

**One Digital  
Invitation to Tender  
Basic Digital Skills Training – Lot 1 and Lot 2  
Feb 2016 – May 2016**

## **1. Background**

One Digital is a Big Lottery funded programme focused on enhancing the [basic digital skills](#) of charities and people in need. It is designed to test different approaches to making a significant and sustainable impact on the skills of these groups, and to learn what works.

A consortium of organisations including SCVO, Digital Unite, Age UK and Citizens Online are working closely to deliver a range of interventions that will support a wide range of people to develop their Basic Digital Skills. These interventions share a common approach: equipping trusted intermediaries to act as digital champions for their organisations and in their communities.

The One Digital consortium will benefit people with disabilities and accessibility needs, young adults seeking work, over 65s, charities, and the people they support. This will help enable them to access essential online services, search and apply for jobs and stay in touch with friends and family. The digital champions may, for example, demonstrate the use of Skype to an older person to help them stay in touch with grandchildren and family, or provide a young person with the skills to search for work and complete an online CV.

SCVO is responsible for delivering the Scottish element of the programme, and has been awarded £500,000. The trusted intermediaries in the SCVO model will be staff and volunteers from third sector organisations across Scotland. The project will test three key areas:

1. How important is it for charities and voluntary organisations themselves to embrace Basic Digital Skills, to improve their overall effectiveness?
2. How important is it for charities and voluntary organisations to embed the passing on of basic digital skills in their day to day interactions with clients?
3. How important is it for charities and voluntary organisations to have leaders who are passionate ambassadors for digital inclusion and Basic Digital Skills?

One Digital – Scotland will be delivered via three Streams of supported learning to better understand these questions.

Stream One: Training organisations to achieve organisational [Basic Digital Skills](#)

Stream Two: Training organisations so staff and volunteers can pass on [Basic Digital Skills](#) by embedding it into their natural interactions with clients

Stream Three: Action Learning Set for new third sector Digital Leaders.

This tender process is designed to identify trainers to develop and deliver a training curriculum to meet the needs of Stream One and Stream Two. A separate exercise will identify facilitators for Stream Three.

SCVO will work with an anchor organisation in each of the 32 Local Authority areas - it is likely that these will be the Third Sector Interfaces (TSIs). The anchor will identify 10 organisations from that area to participate in Stream One, and 10 organisations to participate in Stream Two.

Each cohort of ten will send representatives to a one-day face-to-face training session. There may be up to 20 participants attending each session, as each organisation will be invited to send two individuals.

As individuals pass through the training they will become 'digital champions' and will work to embed their learning within their organisation.

- For Stream One this will be to bring their organisations nearer to achieving organisational Basic Digital Skills.
- For Stream Two this will be for organisations to embed passing on Basic Digital Skills through their day-to-day interactions with clients.

This network of digital champions will be supported by development officers, employed by SCVO. They will have access to a series of online training modules, made available by Digital Unite, a consortium partner.

An evaluation will be carried out to understand which approach has had the most impact on the Basic Digital Skills of the organisations, and their end users.

This project fits into the wider programme of work undertaken by SCVO as part of Digital Scotland. For full detail see [digital.scvo.org.uk](https://digital.scvo.org.uk)

## **2. Stream One and Stream Two**

SCVO wants to commission experienced trainers to help develop and deliver the face to face training sessions for Stream One and Stream Two. For the period of the training delivery the successful candidates will function as part of the 'One Digital' programme team, and will represent SCVO and the wider partnership.

**Applications are welcomed from all organisations and individuals that meet the criteria set out in section six.**

### **2.1 Aims of the training**

The delivery of training is designed to provide a standard input to all organisations participating in the programme. The content of the course will be guided by the One Digital co-production group and should build on existing materials and complement online modules available from Digital Unite (currently in development).

Specifically the main aims of Stream One are:

1. Increase in participant's knowledge and understanding of the five Basic Digital Skills
2. Increase in participant's knowledge and understanding of importance of these attributes for the organisations they work with
3. Ensure participants understand the benefits of making relevant changes within their organisations
4. Give participants confidence to pass on their knowledge to others

The main aims of Stream Two are:

1. Increase knowledge about Basic Digital Skills Framework
2. Ensure participants understand and can identify relevance of Basic Digital Skills for the people they support
3. Provide participants with solid understanding of different learning styles and motivations for going online
4. Provide participants with skills to embed teaching Basic Digital Skills into their daily work, taking account of individual motivations and learning styles

## 2.2 The programme of work

We want you to bring your ideas about the best way to structure and deliver training to meet these aims.

However we anticipate that your approach will broadly include:

- **Developing clear training objectives** and supporting materials which ensure participants are clear about the purpose and objectives of the course
- Reviewing and incorporating **pre-existing content** available from SCVO, Digital Unite and others to ensure training builds on best practice and reflects evidence based approaches to improving basic digital skills
- A clear framework that ensures all training cohorts have received a **standardised training package**, but flexibility in delivery style taking account of individuals learner needs

- A clear understanding of the **importance of evaluation to this test and learn programme**, and commitment to collecting all appropriate data from participants as part of training delivery

### 2.3 The constraints for this training

You will need to work flexibly and recognise that this is an ambitious programme working to tight timescales. We are seeking to deliver all training sessions between February and mid-May 2016, and as there are 64 sessions in total (two in each local authority) this is approximately five sessions per week.

The one-day training delivery will not be sufficient to embed the behaviour change we seek to achieve, but is our key opportunity to create enthusiasm and build a community of committed champions. You will therefore need to work closely with the One Digital team to ensure your approach and content closely matches the other supports available to Digital Champions to continue on their journey. You will be the face of One Digital to many of our participants and we will be trusting you with the brand.

You are likely to be working alongside other trainers and it is crucial that all participants receive the same content and take away the same core messages. Your expertise and skills as a trainer are highly valued and we will seek your input as the package is developed. However, once this is complete we require you to work within the agreed training plan and approach, and to be open to adapting your style if the One Digital team identify a need for a more uniform approach.

As this is a test and learn project we expect that the overall training packages may need to flex as the programme progresses. We would expect you to proactively identify elements of the training which are not working as well as we expect, and suggestions for changes to help achieve the desired aims.

### 2.4 Reporting

The successful trainer will be expected to ensure data is collected as part of the training sessions to contribute to the overall programme reporting, and to evaluate the training itself. This will include collecting baseline data about the Basic Digital Skills of the participants, as well as an organisational audit.

## 3. Managing the project

Your contract would be with SCVO, and the One Digital team will manage the work. You can expect training venues, delegates, refreshments and copies of all participant materials to be organised by SCVO and the anchor organisation.

You will be expected to manage your own travel and accommodation requirements as necessary, and include these costs in your overall fee.

#### 4. Timetable and deliverables

16.12.2015	Specification issued.
08.01.2016	Deadline for responses – <b>12pm</b>
12.01.2016	Trainer interviews
15.01.2016	Contract agreed
w/c 18 Jan	Successful trainer(s) meet One Digital team to agree training programme
1 Feb – 14 May 2016	Training delivery

#### 5. Budget

A maximum budget of £25,600 (inc VAT) is available for the delivery of all 64 training sessions, including travel and subsistence for trainers. We expect responses to include a detailed breakdown of expenditure, including VAT.

#### 6. Response to tender and evaluation criteria

We expect to fund up to three organisations or individuals to deliver the requirements of this tender. Applicants should therefore be able to deliver a minimum of 20 training sessions in the time-frame set out in section four.

Organisations are invited to apply to deliver training in two lots.

Lot 1 – Delivery of Stream One training sessions

Lot 2 – Delivery of Stream Two training sessions

Each response should include the following information:

1. A statement outlining your reasons for wishing to deliver this training, and any connections you have to the wider Digital Scotland landscape
2. Whether you wish to deliver training sessions for Lot 1, Lot 2, or both Lots 1 and 2
3. Which local authority areas you are able to work in
4. Your availability and capacity, identifying how many sessions you can deliver and any periods during the phase when you are unavailable
5. A detailed breakdown of all expenditure (inc VAT)
6. CV/Biography of trainer(s) you would use for this project

7. Evidence of:

- a. Knowledge of the 5 Basic Digital Skills and experience in delivering training to support individuals and organisations to acquire these skills
- b. Successful training development and delivery
- c. Experience delivering training to staff and volunteers working in third sector organisations and understanding of the context they are working in
- d. Experience delivering 'train the trainer' interventions (if applying for Lot 2)

## **7. Contact details**

### **Enquiries**

Please send all questions, queries and clarifications to [jo.malo@SCVO.org.uk](mailto:jo.malo@SCVO.org.uk)

### **Tenders**

Tenders are required to be submitted by 12pm on 8<sup>th</sup> January 2016.

