

# **STANDARD TERMS AND CONDITIONS FOR CHARITIES (ONLINE ACCEPTANCE)**

**Version 6.5 March 2020**

## **Parties to this Agreement**

(A) The National Funding Scheme, a company limited by guarantee registered in England and Wales (under company no: 08223187) and a registered charity in England and Wales (1149800) and Scotland (SC045106) of 10 Queen Street Place, London EC4R 1BE (“NFS”); and

(B) Your organisation that is participating in the Scheme in accordance with this Agreement (“you” or “your” or “your organisation”).

## **Agreed terms**

### **1. Interpretation**

1.1 The definitions and terms in Schedule 4 apply in this Agreement.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 Words in the singular shall include the plural and vice versa.

1.4 A reference to any party shall include that party’s successors or permitted assigns.

### **2. Term**

2.1 By ticking the “I Agree” tick box below, you agree to the terms of this Agreement. The date on which you tick the “I Agree” tick box is the Commencement Date of this Agreement.

2.2 The Term of the Agreement is from the Commencement Date automatically terminating at the end of three years after the Commencement Date (subject to earlier termination in accordance with clause 11).

### **3. NFS’ obligations**

NFS:

3.1 will provide you with, and provide access to you to, such Advertising Materials as it deems appropriate to facilitate the Scheme and maximise Funding for you;

3.2 may provide the Donor Data to you free of charge to use solely to publicise your charitable activities or to fundraise in furtherance of your charitable objects, provided that you will not sell or pass the Donor Data to any third parties and subject to any conditions that NFS imposes at its sole discretion to comply with the Donors’ instructions or specifications at the time of providing the Donor Data to the NFS;

3.3 may offer free of charge to you know-how, advice, guidance, data information sharing and networking opportunities/services relating to the Advertising Materials and fundraising as it deems appropriate during the Term;

3.4 may update and amend the Advertising Materials at any time;

3.5 may during the Term offer additional services to you for a charge or on such terms as the NFS specifies. You will be under no obligation to purchase/receive such services; and

3.6 not do anything, nor act in a manner, that will breach any law or regulation or cause you to breach any law or regulation.

3.7 to the extent that NFS processes personal data (as defined in Data Protection Legislation) in connection with the Scheme, Product Service or Administrative Services, comply with the obligations in Schedule 5.

#### *Hire of Devices and Software*

3.7 NFS may, following the completion and acceptance of our Order Form, hire the Devices to you for the Rental Period. NFS shall not, other than in the exercise of its rights under this Agreement or applicable law, interfere with NFS's quiet possession of the Devices.

3.8 Delivery of the Devices shall be made by NFS by post. You will procure that a duly authorised representative will be present at the Delivery and be competent to install the Devices with the written guidance as provided. Acceptance by such representative of Delivery shall constitute conclusive evidence that you have examined the Devices and have found them to be in good condition, complete and fit for the purpose for which they are intended (save as regards any latent defects not reasonably apparent to a layperson on inspection). If required by NFS, your representative as described in this clause 3.8 shall sign a receipt confirming such acceptance.

3.9 The Devices shall at all times remain NFS's property and you shall have no right, title or interest in or to the Devices (save the right to possession and use of the Devices subject to the terms and conditions of this Agreement).

3.10 The risk of loss, theft, damage or destruction of the Devices shall pass to you on Delivery. The Devices shall remain at your sole risk during the Rental Period and any further term during which the Devices are in your possession, custody or control until such time as the Devices are redelivered to NFS. You will take out insurance as you deem fit.

3.11 NFS warrants that the Devices, the Software and the Software Services shall substantially conform to the Device Specification, Software Specification and Service Levels, be of satisfactory quality and fit for any purpose held out by NFS. NFS shall remedy, free of charge, any material defect in the Devices or the Software which manifests itself during the Rental Period. If NFS fails to remedy any material defect in the Devices or Software in accordance with this clause 3.11, NFS shall, at your request, accept the return of part or all of the Devices and make an appropriate reduction to the relevant charges under this Agreement.

3.12 At the end of the Rental Period or on earlier termination of this Agreement you shall post at your cost (using a signed for services) the Devices to NFS by way of return.

#### *Sales of Devices*

3.13 NFS may, following the completion and acceptance of our Order Form, sell the Devices to you

3.14 Delivery of the Devices shall be made by NFS by post. You will procure that a duly authorised representative will be present at the Delivery and be competent to install the Devices

with the written guidance as provided. Acceptance by such representative of Delivery shall constitute conclusive evidence that you have examined the Devices and have found them to be in good condition, complete and fit for the purpose for which they are intended (save as regards any latent defects not reasonably apparent to a layperson on inspection). If required by NFS, your representative as described in this clause 3.14 shall sign a receipt confirming such acceptance.

