

**DEPARTMENT OF PUBLIC EXPENDITURE AND REFORM  
Government Buildings  
Upper Merrion Street  
Dublin 2  
Ireland**

**AND**

[INSERT INTERESTED PARTY'S NAME AND ADDRESS BELOW]

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**PROCESS AND CONFIDENTIALITY AGREEMENT**

*[INSERT DATE BELOW]*

\_\_\_\_\_ *2013*\_\_

This Process and Confidentiality Agreement (the "Agreement"), which shall be effective as of the later date of execution below, is entered into by and between the Department of Public Expenditure and Reform ("D/PER") on behalf of the Minister for Public Expenditure and Reform and \_\_\_\_\_ (the "Interested Party") and governs the obligations of the Interested Party (as defined herein).

The individual signing this Agreement on behalf of the Interested Party represents and warrants on behalf of him/herself that he/she is authorised to enter into this Agreement and that this Agreement is binding and effective as to the Interested Party.

**WHEREAS:**

- (A) D/PER has invited Expressions of Interest from parties wishing to participate in a competition to become the next licensee for a 20 year exclusive licence to operate the national lottery in Ireland (the "Licence Competition") on behalf of the Minister for Public Expenditure and Reform (the "Minister").
- (B) Interested Parties are required to record their interest in participating in the Licence Competition by submitting an Expression of Interest including this Agreement to be granted access to an interactive data room (the "Virtual Data Room") containing certain information relating to the Licence Competition, the National Lottery, An Post National Lottery Company Limited ("APNLC") and related matters which is of a confidential nature (the "Confidential Information").
- (C) The Interested Party will require access to the Confidential Information to enable the Interested Party to formulate an Application to become the next licensee for the National Lottery (the "Permitted Purpose").
- (D) It is a condition of accessing the Virtual Data Room and participating in the Licence Competition that the Interested Party makes the declarations and grants the undertakings contained in this Agreement.

NOW IT IS HEREBY AGREED in consideration of the sum of €5 (the receipt of which is hereby acknowledged by the Interested Party) as follows:

- 1. The Interested Party acknowledges that Confidential Information, accessed through the Virtual Data Room, will be provided to him/her by D/PER and that each item of Confidential Information shall be governed by the terms of this Agreement.
- 2. For the purposes of this Agreement "Confidential Information" means:  
  
unless specified in writing to the contrary by D/PER all and any information (whether in documentary form, electronic, or otherwise including any copy or copies thereof and whether scientific, commercial, financial, technical, operational or otherwise) held in the Virtual Data Room which includes information relating to the Licence Competition, the National Lottery, APNLC and related matters which is of a confidential nature and any other information that D/PER may, in its absolute discretion, determine to be Confidential Information.

In consideration for accessing the Virtual Data Room and participating in the Licence Competition, the Interested Party declares and undertakes to D/PER as follows:

## 1. DEFINITIONS

In this Agreement the following expressions have the following meanings:

- 1.1 **Agreement** means this agreement which is the Process and Confidentiality Agreement to be entered into by and between the Department of Public Expenditure and Reform and the Interested Party so that the Interested Party can be granted access to the Virtual Data Room containing the Confidential Information and participate in the Licence Competition;
- 1.2 **Application** means the written response by the Interested Party to the Request for Applications in connection with the Licence Competition to become the next licensee of the National Lottery for a 20 year period;
- 1.3 **Bond** means the bond to be provided by Interested Parties in the form set out in Schedule 1 to this Agreement the provision of which is one of the conditions for access to the Confidential Information and participation in the Licence Competition;
- 1.4 **Current Licensee or APNLC** means An Post National Lottery Company Limited;
- 1.5 **Confidential Information** means unless specified in writing to the contrary by D/PER all and any information (whether in documentary form, electronic, or otherwise including any copy or copies thereof and whether scientific, commercial, financial, technical, operational or otherwise) held in the Virtual Data Room which includes information relating to the Licence Competition, the National Lottery, APNLC and related matters which is of a confidential nature and any other information that D/PER may, in its absolute discretion, determine to be Confidential Information;
- 1.6 **D/PER** means the Department of Public Expenditure and Reform and all personnel and its advisers for the purposes of the Licence Competition, namely Davy and QLot Consulting AB;
- 1.7 **EEA** means the European Economic Area including the countries of the European Union plus Iceland, Liechtenstein and Norway;
- 1.8 **Expressions of Interest** means a written expression from an Interested Party wishing to participate in the Licence Competition;
- 1.9 **Interested Party** means the signatory of this Agreement including all representatives and advisers, all associates (including parent and subsidiary undertakings and their representatives and advisers) and any related parties, and Interested Parties shall be construed accordingly;
- 1.10 **Licence** means the next National Lottery Licence which is the subject of the Licence Competition;
- 1.11 **Licence Competition** means the competitive tender for the selection of a licensee for the Licence;
- 1.12 **National Lottery** means the Irish National lottery;
- 1.13 **Permitted Purpose** means the purpose that the Confidential Information is being made available to the Interested Party by D/PER i.e. the formulation of an Application to become the next licensee for the National Lottery;

