to deliver the Contract. |
| 1 | Weak | Response is supported by a weak standard of evidence in several areas giving rise to concern about the ability of the Bidder to deliver the Contract. |
| 2 | Satisfactory | Response is supported by a satisfactory standard of evidence in most areas but a few areas lacking detail/evidence giving rise to some concerns about the ability of the Bidder to deliver the Contract. |
| 3 | Good | Response is comprehensive and supported by good standard of evidence. Gives the HLF confidence in the ability of the Bidder to deliver the contract. Meets the HLF’s requirements. |
| 4 | Very good | Response is comprehensive and supported by a high standard of evidence. Gives the HLF a high level of confidence in the ability of the Bidder to deliver the contract. May exceed the HLF’s requirements in some respects. |
| 5 | Excellent | Response is very comprehensive and supported by a very high standard of evidence. Gives HLF a very high level of confidence the ability of the Bidder to deliver the contract. May exceed the HLF’s requirements in most respects. |

The evaluation of price will be carried out on the Schedule of Charges you provide in response to **Table A.**

## Price Criterion at 35%

* 35 marks will be awarded to the lowest priced bid and the remaining bidders will be allocated scores based on their deviation from this figure. Your fixed and total costs figure in your schedule of charges table will be used to score this question.
* For example, if the lowest price is £100 and the second lowest price is £108 then the lowest priced bidder gets 35% (full marks) for price and the second placed bidder gets 32.2% and so on. (8/100 x 35 = 2.8 marks; 35-2.8 = 32.2% marks)
* The scores for quality and price will be added together to obtain the overall score for each Bidder.

## Table A - Schedule of Charges

Please show in your tender submission, the number of staff and the amount of time that will be scheduled to work on the contract with the daily charging rate.

Please complete the table below providing a detailed breakdown of costs against each capitalised description, detailing a total and full ‘Firm Fixed Cost’ for each element of the service provision for the total contract period. Bidders may extend the tables to detail additional elements/costs (for example additional Posts, travel and subsistence) if required.

Please include the day rates per Post and the number of days required against each Cost.

VAT is chargeable on the services to be provided and this will be taken into account in the overall cost of this contract.

As part of our wider approach to corporate social responsibility the National Heritage Memorial Fund/Heritage Lottery Fund prefers our business partners to have similar values to our own. We pay all of our staff the living wage (in London and the rest of the UK) and we would like our suppliers and contractors to do likewise. Please highlight in you proposal/tender/bid whether you do pay your staff the living wage.

Bidders shall complete the schedule below, estimating the number of days, travel and subsistence costs associated with their tender submission.

**TABLE A: (firm and fixed costs)**

| **Cost** | **Post 1 @cost per day**  **(No of days)**  *e.g. Project Manager/ Director*  *@ £2* | **Post 2 @cost per day**  **(No of days)**  *e.g. Senior Consultant/manager/researcher*  *@£1.5* | **Post 3 @cost per day**  **(No of days)**  *Junior*  *Consultant/equivalent*  *e.g. £1* | **Total days** | **Total fees** |
| --- | --- | --- | --- | --- | --- |
| Inception meeting to agree plans and finalise requirements with the Fund | *Example 0.5 days* | *1* | *1.5* | *3* | *£4* |
| *[Add as necessary]* |  |  |  |  |  |
| *[Add as necessary]* |  |  |  |  |  |
| *[Add as necessary]* |  |  |  |  |  |

| Cost Type | Value (£) |
| --- | --- |
| Sub - Total |  |
| VAT |  |
| Total\* |  |

\* (This must include all expenses as well as work costs; this figure will be used for the purposes of allocating your score for the price criterion and must cover the cost of meeting all our requirements set out in the ITT)

***Notes:* HLF reserves the right to clarify quality and prices and to reject tenders that demonstrate an abnormally low quality response. HLF also reserves the right to amend the timetable of work where required.**

*You should not submit additional assumptions with your pricing submission. If you submit assumptions you will be asked to withdraw them. Failure to withdraw them will lead to your exclusion from further participation in this competition.*

# Procurement Process

* 1. HLF reserves the right to reject abnormally low scoring tenders. HLF reserves the right not to appoint and to achieve the outcomes of the research/evaluation through other methods.
  2. **Procurement timetable:** The procurement timetable is intended to be as follows, although, HLF may, at its own discretion, amend this timetable to suit its own operational requirements:

|  |  |
| --- | --- |
| **Event** | **Date** |
| ITT issued | Friday 10th August |
| Deadline for receipt of clarification questions\* | Wednesday August 22nd |
| Tender return deadline | Friday September 7th |
| Interviews/clarification meetings (may be held with shortlisted consultants) | Wednesday September 19th |
| HLF will notify bidders of our procurement decision on or after | Friday September 21st |
| Contract starts | Monday September 24th |

* \*HLF will upload responses to clarification questions on our website, [here](https://www.hlf.org.uk/about-us/corporate-information/transparency/tenders).  Please note that we will make the anonymised questions, and our responses to them, available to everyone on the HLF website.
* Please email any clarification question to the contacts in 6.3. Questions by any other means will not be responses to.
* \*\*We reserve the right to carry out clarifications if necessary; these may be carried out via email or by inviting bidders to attend a clarification meeting.  In order to ensure that both HLF’s and Bidder’s resources are used appropriately, we will only invite up to three (the ultimate number will depend on the closeness of the scores) highest scoring bidders to attend a clarification meeting.  Scores will be moderated based on any clarifications provided during this meeting.  You are responsible for all your expenses when attending such meetings.
  1. **Tender returns:** Your tender proposals must be sent electronically via e-mail before the tender return deadline of Friday September 7th to the following contacts:

Leo Seymour (ROSS Framework Manager) and Hollie Cook (Business Support Officer), HLF

E-mail: [leo.seymour@hlf.org.uk](mailto:leo.seymour@hlf.org.uk) and hcook@hlf.org.uk

The procurement is being managed by: -

Leo Seymour, ROSS Framework Manager

Heritage Lottery Fund

7 Holbein Place

London

SW1W 8NR

Please visit the [HLF website](http://www.hlf.org.uk/Pages/Home.aspx) for further information about the organisation.

**Appendix A: Accessibility and formatting guidance**

HLF is committed to providing a website that is accessible to the widest possible audience. Our site is annually tested by accessibility auditors and we must meet a AA compliance level. Our accessibility testing encompasses not just site functionality and design but all of our content, including downloadable documents.

Reports and other documents created for HLF (**including the tender submissions**) need to be clear, straightforward to use and ready to circulate internally, externally and online, as well as suitable for use by screen reading software. Best practice in accessibility is summarised below:

**Readability**

In the final report, and all other documents that may be published online including the tender application consultants should ensure that:

* The size of the font is at least 11pt;
* There is a strong contrast between the background colour and the colour of the text. Black text on a white background provides the best contrast. This also applies to any shading used in tables and/or diagrams;
* Italics are only used when quoting book titles for citations and items on the reference list should be arranged alphabetically by author
* Colour formatting and use of photos should be of a resolution size that is easily printable and does not compromise the printability of the document.

