|  |
| --- |
| Dated: xx/xx/xxxx |
| 1. **ROYAL NATIONAL INSTITUTE OF BLIND PEOPLE** 2. **[Insert name of company]** |
| CONSULTANCY AGREEMENT |
| Subject to contract |

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THIS CONSULTANCY AGREEMENT is dated 2023 and is made between:

1. **ROYAL NATIONAL INSTITUTE OF BLIND PEOPLE,** a charity registered in England and Wales under number 226227 and having its principal office at 105 Judd Street, London, WC1H 9NE (the"**Client**");and
2. **[INSERT NAME OF THE COMPANY],** with registered office at [insert address] and with company number [insert number], (the **"Consultant"**);

**BACKGROUND:**

(A) The Consultant provides disability, voluntary and community evaluation consultancy, specialising in disabilities, the voluntary and community space and has considerable skills, knowledge and experience in that field.

(B) In reliance on those skills, knowledge and experience, the Client wishes to engage the Consultant to provide consultancy services. The Consultant acknowledges that the Client has entered into this Agreement on reliance of those skills, knowledge and experience and on the representations of the Consultant.

(C ) In the provision of the Services, the Consultant is required to comply with certain regulatory standards and policies and procedures of RNIB, including RNIB’s Safeguarding Policy and RNIB’s safeguarding procedures.

(D) The Client has entered into the Funding Agreement (as defined below) with the National Lottery Community Fund for the provision of two community based Eye Clinic Liaison Officers (ECLO), a rapid response counsellor and a partnership coordinator in the Hounslow area. The Client’s main objectives under the Funding Agreement are:

* Making sure Blind and partially sighted people in Hounslow are better supported and more knowledgeable with regards to accessing services available to them.
* Enabling blind and partially sighted people to feel more confident in knowing where and how to get support, advice and guidance.
* Ensuring the sight loss pathway is clearer for both professionals and people with sight loss.
* Enabling blind and partially sighted people to feel more connected to others and with their community.
* Ensuring blind and partially sighted people have increased sense of wellbeing and social inclusion.

The Client is subcontracting some of the services provisioned under the Funding Agreement to the Consultant. Through the Services (as defined below), the Consultant shall contribute to the Client’s objectives of:

* monitoring the impact the Hounslow ECLO project is having on the local community and recording the Client’s progress towards meeting its aims.

**IT IS AGREED that:**

1. Definitions and Interpretation
   1. Defined terms:

In this Agreement:

**"Additional Work"** means any work carried out by the Consultant under this Agreement other than the Services;

**"Appointment"** means the appointment of the Consultant on the terms of this Agreement;

**"Business Opportunities"** means any opportunities which the Consultant becomes aware of during the Appointment which relate to the activities of the Client or any Group member or which the Client reasonably considers might be of benefit to the Client or any Group member including without limitation opportunities relating to any potential Donor;

**"Client Premises"** Any site that is owned, leased or rented by the Group;

**"Client’s Policies"** means the policies made available at Appendix 1 to this Agreement and any other relevant policy adopted by any member of the Group from time to time which has been made known to the Consultant as applicable to it or him/her in the performance of the Services on the Client's (or any third parties') Premises;

**"Consultant Employees"** means any person employed or engaged or formerly employed or engaged by the Consultant or any of its subcontractors in the provision of the Services at any time during the term of this Agreement.

**"Data Processor"** has the meaning given to it under the Data Protection Legislation;

**"Data Protection Legislation" means** all applicable laws and regulations relating to the processing of personal data and privacy, including the Data Protection Act 2018, the General Data Protection Regulation 2016/679 as it forms part of English Law and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated, and the terms ''Data Controller'', ''Data Processor'', ''Process", "Data Subject" and ''Personal Data" shall have the meanings given to those terms in such data protection laws and regulations;

**"Donor"** means any party which provides or donates funds to the Client and/or any Group member in connection with their respective activities or which may so provide or donate funds;

"**Funding Agreement**" means the National Lottery Community Fund Funding Agreement attached at Appendix 2;

**"GDPR"** shall mean the General Data Protection Regulation (EU) 2016/679 as it forms part of English Law ;

**"Group"** means any of the following from time to time: the Client, its subsidiaries and subsidiary undertakings and any holding company or parent undertaking of the Client and all other subsidiaries and subsidiary undertakings of any holding company or parent undertaking of the Client, where "holding company", "parent undertaking", "subsidiary" and "subsidiary undertaking" have the meanings given to them in the Companies Act 2006;

**"Information Security Obligations"** means the obligations as set out at Schedule 3;

**"Losses"** means all demands, claims, actions, proceedings, liabilities, damages, losses, costs and expenses (including legal and other professional costs);

**"New Provider"** means any party or third party which will supply services or activities following the termination of this Agreement which are fundamentally the same as any or all of the Services (as provided for by TUPE) or otherwise where the transfer of services or activities amounts to a relevant transfer (as provided for by TUPE);

"**Personal Data**" means any personal data (as defined in the Data Protection Legislation) provided to the Consultant in connection with the Appointment;

**"Representative"** means the individual nominated by the Client from time to time to be responsible for the Consultant;

**"Services"** means the services set out in Part 1 of Schedule 1 to this Agreement; and

**"TUPE"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended, re-enacted or consolidated from time to time.

* 1. Meaning of references

In this Agreement, unless the context requires otherwise, references to:

* + 1. acting **directly** or **indirectly** include acting alone or jointly with or on behalf of or by means of another person and/or giving advice or providing services with a view to assisting another person;
    2. a **person** include an individual, firm, corporation and any other organisation however it is constituted and words denoting the singular include the plural and vice versa;
    3. **statutory provisions** are construed as references to those provisions as amended or re-enacted from time to time (whether before or after the date of this Agreement) and references to documents are construed as references to documents as replaced or amended from time to time after the date of this Agreement;
    4. this **Agreement** include the Schedules which forms part of this Agreement for all purposes; and
    5. the **clause headings** are added for convenience only and do not affect the construction of this Agreement.