Please submit electronic copies to [jo.malo@scvo.org.uk](mailto:jo.malo@scvo.org.uk). We will acknowledge receipt of all tenders received by 5pm on 8 January 2016.

If you have not received an acknowledgement within this timescale please assume that your tender has not been received and contact Jo Malo on 0131 281 0868. It is your responsibility to ensure that the tender has been received by us within the timescale.

## Appendix 1

### SCOTTISH COUNCIL FOR VOLUNTARY ORGANISATIONS

#### CONSULTANCY AGREEMENT for *[INSERT TITLE]*

between

- (1) **SCOTTISH COUNCIL FOR VOLUNTARY ORGANISATIONS (also known as SCVO)**, a company which is a Scottish charity (Scottish charity number SC003558) incorporated under the Companies Acts (company number SC024591) and having its registered office at Mansfield Traquair Centre, 15 Mansfield Place, Edinburgh EH6 3BB ("**SCVO**");

and

- (2) *[insert name of consultant together with full details as to the type of legal entity, any registered number and registered address]* ("**the Consultant**").

#### PERIOD OF AGREEMENT

This Agreement is for the period *[insert start and end date of Agreement]*

#### WHEREAS

- (A) The Consultant provides consultancy services in the field[s] of *[insert description of type(s) of services to be provided]*.
- (B) SCVO wishes to engage the Consultant to provide certain services within those fields on certain terms and conditions, and the Consultant has agreed to accept that engagement.

#### IT IS AGREED as follows:-

The definitions set out in Part 1 of the schedule ("**the Schedule**") annexed and executed as relative to this Agreement shall apply throughout this Agreement and throughout the Schedule.

Reference to a statute or a statutory provision includes a reference to it as from time to time amended, extended or re-enacted.

Words denoting the singular number only include the plural, and vice-versa.

Unless the context otherwise requires, any reference to a clause or paragraph is to a clause or paragraph of this Agreement.

The headings in this Agreement are included for convenience only and shall not affect its interpretation.

[References to the Consultant are to all of the individual partners comprised within the partnership of the Consultant, both at the date of this Agreement and for the duration of all obligations under this Agreement, and any such reference will not be affected by any changes in the composition of the partnership; for the avoidance of doubt, the obligations of the Consultant under this Agreement shall be binding, jointly and severally, on all partners comprised within the Consultant from time to time (including former partners except insofar as they have been expressly released in writing by SCVO) and their respective executors and representatives as well as on the partnership of the Consultant and all of its assets without the necessity of discussing them in their order and such obligations shall subsist and remain in full force and effect, notwithstanding any changes which may take place in the name of the partnership, or in the composition of the partnership, whether by the assumption of a new partner or partners or by the retiral, bankruptcy or death of any individual partner or partners.] *[Note: this clause is to be included only where the Consultant is a partnership e.g. as opposed to a limited company.]*

## APPOINTMENT

SCVO engages the Consultant to provide the Services set out in Part 2 of the schedule during the Contract Period (subject to clauses 00 and 00) on the terms and conditions set out in this Agreement; and the Consultant accepts that engagement.

## THE CONSULTANT'S OBLIGATIONS

The Consultant shall carry out the Services with the skill and diligence which would be reasonably expected from a Consultant skilled and experienced in the provision of services similar to the Services.

The Consultant shall [use best endeavours]:-

[to] achieve the Milestones;

[to] deliver the Deliverables timeously.

*[Note: square brackets to be removed as appropriate to reflect whether these ought to be absolute obligations, or "best endeavours" obligations.]*

Without prejudice to the provisions of clause 00, the Consultant shall ensure that any personnel assigned to undertake the Services will possess the skills and experience necessary for the proper performance of their respective roles in relation to the delivery of the Services; the Consultant shall promptly inform SCVO of the absence



(or anticipated absence) of any personnel key to the delivery of the Services and (if SCVO so require) shall provide a suitably qualified replacement.

The Consultant shall, in carrying out the Services, act at all times in the manner which:-

in the reasonable opinion of SCVO does not and is not likely to damage its good name, image, reputation, or Intellectual Property Rights;

is not misleading and does not impose upon or create for SCVO any liability (except any expressly provided for under this Agreement).

The Consultant shall, without prejudice to any other provision of this Agreement, comply with any instruction or policy direction issued from time to time by SCVO, acting reasonably, with regard to the delivery of the Services.

The Consultant acknowledges that the provision of Services under this Agreement falls within the context of SCVO's involvement in the Big Lottery Fund's Supporting Voluntary Action Programme.

The Consultant shall acknowledge publicly, as appropriate and as practical that the provision of the Services are being financed by the Big Lottery Fund and will follow the Big Lottery Fund's branding and publicity guidelines at all times; the financial support given by the Big Lottery will be acknowledged by the Consultant in any published documents, or in written or spoken public presentations, relating to the Services.

The Consultant shall acknowledge publicly, as appropriate and as practical the support of SCVO by the prominent display of the SCVO logo (available on request), accompanied by the words "[ name of project] is funded by the Big Lottery Fund in Scotland, through the Supporting Voluntary Action Programme, being administered by SCVO, (the Scottish Council for Voluntary Organisations)".

## FEES & EXPENSES

SCVO will pay to the Consultant (subject to clause 09) in consideration of the Services a fee of £[insert relevant sum] plus VAT, in instalments as set out in Part 5 of the Schedule [within [●] days of receipt by SCVO of the relevant VAT invoice.]

[SCVO's obligation to make payment of the Fees (or any part of the Fees) under clause 09 is conditional upon prior receipt by SCVO of relevant funds from the Big Lottery Fund under the Supporting Voluntary Action Programme.] [Drafting note: in light of Burness' responses to Big Lottery's comments, it is unlikely that a consultant would accept this provision]

SCVO shall, without prejudice to its other rights and remedies under this Agreement, be entitled to withhold payment of any Fees if SCVO considers (acting reasonably) that:-

the Services to which the relevant Fees relate were not provided to a standard commensurate with the Consultant's obligations under this Agreement;

there has not been adequate progress during the period to which the relevant Fees relate, and with particular reference to achievement of the Milestones and/or delivery of the Deliverables; or

the Consultant has committed some other breach of this Agreement.

The Consultant shall be entitled to payment from SCVO (at cost, which will be deemed to be inclusive of VAT, if applicable) in respect of out-of-pocket expenses on travel and accommodation necessarily incurred by the Consultant in the course of provision of the Services, subject to the following:-

the claim for recovery of any expenses under the preceding provisions of this clause shall be made through including a separate note of such expenses within the relevant invoice submitted by the Consultant in respect of the Services carried out during the period to which the expenses relate;

each invoice which includes a note of expenses shall be accompanied by a satisfactory voucher in respect of each item comprised in such expenses;

the provisions of clause 00 shall apply in relation to expenses, subject to the further qualification that SCVO may withhold payment of any expenses pending receipt of satisfactory vouchers as referred to in paragraph 00;

the maximum amount of expenses (in aggregate) recoverable under this clause 00 shall be ●% of the Fees (including VAT, if applicable).