For further guidance on ensuring readability of printed materials, please refer to the RNIB Clear Print guidelines. These can be found on the [RNIB website](http://www.rnib.org.uk/Pages/Home.aspx).

**Accessibility**

Reports should adhere to the following guidelines:

**Formatting**

Headings and content in your document should be clearly identified and consistently formatted to allow easy navigation for users. Heading Styles should be used to convey both the structure of the document and the relationship between sections and sub-sections of the content. Heading styles should follow on from each other i.e. Heading 1 then Heading 2.

**Spacing**

Screen readers audibly represent spaces, tabs and paragraph breaks within copy, so it is best practice to avoid the repetitive use of manually inserted spaces. Instead, indenting and formatting should be used to create whitespace (e.g., use a page break to start a new page, as opposed to multiple paragraph breaks).

**Alternative text**

Alt text is additional information for images and tables. This extra information is essential for both document accessibility (screen reading software reads the Alt text aloud) and for the web. Alt text should be concise and descriptive, and should not begin with ‘Image of’ or ‘Picture of’.

**Images**

These should be formatted in-line with text, to support screen readers. Crediting pictures may be necessary, usually in response to a direct request from a third party.

**Tables**

These should be for used for presenting data and not for layout or design. They should be simple and include a descriptive title. The header row should be identified and there shouldn’t be more than one title row in a table. There should be no merged or blank cells.

**Additional documents**

Any additional information, separate to the report, for example proformas and transcripts which may be used as standalone documents must be fully referenced to the piece of work being submitting and therefore dated, formatted and numbered appropriately.

**Acknowledgement**

All reports should acknowledge HLF. Our logo can be found on the [HLF website](http://www.hlf.org.uk/grantholders/acknowledgement/Pages/Logosandacknowledgement.aspx).

**Further resources**

Please refer to the WCAG 2.0 article on [PDF techniques](https://www.w3.org/TR/2014/NOTE-WCAG20-TECHS-20140408/pdf.html) for further information.

**Submitting your report to HLF**

Please check the accessibility of your document using the Word accessibility checker before submitting: File – Info – Check for Issues – Check Accessibility.

Please submit your document as a Word file.

HLF retains the right to amend documents in order to create accessible versions for publishing.

**Appendix B: HLF STANDARD TERMS AND CONDITIONS**

**A. GENERAL PROVISIONS**

**A1. Definitions and interpretations**

The definitions and interpretations for this Contract are set out in Schedule E.

**A2. Term of this Contract**

This Contract starts on the Start Date and ends on the Completion Date, unless the Contract is extended by the Fund under the Change Control Procedures, subject always to the termination, break and variation provisions in this Contract.

**A3. Provision of Services**

A3.1 The Service Provider must make all reasonable enquiries of the Fund to ascertain its requirements and provide the Services:

A3.1.1 with reasonable skill, care and diligence that would be reasonably expected from a prudent and experienced provider of services which are similar to the Services;

A3.1.2 in accordance with the description and timetable of services as well as key performance indicators stated in Schedule A to this Contract;

A.3.1.3 in accordance with terms, conditions and provisions of this Contract and its Schedules, as well as all applicable laws, regulations, Standards and policies;

A3.1.3 - in compliance with all reasonable directions and instructions provided by the Fund; and

A3.1.4 -to the Fund’s satisfaction.

A3.2 The Service Provider must provide each Deliverable by the due date specified for that Deliverable in this Contract. If either party considers a Deliverable due date may not be met, the Service Provider must provide the Fund with a report identifying the nature of the delay, its cause and its anticipated duration. The report must also set out the procedures and resources the Service Provider proposes to apply to overcome and rectify the delay and to ensure the impact of the delay is minimised and future performance of the Contract is not adversely affected. The Service Provider acknowledges that a failure to meet any due date may result in the Fund suffering loss or damage.

A3.3 The Service Provider warrants that:

A3.3.1 it has full corporate power and lawful authority to execute this Contract and to perform its obligations under this Contract; and

A3.3.2 it will be available to perform the Services throughout the term specified in Clause A2 and will not owe obligations to a third party during the term that are likely to adversely affect its capacity to perform the Services.

**A4. Relationship**

The Service Provider, in carrying out the Services, is an independent service provider and not the Fund’s servant or agent. The Service Provider can not make any promise, warranty or representation, or execute any contract or deal on the Fund’s behalf.

**A5. Severability**

The parties agree that the provisions of this Contract are reasonable in all the circumstances. If any clause of this Contract, or part of a clause, is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Contract or that clause shall not be affected.

**A6. Waiver**

A failure by either party to enforce any part of this contract will not affect the rights of that party to require performance by the other party subsequently. Any waiver of a breach of this contract must be in writing signed by the party granting the waiver and will only be effective to the extent specifically set out in that waiver. The waiver of any breach will not be taken as a waiver of any subsequent breach.

**A7. Intellectual Property Rights**

A7.1 All Intellectual Property Rights arising out of the performance of the Contract by the Service Provider (or its employees, agents or sub-contractors), including any Materials and any future Intellectual Property Rights, are assigned to the Fund on creation and will be owned by the Fund.

A7.2 The Service Provider must procure the necessary rights from its employees, agents and sub-contractors to ensure their Intellectual Property Rights are assigned to the Fund under Clause A7.1.

A7.3 The Service Provider grants the Fund a non-exclusive, worldwide, royalty free, perpetual, irrevocable licence (including the right to grant sub-licences) to use and disclose the Service Provider’s Background IP to the extent necessary for the Fund to use and exploit the Materials.

A7.4 Subject to Clause B5, the Fund grants the Service Provider a non-transferable, worldwide, revocable, royalty free, non-exclusive licence to use and reproduce all Materials, and the Fund’s Background IP, solely for the purpose of complying with this Contract.

A7.5 The Service Provider must obtain consent from the Fund before it publishes the results of any work undertaken in connection with this Contract, which the Fund may withhold in its absolute discretion or grant subject to conditions.

A7.6 Each party will do all things reasonably necessary (including signing documents within a reasonable time) to comply with the provisions of this Clause A7, at the request and expense of the other party.

A7.7 Nothing in this Contract prevents the Service Provider from contesting the validity of any patent(s) filed pursuant to this Contract in any legal proceedings and the Fund acknowledges that any patent application will not include any of the items or rights which fall within Clause A7.9.

A7.8 The Service Provider will pay all royalties and fees on copyright, processes and registered designs of any equipment, systems and publications used, installed or incorporated by the Service Provider as part of a Deliverable under this Contract and shall defend, at its expense, any third party claim that any Deliverable provided as part of the Services infringes UK Intellectual Property Rights provided the Fund:

A7.8.1 allows the Service Provider conduct of the defence of such claim, including any settlement;

A7.8.2 makes no prejudicial admission or statement;

A7.8.3 notifies the Service Provider promptly of any claim; and

A7.8.4 actively co-operates and assists the Service Provider, at its expense, in the defence of the claim.