1. Project
   1. The Client has entered into the Funding Agreement. The Client is subcontracting some of the services provisioned under the Funding Agreement to the Consultant. The Services shall be performed in accordance with the Funding Agreement.
   2. This Agreement is a secondary document in that it must be read subject to the Funding Agreement. The content of the Funding Agreement document shall override anything to the contrary in this Agreement.
   3. Notwithstanding any other term of this Agreement the Consultant will at all times use all reasonable endeavours to facilitate and allow RNIB’s compliance with the Funding Agreement.
2. Appointment
   1. Appointment of Consultant

The Client appoints the Consultant to provide the Services and the Consultant agrees to provide them on the terms of this Agreement.

* 1. Term of Appointment

The Client will engage the Consultant, subject to the terms of the Appointment, with effect from [insert start date], and as set out in Part 1 of Schedule 1.

* 1. Conflicts of interest

The Consultant represents and warrants to the Client that there is no obligation, covenant or restriction which would or might prevent the Consultant from performing the Services or which may give rise to any conflict of interest between the Consultant or any Consultant Emoployees and the Client.

1. Services
   1. Provision of Services

The Consultant will:

* + 1. provide the Services:
       1. in accordance with the programme set out in Part 1 of Schedule 1; and
       2. in a diligent, timely and professional manner, and using all reasonable care and skill.
    2. assess the requirements of the Client, having regard to and considering any relevant issues and deal with any problems that may arise in the course of the Appointment; and
    3. provide such written materials and attend such meetings as may reasonably be required for the effective performance of the Services. The Consultant will keep the Representative informed of progress on projects on which he is engaged. The Client acknowledges that the Consultant may determine the manner in which the Services are provided, as long as they are provided in a manner which is consistent with this Agreement. The Consultant will comply with the requests of the Representative and will work and cooperate with any employee, agent or other consultant of the Client.
  1. Records

The Consultant will:

* + 1. prepare detailed records of work carried out, hours worked in connection with its provision of the Services;
    2. maintain such records for six years after termination of this Agreement;
    3. allow the Client to inspect such records and provide the Client with copies of such records on request; and
    4. answer promptly (in writing if required) any reasonable queries the Client may have concerning its provision of the Services.
  1. No authority to bind the Group

The Consultant may not assume, create or incur any liability or obligation on behalf of, or incur any expenditure in the name of, any member of the Group except as specifically authorised in writing by the Representative.

* 1. Provision of facilities

The Client shall be under no obligation to provide office or other accommodation or facilities to the Consultant other than as may be specified in Part 1 (*The Services*) of Schedule 1.

* 1. Defective work

If any Services are not performed in accordance with the requirements of this Agreement the Client may:

* + 1. require the Consultant to perform such Services again at no cost to the Client on notice to the Consultant within one year of termination of this Agreement; or
    2. engage another person to perform such Services, in whole or part, and recover all properly incurred costs of doing so from the Consultant.
  1. Third parties

Nothing in this Agreement will prevent the Consultant from supplying similar consultancy services to any other person with the prior written approval of the Representative. Such approval will not be unreasonably withheld provided that:

* + 1. such activity does not directly or indirectly cause, and is not likely to cause, a breach of any of the Consultant’s obligations under this Agreement; and
    2. such activity does not relate to a business which is similar to or in any way directly or indirectly competitive with the business of the Client or any Group member.
  1. Support

The Consultant may use another person, firm or company to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that the Client will not be liable to bear the cost of performance of such functions and that the number and identity of such staff is always to be subject to the written consent of the Representative.

1. Vulnerable Persons
   1. Vulnerable persons

The provisions of this clause 4 apply if the Consultant or any Consultant Employees will work with children, young people or vulnerable adults ("**Vulnerable Persons**") during the course of providing the Services.

* 1. Additional requirements

The Consultant must:

* + 1. take all reasonable steps to ensure the safety of any Vulnerable Persons;
    2. obtain the prior written consent of the legal carer or guardian of each Vulnerable Person before having any direct contact with any Vulnerable Person; and
    3. have and comply with an appropriate written policy to safeguard Vulnerable Persons and provide the Client with a copy of that policy immediately on request.
  1. Third parties

The Consultant will ensure that any employees, volunteers, trustees or contractors who will supervise, care for or otherwise have direct contact with Vulnerable Persons in connection with the Services will comply with this clause 4.

* 1. Compliance

Without prejudice to clause 11.3 (*Applicable laws*), the Consultant will and shall ensure that its Consultant Employees shall comply with the Safeguarding Vulnerable Groups Act 2006 and any subsequent equivalent legislation at all times in carrying out the Services.

1. Fees and expenses
   1. Fees

The Client will pay the Consultant a fixed fee of [insert fee], plus any VAT for the Services.

* 1. Invoices
     1. The Consultant will deliver to the Client an invoice respect of the Services as set out in Part 2 of Schedule 1. Where the Consultant is registered for VAT, any VAT payable will be shown separately on such invoices. The fee for that period will normally be payable by the Client 30 days after receipt of such invoice except where the Client disputes the whole or part of such invoice in good faith in which case only the undisputed portion is due and payable within the stipulated period.
     2. Claims for fees for Additional Work shall be submitted no more than 3 months after such Additional Work is carried out. Claims for fees made more than 3 months in arrears will not be accepted.
     3. Payment in full or in part of the fees [(or any expenses claimed)] shall be without prejudice to any claims or rights of the Client against the Consultant in respect of the provision of the Services.
  2. Deduction

The Client may deduct or set off any sums that the Consultant may owe to the Client or any member of the Group at any time (including under any indemnity contained in this Agreement) from any sums due to the Consultant under this Agreement.