## TAX AND NATIONAL INSURANCE

[The Consultant warrants that he/she has been operating a business providing consulting services of the type that are to be provided to SCVO under this Agreement, has submitted self-assessment tax returns for that business on such basis to HM Revenue and Customs ("HMRC") and that no enquiries on his/her business tax status have been raised by HMRC. The Consultant therefore accepts that he/she is responsible for taxation and National Insurance or similar liabilities or contributions in respect of that consulting business and the Consultant will indemnify SCVO against all liability for the same and any costs, claims or expenses including interest and penalties that arise from the fees under this Agreement. If HMRC challenge the tax status of the Consultant and seek pay as you earn income tax and primary Class 1 National Insurance contributions from SCVO in respect of the consulting services provided to SCVO by the Consultant under this Agreement, the Consultant will indemnify SCVO for such income tax and national insurance and any connected interest and penalties.] *[Note: this clause is only appropriate where the Consultant is an individual. If a situation arises where the agreement is intended to apply to an individual, further additional clauses might be added and advice should be sought as appropriate].*

## PROVISION OF FACILITIES ETC BY THE CLIENT

SCVO undertakes that it shall provide all such information, make available all such facilities, and issue to officers, employees and third parties all such instructions as the Consultant may reasonably request to allow commencement on the due date and efficient progression of each element comprised in the Services.

## CONFIDENTIALITY

Subject to clause 00, the Consultant undertakes to SCVO:-

that it will not at any time (whether during the period when the appointment of the Consultant under this Agreement is in force or at any time after that period) use or divulge or communicate to any person (other than to officers, employees or professional advisers of the Consultant whose province it is to know the same) any Confidential Information concerning the financial position, contractual arrangements, or other affairs of SCVO which may come or may have come to its knowledge as a result of the obligations and rights conferred on the Consultant under or pursuant to this Agreement or otherwise in the course of delivery of the Services;

that it will use the Confidential Information referred to in paragraph 00 solely for the purposes of performing the Services;

that it shall use its best endeavours to prevent the use, publication or disclosure of, and/or any unauthorised access to, any such Confidential Information.

Without prejudice to the generality of clause 00, the Consultant shall not disclose any Confidential Information to any other consultant or other person engaged by SCVO in connection with the provision of the Services unless the Consultant first obtains from that other person a signed confidentiality undertaking on substantially the same terms as are contained in clause 00 (as read with clause 00).

The provisions of clause 00 shall not apply:-

in relation to any disclosure required by law, including but not limited to, disclosure for the purpose of compliance with freedom of information legislation or environmental information regulations;

in relation to any disclosure required by a regulatory authority or organisation of which the Party making the disclosure is a member or which is empowered by law or custom to regulate that party;

in relation to any information which is in the public domain;

in relation to any disclosure which is necessary to enable a Party to enforce its rights or defend its position in relation to any action or claim brought against it under this Agreement.

## INTELLECTUAL PROPERTY RIGHTS

The Consultant agrees that (subject to clause ~~00~~) the ownership of and the right to exploit all forms and aspects of Intellectual Property Rights created by the Consultant in connection with the provision of the Services ("**Service IPR**") shall belong to SCVO; and, accordingly,

the Consultant hereby assigns to SCVO free from all encumbrances, all rights title and interest which it may have in the Service IPR and that for the full term of the Service IPR including (with effect from their creation) all future rights and all renewals and extensions thereof; and

the Consultant waives all such rights (including, but not limited to, moral rights) as are not capable of assignation.

The Consultant shall, at its own expense and at the discretion of SCVO, execute any further documents, forms and authorisations anywhere in the world and perform any such acts or things as SCVO may require to enable SCVO to secure full legal title to the Service IPR and otherwise to secure the benefits of the rights assigned in clause ~~00~~. In addition, the Consultant shall deliver all supporting materials and documentation required in order to make effective use of the Service IPR.

The Consultant warrants, represents and undertakes to SCVO that it is and will be the sole and absolute legal owner of the Service IPR until such Intellectual Property Rights are assigned in terms of clause ~~00~~ and that such Service IPR is not subject to any third party claims, liens, charges or encumbrances of any kind and that SCVO is free of any duties or obligations or liabilities to third parties which may conflict with the terms of this Agreement.

The Consultant shall have no right to use any of the Service IPR for any purpose other than fulfilling its obligations to SCVO under this Agreement without the prior written consent of SCVO.

The Consultant shall indemnify and keep indemnified SCVO against all claims, actions and proceedings which may be brought or established against and all costs, losses, damages, liabilities, and expenses of any nature (including but not limited to legal expenses on a solicitor and client basis) which may be incurred by, or established against SCVO (both during the continuance of this Agreement and after its termination) arising from any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) of any third party Intellectual Property Rights in connection with the receipt and/or use of the Service IPR, the Services or the Project, or the performance by the Consultant of any obligation in terms of the Agreement.

The provisions of clauses ~~00~~ - ~~00~~ shall not extend to any Intellectual Property Rights belonging to the Consultant which exist prior to the commencement of the Contract Period, (the "**Background Intellectual Property Rights**"), notwithstanding that the

Background Intellectual Property Rights may be used by the Consultant in providing the Services. The Consultant hereby grants to both SCVO and the Big Lottery Fund a non-exclusive, irrevocable, royalty free licence to use the Background Intellectual Property Rights for internal purposes only to the extent necessary to enable SCVO and/or the Big Lottery Fund to obtain the benefit of the Services as set out in this Agreement.

The Consultant shall give written notice to SCVO of all Intellectual Property Rights created by the Consultant in connection with the delivery of the Services as expeditiously as possible.

All memoranda, notes, records, reports, drawings and other documents and all specimens, models and samples made, executed or acquired by the Consultant in the course of provision of the Services shall be the property of SCVO and shall be surrendered to SCVO by the Consultant, from time to time, on demand and/or on termination of the Appointment.

For the avoidance of doubt, SCVO shall retain ownership of all Intellectual Property Rights in all material issued by SCVO to the Consultant in connection with the delivery of the Services.

#### **CONFLICT OF INTEREST**

The Consultant is an independent contractor and (subject to clause 99) is therefore permitted to work for third parties during the currency of the Appointment.

In the event that the Consultant is requested to undertake work (or is proposing to submit a tender or proposal in respect of undertaking work) for a third party of a kind which is or could be in conflict with the Services (and/or the outcomes anticipated through the provision of the Services) or where the relevant third party is or may operate in competition with SCVO, the Consultant shall disclose the details of the work to SCVO and shall not proceed with the work for that third party (or the tender or proposal relating to that work) or agree to do so except with the prior consent of SCVO (such consent not to be unreasonably withheld); any dispute between the parties as to whether SCVO is being unreasonable in withholding its consent under the preceding provisions of this clause shall be resolved via the dispute resolution procedure set out in clause 99.

#### **MONITORING & REVIEW**

SCVO will appoint a Contract Manager and the Consultant will appoint a Consultant Representative to oversee performance in relation to delivery of the Services; neither Party shall change such appointee without prior consultation with the other Party.

The Consultant shall issue monthly e-mail reports to SCVO in relation to the delivery of the Services, in such format and to such level of detail as SCVO may request from time to time.

In addition to its obligations under clause 00, the Consultant shall issue more detailed written reports at such intervals, in such form and to such level of detail as SCVO may request; without prejudice to the generality of the preceding provisions of this clause 00, the written reports shall detail progress in achieving the Milestones and in delivering the Deliverables together with details as to future work to be undertaken in delivering the Services throughout the remainder of the Contract Period.

The Contract Manager and the Consultant Representative shall meet [*insert reference to frequency of meetings*], or as otherwise agreed, to review the performance of the Consultant in providing the Services.

The review meetings referred to in clause 00 shall, in addition to addressing any perceived shortcomings in the provision of the Services, afford an opportunity for SCVO and the Consultant to exchange views in relation to how the delivery of the Services might be improved or rendered more efficient; [any such proposals may, if SCVO sees fit, be reflected in the subsequent initiation by SCVO of a change to the specification of services.]

The review meetings referred to in clause 00 shall be convened on not less than [●] Business Days' notice, except in an emergency (in which case as much notice as is reasonably practicable shall be given); and shall (except in the case of an emergency) be accompanied by an agenda of items to be discussed at the meeting.

In order to facilitate the monitoring and review of the provision of the Services in accordance with clauses 00 to 00, the Consultant undertakes to provide SCVO with such further information and/or access to records and staff of the Consultant as SCVO may reasonably request from time to time.