In the event that any damages are finally awarded against the Fund in respect of such a claim or agreed by the Service Provider in final settlement, these will be paid by the Service Provider. This indemnity will not apply if the infringement is the result of:

A7.8.5 the Fund (or any other party) modifying or misusing the relevant Deliverable;

A7.8.6 the failure of the Fund to use enhancements or modifications offered by the Service Provider to avoid infringement; or

A7.8.7 - the use of information, documents, facilities or items supplied by the Fund for the purposes of the Services.

The indemnity in this Clause A7.8 constitutes the Fund’s sole and exclusive remedy and the Service Provider’s entire liability with respect to any part of the Services infringing any third party Intellectual Property Rights of any kind.

A7.9 The Fund acknowledges that in the course of the delivery of the Services the Service Provider may:

A7.9.1 use products, materials or methodologies proprietary to the Service Provider or a third party; or

A7.9.2 produce proprietary material or methodologies that are not part of the Deliverables.The Fund agrees that it will not have, and will not obtain, rights to such proprietary products, methods and methodologies except pursuant to a separate written agreement on terms to be agreed.

**A8. Sub-contracting**

A8.1 The Fund acknowledges and agrees that the Service Provider may sub-contract part of this Contract to those parties set out in Item 19 of Schedule A, to the extent set out in that Item 19.

A8.2 Except as set out in Clause A8.1, the Service Provider will not assign or sub-contract any part of this Contract without the prior written consent of the Fund, which it may withhold (in its absolute discretion) or grant subject to conditions. In considering the Service Provider’s request, the Fund may request details of any proposed sub-contractor and the personnel the sub-contractor proposes to use to perform the Services.

A8.3 If the Fund consents to the Service Provider sub-contracting any part of this Contract under Clause A8.1 or Clause 8.2:

A8.3.1 it does not relieve the Service Provider of any obligation or duty attributable to the Service Provider under this Contract; and

A8.3.2 the Service Provider must ensure that a term is included in the sub‑contract which requires the Service Provider to pay all sums due to the sub‑contractor within a specified period not exceeding 30 days from the date of receipt of a valid invoice (as defined by the terms of that sub‑contract).

**A9. Assignment**

A9.1 Subject to Clause A9.2, the Fund may:

A9.1.1 assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to any contracting authority (as defined in Regulation 2(1) of the *Public Contracts Regulations 2015*) (a “Contracting Authority”) provided that any such assignment, novation or other disposal shall not increase the burden of the Service Provider’s obligations pursuant to this Contract; or

A9.1.2 novate this Contract to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by any Contracting Authority.

A9.2 If the Contract is novated to a body which is not a Contracting Authority pursuant to Clause A9.1.2 (“Transferee”):

A9.2.1 the rights of termination of the Fund in Clause F1 shall be available to the Service in the event of the bankruptcy, insolvency or default of the Transferee; and

A9.2.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the previous consent in writing of the Service Provider.

**A10. Conflicts of interest**

The Service Provider must use its best endeavours to ensure that the Service Provider, its employees or sub-contractors are not placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of such persons and the duties owed to the Fund under the provisions of this Contract. Immediately on becoming aware or suspecting such a conflict, the Service Provider will disclose the particulars of the conflict to the Fund and co-operate with any reasonable measures implemented by the Fund to manage the conflict.

**A11. Land or premises**

Any land or premises made available to the Service Provider by the Fund in connection with the Services under the Contract will be made available to the Service Provider free of charge and shall be used by the Service Provider solely for the purpose of performing the Contract. The Service Provider will have the use of such land or premises as licensee and will vacate the land or premises on completion, termination or abandonment of the Services. The Service Provider and the Service Provider’s employees, servants, agents, suppliers or sub-contractors must observe and comply with rules and regulations as may be in force at any time for the use of such premises determined by the Fund, and pay for the cost of making good any damage caused by the Service Provider, its employees, servants, agents, suppliers or sub-contractors other than fair wear and tear. For the avoidance of doubt damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

**A12. Property**

A12.1 Property issued or otherwise furnished in connection with this Contract will remain the property of the Fund and will be used by the Service Provider solely for the purpose of performing this Contract and for no other purposes whatsoever unless prior approval in writing of the Fund has been obtained.

A12.2 All such property is deemed to be in good condition when received by or on behalf of the Service Provider unless it notifies the Fund to the contrary within fourteen days of receiving the property.

A12.3 The Service Provider undertakes the safe custody of and the due return of all property and, subject always to the provisions of Clause E1.4, is responsible for all loss from whatever cause, and will indemnify the Fund against such loss. All property must be immediately returned to the Fund on or before the expiry or termination of this Contract.

A12.4 The Service Provider is responsible for any deterioration in such property, except for any deterioration resulting from its normal and proper use in the execution of the Contract (but not insofar as the deterioration is contributed to by any want of due maintenance or repair), and will indemnify the Fund against such loss.

A12.5 Neither the Service Provider nor any supplier or sub-contractor, nor any other person, shall have a lien on any such property for any sum due to the Service Provider, supplier, sub-contractor or other person, and the Service Provider shall take all reasonable steps to ensure that the title of the Fund and the exclusion of any such lien are brought to the notice of all suppliers and sub-contractors and any other persons dealing with any such property.

A12.6 The indemnity contained in Clause A12.3 and Clause A12.4 survives the expiry or termination of this Contract.

A12.7 Apart from any property (including equipment) provided by the Fund, the Service Provider will supply, at its own cost, all equipment required to perform the Services.

**A13. Notices**

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service to the address of the party as set out at the front of this Contract (marked for the attention of the relevant representative set out in Clause A16 or, in the case of the Service Provider, the “Company Secretary”), or to such other address as the party may by notice have advised the other party, shall be deemed effectively given, if served personally at the time of service and if served by post, 48 hours after it was posted provided such 48 hours expires on a working day (being Monday-Friday when the Banks in the City of London are open to the public for business) and if not, such 48 hours shall be extended until the next working day.

**A14. Offers of employment**

For the duration of the Contract and for a period of up to six months after the Completion Date or earlier termination of the Contract, neither party shall employ or offer employment to any of the staff of the other party who have been associated with the delivery of the Services without prior agreement in writing.

**A15. Special Conditions –**

The parties agree to comply with the Special Conditions.

**A16. Representatives**

A16.1 The Fund’s representatives for this Contract are set out in Item 4 of Schedule A.

A16.2 The Service Provider’s representatives for this Contract are set out in Item 5 of Schedule A.