3.15 The risk of loss, theft, damage or destruction of the Devices shall pass to you on Delivery.

3.16 NFS warrants that the Devices, the Software and the Software Services shall substantially conform to the Device Specification be of satisfactory quality and fit for any purpose held out by NFS. NFS shall remedy, free of charge, any material defect in the Devices or the Software which manifests itself during the 30 days following delivery. If NFS fails to remedy any material defect in the Devices or Software in accordance with this clause 3.16, NFS shall offer a replacement or refund of the per unit purchase cost.

#### **4. Funding**

4.1 All Funding received by NFS will be paid into and held in the Bank Account as designated Funding that may be paid to you in accordance with this Agreement.

4.2 Subject to the terms of this Agreement, once received by NFS as cleared and undisputed funds, the Funding will be paid to you after deduction of the Costs. Such payments will be paid to you regularly during the Term (and at least every 3 months) to your chosen bank account notified to NFS in writing before the Commencement Date or to any other bank account notified by you to NFS during the Term (the “**Organisation Account**”), provided that no Donations will be paid to you during the Term unless the total of Donations or Payments and Gift Aid held by NFS is £100 or more. Subject to clause 12.3, on termination of this Agreement under clauses 11.1 NFS will pay all Funding held and received (as cleared and undisputed funds) by NFS to you within 3 months of termination, or if received after the termination date, within 3 months of receipt.

##### *Gift Aid*

4.3 All Donors who are eligible to increase their Donations through the Gift Aid Scheme will be invited (although not obliged) to increase their Donations to NFS using the Gift Aid Scheme.

4.4 Subject to the terms of this Agreement, once received by NFS in its Bank Account as cleared and undisputed funds any Gift Aid on Donations will be paid to you after deduction of the Costs. Such payments will be paid to you regularly during the Term (and at least every 3 months) to the Organisation Account, provided that no Funding will be paid to you during the Term unless the total of Donations or Payments and Gift Aid held by NFS is £100 or more. Subject to clause 12.3, on termination of this Agreement under clause 11.1 NFS will pay all Gift Aid held and received (as cleared and undisputed funds) by NFS to you within 3 months of termination, or if received after the termination date, within 3 months of receipt.

##### *General Funding provisions*

4.5 You agree that all Funding and Gift Aid received from NFS by you will be used by you solely in furtherance of your charitable objects. You will not use the Funding received from NFS to further any commercial activity or commercial trading, regardless of whether this is carried out through your trading subsidiary, except with the prior written consent of NFS.

- 4.6 You warrant that you will immediately notify the NFS in writing:
- 4.6.1 of any misuse of the Funding received from NFS, including (but not limited to) any failure to use the Funding in accordance with the terms of this Agreement;
  - 4.6.2 of any breach of any provision of this Agreement by you;
  - 4.6.3 of any reason which might reasonably influence NFS to cease any payment of Funding to you under this Agreement;
  - 4.6.4 of any event or action which will or is in danger of bringing the Scheme or NFS into disrepute (including, but not limited to, resale of the Donor Data to any third party);
  - 4.6.5 if there is a material change in the financial position or prospects of you, or if you become or are in danger of becoming insolvent, are placed into receivership, administration or liquidation, a petition has been presented for your winding up, you enter into any arrangement or composition for the benefit of your creditors, or you are unable to pay your debts as they fall due;
  - 4.6.6 if you merge or intend to merge with a third party; and/or
  - 4.6.7 if your status as a registered charity changes or is in danger of changing.
- 4.7 If you provide notice of any matter/occurrence under clause 4.6 or if NFS in its reasonable opinion deems any provision of this Agreement is breached by you and/or the Funding should not be paid to you, NFS may choose after consultation with you to withhold from or not pay to you any Funding and Gift Aid collected by NFS permanently or for such term as NFS sees fit, and to use/apply such Funding for such charitable purposes as the trustees of NFS deem appropriate.
- 4.8 The NFS Fee may be altered at any time during the Term, provided that NFS notifies you in writing within 30 days of the increase/decrease. For the avoidance of doubt, such increase/decrease in the NFS Fee shall not apply to Funding collected prior to the date of the notice submitted by NFS under this clause 4.8.
- 4.9 The NFS Fee is exclusive of any VAT that may apply and which will be payable on production of a valid VAT invoice from NFS.
- 4.10 The Third Party Costs may be increased/decreased at any time during the Term in accordance with third party contracts and requirements, provided that NFS notifies you in writing within 30 days of the increase/decrease, subject to any contractual/legal requirements to keep such Third Party Costs confidential. The Third Party Costs are exclusive of any VAT that may apply, which will be payable by you on production of a valid VAT invoice from NFS.