* 1. Additional work

The Consultant shall obtain written consent from the Representative before carrying out any Additional Work or incurring any fees in respect of the Services in excess of any fixed fee specified in clause 5.1.

* 1. Expenses

No expenses are payable to the Consultant by the Client under this Agreement.

5.6 **Interest**

If any sum payable under this Agreement is not paid when due, then, without prejudice to the Consultant's other rights under this Agreement, and except in the event of a bona fide payment dispute, the Client shall pay interest on the overdue amount from the due date until payment is made in full at two (2) per cent per annum over Barclays Bank plc's base lending rate from time to time

1. Insurance and indemnity
   1. General indemnity

The Client relies on the Consultant's skill, expertise and experience in providing the Services and also upon the accuracy of all representations or statements made and the advice given by the Consultant in connection with the provision of the Services and the Consultant acknowledges this. The Consultant agrees to indemnify and keep indemnified the Client and any member of the Group against all Losses incurred or suffered by the Client or any member of the Group or any third party (whether direct or consequential) arising out of or in connection with any act or omission of the Consultant and any personnel supplied by it to perform the Services.

* 1. Insurance
     1. During the Appointment the Consultant will take out and maintain insurance cover with a reputable insurer against such risks, for such amounts and on such terms as are specified and approved by the Representative (the "**Insurance Policies**").
     2. Without prejudice to clause 7.2 (a), the Consultant must take out and maintain the following Insurance Policies:
        1. insurance in respect of liability for death or injury to any person, or loss of or damage to property, or any other Losses arising out of or in connection with the Appointment in a sum not less than £2,000,000 per incident; and
        2. appropriate professional indemnity insurance.
     3. The Consultant must notify the insurers of the Client's interest and must cause such interest to be noted on the Insurance Policies together with a provision to the effect that, if any claim is brought or made by the Client against the Consultant in respect of which the Consultant would be entitled to receive indemnity under any of the Insurance Policies, the relevant insurer will indemnify the Client directly against such claim and any charges, costs and expenses incurred in respect of it. If the relevant insurer does not so indemnify the Client, the Consultant must use all insurance monies received by them to indemnify the Client in respect of any claim and must make good any deficiency from his own resources.
     4. The Consultant must comply with all provisions of the Insurance Policies at all times. If cover under any Insurance Policy lapses, is not renewed, or changes in any material way or the Consultant is aware of any reason why cover under any Insurance Policy may lapse, not be renewed, or change in any material way the Consultant must notify the Client without delay.
     5. The Consultant shall provide the Client on request with evidence that the Insurance Policies are in force (including confirmation that they has been renewed, where necessary) on request. The provision of such evidence is a condition precedent to payment of fees to the Consultant under clause 6.1.

1. Confidentiality and documents
   1. Confidential information

The Consultant acknowledges that during the Appointment it may have access to and may be entrusted with confidential information and trade secrets relating to the business of members of the Group. This includes but is not limited to information and secrets relating to:

* + 1. fundraising and marketing strategy, business development and plans, sales reports and research results;
    2. business methods and processes, manuals and operating procedures, technical information and know-how relating to the business of any member of the Group and which is not in the public domain, including inventions, designs, programs, techniques, database systems, formulae and ideas;
    3. Business Opportunities; business contacts, Donors, lists of customers and Consultants and details of contracts with them and their current or future requirements;
    4. information on employees, including their particular skills and areas of expertise and their terms of employment;
    5. information and personal data in relation to clients and customers;
    6. budgets, management accounts, trading statements and other financial reports; and
    7. any document marked "confidential", any information which could reasonably be considered confidential by its nature, or any information not in the public domain.

together "Confidential Information".

* 1. Duty not to disclose
     1. The Consultant will not during the Appointment (otherwise than in the proper performance of its duties and then only to those who need to know such information or secrets) or thereafter (except with the prior written consent of the Representative or as required by law):
        1. divulge or communicate to any person (including any representative of the press or broadcasting or other media);
        2. cause or facilitate any unauthorised disclosure through any failure by themselves to exercise all due care and diligence; or
        3. make use (other than for the benefit of any member of the Group),

of any confidential information or trade secrets relating to the business of any member of the Group which may have come to its knowledge during its Appointment or in respect of which a member of the Group may be bound by an obligation of confidence to any third party.

* + 1. The Consultant will also use all reasonable endeavours to prevent the publication or disclosure of any such information or secrets. These restrictions will not apply after the Appointment has terminated to information which has become available to the public generally, otherwise than through unauthorised disclosure.
    2. If any confidential information is disclosed in breach of this Agreement, the Consultant will notify the Client promptly of the nature and extent of the disclosure. The Consultant will comply with all reasonable requests of the Representative to mitigate the effects of such disclosure.
  1. Documents

All notes, memoranda, documents, manuals, correspondence, books, papers and other records (however stored) made by the Consultant in providing the Services or which relate to the business of any member of the Group will belong to the relevant member of the Group and will promptly be handed over to the Client (or as the Client directs) from time to time on request and at the end of the Appointment, without copies being kept by the Consultant or anyone on its behalf. The return of such documents is a condition precedent to payment of fees to the Consultant under clause 6.1.