**B. STATUTORY OBLIGATIONS AND REGULATIONS**

**B1. Audit**

B1.1 The Service Provider must keep and maintain until six years after the Contract has been completed, or as long a period as may be agreed between the Service Provider and the Fund, all information produced in the course of this Contract or relating to the Contract and all records of all expenditures which are reimbursable by the Fund to the Service Provider or its employees and sub-contractors which are paid for by the Fund on a time charge basis, invoices and monthly progress reports. The Service Provider will on reasonable advance notice afford the Fund, or the Fund’s Representatives, access to such records.

B1.2 The Service Provider (and any person acting on the Service Provider’s behalf) must permit the Comptroller and Auditor General or appointed representatives, access at no cost but upon reasonable notice to such documents (including computerised records and data) and other information relating to the Contract or the Services provided under the Contract as the Comptroller and Auditor General may reasonably require for the purposes of the Comptroller and Auditor General’s financial audit of the Fund and for carrying out examinations into the economy, efficiency and effectiveness with which the Fund has used its resources. The Service Provider shall furnish such explanations as are reasonably required for these purposes. This clause does not constitute a requirement or agreement for the examination, certification and inspection of the accounts of the Service Provider by the Comptroller and Auditor General under Section 6(3)(d) of the *National Audit Act* of 1983.

B1.3 The provisions of this clause survive the expiry or termination of this Contract.

**B2. Prevention of corruption**

B2.1 The Service Provider undertakes to abide and procure that the Service Provider’s employees, servants, suppliers, sub-contractors and agents abide by the provisions of the *Bribery Act 2010* particularly in relation to the giving or offering of any gift, consideration or commission of any kind as an inducement or reward to any person employed by the Fund or acting on its behalf with the intention of influencing them in the discharge of any responsibilities associated with this or any other Contract with the Fund.

B2.2 Where the Service Provider or the Service Provider’s employees, servants, suppliers, sub-contractors or agents commit such an offence in relation to this or any other contract with the Fund, the Fund has the right to terminate this Contract and the Fund may elect not to award any further contracts to the Service Provider concerned and may recover any costs incurred by the termination from the Service Provider. Provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Fund and provided always that the Fund may recover from the Service Provider the amount or value of such gift, consideration or commission.

B2.3 The decision of the Fund will be final and conclusive in any dispute, difference or question arising in respect of:

B2.3.1 the amount of any such gift, consideration or commission; and

B2.3.2 the right of the Fund under this clause to terminate this Contract.

## B3. Access to information

B3.1 The Service Provider’s attention is hereby drawn to the *General Data Protection Regulation (GDPR)* which comes into force on the 25th of May 2018.

B3.2 Both parties warrant that they will duly observe all their obligations under the *General Data Protection Regulation (GDPR)*.

B3.3 The parties shall comply with their respective obligations as the data controller and the data processor under the *General Data Protection Regulation (GDPR)*  and any other applicable data protection laws and regulations (together, the “Data Protection Laws”) in connection with this Contract.

B3.4 The parties agree that for all personal data (as defined in the Data Protection Laws) controlled by the Fund and processed in connection with this Contract:

B3.4.1 the Fund alone shall determine the purposes for which the personal data will be processed;

B3.4.2 the Fund shall be the data controller (as defined in the Data Protection Laws); and

B3.4.3 the Service Provider shall be the data processor (as defined in the Data Protection Laws).

B.3.5 Where, in connection with this Contract, the Service Provider processes personal data on behalf of the Fund, the Service Provider shall comply with the Fund’s Data Processing Agreement

B3.8 The Fund shall be responsible for determining in its absolute discretion whether any commercially sensitive information or other information is exempt from disclosure or may be disclosed either without consulting the Service Provider or following consultation with the Service Provider and having taken its views into consideration.

## B4. Compliance with discrimination legislation and public duties

B4.1 The Service Provider must not unlawfully discriminate against or treat unfairly anyone on the grounds of their sex, age, religion or belief, sexual orientation, gender identity, political opinion, marital or civil partnership, pregnancy or maternitystatus within the meaning and scope of the provisions of the *Equality Act* 2010, the *Sex Discrimination (NI) Order* 1975, the *Race Relations (NI) Order* 1997, the *Disability Discrimination Act* 1995, the *Fair Employment Act (Northern Ireland) Order* 1970, *the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003* and the *Employment* *Equality (Age) Regulations (Northern Ireland) Act* 2006. In addition the Service Provider will meet its obligations under the public duties required by the *Equality Act 2010* (in Great Britain) and by Section 75 of the *Northern Ireland Act 1998* (in Northern Ireland).

B4.2 The Service Provider will co-operate with any investigations or proceedings concerning any alleged contravention of any of the legislative requirements and public duties as specified in the provisions of Clause B4.1 and will indemnify the Fund in the case of any finding under the legislative requirements or public duties arising out of any acts or omissions by the Service Provider. This indemnity survives the expiry or termination of this Contract.

B4.3 The Service Provider shall take all reasonable steps to ensure the observance of the provisions of Clauses B4.1 and B4.2 by all servants, employees or agents of the Service Provider and all sub-contractors and suppliers employed in the execution of the Contract. It will ensure that those involved in the provision of Services under this Contract receive appropriate training on equal opportunities legislation and associated good practice.

**B4. Compliance with discrimination legislation and public duties**

B4.1 The Service Provider must not unlawfully discriminate against or treat unfairly anyone on the grounds of their sex, age, religion or belief, sexual orientation, gender identity, political opinion, marital or civil partnership, pregnancy or maternitystatus within the meaning and scope of the provisions of the *Equality Act* 2010, the *Sex Discrimination (NI) Order* 1975, the *Race Relations (NI) Order* 1997, the *Disability Discrimination Act* 1995, the *Fair Employment Act (Northern Ireland) Order* 1970, *the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003* and the *Employment* *Equality (Age) Regulations (Northern Ireland) Act* 2006. In addition the Service Provider will meet its obligations under the public duties required by the *Equality Act 2010* (in Great Britain) and by Section 75 of the *Northern Ireland Act 1998* (in Northern Ireland).

B4.2 The Service Provider will co-operate with any investigations or proceedings concerning any alleged contravention of any of the legislative requirements and public duties as specified in the provisions of Clause B4.1 and will indemnify the Fund in the case of any finding under the legislative requirements or public duties arising out of any acts or omissions by the Service Provider. This indemnity survives the expiry or termination of this Contract.

B4.3 The Service Provider shall take all reasonable steps to ensure the observance of the provisions of Clauses B4.1 and B4.2 by all servants, employees or agents of the Service Provider and all sub-contractors and suppliers employed in the execution of the Contract. It will ensure that those involved in the provision of Services under this Contract receive appropriate training on equal opportunities legislation and associated good practice.