## **5. Your Obligations**

### **5.1 You will:**

- 5.1.1 promptly provide to NFS all reasonable Organisation Information as requested by NFS before or after the Commencement Date;
- 5.1.2 notify NFS immediately if, for any reason, you have a reasonable belief that an Event date will be changed or an Event will be cancelled.

5.1.3 use the Advertising Materials in accordance with any reasonable Advertising Guidelines and instructions and only for the Permitted Use;

5.1.4 not directly, nor through a third party, develop, modify, copy, adapt, reverse engineer, decompile, adapt or disassemble the Software;

5.1.5 not do anything, nor act in a manner, that will or may jeopardise or invalidate any use, right, title and/or interest of NFS or its licensors in the Advertising Materials;

5.1.6 comply with any instructions, restrictions or requirements when using the Donor Data as requested by NFS at the time of sharing the Donor Data with you;

5.1.7 not offer any benefit to any Donor which would, or is in danger of, being deemed by HMRC a benefit that exceeds the limits on benefits to donors under the Gift Aid Scheme as specified by HMRC from time to time, in respect of the Gift Aid;

5.1.8 not do anything, nor act in a manner, that will or is likely to bring the NFS or the Scheme into disrepute;

5.1.9 not do anything, nor act in a manner, that will or is likely to breach any law or regulation or cause the NFS to breach any law or regulation, including (but not limited to) the Data Protection Act 1998, in respect of this Agreement or the use by you of the Donor Data;

5.1.10 not make any use of the Advertising Materials that is misleading or which may be taken to indicate that you have any right, title or interest in the Advertising Materials, other than as set out in this Agreement;

5.1.11 if it becomes aware of any unauthorised use or infringement of the Advertising Materials, promptly notify NFS in writing with full details; and

5.1.12 provide all assistance and cooperation to NFS as NFS reasonably requests to enable the Permitted Use of the Advertising Materials (and any updates to the Advertising Materials).

5.2 NFS will use its reasonable endeavours: to ensure that the Advertising Materials can be used by you and Donors for the Permitted Use for the Term in accordance with this Agreement and to rectify any defect or fault in the Advertising Materials that comes to its attention within 14 days. However, NFS cannot guarantee and does not warrant that the Advertising Materials (including, without limitation, the Software), and your/Donors' use/access of the Advertising Materials, will be accurate, uninterrupted or error- free.

5.3 You acknowledge that you do not have any right, title or interest in the Advertising Materials or their Intellectual Property, nor in their updates or improvements, except as set out in this Agreement; and

5.4 You warrant that you are not aware of any reason which you have failed to disclose to NFS which might reasonably have influenced NFS to not enter into this Agreement or pay the Funding to you under this Agreement.

## **6. Working Together**

6.1 Both NFS and you will use your reasonable endeavours to proactively manage their working relationship and working practices in respect of this Agreement and aim to maximise the

benefits and success of the Scheme. You will use all reasonable endeavours to encourage your visitors and supporters to make Donations and Payments through the Scheme (including, but not limited to, complying with clause 7 of this Agreement).

## **7. Publicity and Advertising**

7.1 You hereby grant a non-exclusive, royalty-free licence to the NFS for the Term to use your Name and Logo in any media in furtherance of the Scheme provided that the NFS complies with any branding guidelines provided to it by you when using your Name and Logo.

7.2 The NFS hereby grants a non-exclusive, royalty-free licence to you for the Term to use the NFS Name and Logo in furtherance of the Scheme in accordance with the Branding Guidelines.

7.3 In consideration of a sum of money equal to 62.5% of the NFS Fee, NFS will provide the Product Services and Advertising Services. The parties understand that a charitable relief applies to such services so that those services are zero rated for Value Added Tax (VAT) under the current taxation laws of England. In the event that the services attract a VAT payment for the Product Service and Advertising Services delivered under this Agreement you shall pay to NFS a sum equal to the VAT that becomes payable.

7.4 In consideration a sum of money equal to 37.5% of the NFS Fee, NFS will provide the Administrative Services. The parties understand that there is no charitable relief in respect of VAT upon such services and NFS will invoice for the Administrative Services with VAT payable where in its absolute discretion it chooses to do so.

7.5 You will comply with all reasonable Advertising Guidelines and all reasonable marketing and publicity requirements during the Term.