#### **FURTHER CONDITIONS/OBLIGATIONS**

The Consultant shall (subject to clause 00) indemnify SCVO against any loss or liability which SCVO may sustain or incur, or any claim by a third party against SCVO (including the expenses associated with contesting any such claim on a solicitor-client basis, and any costs awarded against SCVO in respect of any such claim), where such loss, liability or claim arises out of, or in connection with,

any breach by the Consultant of the provisions of this Agreement (which may include, without prejudice to that generality, any failure to meet the standard of care prescribed under clause 00);

any act or omission of the Consultant or of any personnel or sub-contractors engaged in the provision of the Services, in the course of or in connection with the provision of the Services;

the negligence, recklessness or wilful misconduct of the Consultant or of any personnel or sub-contractors engaged in the provision of the Services;

any tax or employer's National Insurance contributions or expenses payable in respect of the Consultant or its employees, agents or sub-contractors or in relation to the delivery of the Services.

The indemnity contained in clause ~~00~~ shall not extend to any loss, liability or claim which arises directly out of any breach by SCVO of its obligations under the Agreement.

The Consultant shall:-

provide to SCVO such information as SCVO may reasonably request from time to time to enable SCVO to monitor and review the activities of the Consultant and its personnel in carrying out the Services and to enable SCVO to ascertain that the terms and conditions of this Agreement are being observed;

ensure that it is not in breach of any other agreements or any Law in connection with the provision of the Services;

ensure that all consultants and sub-contractors employed on or in connection with the provision of the Services are paid timeously;

ensure that the Services are carried out to the reasonable satisfaction of SCVO at all times;

provide SCVO, and any person duly authorised by it, with reasonable facilities to inspect and review all records, accounts, invoices and other materials retained in connection with the provision of the Services upon SCVO giving reasonable notice to the Consultant;

promptly give notice to SCVO of any circumstances which could potentially affect the ability of the Consultant to fulfil its obligations under this Agreement.

SCVO and the Consultant agree that on termination or expiry of the Appointment it is not intended that TUPE shall apply so as to transfer any employee of the Consultant to SCVO or to any new provider of services similar to the Services (a "**New Provider**").

The Consultant shall take all such steps as are reasonably practicable to minimise the likelihood of TUPE applying on the termination or expiry of the Appointment; these steps shall include, without limitation,

stipulating in writing to any employee of the Consultant engaged in the provision of the Services that they will remain an employee of the Consultant on the termination or expiry of the Appointment; and

organising its workforce prior to the expiry or termination of the Appointment to ensure that any such employees are redeployed elsewhere in the business of the Consultant.



Where, during or following termination or expiry of the Appointment, any claim is made against SCVO or any New Provider arising out of the alleged application of TUPE to any person connected with the provision of the Services, the Consultant shall indemnify SCVO and any New Provider against any losses, costs, demands, fines, penalties, awards, expenses (including legal expenses on a solicitor-client basis), damages or other liabilities, howsoever arising, suffered or incurred by SCVO or any New Provider associated with such claim.

The Consultant shall be responsible for maintaining insurances, throughout the Contract Period and for a period of [●] years following the end of the Contract Period, in accordance with the particulars set out in Part 6 of the Schedule, subject to such variations as the Parties may agree from time to time (each being bound to act reasonably in this respect).

The Consultant undertakes: -

to provide to SCVO on request copies of the policy documents relating to the insurances maintained by the Consultant in pursuance of clause 99, together with such evidence as SCVO may reasonably request to demonstrate that such policies are in force;

to advise SCVO promptly in writing if there is any significant change in the terms of the relevant insurance policies or the identity of the insurer.

## PERSONAL DATA

Each Party shall comply with its obligations under the provisions of the Data Protection Act 1998.

Where the Consultant, or any of its sub-contractors or others engaged by the Consultant, processes personal data as a data processor on behalf of SCVO in the course of provision of the Services, the Consultant shall, and shall procure that its sub-contractors and others shall:-

act only on instructions from SCVO as a data controller; and

comply with SCVO's instructions in relation to the processing of such personal data as such instructions are given and varied from time to time by SCVO; and

at all times take all appropriate technical and organisational measures against unauthorised or unlawful processing of such personal data and against accidental loss or destruction or, or damage to, such personal data.

## BEHAVIOUR OF PERSONNEL

SCVO reserves the right under this Agreement to refuse to admit to SCVO's premises any individuals employed or engaged by the Consultant, or by a sub-contractor, whose admission would be, in the reasonable opinion of SCVO, undesirable.



The Consultant shall comply with, and shall procure that all individuals employed or engaged by the Consultant, or by a sub-contractor, in connection with the provision of the Services comply with, all reasonable security requirements and all reasonable policies of SCVO as regards health and safety and other matters, while in SCVO's premises or while using equipment supplied by SCVO.

#### **FORCE MAJEURE**

If either Party is prevented from performing, or hindered or delayed in performing, any obligations under this Agreement by reason of any circumstances beyond its reasonable control (including, without prejudice to that generality, strikes or lockout), it shall be excused performance to the extent affected by the circumstances concerned, so long as:-

it gives notice to the other Party of those circumstances promptly after they first affected performance; and

it uses all reasonable commercial endeavours to remove or avoid their cause or minimise their effect.

Such performance shall be excused for the period during which the inability of the Party to perform subsists but for no longer period, and shall be remedied as soon as possible.

If the Consultant is prevented or impeded from performing the Services by reason of any circumstances falling within the provisions of clause ~~09~~, for a period in excess of [three] months, then either Party may terminate this Agreement, with immediate effect, by written notice to the other Party, with such termination to take effect forthwith.

#### **DEFAULT & TERMINATION**

SCVO may at any time, by notice in writing to the Consultant, terminate this Agreement with immediate effect if:-

the Consultant fails to observe or perform any of its material obligations contained in this Agreement where such failure is not remediable;

the Consultant fails to observe or perform any of its material obligations contained in this Agreement where such failure was capable of being remedied but was not remedied within [10] Business Days of being requested to do so by SCVO;

the Consultant fails to comply with a remedial plan of the nature referred to in clause ~~09~~ within the period reasonably prescribed within that remedial plan;

the Consultant ceases to carry on its activities, becomes unable to pay its debts when they fall due, becomes insolvent or apparently insolvent, has a receiver, manager, administrator, administrative receiver or similar officer appointed in

respect of the whole or any part of its assets or undertaking, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt, an order is made or resolution passed for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or enters into liquidation whether compulsorily or voluntarily or shall suffer any analogous event;

the Consultant, or any personnel or sub-contractors involved in the delivery of the Services damages (in SCVO's opinion) the reputation of SCVO or otherwise brings SCVO into disrepute.

Following the occurrence of an event of the nature referred to in paragraph 99, SCVO shall, without prejudice to any other remedy competent to SCVO, be entitled to decline to make any further payments of the Fees (or any part of the Fees), temporarily or otherwise, and without prejudice to the entitlement of SCVO subsequently to terminate the Agreement on the same or any other ground.

In the event of the Consultant committing any breach or series of breaches in respect of its obligations under this Agreement, SCVO may (without prejudice to any right to terminate this Agreement under paragraph 99 or 100): -

enter into discussions with the Consultant with a view to determining how that breach or series of breaches might be remedied or the incidence of any breaches of that nature might be reduced or eliminated;

prescribe (acting reasonably, and taking account of any discussions held in pursuance of paragraph 99) a remedial plan (including a reasonable period for implementation) which it shall issue in writing to the Consultant;

and the Consultant shall thereafter be under obligation to comply with the remedial plan within the period stated in such remedial plan.

In addition to its rights under clause 99, SCVO may at any time, by notice in writing to the Consultant, terminate this Agreement with immediate effect (and shall not (subject to clause 99) be obliged to make any further payment of the Fees or any part of the Fees) if the Big Lottery Fund withdraws or terminates the provision of relevant funding to SCVO.

If the Agreement is terminated in accordance with clause 99, SCVO will pay to the Consultant [(subject to clause 99)] the relevant proportion of the Fees plus VAT for such part of the Services as have been carried out to the date of termination of the Agreement (under clause 99), but in respect of which SCVO have not yet been invoiced in terms of clause 99; payment will be made by SCVO within [•] days of receipt by SCVO of the relevant VAT invoice.