**B5. Confidentiality**

B5.1 Each party (Receiving Party) must:

B5.1.1 keep secret and not disclose (and shall procure that its employees, affiliates and subcontractors keep secret and do not disclose) any Confidential Information of the other party (Disclosing Party) to any third party except:

B5.1.1.1 for disclosures permitted under Clause B5.2; and

B5.1.1.2 to the extent the Receiving Party is required by law to disclose the Confidential Information of the Disclosing Party; and

B5.1.2 only use the Confidential Information of the Disclosing Party for the purposes of this Contract.

B5.2 The Receiving Party may disclose Confidential Information of the Disclosing Party to the Receiving Party’s officers, employees and professional advisors who have a need to know (and only to the extent that they need to know) provided that before disclosure they have been directed to keep the Confidential Information confidential.

B5.3 On the expiry or termination of this Contract the Receiving Party must deliver up to the Disclosing Party (or, at the Disclosing Party’s written election, securely destroy) all Confidential Information of the Disclosing Party which is in its possession or control.

B5.4 The Service Provider must clearly identify to the Fund any business or trade secret which would prejudice the commercial interests of the Service Provider if disclosed pursuant to a Freedom of Information request.

B5.5 The Fund is entitled to disclose to any Contracting Authority or Transferee any Confidential Information of the Service Provider which relates to the performance of the Services by the Service Provider. In such circumstances, the Fund shall authorise the Contracting Authority or Transferee to use such Confidential Information only for purposes relating to the performance of the Services and for no other purposes and shall take all reasonable steps to ensure that such body accepts an obligation of confidence.

B5.6 The Service Provider must not provide any information regarding the delivery of the Services under this Contract, or permit photography or film in connection with the Services or this Contract, without the prior written permission of the Fund. Any press, media or other enquiry about the Services or this Contract must be referred to the Fund’s Representatives.

**B6. Value Added Tax**

B6.1 The Fund shall pay the Value Added Tax on the Contract price at the rate and in the manner prescribed by law, from time to time.

B6.2 Any invoice or other request for payment of monies due to the Service Provider under the Contract, shall, if he is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the *Value Added Act* 1994.

B6.3 The Service Provider shall, if so requested by the Fund, furnish such information as may reasonably be required by the Fund as to the amount of Value Added Tax chargeable on the value of the services supplied in accordance with the Contract and payable by the Fund to the Service Provider in addition to the Contract price. Any overpayments by the Fund to the Service Provider shall be a sum of money recoverable from the Service Provider for the purposes of the Conditions in the Contract regulating the recovery of sums due to the Fund.

**B7. Publicity**

B7.1 The Service Provider (including its sub-contractor(s), agents, servants, suppliers and employees) must not, without the prior written consent of the Fund (which shall not be withheld unreasonably), advertise or publicly make any announcement regarding this Contract or that the Service Provider is undertaking work for the Fund.

B7.2 In the event of any enquiries including media, Parliamentary or official enquiries being received by the Service Provider, its sub-contractor(s), agents, servants, suppliers or employees about this Contract, the delivery of the Services or any other matter relating to the Contract, the Service Provider or its sub-contractor(s), agents, servants, suppliers or employees shall immediately refer the matter to the Fund’s Representative. Except for such referral, the Service Provider shall make no other formal or informal response without the prior written approval of the Fund.

B7.3 The Service Provider (including its sub-contractor(s), agents, servants, suppliers and employees) must not commit any act, or omit to do any act, or do anything which attracts public or media attention that is prejudicial or otherwise detrimental to the Fund’s name, messages or reputation. If such an event does occur, the Service Provider must immediately notify the Fund’s Representative.

**B8. Rights of third parties**

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

**C. THE SERVICES**

**C1. Service Provider’s personnel**

C.1.1 The Fund shall act reasonably and in good faith in making any decision or request of the Service Provider, its employees, agents, suppliers or subcontractors under or pursuant to this Contract.

C.1.2 The Service Provider shall take the steps reasonably required by the Fund to prevent unauthorised persons being admitted to the Fund’s premises.

C1.3 The Service Provider, its employees or agents whilst on the premises of the Fund in connection with the Contract shall, in all respects, conform to and comply with any requirements, rules, regulations and instructions that may be given by an employee or agent of the Fund or on its behalf, as to the Fund’s employment and equality policies, the work environment, site and safety precautions and the conduct of the Service Provider, its employees or agents whilst engaged thereof.

C1.4 If the Fund gives the Service Provider notice that any person must not:

C1.4.1 be admitted to or is to be removed from the Fund’s premises; or

C1.4.2 become involved in or is to be removed from involvement in the delivery of the Services,

the Service Provider shall take all reasonable steps to comply with such notice.

C.1.5 In the event that through any default of the Service Provider, data transmitted or processed in connection with the delivery of the Services is either lost or sufficiently degraded to be unusable, the Service Provider shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any Charge levied for its transmission. Payment of cost or provision of any credit by the Service Provider in accordance with this clause shall not prejudice or affect any other right of action or remedy which shall have accrued or shall thereafter accrue to the Fund.

C.1.6 The Service Provider shall bear the cost of any notice, instruction or decision of the Fund under this Cause C1 provided the Fund gives the Service Provider reasonable prior notice.

C.1.7 In the event that the Fund is dissatisfied with the work of a Service Provider employee or subcontractor or wishes to remove them from the Services, the Fund shall request a meeting with the Service Provider to discuss such performance issues and provide evidence wherever possible. Without restricting the Fund’s rights under Clause C1.4, the parties will seek to agree a plan to resolve such issues or if necessary the replacement of such personnel.

**C2. Key Personnel**

C.2.1 The Service Provider’s Key Personnel for the provision of the Services are set out in Item 6 of Schedule A. The delivery of the Services shall be undertaken or directly overseen by the Key Personnel.

C.2.2 The Service Provider shall not without the prior written approval of the Fund make any changes to the Key Personnel for a particular phase of the Services.

C.2.3 The Service Provider shall undertake all reasonable steps to ensure that the Key Personnel will remain for the full period of the relevant phase of the Services for which they are appointed. In the event of a Key Personnel’s sickness or other emergencies, the Service Provider must consult with the Fund, and if required provide suitably qualified and experienced replacement personnel who are acceptable to the Fund without additional charge or expense at the earliest possible opportunity.

C2.4 If, for any other reasons, changes in the Key Personnel become necessary:

C2.4.1 in the reasonable opinion of the Fund due to such person’s misconduct or repeatedly substandard work, then the Service Provider will provide replacement Key Personnel at the earliest opportunity (or at least within the reasonable time period specified by the Fund) and at no additional cost to the Fund; or

C2.4.2 at the Service Provider’s request, then such changes shall be subject to a minimum of ten working days written notice by the Service Provider to the Fund in the first twenty elapsed working days of the Contract and twenty working days written notice any time thereafter and the Key Personnel must be provided at no additional cost to the Fund.