1.14 **RFA** means the Request for Applications in connection with the Licence Competition to become the next licensee of the National Lottery for a 20 year period which will be available the Interested Party in the Virtual Data Room;

1.15 **Signature Date** means the date of grant of the Licence;

1.16 **Virtual Data Room** means the online facility designated as such by D/PER in which information relating to the Licence Competition will be stored and made available for inspection by the Interested Party; and

1.17 **VDR Rules** means the rules of the Virtual Data Room which will be available to Interested Parties granted access to the Virtual Data Room and any amendment to these rules issued by D/PER.

## **2. EXCEPTIONS**

For the purposes of this Agreement, “Confidential Information” does not include information if and to the extent that it:

- (a) is, at the time of disclosure by D/PER to the Interested Party within the public domain and could be obtained by any person with no more than reasonable diligence;
- (b) comes into the public domain and could be so obtained after such disclosure, otherwise than by reason of a breach of any of the terms of this Agreement or any other obligation of confidentiality; or
- (c) is, at the time of such disclosure, already within the possession of the Interested Party or is subsequently provided to the Interested Party by a person who has not obtained such information from D/PER provided that, in any such case, such information was not obtained illegally or disclosed by any person in breach of any undertaking or duty as to confidentiality whether express or implied.

## **3. PROVISION OF INFORMATION**

The Interested Party shall, if and to the extent so requested by D/PER, provide D/PER, its representatives or advisers with such information concerning the Interested Party and their business as D/PER may require and shall present such information in such manner, as D/PER may reasonably require until the Signature Date.

## **4. CONFIDENTIALITY UNDERTAKINGS BY THE INTERESTED PARTY**

4.1 In consideration of the Confidential Information being made available to the Interested Party the Interested Party hereby agrees and undertakes that it:

- (a) shall use all Confidential Information solely for the Permitted Purpose;
- (b) shall keep secret and safely store all Confidential Information supplied to the Interested Party;
- (c) shall not disclose any Confidential Information to any third parties except those who need to know the Confidential Information for the purposes of evaluating whether or not and on what terms the Interested Party might proceed with an Application including providers of debt finance;