Termination or expiry of the Agreement, however arising, shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either

Party, including (without prejudice to that generality), the right to recover any sums of money which are due to be paid under this Agreement.

The provisions of clauses 00, 00, 00, 00, 00, 00 to 00, 00, 00, 00, and clauses 00 to 00 shall survive termination (for whatever reason) or expiry of this Agreement.

In the event of termination of the Appointment for any reason: -

the Consultant shall deliver to SCVO all material held by it of the nature referred to in clause 00;

the Consultant shall co-operate fully with any New Supplier, and shall (without prejudice to the provisions of paragraph 00) provide any New Supplier with all such information as the New Supplier may reasonably request to ensure the smooth and efficient transfer to the New Supplier of responsibility for delivery of the Services;

the Consultant shall assign to SCVO its whole right, title and interest in and to all Intellectual Property Rights created in the course of delivery of the Services.

#### **ASSIGNATION & SUBCONTRACTING**

The Consultant shall not assign, novate or otherwise dispose of its interest under this Agreement to any other party.

SCVO shall be entitled to assign its rights and obligations in terms of this Agreement to the Big Lottery Fund or to any other body to which the statutory powers and functions of the Big Lottery Fund may be transferred/delegated; in addition, SCVO shall be entitled to novate its interest under this Agreement to the Big Lottery Fund (or to any other body to which the statutory powers and functions of the Big Lottery Fund may be transferred/delegated).

The Consultant shall not be entitled to enter into sub-contracts for the delivery of the whole or any element of the Services, without the prior written consent of SCVO; in the event of any subcontract being entered into, the Consultant shall remain liable for the performance of all obligations incumbent upon it under this Agreement.

#### **WAIVER**

The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled under this Agreement, shall not constitute a waiver of that provision, right or remedy; and shall not prejudice the ability of that Party to enforce that provision in accordance with its terms, or to exercise that right or remedy, on any future occasion.

No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver, identifies the specific provision(s) to which it relates, and is

communicated to the other Party in writing, signed by a duly authorised representative of the Party which is waiving the relevant provision(s).

## NOTICES

All notices and notifications under the Agreement shall be given or issued by letter or by other written document, or by way of facsimile transmission or other visible electronic means.

A notice or notification under the Agreement shall (subject to clauses 00 and 00) be deemed to be duly given:-

in the case of a letter or other written document, when delivered;

in the case of facsimile transmission or other visible electronic means (provided that any relevant answerback has been received) when despatched;

to the Party to which it is given, addressed to that Party at the address last intimated in writing to the Party giving the notice or (as the case may be) at the facsimile number then current of the Party to which it is given.

A notice or notification which is delivered, or (in the case of facsimile transmission or other visible electronic means) despatched, outwith business hours shall be deemed to be duly given during business hours on the Business Day which next follows.

A notice sent by first class recorded delivery post (or equivalent postal service) shall be deemed to have been delivered during business hours on the Business Day following the date of posting; in proving that a notice was given, it shall be sufficient to prove that an envelope containing the notice was duly addressed and posted in accordance with clause 00.

For the purposes of clauses 00 and 00, "business hours" shall mean the period between 9.00 a.m. and 5.00 p.m. on a Business Day.

## PARTNERSHIP

The Agreement shall not be deemed to constitute a partnership or a joint venture between the Parties; neither Party is an agent, express or implied, of the other and neither Party shall hold itself out or submit itself to be held as such or as having any power or authority of any other kind to bind the other Party in respect of legal obligations to third parties.

## SEVERANCE

All of the provisions of the Agreement are severable and distinct from one another; if at any time one or more of such provisions becomes or is declared by a court to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

## WARRANTIES

The Consultant warrants, represents and undertakes to SCVO that the Consultant has full capacity and authority to enter into the Agreement.

The Parties hereby exclude from the Agreement all implied warranties, implied conditions, implied licences and implied terms to the fullest extent permitted by law.

## DISPUTE RESOLUTION

All disputes between the Parties arising out of or relating to this Agreement may be escalated, by either Party, to *[insert title of relevant individual]* of SCVO and *[insert title of relevant individual]* of the Consultant for resolution.

If a dispute cannot be resolved by the individuals to which the dispute has been escalated in pursuance of clause ~~00~~ within 14 days, the dispute may, within 28 days thereafter, be referred for final determination to an expert (the “**Expert**”) who shall be deemed to act as expert and not as arbiter; and

The Parties agree that the Expert shall be an individual with significant experience in relation to the operation of consultancy agreements involving the provision of services similar to the Services as the Parties may agree or, failing agreement within [5] Business Days after a request by one Party to the other, to be chosen at the request of either Party by the President for the time being of the Law Society of Scotland.

Within [5] Business Days after the Expert has accepted the appointment, the Parties shall submit to the Expert a written report on the dispute.

Both Parties will then afford the Expert all necessary assistance which the Expert requires to consider the dispute.

The Expert shall be instructed to deliver his/her determination to the Parties within [5] Business Days after the submission of the written reports pursuant to clause ~~00~~.

Save in the case of manifest error, decisions of the Expert shall be final and binding and shall not be subject to appeal.

The Expert shall have the same powers to require any Party to produce any documents or information to him/her and the other Party as an arbiter and each Party shall in any event supply to him/her such information which it has and is material to the matter to be resolved and which it could be required to produce on discovery.

The fees of the Expert shall be borne by the Parties in such proportion as shall be determined by the Expert having regard (amongst other considerations) to the conduct of the Parties.

## **PUBLICITY**

Except as otherwise agreed in writing by SCVO, the Consultant shall not communicate with the media or any other third person nor publish the results of any operational or financial review of, or report or article about, the provision of the Services or any matter connected with or arising out of the provision of the Services, without the prior written consent of SCVO (such consent not to be unreasonably withheld or unreasonably delayed) except and to the extent that such disclosure may be necessary to:-

comply with the law or the requirements of auditors;

provide information to HM Revenue & Customs and its professional advisers;

provide information to the Consultant's professional advisers.

## **VARIATION**

Save as otherwise expressly provided, no amendment or supplement of any of the provisions of the Agreement shall be effective unless made in writing specifically referring to the Agreement and duly executed by the Parties.

## **COSTS**

Each Party shall meet its own costs in connection with the preparation, adjustment and completion of this Agreement.

**GOVERNING LAW AND JURISDICTION**

The Agreement shall be governed by and construed in accordance with the laws of Scotland.

IN WITNESS WHEREOF this Agreement, consisting of this and the preceding [•] pages together with the Schedule in [•] parts annexed, is executed as follows:-

SUBSCRIBED for and on behalf of  
the said SCOTTISH COUNCIL FOR  
VOLUNTARY ORGANISATIONS

at

on

by

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Director

before this witness

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Witness

Address

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

SUBSCRIBED for and on behalf of  
the said [*insert name of consultant*]

at

on

by

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Director

before this witness

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Witness

Address

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[*Note: this signing docquet assumes that the consultant is a limited company and will have to be adjusted accordingly where the consultant is an individual, a partnership etc.*]



This is the Schedule referred to in the preceding Consultancy Agreement between the Scottish Council for Voluntary Organisations and [*insert name of consultant*]

## **SCHEDULE**

### **PART 1 - DEFINITIONS**

<b>“Agreement”</b>	means the agreement to which this Schedule is annexed;
<b>“Appointment”</b>	means the appointment of the Consultant under this Agreement to provide the Services;
<b>“Big Lottery Fund”</b>	means the Big Lottery Fund, established under the National Lottery Act 2006 and having its corporate office at 1 Plough Place, London EC4A 1DA;
<b>“Business Day”</b>	means a day other than a Saturday, a Sunday or a day which constitutes a holiday for the majority of the Consultant’s staff;
<b>“Confidential Information”</b>	means, in relation to either Party, information of a confidential or proprietary nature (whether in oral, written or electronic form) belonging or relating to that Party, its business affairs or activities which (a) either Party has marked as confidential or proprietary, (b) either Party, orally or in writing, has advised the other Party is of a confidential nature, or (c) due to its character or nature, a reasonable person in a like position and under like circumstances would treat as confidential;
<b>“Consultant Representative”</b>	means the representative of the Consultant appointed pursuant to clause <u>00</u> ;