C2.5 Subject always to the provisions of Clause C1.1, in the event that the Service Provider having provided the Fund with a number of alternatives is unable to provide replacement Key Personnel with the appropriate skills who are acceptable to the Fund within sufficient time to enable the Service Provider to complete the delivery of the Services on time then the Fund following consultation with the Service Provider may obtain replacement personnel from other sources or terminate the Contract at its discretion. In event of termination the Fund shall only be liable for work completed by the Service Provider up to the date of the termination and any committed costs which can not be mitigated by the Service Provider on receiving the notice of termination. Such termination does not restrict any other rights the Fund may have under this Contract or by law.

C2.6 The parties shall discuss and agree whether a handover period is required and if so for how long (but for no greater than ten (10) working days), whereupon the Service Provider shall provide both the Key Personnel and the replacement personnel during this period at no extra charge.

**C3. Standard of work**

The Service Provider warrants that all staff assigned to the performance of the Services shall possess and exercise such skill and experience as necessary for the proper performance in the delivery of the Services and any training of staff to achieve or maintain this standard is at no cost to the Fund.

**C4. Security of Confidential Information**

C4.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Contract (“Contract Data”), the Service Provider undertakes to maintain the security systems approved by the Fund.

C4.2 Each party will immediately notify the other party of any breach of security in relation to Confidential Information and any Contract Data and will keep a record of such breaches. Each party will use its best endeavours to recover such Confidential Information or Contract Data however it may be recorded. Each party will co-operate with the other party in any investigation that such party considers necessary to undertake as a result of any breach of security in relation to Confidential Information or Contract Data.

C4.3 The Fund may issue a Change Request under the Change Control Procedure to request the Service Provider to alter any security systems at any time during the Contract period, and the Service Provider must not unreasonably withhold its agreement to such a request.

**C5. Monitoring of performance**

C5.1 The Fund will monitor the performance of the Service Provider under this Contract. The Service Provider agrees to assist the Fund with its request in monitoring the performance, which may include (without limitation):

C5.1.1 regular meetings at working level and director level to confirm there is a clear understanding of scope of work, the interpretation of information, timetables, deadlines and timing of reports;

C5.1.2 security (and availability for inspection) of all relevant documentation; and

C5.1.3 the delivery of such written reports in such format as the Fund may reasonably require from time to time and, if appropriate, time sheets as may reasonably be required.

C5.2 The Fund will provide the Service Provider the assistance specified in Item 8 of Schedule A. The Service Provider agrees that no other assistance is required from the Fund for the Service Provider to provide the Services. If the Service Provider has any reason to believe the Fund will not provide the assistance, or the Fund does not provide the assistance, the Service Provider must give the Fund notice of that and accepts responsibility for, and will mitigate, the consequences of non provision of the assistance until such notice is given.

**C6. Reports**

C6.1 The Service Provider shall provide a Progress Report to the Fund on the dates specified in Item 9 of Schedule A, or at any time as the Fund may require.

C6.2 The Service Provider will provide a Final Progress Report to the Fund on or before the date specified in Item 10 of Schedule A.

C6.3 The Service Provider must provide the Fund with a Risk Report on the Fund’s reasonable request and, if the Fund requires, maintain a Risk Register with the Fund.

C6.4 The Service Provider shall provide reports in the format as reasonably required by the Fund.

C6.5 If the Fund requests additional information in respect of such reports, the Service Provider agrees to provide such additional information or updates within 10 days of the request.

**C7. Surveys**

The Service Provider shall not carry out any survey for the Fund (whether or not such survey forms part of the Services) which includes any interviews or the circulation of questionnaires or similar documents without the agreement of the Fund to the form and content of such interviews, questionnaires or other documents.

**C8. Environmental requirements**

C8.1 The Service Provider will:

C8.1.1 comply in all material respects with all applicable environmental laws and regulations in force from time to time in connection with the Services;

C8.1.2 promptly provide all information regarding the environmental impact of the Services as may reasonably be requested by the Fund; and

C8.2 The Service Provider will meet all reasonable requests by the Fund for information evidencing compliance with this Clause C8.

**C9. Risk**

The Service Provider must assess the risk of not being able to provide the Services for any reason in accordance with this Contract and apply appropriate risk mitigation strategies, and whatever resources are necessary, to ensure the Services are provided in accordance with this Contract.

**C10. Variation of requirement**

In the event that the Fund wishes to amend any requirements of this Contract, the Service Provider agrees to negotiate the terms of the change in good faith and any payment as a result of the variation of the requirement is subject only to a fair and reasonable adjustment to reflect the work to be done under the change. The variation will be subject to the Change Control Procedure.

**C11. Amendment of Contract**

C11.1 This Contract (including its Schedules) and the Services may only be varied in writing under the Change Control Procedure via a Change Request signed by both parties.

C11.2 If a change in legislation has an impact on the Services, or increases the Service Provider’s cost of providing the Services, either party may raise the matter under the Change Control Procedure.

C11.3 Neither party will claim any cost of expense from the other party in connection with any Change Request including but not limited to reviewing, negotiating or discussing any Change Request.

**D. PAYMENT**

**D1. Fees and expenses**

D1.1 Subject to Clause D4, the Fund will pay to the Service Provider the fees and expenses specified in Item 1 of Schedule D (except to the extent the invoice is in dispute) at the times set out in Item 2 of Schedule D and in the manner set out in Item 3 of Schedule D.

D1.2 The Service Provider will invoice the Fund at the time set out in Item 4 of Schedule D. All invoices must:

D1.2.1 be correctly rendered;

D1.2.2 include the contract number (set out on the front page of this Contract);

D1.2.3 clearly identify and detail the Services provided during the period of the invoice; and

D1.2.4 be submitted in hard copy and electronic formats to the Fund at the addresses set out in Item 5 of Schedule D.

D1.3 Where the Services are provided on a time and materials daily rate basis, the Service Provider must only invoice for the time actually worked by its personnel and must not invoice for travel time, any leave entitlements or for more than eight hours per day or the agreed maximum daily rate unless it has received written approval from the Fund in respect of those additional hours.

D1.4 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

**D2. Recovery of sums due**

Wherever under this Contract any sum of money is recoverable from or payable by the Service Provider, that sum may be deducted from any sum then due, or which at any later time may become due, to the Service Provider under this Contract or under any other agreement or contract with the Fund.

**D3. Final payment**

The Service Provider shall submit a final invoice to the Fund within six weeks of the delivery of the final Services (or of termination of the Contract if that is earlier).

**D4. Limitations on payment**

D4.1 The Fund is not required to pay the fees or expenses under Clause D1.1 and/or may withhold the payment:

D4.1.1. if the Fund has not received an invoice that complies with Clause D1.2;

D4.1.2. if the Services have not been provided in accordance with the A3.1 (including but not limited the Services have not been rendered in accordance with the description of services, requirements of the Fund and key performance indicators stated in Schedule A to this Contract);

D4.1.3. if the Services have not been delivered to the satisfaction of the Fund and have not been accepted under the Acceptance Procedures.