7.6 All external press releases and publicity materials/announcements related to the Scheme to be issued by you will not be released/issued by you except with the prior written consent of NFS, not to be unreasonably withheld or delayed.

7.7 You will refer any negative publicity about the Scheme immediately to NFS and agree that NFS will manage such negative publicity. You will provide such assistance to NFS as NFS reasonably requests in respect of such negative publicity.

## **8. Accounting records, reports and standards**

You will:

8.1 submit to NFS a completed questionnaire (the “**Questionnaire**”) about your use of the Funding, on six-monthly and/or end of Term basis, or more frequently (but never more than 5 times per year) , as NFS reasonably requests, evidencing your use of the Funding in furtherance of your charitable objects. The Questionnaire you are required to submit to NFS will be in such format as NFS reasonably requests during the Term. The level of detail required from you on its Questionnaire(s) will differ depending on the level of Funding received by you. You agree that NFS may use the information in all or any part of the Questionnaires submitted by you under this clause for NFS’ own reporting requirements or to promote/publicise the Scheme;

8.2 at all times comply with all laws, legislation and applicable codes of practice relating to its use of the Funding and participation in the Scheme, including (but not limited to) its financial audit obligations; and

8.3 keep and maintain complete and accurate accounts and records relating to the Funding and

use of the Funding during the Term and for at least 3 years after the Term.

## **9. Sale, assignment and subcontracting**

9.1 You may not sell, assign or sub-license, or deal in any other manner with any of your rights or obligations under this Agreement without the express written permission of NFS.

9.2 NFS may at any time subcontract all or any of its rights or obligations under this agreement to a third party and assign or transfer any of its rights or obligations under this agreement to a wholly owned trading subsidiary with 60 days written notice.

## **10. Confidentiality**

10.1 Each party undertakes that it shall not at any time during this Agreement, and for a period of 3 years after the Term, copy, use or disclose to any person any Confidential Information about the other party, except as permitted by this Agreement.

10.2 Each party may disclose Confidential Information:

10.2.1 to its employees, officers, representatives or advisers but only if they need to know such information for the purposes of carrying out their obligations under this Agreement. Each party will ensure that its employees, officers, representatives or advisers to whom the Confidential Information is disclosed comply with this clause 10; and

10.2.2 as may be required by law, court order or any governmental or regulatory authority.

10.3 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under this Agreement.

## **11. Clawback and Termination**

11.1 You may terminate this Agreement immediately by providing notice in writing to NFS. NFS may terminate this Agreement by providing at least 30 days' notice in writing to you.

11.2 NFS may terminate this Agreement with immediate effect (or following such notice period as NFS sees fit) without prejudice to any of NFS' other rights or remedies, by giving written notice to you if:

11.2.1 you commit a material breach of any term of this Agreement and (if such breach is remediable) fail to remedy that breach within a period of 14 days after being notified in writing to do so; or

11.2.2 you repeatedly breach any of the terms of this Agreement; or

11.2.3 you give to NFS any false or materially misleading information, or make any misrepresentation in connection with this Agreement or the Funding; or if you merge with or become a subsidiary of a third party that leads to a fundamental change in your charitable aims and objectives; or leads to a cessation of the causes for which DONATE is being used as a fundraising mechanism; or leads to material breaches as laid out in clauses 11.2.5 and 11.2.6.

11.2.4 you take any action or act in a manner which in the reasonable opinion of NFS

will bring, or is likely to bring, NFS' name or reputation into disrepute or will damage, or is likely to damage, NFS' reputation in any way; or

11.2.5 you suspend or cease, or threaten to suspend or cease, to carry on all or a substantial part of your business; or

11.2.6 you become or are in danger of becoming insolvent, or are placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due.

11.3 You will on the written request of NFS promptly return all or some of the Funding paid to you under this Agreement on receipt of written notice from NFS if NFS suffers any loss, liability or damage as a result of your fraudulent misuse of all or any part of the Funding or failure to use the Funding in accordance with the terms of this Agreement (including, but not limited to, clause 4.5).

## **12. Consequences of termination**

12.1 On termination or expiry of this Agreement for any reason clauses 4.6.1, 4.7, 5.1.5, 8.2, 11.2, 12, 13, 16, 17, 20, 21, 22, 23 will continue in force indefinitely. Clauses 8.3 and 10 will continue in force for 3 years after termination.

12.2 Any termination or expiry of this Agreement shall not affect any rights or liabilities that have accrued prior to such termination.