- (d) shall not, whether or not the discussions proceed, disclose such Confidential Information to any person other than third parties under 4.1 (c) above or such other persons as D/PER may from time to time specifically approve in writing following a written request from the Interested Party for permission to share Confidential Information with named third parties for the purposes of forming a consortium to submit an Application.
  - (e) without prejudice to the generality of Clause 4.1, shall not make contact with the Current Licensee in connection with Confidential Information; and
  - (f) where its participation in the Licence Competition concludes it shall safely dispose or destroy all records of any Confidential Information received without keeping any copies thereof.
- 4.2 The Interested Party acknowledges that the documents contained in the Virtual Data Room constitute Confidential Information for the purposes of this Agreement. Access to the Virtual Data Room shall be made available to the Interested Party on returning a complete Expression of Interest together with required supporting documentation including this Agreement subject to and on the terms contained in this Agreement. The Interested Party shall hold such documents contained in the Virtual Data Room in complete confidence and subject to the terms of this Agreement.
- 4.3 The Interested Party acknowledges and confirms that neither D/PER nor any third party who may supply Confidential Information accepts any responsibility for, or makes any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the Confidential Information or any communication in connection therewith.
- 4.4 The Interested Party hereby agrees and undertakes that it shall not disclose to any person, except as required by law, information relating to its participation in the Licence Competition or the status of any discussions with D/PER or with any other prospective licensee other than the fact that the Interested Party is investigating the possibility of submitting, has decided to submit or has submitted, an Application.
- 4.5 The Interested Party acknowledges and confirms that any information made available to the Interested Party prior to, in the course of, or for the purpose of, negotiating, analysing or evaluating an Application, will not constitute an offer by or on behalf of D/PER to operate the National Lottery.
- 4.6 The Interested Party shall not obtain any proprietary interest or any other interest whatsoever in the Confidential Information furnished to him by D/PER and the Interested Party so acknowledges and confirms.
- 4.7 D/PER is subject to the provisions of the Freedom of Information Acts, 1997- 2003. In the event of D/PER receiving a request for information related to this Agreement, D/PER shall consult with the Interested Party in respect of the request. The Interested Party shall identify any information that is not to be disclosed on grounds of commercial sensitivity, and shall state the reasons for this sensitivity. D/PER will consult the Interested Party about this sensitive information before making a decision on any Freedom of Information request received. The final decision in regard to release of any such information rests with the Information Commissioner and ultimately with the Courts.
- 4.8 The Interested Party acknowledges that the Confidential Information could be subject to the Official Secrets Act, 1963 (for the avoidance of doubt, to include any replacement or re-enactment thereof from time to time) and in particular but not limited to section 6 of that Act. The Interested Party agrees that it will execute on its own behalf, and on behalf of all employees employed by it who are assigned to provide any services pursuant to the Licence Competition, any documentation which D/PER reasonably deems necessary to ensure confidentiality (including any documentation necessitated by the provisions of the Official Secrets Act, 1963). Any employee, sub-contractor or agents assigned by the Interested Party to provide the services pursuant to the Licence Competition shall be required to execute any documentation which the D/PER reasonably deems necessary to ensure confidentiality

(including any documentation necessitated by the provisions of the Official Secrets Act, 1963). The provisions of Circular 15/79 regarding the Official Secrets Act will apply in relation to any official information gained in the course of the delivery of the services.

- 4.9 The Interested Party acknowledges and agrees that the Confidential Information shall be and shall remain the property of D/PER. The Interested Party shall take all such measures as are necessary to ensure that the privacy, security and integrity of the Confidential Information is fully protected. The Interested Party shall comply with all requirements as to the management of the Confidential Information as may be specified in writing by the D/PER from time to time.

## **5. DATA PROTECTION PROVISIONS**

5. The Interested Party undertakes:

- 5.1 to comply with all directions of D/PER with regard to the use and application of all and any Confidential Information or data (including personal data as defined in the Data Protection Acts, 1988 and 2003);
- 5.2 upon termination of the Licence Competition for whatever reason to furnish to D/PER, all Confidential Information or at the written direction of D/PER to destroy in a secure manner all (or such part or parts thereof as may be identified by the D/PER) Confidential Information in its possession and shall erase any Confidential Information held by the Interested Party in electronic form. The Interested Party will upon request furnish a certificate to that effect should D/PER so request in writing. As an exception to its obligations under this clause
- 5.2 the Interested Party may retain one copy of the Confidential Information, in paper form, in its legal files for the purposes of ensuring compliance with its obligations under this Agreement. For the avoidance of doubt “document” includes documents stored on a computer storage medium and data in digital form whether legible or not; and
- 5.3 without prejudice to clause 10 below, to comply with the requirements of Data Protection law and such guidelines as may be issued by the Data Protection Commissioner from time to time, including but not being limited to:-
- (i) Data Protection Acts, 1988 and 2003 and
  - (ii) All EU requirements arising (including, but not limited to, provisions relating to the processing of data, ensuring the security of data and restrictions on transfers of data abroad) and any legislation and regulations implementing same.