**“Contract Manager”**

means the representative of SCVO appointed pursuant to clause ~~00~~;

**“Contract Period”**

means the period from [*insert relevant date*] (notwithstanding the dates of execution of the Agreement) to [*insert relevant date*];

**“Deliverables”**

means the deliverables in respect of the Project as specified in Part 4 of the Schedule;

**“Fees”**

means the payments to be made by SCVO to the Consultant under the Agreement in consideration for the Services;

**“Intellectual Property Rights”**

means all patents, trade marks, registered designs (and any applications for any of the foregoing), copyright (including rights in software - object code and source code), semi-conductor topography rights, database rights, unregistered design rights, rights in and to trade names, business names, domain names, product names and logos, databases, inventions, discoveries, know-how and any other intellectual or industrial property rights in each and every part of the world together with all applications, renewals, revisals and extensions;

**“Law”**

means any applicable statute or any delegated or subordinate legislation, any enforceable community right within the meaning of section 2(1) of the European Communities Act 1972, any applicable guidance, direction or determination with which either Party is bound to comply and any applicable judgement of a relevant court of law which is a binding precedent in Scotland, in each case so far as in force in Scotland;

<b>“Milestones”</b>	means the milestones specified in Part 3 of the Schedule;
<b>“New Supplier”</b>	means any entity which is awarded a contract to provide services equivalent or similar to the Services, or any part of the Services, in place of the Consultant;
<b>“Parties”</b>	means SCVO and the Consultant; <b>“Party”</b> shall be construed accordingly;
<b>“Services”</b>	means the [ <i>include brief description of the types of services</i> ] services to be provided by the Consultant as set out in the Specification;
<b>“Specification”</b>	means the specification for the Services as detailed in Part 2 of the Schedule, which may be varied from time to time by agreement in writing between the parties;
<b>“TUPE”</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and/or any other regulations enacted for the purposes of implementing the Acquired Rights Directive (2001/23/EC) into UK law;
<b>“VAT”</b>	means value added tax.



## **PART 2 – SPECIFICATION OF SERVICES**

*[insert here the specification of the services]*

### **PART 3 – MILESTONES**

*[insert details of the milestones]*

#### **PART 4 - DELIVERABLES**

*[insert details of deliverables]*

**PART 5 – INSTALMENTS OF FEES**

<i>Amount of fee</i>	<i>Date Payable</i>



## PART 6 – INSURANCES

Professional indemnity insurance providing cover of £• on an each and every claim basis  
[*other key terms* ]

[Public liability insurance providing cover of £• on an each and every claim basis [*other key terms*] ?]

## **PART 7 - The Big Lottery Fund**

### **Standard terms and conditions for portfolio grants**

If you do not understand any part of these terms and conditions or want us to explain any of them further, please contact the member of staff who is handling your grant at the Big Lottery Fund. However, please note that the standard terms and conditions of grant are not negotiable.

#### **Definitions**

**“We” and “our” refer to the organisation receiving the grant bound by these terms and conditions.**

**“You” and “your” means The Big Lottery Fund and includes your employees and those acting for you.**

The “portfolio” means the portfolio of projects that you are giving us the grant for as set out in our application form and any supporting documents, and/or as varied by the grant agreement. This includes the agreed individual projects and the organisations that will deliver them, as listed in the grant offer letter.

“Assets” are items whose purchase, construction or improvement are funded in total or in part by a capital grant, that cost or are valued at (whichever is higher) £500 or more, and have a useful economic life of three years or more (based on normal accounting practice). This includes items bought or owned by third parties delivering individual projects.

The “grant agreement”, which we have accepted and signed, includes and incorporates these standard terms and conditions and the grant offer letter together with any other conditions we have agreed.

#### **IN GENERAL**

- 1.1 We will use the grant exclusively for the delivery of the portfolio. We will hold any unused part of the grant on trust for you at all times, and we will repay any grant (including any unused grant) to you immediately upon demand if any of the events listed in clause 12.8 occur. The term “on trust” means the legal relationship that exists between us while we are using the grant for our portfolio.

- 1.2 During the period of the grant we will act in a fair and open manner without distinction as to race, religion, age or disability, and in compliance with relevant legislation.
- 1.3 We will ensure that while the grant agreement is in force we are correctly constituted and regulated and that the receipt of the grant and the delivery of the portfolio are within the scope of our governing documents, and, if asked by you, we will provide a legal opinion from our solicitors confirming this.
- 1.4 We will make sure that all current and future members of our governing body or our executive team, if we are a statutory organisation, receive a copy of these terms and conditions while the grant agreement remains in force.
- 1.5 We understand that these terms and conditions are not negotiable and will not be changed.

## **2 THE PORTFOLIO**

- 2.1 We will get your written agreement before making any change to the portfolio or to its aims, structure, delivery, outcomes, duration or ownership. We will get your written agreement before changing the agreed individual projects or the organisations that are delivering them.
- 2.2 We will start at least some of the individual projects within 6 months of the date of the grant agreement. If we cannot meet this date we will write to you giving reasons for the delay and asking for an extension.
- 2.3 We agree to make satisfactory progress with the portfolio and complete it on time or within a reasonable period if you have not set a time limit.
- 2.4 We will not use the grant to pay for any spending commitments we have made before the date of the grant agreement.
- 2.5 We will tell you of any offer of funding for the portfolio from anyone else at any time during the portfolio. We will tell you of any additional income received for the portfolio, including interest earned on the grant income.
- 2.6 We shall secure any other funding needed for the delivery of the portfolio, as detailed in our application, in good time and will provide evidence of this that is acceptable to you.

- 2.7 If we spend less than the whole grant on the portfolio, we will return the unspent amount to you promptly. If the grant part-funds the portfolio, we will return the appropriate share of the unspent amount to you.
- 2.8 We will acknowledge the grant publicly as appropriate and as practical. We will follow your branding and publicity guidelines at all times. We will acknowledge your support in any published documents that refer to the portfolio, including job advertisements, accounts and public annual reports, or in written or spoken public presentations about the portfolio.
- 2.9 We hereby consent to any publicity about the grant and the portfolio as you may from time to time require. You can carry out any forms of publicity and marketing to promote the award of the grant as you see fit. We agree to do whatever you reasonably require in order to assist with any form of publicity and marketing, including any press or media related activities.
- 2.10 We will tell you promptly about any changes to information we have provided and will make sure that the information you hold is always true and up to date.
- 2.11 In our management of all personal information we will meet the requirements of the Data Protection Act 1998. We will tell you immediately if any of our key contacts change.
- 2.12 We agree to meet all laws regulating the way we operate, the work we carry out, the staff we employ or the goods we buy, including (but without limitation):
- employment legislation
  - health and safety legislation
  - child and vulnerable adult protection legislation, including if appropriate, gaining registration (and providing us with evidence that this has been done) under the Children's Act 1989 or the Children (Northern Ireland) Order 1955 before any payment can be made
  - Freedom of Information legislation.

We will ensure that we have an equal opportunities policy that is implemented and reviewed regularly. If our portfolio involves work with children, young people or other vulnerable groups we will also have an appropriate protection policy in place and implemented at all times, to help us comply with all relevant laws and good practice throughout the period of the grant agreement. We will obtain all approvals and licences and any profile checks required by law or by you.

- 2.13 If we are a charity, we will register with the Charity Commission or the Office of the Scottish Charity Regulator if our income goes over their minimum exemption figure.
- 2.14 We will maintain adequate insurance with reputable insurers to cover all legal and other liabilities at all times. This includes employee and public liability insurance and insurance that covers the full replacement value of any assets you have funded for the asset monitoring period (see clause 9.6). If asked, we will supply copies of current policies and evidence of premium payment to you. If we are a statutory organisation we may choose not to take out insurance on assets you have funded. But if the assets are lost, damaged or stolen, we will replace them as soon as practicable at no further cost to you.
- 2.15 We will acquire and maintain all necessary consents, resources and expertise to deliver the portfolio.
- 2.16 We have and will keep in place adequate procedures for dealing with any conflicts of interest.
- 2.17 We have and will keep in place systems to prevent fraud.
- 2.18 You have the right to reproduce any of our application or subsequent information supplied by us to you for any purpose, including publication, as you see fit.