12.3 On termination or expiry of this Agreement for any reason:

12.3.1 you will immediately stop using the Advertising Materials and take all steps as NFS may reasonably require to cease interacting with the Scheme;

12.3.2 you will immediately cease to represent publicly that you are a beneficiary of, or is otherwise involved with, the Scheme or do anything that may indicate any relationship between you and NFS, except with the prior written consent of NFS;

12.3.3 you will promptly pass all enquiries regarding the Scheme, and full details of potential Donors (where possible under Data Protection Legislation), to NFS;

12.3.4 you will submit a Questionnaire to the NFS in accordance with clause 8.1; and

12.3.5 you will return all or any part of the Funding if required by the NFS under clause 11.

12.4 On termination or expiry of this Agreement by NFS under clause 11.2 NFS will immediately cease paying any future Funding to you unless, in its sole discretion, it chooses to make further payments of Funding to you.

## **13. Limitation of Liability of NFS**

13.1 Neither party to this Agreement will be liable to the other party, whether in contract, tort or otherwise, for any indirect losses, loss of profits, loss of donations, sales or business, loss of agreements or contracts, damage to or loss of goodwill or reputation, or any consequential or special losses, however arising.



13.2 In the event that either party is liable to the other party, the liability (of the liable party) will be limited to the value of the Funding paid during the Term. Nothing in this clause shall limit or exclude a party's liability for fraud, death or personal injury caused by its negligence.

13.3 We will use reasonable endeavours to ensure communications are sent to donors, however we will not be responsible for any failure to receive such communications.

13.4 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from acts of God, natural disaster, terrorist attack, armed conflict, any action taken by a government or public authority or interruption or failure of utility service (which shall include mobile communications networks). In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

#### **14. Use of Additional Services**

14.1 NFS will make available to you NFS' Silent Auction Service and/or Text-Raffle Service. You understand that use of these is in accordance with the terms of this agreement and that in addition to any charges within Appendix 1:

14.1.1 During an Event which uses the Auction and or Text Raffle services, additional server and bandwidth may be required to ensure the Donor experience. NFS will discuss with you additional server and bandwidth charges before the event and where usage is such that additional provision is recommended advise you of the additional cost. Should you decide not to accept those charges NFS may, in its sole discretion, remove the provision of some/all of its services.

14.1.2 NFS supplies the Text Raffle Service on the assumption that it will be used by you in accordance with the Incidental Lotteries provision (as identified by the Gambling Commission).

14.1.3 Should you use the Text Raffle Service in a way that does not fall under this provision, you must inform NFS of this in advance. You remain solely responsible for ensuring that you hold the relevant licences and you further understand that we act as a technology provider and not as an External Lottery Manager as defined by the Gambling Commission.

14.1.4 The following provision apply to your use of the Silent Auction Services:

- (a) through the Silent Auction Services, NFS is providing a platform service is is not responsible for the auction itself, including for the avoidance of doubt, providing auction lots to the successful bidders.
- (b) You understand and acknowledge that, in accordance with HMRC guidelines, Gift Aid is only applicable to the amount of the Donation paid above the commercial value of the auction lot (as reasonably determined by NFS).
- (c) You are responsible for sourcing and delivering all auction lots, as well as any related description and data. You will provide NFS with accurate information regarding the auction lots, to enable NFS to the upload this information as part of the Silent Auction Services.
- (d) You will be responsible for final approval of the description and pricing of all auction items.
- (e) NFS will use reasonable endeavours to obtain payment from the successful bidders for the auction lots on the night of the Event, and will provide

reasonable assistance to you in collecting payment for auction lots following the Event. NFS will not be responsible for bidders who do not follow through with payment (regardless of the reason).

14.2 Any additional services provided by NFS to you will be under the terms of this Agreement, and any other terms agreed between the parties from time to time in relation to those services.

## **15. Entire agreement**

This Agreement and any documents referred to in it or created in accordance with its express terms, including the Schedule, constitute the whole Agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement.

Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

## **16. Third party rights**

A person who is not a party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

## **17. No partnership or agency**

Nothing in this Agreement is intended to, nor shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute either party the agent of the other party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way, except as set out in this Agreement.

## **18. Severance**

If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

## **19. Variation**

No variation, waiver or agreed termination of this Agreement shall be effective unless it is in writing and executed by the parties (or their representatives) in the same manner as this Agreement.

## **20. Waiver**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that (or any other) right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

## **21. Governing law and jurisdiction**

21.1 This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter, will be governed by and construed in accordance with the laws of England and

Wales.

21.2 The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Agreement or its subject matter.

## **22. Alternative dispute resolution**

If any dispute arises in connection with this Agreement, the parties shall attempt to settle it amicably and promptly. If that fails, the parties shall attempt to settle the dispute by mediation in accordance with the CEDR model mediation procedure or any alternative dispute resolution/mediation procedure agreed between the parties.