## **6. OTHER UNDERTAKINGS BY THE INTERESTED PARTY**

The Interested Party warrants, represents and undertakes to D/PER that:

- (a) the Interested Party is acting as a principal on its own account and not as agent or broker for any other person(s) and will be responsible for any costs incurred by it or on its behalf in connection with an Application or the contemplation thereof;
- (b) the Interested Party is submitting its Expression of Interest and entering this Agreement for the Permitted Purpose only;
- (c) the Interested Party has not committed in any jurisdiction criminal offences which are related to their professional conduct, and which are ascertainable by any method. Offences related to professional conduct include but are not limited to fraud, money

laundering, embezzlement, extortion, forgery, perjury, bribery, fraudulent bankruptcy, or participation in a criminal organisation;

- (d) the Interested Party is not bankrupt, in liquidation, in compulsory receivership or in any other relevant situation resulting from a similar process specified in the law of the country where the company is based or in Irish law;
- (e) no proceedings have been instigated against the Interested Party for bankruptcy, liquidation, compulsory receivership, bankruptcy settlement or any other similar process specified in relevant national, legal and regulatory provisions;
- (f) the Interested Party has fulfilled its obligations, as regards payment of social security contributions or regarding payment of taxes and duties, in accordance with the law of the country where the company is based, or according to Irish law;
- (g) the Interested Party is not guilty of making false representations or having neglected to submit required information in accordance with the law of the country where the company is based, or according to Irish law;
- (h) the information, representations and other matters of fact communicated in writing to D/PER by the Interested Party relating to the Expression of Interest and in due course the Licence Competition are accurate and not misleading in all material respects both as at the date communicated and as at the date of submission of an Application;
- (i) it will inform D/PER in writing, to the addresses set out in Clause 12 - *Notices* below, of any material change to any of the information, representations and other matters of fact communicated to D/PER as part of its Application immediately upon becoming aware of such changes;
- (j) it is submitting the Expression of Interest and seeking to participate in the Licence Competition at the sole risk and expense of the Interested Party and that such participation does not establish any right to compensation from the D/PER or any other party;
- (k) it will not attempt to contact or interview or solicit information from any representative of D/PER, its advisors or APNLC save as provided for in the RFA and the VDR Rules;
- (l) that nothing in this Agreement nor in the Interested Party's participation in the Licence Competition shall give rise to any rights or remedies against D/PER; and
- (m) it accepts that D/PER may change the basis of or the procedures for the Licence Competition, reject any person from further participation at any stage of the Licence Competition, reject all or any proposals, terminate discussions with or directly or indirectly involving the Interested Party and/or decide not to proceed with the Licence Competition.

## 7. BOND

The Interested Party shall include with its Expression of Interest the Bond in an amount equal to **€100,000** (one hundred thousand euro) as follows:

The Bond shall be issued by a bank or insurance company which must:

- (i) be licensed and located within the EEA; and

- (ii) have a long-term credit rating of not less than BB- from Standard & Poor's Rating Services or a long-term credit rating of not less than Ba3 from Moody's Investor Services Limited.

The Bond shall be valid until 31 December 2013 but shall no longer be callable following the bid submission deadline or termination of the Licence Competition by D/PER.

The Bond shall be free of interest and payable in cash, on D/PER's first demand, upon receipt of D/PER's duly signed request for payment stating that this Process and Confidentiality Agreement between the Interested Party and D/PER has been breached. D/PER shall be entitled at its absolute discretion to claim the full amount of the Bond or any part thereof. The Bond shall allow multiple claims, provided that they do not exceed the total amount of the bond.

The Bond shall be in the form set out in Schedule I to this Agreement.