### **3 OUR ORGANISATION**

3.1 We will get your written agreement before:

- Changing our governing document, (unless we are a statutory organisation) concerning our aims, payments to members and members of our governing body, the sharing out of our assets (whether our organisation is dissolved or not), or the admission of any new members; or
- Transferring our assets to, or merging or amalgamating with, any other body, including a company set up by us; or
- Changing our organisation's ownership, composition, structure or key personnel.

3.2 We will write to you as soon as possible if any legal claims are made or threatened against us and/or which would adversely affect the portfolio during the period of the grant (including any claims made against members of our governing body or staff concerning the organisation).

3.3 We will tell you in writing as soon as possible of any investigation concerning our organisation, trustees, directors, employees or volunteers carried out by the Police, Charity Commission, the Office of the Scottish Charity Regulator, HM Revenue & Customs or any other regulatory body.

3.4 We will be available for meetings with you and allow full and free access to our records however and wherever held and to any of our offices or buildings, to you, or those acting for you or to the National Audit Office.

3.5 We will let you know if our governing body falls below three members and will increase it to at least three as soon as possible.

#### **4 CONTRACTS BETWEEN US AND THIRD PARTIES DELIVERING INDIVIDUAL PROJECTS**

4.1 Even though we may sub-contract individual projects to third parties, we understand we remain accountable for delivering the portfolio and for keeping all of the grant terms and conditions.

4.2 We will ensure that the payment of grant funds to third parties is subject to an agreement containing reasonable and adequate terms and conditions to safeguard the grant and all relevant obligations from this grant agreement. These terms and conditions must include provisions for third parties to repay grant funds if any of the events listed in clause 12.8 occur.

4.3 We will ensure that third parties are bound by the requirements covering portfolio assets set out in Section 9 'Grants for Assets and Services'.

4.4 We will ensure that third parties maintain adequate insurance cover in line with clause 2.15.

4.5 We will ensure that third parties follow your branding and publicity guidelines at all times.

4.6 You have the right to have any contract between us and a third party novated to you (or a new organisation) if any of the events listed under 12.8 occur.

4.7 You also have the right (under the Contracts (Rights of Third Parties) Act 1999) to enforce any of our rights under the contract with a third party. The third party contract must contain a provision that these rights may not be altered or extinguished without your written consent.

- 4.8 If we recover money from a third party, we will repay this money immediately to you, unless you agree otherwise in writing.

## **5 VAT**

- 5.1 We acknowledge that the grant is not consideration for any taxable supply for VAT purposes by us to you. We understand your obligation does not extend to paying us any amounts in respect of VAT in addition to the grant and that the grant made by you is inclusive of VAT.
- 5.2 We agree to repay you immediately any VAT we recover whether by set-off, credit or repayment to the extent that any such VAT cost is included in the grant.
- 5.3 We will notify you immediately if any irrecoverable VAT claimed under the grant becomes recoverable.
- 5.4 We will keep proper and up to date records relating to VAT, and we will make such records available for you to look at and give you copies when requested.
- 5.5 If you have funded all of the VAT costs for our portfolio, we agree to refund immediately all of the VAT we recover to you.
- 5.6 If you have funded a proportion of the VAT costs for the portfolio, we agree to refund immediately the same proportion of the VAT recovered to you.

## **6 OUR ANNUAL REPORT AND ACCOUNTS**

- 6.1 We will comply with all relevant laws regarding the submission of accounts, audit or examination of accounts, annual reports, and annual returns.
- 6.2 We will acknowledge your grant in our annual reports and accounts covering the period of the portfolio.
- 6.3 We will show your grant and related expenditure as a restricted fund under the description “Big Lottery Fund Grant” in our organisation’s annual accounts. If we have more than one restricted fund, or, as a statutory authority, cannot show restricted funds in our accounts, we will include a note to the accounts identifying each restricted fund separately. If we have more than one grant from you, we will

record each grant separately in the notes to the accounts. We will identify unspent funds and assets in respect of the grant separately in our accounting records.

- 6.4 We will send you a copy of our annual accounts as soon as they have been approved in accordance with our governing document and in any event within 10 months of the end of the financial year for each year in which grant payments are made. The accounts will be signed by a member of our management committee and externally audited or independently evaluated as appropriate for our organisation. If a statutory authority, we will send you our accounts, signed and audited as required by the appropriate regulations.
- 6.5 We will keep proper and up to date accounts and records for at least seven years after the termination of our grant, including summary profit and loss accounts and management accounts, personnel and payroll records and invoices, which show how the grant has been used. We will make these financial records available to you to look at and give you copies.
- 6.6 We will report regularly and fully to all members of our governing body on the financial position of our organisation.

## **7 MONITORING**

- 7.1 We will monitor the progress of the portfolio and complete regular reports as you require using the forms you send us.
- 7.2 We will send you any further information you may ask for about the portfolio or about our organisation, and its activities, the number of jobs created by the portfolio, the number of users and other beneficiaries and such other information as you may require from time to time. You may use this information to monitor the portfolio and evaluate your grants programmes.
- 7.3 We will fill in a final report on the portfolio using the form you send us. We understand that the grant is finished only after we have completed this report to your satisfaction and you have received annual accounts for the full period.
- 7.4 We will tell you immediately in writing of anything that significantly delays, threatens or makes unlikely the portfolio's completion or significantly delays threatens or makes unlikely the completion of any individual project.



- 7.5 We will tell you immediately if there is to be any variation to or decrease in the portfolio outcomes.
- 7.6 We will comply with any reasonable requirements that you may have for site visits (including visits to individual project sites), compliance visits, and meetings with our officers or agents at any time during or after completion of the portfolio or during the asset monitoring period (clause 9.6).

## **8 GRANTS FOR SALARIES**

- 8.1 We will ensure that we have proper employment policies and procedures in place at all times. We will pay attention to equalities in the recruitment and selection process and the need to ensure an appropriate balance of staff in our organisation.
- 8.2 If the grant is for a salary of a new post, we will make sure the vacancy is advertised externally, using appropriate media (including media that could attract disadvantaged groups). We will make sure every advertisement is in accordance with all current best practice and will acknowledge that you are the funder of the post. This applies to any re-advertisement. The job description, a list of the publications where the advertisements were placed and a copy of the letter of appointment must be kept. We will send them to you if you ask for them.
- 8.3 We will maintain records of staff funded by you including their names, their salaries and their start, and, if appropriate, end dates and give you this information if you ask for it.
- 8.4 We will maintain all main financial records including personnel and payroll records for staff funded by you for seven years after the grant has ended. We will make sure third parties employing staff funded by you also meet this requirement. We will complete all statutory returns for employees and make all relevant payments to cover their pensions and salary deductions, such as income tax and National Insurance contributions.

## **9 GRANTS FOR ASSETS AND SERVICES**

- 9.1 IF ANY PART OF THE GRANT IS TO BUY OR BUILD, REFURBISH, EXTEND OR ALTER BUILDINGS OR LAND THEN WE WILL COMPLY WITH THE TERMS OF THE STANDARD

CAPITAL GRANT CONDITIONS ATTACHED TO THE GRANT OFFER LETTER OR ANY OTHER CONDITIONS WHICH YOU HAVE REQUIRED OF US.

- 9.2 We will take reasonable steps to obtain value for money when buying goods and services in connection with the portfolio by obtaining quotations or applying competitive tendering. If any part of the grant is used to buy any capital items or a series of related capital items costing more than £10,000, we will put out the order to competitive tender. If there are good reasons why we cannot tender, we will get your agreement beforehand. We understand that public bodies must meet the relevant UK and European legislation on procurement, together with the provisions of the World Trade Organisation General Procurement Agreement.
- 9.3 If the grant is for the purchase of a vehicle we will send you a copy of the registration documents no later than three months after you have sent us the money for the vehicle.
- 9.4 If any part of the grant is used directly or indirectly to purchase or develop any intellectual property rights then we will take all necessary steps to protect such rights and we agree that we will not exploit such rights without your prior written consent. Exploitation includes use for any commercial purpose or any licence, sale, assignment, materials transfer or other transfer rights. We understand and accept that if you provide the consent it may be subject to conditions requiring us to repay or to share any money we receive.
- 9.5 We will keep all assets funded by the grant safely and in good repair and will make sure we have adequate insurance cover for all of them. Any loss resulting from payments made for assets before delivery will be our responsibility. If the asset is damaged, destroyed or stolen, we must tell you in writing and we must repair or replace it. We will not change the purpose for which the portfolio assets are used during the asset monitoring period without your written approval. This includes assets owned by third parties.
- 9.6 We understand that you will monitor assets bought with the grant for the period shown in the following table. We will supply you with the information that you ask for and will allow you to inspect the assets for this period.