## **23. Notices**

23.1 A notice or other communication given to a party under or in connection with this Agreement will be in writing and may be delivered personally or sent by pre-paid first class post or recorded delivery to the registered office of the other party or sent by email to an email address notified by the receiving party to the sending party for the purpose.

23.2 If a notice or other communication has been properly sent or delivered in accordance with this clause, it shall be deemed to have been received as follows:

23.2.1 if delivered personally, at the time of delivery; or

23.2.2 if sent by pre-paid first class post or recorded delivery, 9.00 am on the second business day after posting; or

23.2.3 if sent by email, at the time of transmission (except where an out of office or undelivered message is received by the sender, in which case notice is not delivered).

## Schedule 1

### Costs Schedule

#### NFS' deductible Costs from Funding

##### 1. NFS Fee

The fee which NFS charges under this agreement (the “**NFS Fee**”) for the provision of Product Services, Advertising Services and Administrative Services and which also covers Third Party Costs (as defined below) is, at the Commencement Date, as follows:

- (a) For Transactions where Gift Aid is claimed by the Donor, the NFS Fee shall be 45% of the Gift Aid (+VAT) plus, for web transactions, a fixed fee of 22p/transaction; OR
- (b) For Transactions where Gift Aid is not claimed by the Donor (regardless of whether such payment was eligible for Gift Aid), the NFS Fee shall be 4.5% (+VAT) plus, for web transactions, a fixed fee of 22p/transaction
- (c) For Auction lots listed but not bid against or not paid for through our services, NFS will charge 4.5% (+VAT) against the Starting Bid price.

A Dormancy Fee will, unless the scaled level of donations is reached, be charged as below:

<b>Annual income bracket [1]</b>	<b>One-off Dormancy Fee [2]</b>	<b>Level of donations at which Dormancy Fee is not charged</b>
£0-£10k	£0	N/A
£10k-£100k	£45	£500 raised in first 6mos
£100k-£500k	£95	£1,000 raised in first 6mos
£500k-£5mln	£195	£2,000 raised in first 6mos
£5mln+	£295	£3,000 raised in first 6mos

##### Notes

1. <https://www.gov.uk/government/publications/charity-register-statistics/recent-charity-register-statistics-charity-commission>
2. One-off Dormancy Fee is invoiced (or deducted from out-payment to organisation) 6 months (or later) from the Commencement Date. It is payable within 14 days.

##### 2. Third Party Costs

The third party transaction costs (the “**Third Party Costs**”) (exclusive of any VAT that may apply) to administer the collection and payments of the Funding and payment of Gift Aid through the Scheme payment channels are covered in the NFS fee.

### 3. Additional charges

Additional charges are noted below. Further services may be available and will be quoted for as required.

<b>At event personnel (if requested)</b>	<b>Charge (+VAT)</b>	<b>Notes</b>
Technical engineer	£450	Per 4 hour period
Donation volunteer	£100	Per 4 hour period
<b>Services</b>		
Artwork	£75	Per hour
Bespoke technical development	£90	Per hour
Master of Ceremonies	As specified	Per 4 hour period
<b>Other</b>		
Hire of laptops/iPads	From £17.50 / unit / evening + carriage	Includes 3G receivers
Wi-Fi provision	As specified	Depending on layout
<b>Mobile Charges</b>	<b>Charge (+VAT)</b>	
Bulk MT SMS	5p per text message	Mobile messages sent by networks and received for free by mobile users
Other SMS charges	As charged by network provider	
Additional Bandwidth and server fees	Charge (+VAT)	As agreed with ourselves
Above 200 text transactions within a 1 hour period	£50	Per additional 200 text messages.
<b>Tap+DONATE™</b>	<b>Charge (+VAT)</b>	<b>Notes</b>
One-off set-up charge	See Order Form	
Purchase Rental and rental deposit	See Order Form	Rental options are provided in the Order Form
Printing of labels	See Order Form	Rental options are provided in the Order Form

Schedule 2

NFS Name, NFS Logo and Logo Icon

NFS Name: The National Funding Scheme

NFS Logos:

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**DONATE**

### **Schedule 3**

#### **Product Service**

1. The NFS will provide you with the following product services to attract donations and financial transactions:
  - 1.1 The promotion of your event on our portal (desktop / iPad and mobile)
  - 1.2 Use of DONATE brand collateral
  - 1.3 Live data feeds from our servers showcasing amounts raised; number of donations and other details as agreed
  - 1.4 Creation of QR codes, specific text donation codes and URLs

#### **Advertising Services**

2. The NFS will enable you to promote your organisation by the placement of your brand (Organisation Name and Logo) and funding causes on the following NFS media:
  - 2.1 NFS website; and
  - 2.2 NFS mobile platform; and
  - 2.3 NFS iPad platform; and
  - 2.4 in hard copy publicity materials for the Scheme; and
  - 2.5 on Donor payment receipts
3. The NFS will provide Advertising Materials (in accordance with clause 3.1 of this Agreement), including signage templates, to you allowing you to advertise and promote your organisation and the Scheme.