1. Intellectual property
   1. Intellectual property

It is agreed that:

* + 1. all intellectual property rights (including without limitation trade marks, copyrights, patents and design rights) and all other rights of whatever nature, whether now known or in the future created, arising from or relating to the provision of the Services by the Consultant (whether or not made, originated or developed during normal working hours) (the **"IP Rights"**) will be owned by the Client;
    2. the Consultant will disclose to the Client full details of all documents and materials recording or relating to the IP Rights (the **"Materials"**), forthwith upon their creation;
    3. the Consultant hereby assigns, with full title guarantee free of any encumbrance, all the IP Rights to the Client;
    4. the Consultant will execute all such documents, provide such assistance and do all other acts or things as may reasonably be required by the Client to enable the Client or its nominee to enjoy the full benefit of clauses 9.1(a)to (c). Should the Consultant fail to do so to the Client's reasonable satisfaction, the Client is irrevocably authorised to appoint a person in the Consultant's name and on its behalf (as appropriate) to execute any documents and take such other steps as are necessary to give effect to this clause 9.1(d);
    5. the Consultant grants to the Client a royalty free, world-wide, perpetual, irrevocable, non-exclusive, transferable licence to use any IP Rights which do not vest in the Client in accordance with clauses 9.1(a)to (c);
    6. the Consultant irrevocably waives all moral rights which he might otherwise have or be deemed to have under Chapter IV Copyright Designs and Patents Act 1988 or any similar legislation anywhere in the world; and
    7. immediately upon the termination of this Agreement or earlier at the Client's request, the Consultant will deliver up to the Client all of the Materials which are in the Consultant's possession, custody or power.
  1. Representations and warranties

The Consultant represents and warrants that:

* + 1. but for the provisions of this clause 9, the Consultant would be the sole legal and beneficial owner of the IP Rights;
    2. the Consultant has not granted or assigned, and will not grant or assign, any rights in or to the IP Rights to any third party; and
    3. the use or possession by the Client of the Materials will not infringe any third party rights.
  1. IP indemnity

The Consultant agrees to indemnify and to keep the Client indemnified against all Losses incurred or suffered by the Client arising out of or in connection with any breach of the warranties given in clause 9.2 (*Representations and warranties*) or out of any claims by a third party based on any facts which, if substantiated, would constitute such a breach.

1. Termination
   1. The Client may terminate the Appointment on one week's written notice to the Consultant.
   2. Summary termination

The Appointment may be terminated by the Client without notice:

* + 1. if the Consultant has a winding up petition presented against it or enters into liquidation whether compulsory or voluntary (except for the purposes of bona fide reconstruction or amalgamation), or compounds with or makes any arrangement with its creditors or makes a general assignment for the benefit of its creditors, or if it has a receiver, manager, administrative receiver or administrator appointed over the whole or substantially the whole of its undertaking or assets, or if it has an administration petition presented or administration application made against it or a notice of intention to appoint an administrator has been given to any person or if it ceases or threatens to cease to carry on its business, or makes any material change in its business, or if it suffers any analogous process under any foreign law;
    2. if the Consultant commits any serious or repeated breach of this Agreement or is guilty of serious neglect or negligence in the performance of its duties;
    3. If the Consultant commits any breach of clause 3.6 (*Third parties*), clause 4 (*Vulnerable Persons*) or clause 7 (*Confidentiality and Documents*);
    4. if the Consultant fails or is expected to fail to complete the Services during the Appointment.

1. Compliance with Client Policies
   1. Equal opportunities

In its dealing with any of the Group's employees, agents and other consultants, the Consultant will and will ensure that the Consultant Employees adhere to the Client's Equal Opportunities Policy and will maintain appropriate standards of behaviour. The Consultant agrees to indemnify and keep indemnified the Client and any member of the Group against all Losses incurred or suffered by the Client or any member of the Group or its officers or employees arising out of or in connection with any act or omission by the Consultant or any Consultant Empliyees including but not limited to discrimination or harassment.

* 1. Compliance with Client’s Supplier Codes of Conduct

The Consultant providing the Services to the Client agrees to comply with the Client’s Supplier Code of Conduct (“the Supplier Code of Conduct”) and will ensure any of its employees and/or contractors and/or substitutes comply with the Supplier Code of Conduct. The Supplier Code of Conduct can be found under Appendix 1 of this Agreement.

* 1. Compliance to Client’s Policies

The Consultant will comply with any relevant policy adopted by any member of the Group from time to time which has been made known to the Consultant , including but not limited to the Client's policies listed under this clause including those set out in this Agreement and as attached under Appendix 1.

The Consultant shall also complete any required Client safeguarding courses or other training within the time frames specified by the Client.

The Consultant shall comply with the following policies:

(a) Accessibility;

(b) Alcohol, Substance Abuse and Smoking;

(c) Bullying and Harassment;

(d) Confidentiality Code of Conduct;

(e) Data Protection;

(f) Fraud, Theft and Bribery;

(g) Health and Safety;

(h) Professional Code of Behaviour

(i) Safeguarding Adults;

(j) Safeguarding Children

(k) Social Media;

(l) Whistle Blowing.

* 1. Applicable laws

The Consultant will comply with all applicable laws in providing the Services.

* 1. Indemnity

Without prejudice to clause 7.1 (*General indemnity*), the Consultant agrees to indemnify and keep indemnified the Client and any member of the Group against any Losses incurred or suffered by the Client or any member of the Group or its officers or employees arising out of or in connection with any breach of these rules by the Consultant.

1. Privacy
   1. Data protection – data held by Client

The Consultant acknowledges that it has been informed that the Client and any member of the Group may hold and process (both electronically and manually) Personal Data and/or Special Personal Data provided by the Consultant to the Client or any member of the Group for purposes relating to Consultant's engagement and the operation, management, security and administration of the business of any member of the Group. The Client shall comply with the data processing obligations set out within Schedule 2 to this Agreement.

* 1. Monitoring of office equipment

The Consultant acknowledges that it has been informed that any member of the Group may monitor, intercept or record the Consultant's use of office equipment, including but not limited to email and internet usage, telephones and mobile phones.

* 1. Data protection – data held by Consultant

Where the Consultant acts as a Data Processor, the Consultant shall comply with the data processing obligations set out within Schedule 2 to this Agreement.

* 1. Information security

The Consultant shall at all times comply with the Information Security Obligations set out within Schedule 3 to this Agreement.