Asset type	Value of asset	Asset monitoring period (from date of acquisition or completion of capital works)
Equipment and vehicles	£500 and above	Useful economic life of the asset as determined by normal accounting practices

Asset type	Value of asset	Asset monitoring period (from date of acquisition or completion of capital works)
Refurbishment, extension or construction of buildings or other property	Up to £50,000	5 years
	£50,001 to £250,000	10 years
	£250,001 to £5 Million	20 years
	Above £5 Million	40 years
Purchase of leasehold buildings and land	N/A	Either: <ul style="list-style-type: none"> <li>• The unexpired period of the lease, or</li> <li>• 80 years</li> </ul> whichever is the shorter.
Purchase of buildings / land on a heritable basis in Scotland, or purchase of buildings / land on a freehold basis elsewhere	N/A	80 years

9.7 During the above asset monitoring period, we will maintain a detailed register of the portfolio assets and provide a copy of this every year or when new assets are acquired or disposed of (whichever is the sooner). The register must include details of the owner and location of the asset.

9.8 We will get your written consent before any disposal of assets within the above asset monitoring period. This includes any disposal by us, a third party or any party or any owner with an interest (whether equitable or legal) in the asset. As our grant has come from public funds, we understand and accept that if you provide the consent it may require that the sale is at full market value and/or subject to conditions requiring us to repay all or part of the money we receive.

9.9 We do not have any undisclosed loans on the capital assets. We will not take out any loans secured on any capital assets funded or part-funded by the grant unless we receive first your agreement in writing. Your agreement may be subject to conditions which we will have to meet.

## **10 PAYMENT OF GRANT**

- 10.1 You will pay the grant by bank transfer (BACS) into a UK-based bank account or building society account in our name, which requires the signatures of at least two authorised people for every withdrawal. We will not use ATM's or debit cards to make cash withdrawals or payments from this account.
- 10.2 You will not be liable for any losses or costs (including, but not only, bank charges) if you do not make grant payments on the agreed date. We must take up the first instalment of the grant within six months of the date of the grant offer letter; otherwise it will automatically lapse, unless you agree in writing to an extension.
- 10.3 We will submit payment claims by providing an up to date income and expenditure statement, plus a projection of future costs on the claim form you provide, plus any associated information asked for with the claim. Claims for grant payments shall be for individual project costs or portfolio management costs associated with the portfolio only and not for investments. Where the grant is claimed to cover estimated (rather than actual) expenditure, the claim can only include items of expenditure to be made during the period to which the claim relates. Grants for capital payments will not be paid unless supported by validated certificates and invoices, unless you agree otherwise in writing.
- 10.4 If you agree a grant claim, you will pay it without unnecessary delay and normally within 30 days.
- 10.5 If you are not satisfied that we have met all the terms of our grant agreement, or you need extra information or documents, you may ask for this and may postpone payment of the grant until you feel that the terms are met or until you receive the material you want.

## **11 LENGTH OF GRANT AGREEMENT**

- 11.1 These terms and conditions and the grant agreement remain in force for whichever of these is the longest time.
- For one year following the payment of the last instalment of the grant;
  - As long as any part of the grant remains unspent;
  - The expiry of the maximum asset monitoring period (clause 9.6); or

- As long as we do not carry out any of the terms and conditions of the grant agreement or any breach of them continues (this includes any outstanding reporting on grant expenditure or portfolio delivery).

## **12 We understand that**

- 12.1 You can only guarantee future instalments of the grant as long as funds from the National Lottery are available and you continue to operate.
- 12.2 You are not liable, except for death or personal injury resulting from negligence or for fraud:
- to any person for any matter arising in connection with the development, planning, construction, operation, management and administration of the portfolio, or
  - to us for any loss or damage arising directly or indirectly as the result of us complying with standard conditions or terms of grant.
- 12.3 We hold the grant on trust and may not transfer it, except for payments to third parties for delivering individual projects as agreed in the grant offer letter.
- 12.4 The grant agreement is solely between us and the Big Lottery Fund. The standard terms and conditions cannot be enforced by any other party.
- 12.5 We accept that you may share information about our grant, our organisation, our portfolio and any third parties with any parties of your choice as well as with members of the public who make a request for information under the Freedom of Information Act 2000. Details of the portfolio may be broadcast on television, on your website, in newspapers and through other media.
- 12.6 You will not increase the grant if we spend more than the agreed budget.
- 12.7 You may suspend payment of the grant if you want to investigate any matters concerning the grant (or any other grants you have given to us). We understand that you accept no liability for any consequences, whether direct or indirect, that comes about from a suspension even if the investigation finds no cause for concern.

12.8 You may withhold or demand repayment of all or part of the grant at your absolute discretion, in any of the following circumstances if:

- We fail to meet any of these terms and conditions, or the terms and conditions attached to any other grants from you for which a grant agreement is still in force.
- We completed the application form dishonestly or significantly incorrectly or misleadingly.
- We or any other person or organisation operating for us gave you any significantly misleading or inaccurate information, whether deliberate or accidental, during the application process, or during the period of the grant agreement.
- It is likely that our organisation will have to stop operating, may be dissolved or become insolvent, or is likely to be put into administration or receivership or liquidation, or we are about to make an arrangement with, or guarantee a Trust Deed to our creditors, or, in Scotland, our organisation's estate is sequestrated.
- Members of our governing body, volunteers or staff or any person or organisation closely involved in carrying out the portfolio act at any time during the portfolio dishonestly or negligently or in any way, directly or indirectly, to our detriment or to the detriment of our organisation or the portfolio or to the detriment of your reputation.
- Our organisation, members of our governing body, employees or volunteers are subject to an investigation or formal enquiry by the Police, Charity Commission, the Office of the Scottish Charity Regulator, HM Revenue & Customs or other regulatory body.
- We receive duplicate funding from any other source for the same or any part of the portfolio.
- We do not take positive steps to ensure equal opportunities in our own employment practices and the delivery of and access to our services.
- There is a significant change of purpose, ownership or recipient, either during the portfolio or within a reasonable period after its completion, so that you judge that the grant is unlikely to fulfil the purpose for which you made it.
- At any stage of the application process or during the period of the grant agreement we do not let you have information that would affect your decision to award, continue or withdraw all or part of the grant.
- We are or become legally ineligible to hold the grant.

- If you have reasonable grounds to believe that it is necessary to protect public money.

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12.9 We acknowledge that the grant comes from public funds and we will not use the grant in a way that constitutes State aid. In the event that it is deemed to be State aid, then we will repay the entire grant immediately.

12.10 You may assign any of your rights under the grant agreement to any other or successor body.

12.11 We may not transfer any part of the grant or this grant agreement or any rights under it to another organisation or individual, unless we have entered into an agreement, authorised by you, requiring us to work with another organisation in delivering the portfolio.

### **13 ADDITIONAL CONDITIONS**

13.1 You have the right to impose additional terms and conditions on the grant either in the offer letter and/or if:

- We are in breach of the grant agreement.
- You withdraw any part of the funding for the project.
- Any funding due from other sources for the portfolio has been withdrawn or otherwise cannot be used for the portfolio.
- You judge that members of our governing body, volunteers or staff or any person or organisation closely involved in carrying out the portfolio act in a way that may have a detrimental effect on the portfolio or on your reputation as a distributor of public money or as a Government sponsored body.
- If you have reasonable grounds to believe that it is necessary to protect public money.
- You believe such conditions are necessary or desirable to make sure that the portfolio is delivered as set out in our application or following any agreed changes