#### **Administrative Services**

4. The NFS will provide the following Administrative Services to you:
  - 4.1 collection and distribution of the Funding through Third Party payment channels (in accordance with clause 4 of this Agreement); and
  - 4.2 administration of the NFS Bank Account to hold the Funding before distribution to you.

#### **Dependencies**

5. The following dependencies shall be applicable to you under this Agreement:
  - 5.1 there will be an uninterrupted WiFi, bluetooth or mobile network data connection available to the Devices;
  - 5.2 the Devices will be charged whenever their battery is running low; and
  - 5.3 insufficient training of users by your trained staff
  - 5.4 donor's card is invalid/damaged
6. To the extent that performance by NFS of any of its obligations under this Agreement is prevented by your failure to perform, or to procure the performance of, any of the dependencies listed at paragraph 5, NFS shall be entitled to claim relief from performing the obligation for the period during which the failure or delay in performing the dependency continues and shall be allowed an additional period of time to perform the obligation. Unless otherwise agreed, the additional period shall be equal to the amount of time during which NFS is delayed or prevented from performing the obligation.

## Schedule 4

### Definitions

The definitions and terms in this Schedule apply in this Agreement.

**Administrative Services:** the administrative services to be provided by the NFS to you in return for a proportion of the NFS Fee as set out in Schedule 3.

**Advertising Services:** the advertising services to be provided by the NFS to you in return for a proportion of the NFS Fee as set out in Schedule 3.

**Advertising Guidelines:** any advertising and publicity guidelines issued by the NFS to you during the Term.

**Advertising Materials:** means the hard copy or online materials and content designed, produced and provided to you (in relation to the Scheme), and which allow you to promote and promulgate their name, logo and fundraising causes to the public, including (but not be limited to) web pages, mobile accessible pages and other online and hard copy publicity materials, including posters and signs.

**App Software:** Software provided to you to operate the tap+DONATE™ devices.

**Bank Account:** the bank account of NFS in which it will hold the Funding as donor advised funds that may be payable to you under the terms of this Agreement and marked specifically for the purpose of holding funds for the Scheme.

**Branding Guidelines:** any branding guidelines issued by NFS to you during the Term.

**Break Date:** has the meaning given in clause 11.1.

**Commencement Date:** the commencement date of this Agreement as set out in clause 2.1.

**Confidential Information:** any information of a confidential nature which is disclosed by either party to the other in connection with this Agreement or the disclosing party's business or finances, whether orally or in writing and whether or not such information is expressly stated to be confidential, or which otherwise comes into the hands of the other party in relation to the Scheme other than information which is already in the public domain (other than as a result of a breach of any obligation of confidentiality).

**Costs:** the NFS Fee and Third Party Costs deducted by NFS from the Funding paid to you (to cover the NFS and third party costs of collecting and paying the Funding to you) as set out in Schedule 1.

**Data Protection Legislation** means (i) prior to 25 May 2018, Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data; (ii) on and after 25 May 2018, Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); and (iii) any applicable laws which apply to either party in any jurisdiction in any part of the world with respect to data protection, privacy, the use of information relating to individuals, and or the information rights of individuals.



**Device:** a tap+DONATE™ contactless unit which utilises the Software and meets the specification set out at paragraph 6 of Schedule 3.

**Donations:** a donation to NFS by a Donor via the Software, including (but not limited to) through a web page, mobile phone, text message, or other device.

**Donor Data:** the contact details of Donors where the Donors have provided consent under the Data Protection Act 1998 for such data to be shared with you.

**Donors:** the individual donors to NFS who make digital donations to the NFS via the Software, including (but not limited to) through a web page, mobile phone, text message, or other device.

**Event:** an event organised by you for the purposes of collecting Funding via the Scheme.

**Funding:** the Donations and Payments collected by NFS from Donors in relation to you/your activities and/or where NFS has communicated to the Donor that it may pass their such funding to you (but not including any Gift Aid collected in respect of such funding unless NFS, at its sole discretion, decides otherwise).