1. Post-Termination Restrictions
   1. Restrictions

In the course of providing the Services under this Agreement, the Consultant will acquire information relating to the business of the Client and/or Group members, including information relating to Donors, customers, consultants and employees which is information which the Client is entitled to protect.

The Consultant therefore agrees that it will not, in competition with the Client or any Group member, directly or indirectly during the period of 6 months following the date on which this Agreement is terminated (whether by the Consultant or by the Client or by mutual agreement):

* + 1. persuade or attempt to persuade any Donor known to the Consultant during the 6 months immediately prior to the termination of this Agreement and with whom the Consultant had material dealings to cease providing funds to the Client or any Group member or to provide funds in relation to a charity or business which is similar to or in any way, directly or indirectly, competitive with the activities of the Client or any Group member without the prior written consent of the Representative;
    2. persuade or attempt to persuade any employee known to the Consultant and engaged or appointed by the Client or any Group member during the 6 months immediately prior to the termination of this Agreement and with whom the Consultant had material dealings to terminate their employment with the Client or any Group member, whether or not that employee would be in breach of their own contract of employment in so doing.

The Consultant acknowledges that the covenants, obligations and restrictions contained in this clause are reasonable in all the circumstances.

1. Miscellaneous
   1. Assignment by the Client

The Client may assign this Agreement to any third party.

* 1. Assignment by the Consultant

The Consultant may not assign the benefit of this Agreement without the prior written consent of the Representative.

* 1. Entire Agreement

This Agreement constitutes the entire terms and conditions of the Appointment and may only be modified or otherwise amended by written agreement of the parties.

* 1. Notices

Any notice to be given under this Agreement must be given in writing in accordance with Part 2 of Schedule 1. Such notices will take effect if delivered by hand, upon delivery; if posted, at the earlier time of delivery and 10.00 a.m. on the second business day after posting; or if sent by email, when a complete and legible copy of the communication has been received. Any such notice will be delivered or sent to the address of the addressee specified in Part 2 of Schedule 1 or such other address as may be notified in writing from time to time.

* 1. Contracts (Rights of Third Parties) Act 1999

Any member of the Group may enforce or enjoy the benefit of any term of this Agreement which applies to the Group. A person who is not a party to this Agreement (other than any member of the Group) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement.

1. Governing Law and Dispute Resolution
   1. Governing law

This Agreement shall be governed by and construed in accordance with English law.

* 1. Dispute resolution

All disputes arising out of or in connection with this Agreement shall to the extent possible be settled amicably by negotiation between the parties. In the first instance each of the Client and the Consultant shall arrange for a representative to meet solely in order to resolve the matter in dispute. Such meeting(s) shall be minuted and shall be chaired by the Client (but the chairman shall not have a casting vote). Such meeting(s) shall be conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question at the discretion of the chairman.

* 1. Mediation

If any dispute arising in connection with this Agreement is not resolved in accordance with clause 15.2 within 30 days from the date of written notice by either party of the existence of such a dispute, the parties agree to enter into mediation to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. The fees of the mediator will be divided equally between the parties.

If the dispute is not settled by mediation within 90 days of commencement of the mediation, or such other period as the parties shall agree in writing, the dispute shall be referred to the English courts for determination.

* 1. Jurisdiction

The parties irrevocably submit to the exclusive jurisdiction of the English courts, save that the courts will only have the power to determine a dispute after the period for dispute resolution and mediation has expired.

SCHEDULE 1 - THE SERVICES

**Part 1**

**The Services**

**1. Description of Services**

The Consultant shall [insert description of Services]

**Contract Programme**

Commencement date:

End date:

**2. Details of personal data processing**

* + 1. **Duration of Processing:** For the duration of the Services.
    2. **Nature and purpose of the Processing**: To provide the Services under the Agreement.
    3. **Type of Data:**

Business contact details, commercial (contractual, financial or bank) data

Communication means and contact details

Education and training details

Employment-related details

Family, lifestyle and social circumstances

Financial, economic and insurance details

Health data

Personal identification and address details

Other (please specify):

* + 1. **Categories of Data Subject:**

RNIB Business contacts

RNIB Donors

RNIB ECLO service users

RNIB employees

RNIB members

RNIB Service users

RNIB Volunteers

Other (please specify):

**Part 2**

**Contract Management and Invoices**

**1. Notices to the Client:**

Contact name:

Address: RNIB, 105 Judd Street, London, WC1H 9NE

Phone:

e-mail:

Fax: n/a

**Notices to the Consultant:**

Contact name:

Address:

Phone:

e-mail:

Fax: n/a

1. **Invoices**
   * 1. Invoices, quoting the PO number must be emailed to: invoices@rnib.org.uk.
     2. Invoices shall indicate or contain the following:
        1. the project title;
        2. RNIB's order number, and
        3. a summary of the claim in the format of the project costs above, with a transaction list illustrating how this figure was derived and supporting documents, to be agreed with RNIB in advance.
     3. All payments will be inclusive of irrecoverable VAT.
     4. A brief explanation should be given for significant variances between budget lines.
     5. Any anticipated changes in phasing between project years should be discussed with RNIB as soon as they become apparent.
     6. Any queries regarding invoicing and progress of payments should be directed to Accounts Payable on 01733 375216. Invoices attached to letters shall have ROYAL NATIONAL INSTITUTE OF BLIND PEOPLE and the address in full as above typed on the invoice.