D4.2 Where the Fund agrees to pay any expenses in connection with this Contract, the Fund is not required to pay if:

D4.2.1 it is not satisfied that the expense was incurred by the Service Provider directly for the provision of the Services;

D4.2.2 the Fund does not receive a copy of a tax invoice from the applicable third party indicating that the Service Provider paid for the expense;

D4.2.3 in the Fund’s opinion, the expense is not reasonable as against the Fund’s policy on out of pocket expenses.

**D5. Fee and invoice disputes**

Any dispute about the fees or expenses under this Contract, or any invoice issued under this Contract, will be subject to the dispute resolution procedure set out in Clause G1.

**E. LIABILITY AND INSURANCE**

**E1. Liability**

E1.1 Without prejudice to any rights or remedies of the Fund and subject to the provisions of Clauses E1.2, E1.3 and E1.4, the Service Provider indemnifies the Fund, and agrees to keep the Fund indemnified, against all actions, suits, claims, demands, losses, charges, costs and expenses made against the Fund (or any of its employees, officers or agents) by any third party (including any current or former employee, servant, agent, supplier or sub-contractor) arising out of or in connection with this Contract or the relationship established by it and:

E1.1.1 loss of or damage to any property;

E1.1.2 personal injury (whether fatal or otherwise) to any person;

E1.1.3 any fraudulent, unlawful or negligent act or omission of the Service Provider in connection with this Contract; or

E1.1.4 termination of this Contract for material breach under Clause F1.1.2.

E1.2 The indemnity contained in Clause E1.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Fund, or any employee, servant, agent, supplier or sub-contractor of the Fund.

E1.3 In no event shall either party be liable to the other for any loss (howsoever arising) of profits, business, contracts, revenues, goodwill or reputation or any indirect, incidental, punitive or consequential loss, damage, cost or expense whatsoever.

E1.4 The Service Provider’s liability under or in connection with the Services (whether in contract, tort or otherwise) will be limited to the maximum amount set out in Item 11 of Schedule A in respect of each incident or series of connected incidents. For the avoidance of doubt, nothing in this Contract shall limit the Service Provider’s liability for death or personal injury due to the negligence of the Service Provider or its employees or for any breach or claimed breach of a third party’s intellectual property rights.

E1.5 The Fund’s liability under or in connection with the Services and this Contract (whether in contract, tort or otherwise) will be limited to the maximum amount set out in Item 12 of Schedule A.

**E2. Insurance**

E2.1 The Service Provider shall have in force, and shall require any sub-contractor to have in force, for the period set out in Item 13 of Schedule A:

E2.1.1 employer’s liability insurance in accordance with any legal requirement for the time being in force;

E2.1.2 public liability insurance for the sum of not less than the amount set out in Item 14 of Schedule A; and

E2.1.3 professional indemnity cover for the sum of not less than the amount set out in Item 15 of Schedule A.

E2.2 The Service Provider will provide confirmation from its insurance brokers that it has in place the insurance cover referred to in Clause E2.1 on request together with satisfactory evidence of payment of premium or premiums.

**F. END OF CONTRACT AND BREACH**

**F1. Termination**

F1.1 The Fund may terminate this Contract immediately by notice in writing if:

F1.1.1 any of the events described in Clause F1.3 happen;

F1.1.2 the Service Provider commits a material breach of this Contract and (if such breach is capable of remedy) fails to remedy such breach within 30 days of being required by the Fund in writing to do so;

F1.1.3 the Service Provider does not comply with any of the terms, conditions and provisions of this Contract and its Schedules (including the Delivery Plan if applicable) and fails to remedy that breach (if that breach is capable of remedy) within 10 days of receiving a request from the Fund to do so;

F1.1.4 the Service Provider is an individual and he or she dies or adjudged incapable of managing his or her affairs within the meaning of Part VII of the *Mental Health Act* 1983.

F1.2 If the Fund terminates this Contract under Clause F1.1:

F1.2.1 the Service Provider will hand over to the Fund all Materials in which the Fund owns the Intellectual Property Rights including all work in progress;

F1.2.2 the Fund may, without prejudice to any other of the Fund’s rights, complete the delivery of the services or have it completed by a third party;

F1.2.3 the Fund shall not be liable to make any further payment to the Service Provider until the delivery of the Services has been completed in accordance with the requirements of the Contract;

F1.2.4 the Fund may deduct from any amount due to the Service Provider the costs and expenses incurred by the Fund (including the Fund’s own costs) in connection with the termination and procuring or performing similar services. If the total cost to the Fund exceeds the amount (if any) due to the Service Provider, the Service Provider must pay to the Fund the difference within 30 days of the Fund’s request.

F1.3 The Service Provider shall notify the Fund in writing immediately upon the occurrence of any of the following events:

F1.3.1 where the Service Provider is an individual and if a petition is presented for the Service Provider’s bankruptcy or a criminal bankruptcy order is made against the Service Provider, or the Service Provider makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Service Provider’s affairs; or

F1.3.2 where the Service Provider is not an individual but is a firm, or a number of persons acting together in any capacity, if Clause F1.3.1 occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Service Provider to be wound up as an unregistered company;

F1.3.3 where the Service Provider is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under a fixed or floating charge (but excluding for the purposes of this Clause any bona fide company reconstruction);

F1.3.4 there is a change of “control” as defined by Section 416 (2) of the *Income and Corporation Taxes Act* 1988 in the Service Provider; or

F1.3.5 where the Service Provider is a firm or partnership and there is a change in the identity of any of the partners in the firm and/or a change in the extent to which any partner is able to exercise or entitled to acquire direct or indirect control over the firm’s affairs.

F1.4 Termination under Clause F1.1 shall not prejudice or affect any right of action or remedy that shall have accrued or shall thereupon accrue to the Fund and shall not affect the continued operation of Clauses A7, A10, A12.3, B1 and B5.

**F2. Remedies cumulative**

Except as otherwise expressly provided by the Contract, all remedies available to either party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**F3. Survival**

Clauses A1, A7, B1, B3, B7, D2, E1, E2 and F5 and any other provision of this Contract (including its Schedules) that by its nature is intended to survive expiry or termination or that is necessary for its interpretation or enforcement shall survive the expiry or termination of this Contract.

**F4. Break**

F4.1 The Fund shall in addition to its powers under any other Clause of this Contract have power to determine this Contract at any time by giving to the Service Provider written notice, to expire at the end of the period set out in Item 16 of Schedule A, and upon the expiration of the notice this Contract shall be determined without prejudice to the rights of the parties accrued to the date of determination.

F4.2 In the event of notice being given by the Fund under Clause F4.1, the Fund shall at any time before the expiration of the notice be entitled to exercise and shall as soon as may be reasonably practicable within that period exercise such of the following powers as it considers expedient:

F4.2.1 to direct the Service Provider, where work has not been commenced, to refrain from commencing work; or

F4.2.2 to direct the Service Provider to complete in accordance with this Contract all or any of the delivery of the Services, or any part or component thereof, which shall be paid for at the agreed Contract fee.