**HMRC:** Her Majesties Revenue & Customs.

**Intellectual Property:** all copyright and related rights, trade marks, trade names and domain names, all rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for (or rights to apply for) and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may, now or in the future, subsist in any part of the world.

**Order Form:** a separate document (available through <https://www.nationalfundingscheme.org/tap-donate/>) that defines your requirements for the tap+DONATE™ contactless device and services.

**Organisation Account:** has the meaning given in clause 4.2.

**Organisation Information:** means information about the Organisation requested by NFS to verify that you are suitable for involvement in the Scheme.

**Organisation Name and Logo:** means the name, logo (and other identifying marks) of your organisation as confirmed in writing by you on request of the NFS.

**NFS:** The National Funding Scheme (details of which are given above).

**NFS Fee:** has the meaning given in Schedule 1.

**NFS Name and Logo:** the NFS name and logo as shown at Schedule 2.

**Payments:** Payments for goods and services collected by the NFS from users which cannot attract Gift Aid.

**Permitted Use:** means the permitted use of the Advertising Materials by you which is to use the Advertising Materials and/or display the Advertising Materials on its premises in accordance with this Agreement and the Advertising Guidelines in order to promote and advertise you and facilitate the Scheme.

**Silent Auction Services:** the service which enables a charity to upload auction products and Donors to bid on such products through mobile devices.

**Questionnaire:** has the meaning given in clause 8.1.

**Schedule:** a Schedule to this Agreement.

**Scheme:** the digital donation scheme facilitated by NFS allowing members of the public to donate to charities in the UK.

**Software:** the software used by NFS to facilitate the Scheme.

**Third Party Costs:** has the meaning given in Schedule 1.

**Term:** the term of this Agreement under clause 2.

**Text Raffle Services:** the service to allow donors to use text services to enter a raffle lottery.

**you, your or your organisation:** the organisation entering into this Agreement with NFS.

## **Schedule 5**

### **Data Protection**

1. To the extent that NFS processes any Donor Data (as data processor (as defined under the Data Protection Legislation) under this Agreement, NFS shall and shall ensure that its employees, sub-contractors and/or agents comply with the following obligations:
  - 1.1 take reasonable steps to ensure the reliability of any individuals or entities who have access to the Donor Data;
  - 1.2 process the Donor Data securely at all times and take such technical and organisational security measures against unauthorised and unlawful processing of, accidental loss of, destruction of or damage to the Donor Data as may be required, having regard to the state of technological development and the cost of any measures, to ensure a level of security appropriate to the harm that might result from such processing, loss, destruction or damage and the nature of the Donor Data to be protected Such measures shall without limitation include ensuring that:
    - 1.2.1 all Donor Data processed by NFS shall be:
      - (a) stored securely; and
      - (b) where stored on electronic portable media (including, without limitation, laptops, memory sticks or CD roms), encrypted and password protected;
    - 1.2.3 access to all Donor Data, whether stored and processed electronically or otherwise, shall be restricted to such of NFS's relevant officers, employees and/or agents and any sub-contractors engaged by NFS who have a specific need to access the Donor Data;
  - 1.3 not do any of the following:
    - 1.3.1 except as permitted by this Agreement, use the Donor Data for any other purposes, including marketing purposes;
    - 1.3.2 transfer, or permit the transfer of, the Donor Data to third parties apart from its employees, sub-contractors and/or agents; or
    - 1.3.3 transfer, or permit the transfer of, the Donor Data outside the EEA (subject to paragraph 2 of this Schedule 5) without satisfying any requirements of relevant Data Protection Legislation regarding cross border transfers;
2. NFS shall notify you immediately if it becomes aware of, or reasonably suspects the occurrence of, any unauthorised or unlawful processing, loss of, damage to or destruction of any Donor Data.
3. If NFS engages any agent and/or sub-contractor to perform any of its obligations under this Agreement, it shall ensure that any contract with such an agent and/or sub-contractor contains equivalent provisions as those set out in paragraph 1 of this Schedule 5. The parties agree that NFS shall engage Panlogic Limited (of Marcar House, 13 Parkshot, Richmond, Surrey, TW9 2RG and with company number 03753915) as a sub-contractor in accordance with this paragraph 3. If NFS breaches this Schedule 5 due to any act or omission on the part of an agent or sub-contractor during the Term of this Agreement, this shall be deemed to be a breach of this Schedule 5 by NFS.
4. Where NFS acts as a data controller (as defined under the Data Protection Legislation) if any personal data under or in connection with this Agreement, NFS shall comply with all Data Protection Legislation.