SCHEDULE 2 - DATA PROCESSING OBLIGATIONS

**Definitions:**

**Applicable Law** means all national, supranational, foreign or local laws (including case law), legislation, European regulations as they form part of English law, statutes, statutory instruments, rules, regulations, edicts, by-laws or directions or guidance from government or governmental agencies, including any rules, regulations, guidelines or other requirements of relevant regulatory authorities which have the force of law together with any industry codes of practice in effect from time to time, including the Data Protection Legislation;

**Data** shall mean the Personal Data and Special Personal Data provided by the Client to the Consultant pursuant to the Agreement or which is otherwise Processed by the Consultant on behalf of the Client pursuant to the Agreement;

**Special Personal Data** shall mean the special categories of Personal Data as set out at Article 9(1) of the GDPR as it forms part of English Law;

**Sub-Processor** means as set out at Clause 1.5.

All other defined terms within this Schedule will have the meaning assigned to them within clause 1 of the Agreement.

1. **DATA PROTECTION** 
   1. The parties acknowledge that the Client is a Controller and the Consultant is a Processor in relation to the Data.
   2. To the extent not stated elsewhere in this Schedule 2, Schedule 1 sets out the following information in relation to the Data:
      1. subject matter of the Processing;
      2. duration of Processing;
      3. nature and purpose of the Processing;
      4. type of Data; and
      5. categories of Data Subject.

The Consultant shall review Schedule 1 no less than once every three months to ensure that it remains up-to-date and shall agree any changes required by such review or by request by the Client, in writing.

* 1. The Client shall:
     1. ensure it has all necessary rights and consents to Process Data and to disclose Data to the Consultant in accordance with the Data Protection Legislation;
     2. provide the Consultant with its name and contact details (or those of its representative) and the name and contact details of its data protection officer (where one is appointed);
     3. be responsible for the provision of a privacy notice to Data Subjects;
     4. be responsible for deciding and determining the following:
        1. the subject-matter and extent of Data to be collected and Processed, including which individuals' Data should be Processed;
        2. the purpose and manner of Processing of Data;
        3. third parties to whom Data is disclosed; and
        4. duration of retention of Data.
  2. The Consultant shall:
     1. Process the Data only on the documented instructions of the Client as set out in the Agreement and to perform its obligations under the Agreement and ensure it takes steps to ensure that its personnel and those of its Sub-Processors only Process Data on documented instructions from the Client, unless required to do otherwise by Applicable law. If the Consultant is aware that, or is of the opinion that, any instruction given by the Client breaches the Data Protection Legislation, the Consultant shall immediately inform the Client of this, giving details of the breach or potential breach;
     2. ensure that its personnel and the personnel of any Sub-Processors who are authorised to Process Data are under obligations of confidentiality that are enforceable by the Consultant and/or the Client;
     3. take all reasonable steps to ensure the reliability of its personnel and the personnel of Sub-Processors who have access to the Data and ensure that access to the Data is limited to such authorised personnel only who require access to it for the purpose of complying with the obligations under the Agreement;
     4. in accordance with Article 32 of the GDPR as it forms part of English law, implement appropriate technical and organisational measures to ensure a level of security appropriate to protect the Data, including from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or unauthorised access and comply with any data security requirements set out under the Agreement to include adequate training and monitoring of all Consultant personnel who have access to Data. Appropriate technical and organisational measures may include:
        1. the pseudonymisation and encryption of Data;
        2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
        3. the ability to restore the availability of and access to Data in a timely manner in the event of a physical or technical incident;
        4. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing;
        5. provision of the Consultant's information security policy and training materials which are acceptable to the Client prior to commencement of the Services;
     5. taking into account the nature of the Processing, assist the Client with its obligations to comply with Data Subjects' requests and Data Subjects' rights under Chapter III of the GDPR as it forms part of English law through the use of appropriate technical and organisational measures. In addition, the Consultant shall:
        1. within three working days, inform the Client if it receives any subject access request, or request by a Data Subject to transfer, rectify, erase or destroy the Data which is Processed by the Consultant under the Agreement; and
        2. within three working days, inform the Client of any request for disclosure of the Data from a third party which the Consultant receives directly, and provide a copy of such request. The Consultant shall not disclose or release any Data without first consulting with and obtaining the consent of the Client, except where required by Applicable Law or any court of competent jurisdiction;
     6. taking into account the nature of processing and the information available to the Consultant, assist the Client in ensuring compliance with the Client's obligations in Articles 32-36 of the GDPR as it forms part of English law, including:
        1. notifying the Client, without undue delay and in any event within twenty four hours, if the Consultant becomes aware of a breach of the Data Protection Legislation in relation to the Data and/or if it becomes aware of a breach of the provisions of the Agreement by the Consultant, any Sub-Processor or any third party; and
        2. providing full details of the relevant breach where caused by the Consultant or any Sub-Processor as set out in Article 33(3) of the GDPR as it forms part of English law without undue delay and in any event within twenty four hours or, where necessary, in phases, but always without further undue delay;
     7. at the written election of the Client, either:
        1. securely destroy the Data (including all copies of it); or
        2. return the Data (including all copies of it) to the Client in the format required by the Client which retains the integrity of the Data,

at any time upon request by the Client or promptly upon termination or expiry of the Agreement (provided that, in relation to any partial termination of the Services, it shall not be required to do so where this would adversely affect the Consultant's ability to provide the remaining services) unless any applicable law requires the Consultant to continue to store the Data, in which case this clause shall survive termination or expiry of the Agreement;