## **8. ANTI COLLUSION**

- 8.1 Save as agreed in writing by D/PER the Interested Party undertakes that it shall not, at any time prior to the execution of the Licence and the satisfaction of any conditions precedent to such a Licence coming into force:
- (a) enter into any agreement or arrangement with any person that they shall refrain from submitting an Application for the Licence or that they should withdraw any such Application once submitted; and
  - (b) pay, give or offer to pay or give any sum of money or other valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other Application for the Licence any of the aforementioned actions.
- 8.2 The Interested Party agrees that it shall be responsible for any failure by it or any representative to abide by the terms of Clause 7.1 as if such failure had been its own act of omission.

## **9. REMEDIES**

The Interested Party acknowledges and agrees that damages would not be an adequate remedy for any breach by it of the provisions of this Agreement and that, without prejudice to all other remedies to which they may be entitled as a matter of law, D/PER shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this Agreement and no proof of special damages shall be necessary for the enforcement of this Agreement.

## **10. INDEMNITY**

The Interested Party hereby agrees to indemnify and keep indemnified D/PER against any costs, claims, demands, losses or liabilities whatsoever arising directly or indirectly out of any breach by the Interested Party of the obligations under this Agreement.



## **11. OTHER**

- 11.1 This Agreement shall be binding upon the Interested Party and its successor. The Interested Party shall not be entitled to assign any rights or obligations under this Agreement.
- 11.2 If any provision of this Agreement is held to be invalid or unenforceable, that provision shall (so far as it is invalid or unenforceable) be given no effect and shall be deemed not to be included in this Agreement, but without invalidating any of the remaining provisions of this Agreement.
- 11.3 This Agreement shall be governed by and construed in accordance with the laws of Ireland, and the Interested Party hereby submits to the exclusive jurisdiction of the Irish Courts.

## **12. NOTICES**

Notices in relation to this Agreement shall be given to D/PER's advisers Davy Corporate Finance in writing only by email to:

[nationallotterycompetition2013@davy.ie](mailto:nationallotterycompetition2013@davy.ie)

or by hand or courier to:

**National Lottery Competition 2013**  
Davy Corporate Finance  
Davy House  
49 Dawson Street  
Dublin 2  
Ireland

AS WITNESS this Agreement has been duly executed by the parties hereto. SIGNED by their duly authorised respective officers for and on behalf of:

**Department of Public Expenditure and Reform**

By: \_\_\_\_\_

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

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

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

**Interested Party:**

\_\_\_\_\_

By: \_\_\_\_\_

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

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

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

**Schedule 1**

**Form of Bond**

To: The Department of Public Expenditure and Reform (D/PER), Government Buildings, Upper Merrion Street, Dublin 2, Ireland.

Bond No.....

By this Bond we.....(**Financial Institution**)

whose address is.....

hereby guarantee Messrs.....(**Interested Party**)

of.....

and hold, subject to the provisions below, at your disposal the sum of €100,000 until 31 December 2013.

The Bond shall no longer be callable following the bid submission deadline or termination of the Licence Competition by D/PER.

The Bond shall be free of interest and payable in cash, on D/PER's first demand, upon receipt of D/PER's duly signed request for payment stating that the Process and Confidentiality Agreement between the Interested Party and D/PER has been breached. D/PER shall be entitled at its absolute discretion to claim the full amount of the Bond or any part thereof. The Bond shall allow multiple claims, provided that they do not exceed the total amount of the Bond.

D/PER shall be entitled in its discretion to claim the full amount of the Bond or any part thereof. The Bond shall allow multiple claims, provided that they do not exceed the total amount of the Bond.

*Terms used in this Bond have the same meaning as defined in the Process and Confidentiality Agreement.*

**Authorised Signatories**

*To be issued by a bank or other financial institution licensed and located within the EEA and with a long term credit rating of not less than BB- from Standard & Poor's Rating Services or a long-term credit rating of not less than Ba3 from Moody's Investor Services Limited.*

*The Bond must be executed by deed under seal or equivalent of the bank or financial institution.*

**IN WITNESS WHEREOF the parties have duly executed and delivered as a deed on this day and year first above written.**

**EXECUTED AS A DEED**

**FOR AND ON BEHALF OF**

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**Director**

Financial Institution

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**Director or Secretary**

Financial Institution

**In the presence of**

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Name and Address of Witness