F4.3 The Fund shall indemnify the Service Provider against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Service Provider directly in connection with this Contract to the extent to which those commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Service Provider by reason of the determination of this Contract.

F4.4 The Fund shall not in any case be liable to pay under the provisions of this Clause F4 any sum which, when taken together with any sums paid or due or becoming due to the Service Provider under this Contract, shall exceed the total Contract price.

F4.5 The Fund shall pay the Service Provider in full for all work satisfactorily carried out by the Service Provider, its employees and subcontractors up to the date of termination.

**F5. End of Contract assistance**

F5.1 For the term of the End Phase, the Service Provider must comply with the Fund’s reasonable exit management requirements and provide to the Fund any assistance reasonably requested, including the assistance set out in Item 20 of Schedule A.

F5.2 If the Fund requires any such assistance after the termination date of this Contract or which requires the Service Provider to use additional resources to that needed to supply the Services then:

F5.2.1 if this Contract was terminated otherwise than due to the Service Provider's breach or insolvency, the Fund must pay at the Service Provider's time and materials rates as agreed by the parties; or

F5.2.2 if this Contract was terminated due to the Service Provider's breach or insolvency, the Fund must pay the Service Provider on a cost of services recovery basis only.

F5.3 Before performing any Services in respect of which the Service Provider may make a charge of the Fund under this Clause F5, the Service Provider must notify the Fund of the fact that such a charge may be made and the likely amount of the charge. The Service Provider must only perform those Services to the extent approved and agreed by the Fund under the Change Control Procedures set out in Schedule C.

**G. LAW AND DISPUTE RESOLUTION**

**G1. Dispute resolution**

G1.1 The parties’ representatives set out in Clause A16 (or any other person nominated by the party) shall attempt in good faith to negotiate a settlement to any dispute, including escalating the dispute to senior management as required.

G1.2 If the dispute cannot be resolved by the parties pursuant to Clause G1.1 within 28 days (unless otherwise agreed), the dispute may be referred by either party to mediation pursuant to Clause G1.4.

G1.3 The performance of the Services shall not be suspended, cease or be delayed by the reference of a dispute to mediation pursuant to Clause G1.2 and each party shall (and shall procure that its employee, servant, agent, supplier or sub-contractor shall) comply fully with the requirements of the Contract at all times.

G1.4 The procedure for mediation and consequential provisions relating to mediation are as follows:

G1.4.1 A neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within 14 days after a request by one party to the other, or if the Mediator agreed upon is unable or unwilling to act, either party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days notice to either party that they are unable or unwilling to act, apply to the Centre for Dispute Resolution (“CEDR”) to appoint a Mediator.

G1.4.2 The parties shall within 14 days of the appointment of the Mediator meet with them in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

G1.4.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.

G1.4.4 If the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by their duly authorised representatives.

G1.4.5 Failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both parties.

G1.4.6 If the parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

G1.5 Each party must pay its own costs of complying with this clause G1. The parties must equally pay the costs of any Mediator.

G1.6 This dispute resolution procedure does not prevent a party from applying to a court for urgent interlocutory or other relief to protect Intellectual Property Rights.

**G2. Contract is not exclusive**

The Service Provider will provide the Services on a non-exclusive basis. Nothing in this Contract prevents the Fund from obtaining services which are the same as or similar to the Services from any third party or from itself performing services which are the same as or similar to the Services.

**G3. Governing law**

This Contract shall be governed by and construed in accordance with English Law and the parties hereby irrevocably submit to the jurisdiction of the English Courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of either party to take proceedings against the other in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

**G4. Entirety**

This Contract and the related Schedules shall constitute the entire Contract between the Fund and the Service Provider and shall supersede all previous Contracts, regulations, correspondence and representations whether written or oral in respect of the delivery of the Services.

**G5. Pre-contractual documents and other terms and conditions**

G5.1 In the event of any conflict in the interpretation of the terms and conditions of this Contract, the parties must refer to the relevant interpretation in the pre-contractual documents in the following order of precedence:

G5.1.1 the Invitation to Tender; and

G5.1.2 if the Invitation to Tender does not provide the interpretation, the Tender Response.

G5.2 This Contract takes precedence over any other terms and conditions (including the Service Provider’s terms and conditions whether provided as part of the Tender Response, with an invoice, or at any time) in connection with the subject matter.

**Appendix C: NON-DISCLOSURE AGREEMENT (NDA)**

1. [NAME OF INDIVIDUAL RECEIVING INFORMATION] of [address of individual]

OR

1. [NAME OF COMPANY RECEIVING INFORMATION], a company registered in [England] under company number [number on Register of Companies] whose registered office is at [address of office on the Register of Companies]   
   (the Recipient)

and

1. THE HERITAGE LOTTERY FUND of 7 Holbein Place, London SW1W 8DNR (the Discloser)

1. The Discloser intends to disclose information (the Confidential Information) to the Recipient for the purpose [PROVIDE REASON FOR DISCLOSURE] to enable the Recipient to receive confidential information relating to the Discloser so that it can prepare an informed tender response (the Purpose).

2. The Recipient undertakes not to use the Confidential Information for any purpose except the Purpose, without first obtaining the written agreement of the Discloser.

3. The Recipient undertakes to keep the Confidential Information secure and not to disclose it to any third party except to its employees and professional advisers who need to know the same for the Purpose, who know they owe a duty of confidence to the Discloser and who are bound by obligations equivalent to those in clause 2 above and this clause 3.

4. The undertakings in clauses 2 and 3 above apply to all of the information disclosed by the Discloser to the Recipient, regardless of the way or form in which it is disclosed or recorded but they do not apply to:

a) any information which is or in future comes into the public domain (unless as a result of the breach of this Agreement); or

b) any information which is already known to the Recipient and which was not subject to any obligation of confidence before it was disclosed to the Recipient by the Discloser.

5. Nothing in this Agreement will prevent the Recipient from making any disclosure of the Confidential Information required by law or by any competent authority.

6. The Recipient will, on request from the Discloser, return all copies and records of the Confidential Information to the Discloser and will not retain any copies or records of the Confidential Information.

7. Neither this Agreement nor the supply of any information grants the Recipient any licence, interest or right in respect of any intellectual property rights of the Discloser except the right to copy the Confidential Information solely for the Purpose.

8. The undertakings in clauses 2 and 3 will continue in force indefinitely.

9. This Agreement is governed by, and is to be construed in accordance with, English law. The English Courts will have non-exclusive jurisdiction to deal with any dispute which has arisen or may arise out of, or in connection with, this Agreement.

If the Recipient is an individual

Signed and Delivered as a Deed by:

[name of Recipient] in the presence of:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address of witness

If the Recipient is a company

Executed and Delivered as a Deed by

[name of Recipient] acting by

[name of director], a director,

in the presence of:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Director

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of witness

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Address of witness