* + 1. provide all information necessary to demonstrate the Consultant's and any Sub-Processor's compliance with this clause 1.4;
    2. allow the Client and its authorised representatives, upon reasonable prior written notice to the Consultant, reasonable access during normal business hours to any relevant premises and documents to inspect the procedures and measures referred to in the Agreement;
    3. not Process or transfer Data outside of the UK or any country deemed adequate by the UK under the Data Protection Legislation) without the prior written consent of the Client and without putting in place adequate protection for the Data to enable compliance by the Client and the Consultant with their obligations under the Data Protection Legislation;
    4. provide reasonable assistance to the Client in connection with its record-keeping obligations under Article 30 of the GDPR as it forms part of English law;
    5. at all times perform its obligations under the Agreement in such a manner as not to cause the Client in any way to be in breach of the Data Protection Legislation;
    6. perform its obligations under the Agreement (and any other agreement relating to the provision of the Services) in full compliance with the Data Protection Legislation and all applicable guidelines, statutory orders, supplementary laws and codes of practice issued by relevant regulators pursuant to or in connection with the Data Protection Legislation, including as may be issued by the Office of the Information Commissioner in the UK,; and
    7. immediately inform the Client of, and promptly provide assistance with, responding to any enquiry made, or investigation or assessment of Processing initiated by the Information Commissioner's Office or other regulatory authority in respect of the Data.
  1. Without prejudice to the restrictions in Clause 1.6, the Consultant shall put in place in writing with any third party, including a consultant, sub-contractor, agent or professional adviser or other third party which may receive and/or have access to Data ("**Sub-Processor**"), contractual obligations which are at least equivalent to the obligations imposed on the Consultant pursuant to this Schedule and any specific security obligations set out under the Specification, including obligations which provide sufficient guarantees from the Sub-Processor that the processing meets the requirements of the Data Protection Legislation. The Consultant shall be liable to the Client for any failure of any such Sub-Processor to comply with such equivalent data protection obligations (including where the Consultant is in breach of its obligation to put such obligations in writing with the Sub-Processor).
  2. The Consultant shall not appoint any Sub-Processor without the prior written consent of the Client. If the Client provides such consent in writing, such consent is provided on condition that:
     1. the Consultant notifies the Client in writing of all Sub-Processors prior to the Processing of any Data by the relevant Sub-Processor, and shall notify the Client in writing of any change in identity of a Sub-Processor from time to time;
     2. the Consultant shall provide the Client with all information reasonably required by the Client to satisfy the Client that the Sub-Processor implements appropriate technical and organisational measures in such a manner to ensure that processing meets the requirements of the Data Protection Legislation and ensures the protection of the rights of Data Subjects; and
     3. the Consultant is fully liable to the Client for the acts and omissions of all Sub-Processors as if they were acts and omissions of the Consultant.

Where the Client, acting reasonably, objects to the use of a particular Sub-Processor, the Consultant shall use reasonable endeavours to resolve the reasons for the Client's objections or to procure use of a different Sub-Processor. If the Consultant is unable or unwilling to resolve the reasons for the Client's objections or to procure use of a different Sub-Processor, the Client may terminate the Agreement without payment of compensation or damages or terminate the Agreement in relation to the Services which would otherwise have related to the Processing carried out by such Sub-Processor.

* 1. The Consultant warrants that it is not, at the date of the Agreement, aware of any matter or circumstance which would cause it to be unable to fully comply with the provisions of the Agreement.
  2. The Consultant shall indemnify and keep indemnified the Client against all costs, claims, losses, damages, fines and expenses (including legal expenses) suffered or incurred by the Client arising out of, or in connection with, any breach of the Agreement by the Consultant, Sub-Processors and/or its representatives.
  3. The parties agree and acknowledge that nothing in this Schedule relieves the Consultant of its direct responsibilities and liabilities under GDPR as it forms part of English law.

SCHEDULE 3 - INFORMATION SECURITY OBLIGATIONS

1. Information Security Obligations of the Consultant
   1. The Consultant will use reasonable precautions, including but not limited to, physical, software, and network security measures, employee screening, training, and supervision and appropriate agreements with employees, to prevent anyone other than the Client from monitoring, using, gaining access to or learning the import of Data (as defined in Schedule 2); protect appropriate copies of Data from loss, corruption, or unauthorised alteration; and prevent the disclosure of Client passwords and other access control information to anyone other than authorised Client employees, except as relates to the provision of services provided to the Client by the Consultant or its subcontractors as pertains to this Agreement.
   2. The Consultant will periodically test and re-evaluate the effectiveness of the obligations specified in this schedule. This is to include a minimum of two external assessments per calendar year. The Consultant agrees to supply these reports to the Client upon reasonable request, and will maintain copies of these reports for not less than two (2) calendar years.
   3. If a breach of information security or data protection measures occurs and Data is or was at risk as a result of the breach, the Consultant will notify the Client within 48 hours.
   4. If the Consultant is served with a warrant, subpoena, or any other order or request from a government body or any other person for any record or files of Data, the Consultant will, as soon as reasonably practical and not in violation of the law, deliver to the Client a copy of such warrant, subpoena, order or request and will not, without the Client's prior written consent, comply with the same unless and until required to do so under applicable law.
   5. The Consultant will not be liable for the disclosure, monitoring, loss, alteration of corruption of Data to the extent it results from the Client's failure to implement reasonable security measures to protect against the unauthorised use of facilities, computers, network access devices and passwords.
   6. The Consultant will supply the Client a description of its security measures or any particular controls described herein upon reasonable request.
   7. The Consultant shall ensure its personnel comply with the data security requirements set out in this Agreement.
2. Practical security measures
   1. With regard to the processing of Personal Data on behalf of the Client, the Consultant, as a minimum requirement, shall ensure it has reasonable procedures in place for the following types of security measures, and warrants that it will implement and maintain these controls to an effective standard of practice:
      * 1. Information Security Management Systems;
        2. Physical Security;
        3. Access Control;
        4. Security and Privacy Enhancing Technologies;
        5. Security Awareness;
        6. Incident Management;
        7. Business Continuity and Disaster Recovery;
        8. Audit Controls/Due Diligence Procedures.
   2. In addition to the above measures, the Consultant will institute organisational and technical measures around its processing of Data to provide comprehensive information lifecycle management, inclusive of collection, processing, storage and destruction. The Consultant will routinely validate the efficacy of these measures through a combination of organisational tools and technical measures, such as access and authentication controls, data management tools, data leak protection and audits.
   3. The requirements of this contract and, in particular, Schedule 5 apply to all Data processing and storage, including the use of external, cloud or third-party information processing services. The Consultant will ensure that all use of external, cloud or third-party information services to process Data meets the requirements and standards of care specified in this contract.
3. Consultant-Specific Security Measures
   1. The clauses in section 3 are specific to the Consultant and the Consultant's technical environment. Where the Consultant changes its operating or technical practise, these controls may no longer apply. Should that occur, the Consultant warrants that it will provision equivalent security and data processing measures so as to maintain an equivalent or superior degree of information security control.
   2. The Consultant warrants that should any of the requirements specified in section 4 no longer apply, or where the Consultant is aware that these controls will no longer apply or be relevant in the future, it will provide detail of this to the Client within two (2) weeks of this becoming known. This detail will include a description of the equivalent security measures implemented under clause 3.1 of this schedule.
   3. If the Client decides the replacement measures taken under clauses 3.1 and 3.2 are sufficient, it will advise the Consultant of such and request reasonable revisions. The revisions and implementation timescales are to be agreed within one (1) month of the date the Client is provided notice. Should an agreement between the Client and the Consultant as to what constitutes sufficient security revision not be reached, the Consultant will maintain Data on the technical and organisational environment stipulated by this schedule for the lifetime of this contract.
   4. The Consultant warrants that, where information services and systems are used to process Data:
      * 1. the Consultant will maintain services sufficient to provide lifecycle management, control, auditing and monitoring around the Client data;
        2. the Consultant will maintain a configuration management and hardening practice;
        3. the Consultant will review access to and use of the Client data within its managed data environment. This review is to be performed on a minimum of a weekly basis. Irregularities are to be reported to the Client within two (2) working days;
        4. the Consultant will ensure that the Consultant's office, network, server and endpoint solutions will be managed and maintained to a standard of good security practise, specifically including:

* centrally managed authentication controls with a defined, tested staff changes process,
* maintained and managed business or enterprise endpoint security technologies,
* a managed, maintained and monitored firewall, firewalls, or equivalent,
* fit-for-purpose detective controls on endpoints, network devices and servers, as relevant to processing requirements of this contract,
* standardised builds and configuration management processes,
* a comprehensive patch management programme.
  1. The Consultant will ensure that administrative, super-user or privileged access meets, at a minimum, the following requirements:

1. 0segregation of standard 'user' accounts from administrative accounts, with no use of administrative accounts for routine business activity;
2. internal administrative access limited to specified portions of the Consultant network;
3. no use of insecure or cleartext protocols (e.g. telnet, tftp);
4. remote or external administrative access must utilise validated secure protocols or services such as SSH, TLS or VPN. Cipher suites or technologies used for remote access must be pruned of legacy and insecure configuration options;
5. multi-factor authentication based on TOTP or U2F technologies must be used for external or remote administrative access.
   1. The Consultant will maintain an internal and external vulnerability management programme across its technical environment. The Consultant warrants that this programme will include the remediation of identified vulnerabilities in keeping with industry practice.
   2. The Consultant warrants that all access to Data will be designed and provided on the basis of least privilege.
   3. The Consultant warrants that it will maintain a practice of proactive threat awareness, assessment and modelling, and will use such to inform its internal control environment.
6. Specific Payment Processing Information Security Obligations
   1. The provisions in this schedule are supplemental to and do not supersede that of any provisions in the main body of the contract. Should these provisions at any time conflict, interfere with or limit the effectiveness of any obligations imposed by the Payment Card Industry Council or other regulation or legislation, these provisions do not take precedence.
   2. The Consultant shall ensure that cardholder data on any media, including but not limited to computers, removable electronic media, paper receipts, paper reports, and faxes, is under the physical control of the Consultant's personnel or in appropriate secure physical storage at all times.
   3. The Consultant shall ensure that, for all artefacts of the payment process, including, but not limited to, card processing equipment and any physical media, such as paper receipts, a classification policy is developed that encompasses those artefacts and that personnel who handle those artefacts receive sufficient training to handle those artefacts appropriately.
   4. The Consultant shall ensure that card processing equipment and any media containing cardholder data is transported via a secure, trackable courier service.
   5. The Consultant shall implement and maintain an accurate inventory of any media containing cardholder data and of any card processing equipment.
   6. The Consultant shall ensure that any media containing cardholder data is securely destroyed when the Consultant no longer has a requirement to retain it.
   7. The Consultant shall implement a regular inspection of all card processing equipment for signs of tampering. The Consultant shall ensure the Consultant personnel receive sufficient training for this responsibility.
   8. The Consultant shall ensure that only authorised personnel service card processing equipment while it is in possession of the Consultant. The Consultant acknowledges that it is responsible for ensuring personnel are authorised.
   9. The Consultant is responsible for creating a framework to measure and monitor the compliance status of third-party suppliers that process, transmit or store the Client's cardholder data, or interact with card processing equipment.
   10. The Consultant shall create and maintain a security awareness programme for all the Consultant's personnel that interact with card processing equipment or cardholder data processed on behalf of the Client.
   11. The Consultant shall establish a specific security incident response policy and process that encompasses all the Consultant's personnel that fulfil this contract, interact with card processing equipment or with cardholder data processed on behalf of the Client.

**EXECUTION:**

**The Client**

|  |
| --- |
| SIGNED by the ROYAL NATIONAL INSTITUTE OF BLIND PEOPLE:  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**The Consultant**

SIGNED by [insert name of the Company]:

Name:  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:   
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:   
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPENDIX 1 – CLIENT POLICIES and codes of conduct

**Policies:**



**Supplier Codes of Conduct:**



Supplier Code of Conduct can also be found following this [link](https://www.rnib.org.uk/sites/default/files/supplier_code_of_conduct.pdf).

APPENDIX 2 – NATIONAL LOTTERY COMMUNITY FUND FUNDING AGREEMENT

