1. Definitions and interpretation
   1. In these terms and conditions:

“**Fund**” means the Big Lottery Fund, operating as The National Lottery Community Fund, with its principal office at 1 Plough Place, London EC4A 1DE;

“**Contract**” means the contract for the sale and purchase of Goods and/or the supply and acquisition of Services on these terms and conditions;

“**Data Protection Legislation**” means, for the periods in which they are in force, the European Union Data Protection Directive (95/46/EC), all laws giving effect or purporting to give effect to the European Union Data Protection Directive (95/46/EC), The GDPR or otherwise relating to Data Protection, including the Data Protection Act 2018, and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time;

“**Data Subject**” shall have the same meaning as in the Data Protection Legislation;

“**GDPR**” (a) the General Data Protection Regulation (Regulation (EU) 2016/679; or (b) any equivalent legislation amending or replacing the General Data Protection Regulation (Regulation (EU) 2016-679);

“**Goods**” means the goods (including any instalment, component, part of or raw materials used in such goods and any deliverables resulting from performance of the Services) described in the Order;

“**Order**” means the Fund’s order for the supply of goods and/or services, as set out in the Fund's purchase order form or as provided verbally or otherwise in writing (including by email), or in the Fund's written acceptance of the Supplier's quotation or overleaf, as the case may be and confirmed in all cases by a purchase order issued by the Fund;

“**Personal Data**” has the meaning given to this term by the Data Protection Legislation;

“**Personal Data Breach**” shall have the same meaning as in the Data Protection Legislation;

“**Price**” means the price of the Goods or the Services or both as set out in the Order;

“**Services**” means the services (if any) described in the Order; and

“**Supplier**” means the person, firm or company so described in the Order.

* 1. Where the context so admits or requires, words in this Contract denoting the singular include the plural and vice versa and words denoting any gender include all genders.
  2. Where the words “**include(s)**” or “**including**”, or words of a similar nature, are used in these terms and conditions, they are deemed to have the words “without limitation” following them, and are illustrative and shall not limit the sense of the words preceding them.

1. Basis of Purchase
   1. The Order constitutes an offer by the Fund to purchase the Goods and/or acquire the Services subject to these terms and conditions.
   2. The Supplier shall be deemed to have accepted these terms and conditions by accepting an Order (notwithstanding any conditions attached to such acceptance or any purported incorporation of terms other than these terms and conditions) or by delivering any Goods or performing any Services, at which point the Contract shall come into existence.
   3. These terms and conditions shall apply to the Contract and/or any performance of the Services by the Supplier prior to entering into the Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Fund or subject to which the Order is accepted or purported to be accepted by the Supplier.
   4. Where the Fund places an Order pursuant to any framework agreement or any other contract it holds with the Supplier, the terms and conditions of such framework agreement and the associated call off contract, or of such other contract which the Supplier holds with the Fund, shall take precedence over these terms and conditions.
2. Supply of Goods
   1. The Supplier shall ensure that the Goods delivered to the Fund:
      1. correspond with the description (i) in the Order, including as set out in any attachments or documents referenced in and attached to the Order (including the Supplier's quotation or proposal referenced in the Order whether or not such quotation or proposal is attached to the Order), (ii) published in any of the Supplier’s marketing materials and (iii) in any other specification agreed in writing by the Supplier and the Fund;
      2. are of satisfactory quality (within the meaning of the UK Sale of Goods Act 1979, or any re-enactment of that legislation) and comply with any relevant express and implied terms of the Supply of Goods and Services Act 1982 and are fit for any purpose held out by the Supplier or made known to the Supplier by the Fund, expressly or by implication, prior to the date of the Order and in this respect the Customer relies on the Supplier’s skill and judgment;
      3. are free from defects in design, materials and workmanship; and
      4. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods, and are properly packed and secured to ensure they are delivered in good condition.
   2. The Supplier warrants to the Fund that the use of the Goods by the Fund for their standard purpose and (if different) any purpose made known to the Supplier by the Fund prior to the date of the Order will not result in the infringement of any intellectual property rights of the Supplier or any third party.
3. Supply of Services
   1. The Supplier shall:
      1. perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier’s industry, profession or trade and any other industry, profession or trade relevant to the Services and in accordance with the reasonable instructions of the Fund and any relevant manufacturer’s published instruction materials (including the marketing materials of such manufacturers; and
      2. observe all health and safety rules and regulations and any other security requirements that apply at the Fund’s premises.
   2. The Supplier hereby assigns to the Fund with full title guarantee by way of present and future assignment any and all intellectual property rights in the documents, data, information, software, devices, processes or other material created by the Supplier in the course of performing the Services, and any other intellectual property rights the Supplier creates during its performance of the Services. The Supplier shall sign the Order to effect this.
   3. The Fund reserves the right to determine whether the results, outputs and deliverables provided in the performance of the Services shall be published and, if so, on what conditions.
4. Price and Payment
   1. The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be
      1. fixed and not subject to variation for the duration of the Contract; and
      2. exclusive of any applicable VAT (which shall be payable by the Fund subject to receipt of a VAT invoice) but inclusive of all charges for packaging, insurance and delivery of the Goods to the Fund’s specified delivery address, and travel and accommodation and any and all out of pocket expenses in the case of Services, and any duties, imposts or levies other than VAT.
   2. Unless otherwise stated in the Order and subject always to the Goods and Services having been delivered and accepted by the Fund as being in accordance with the Contract, the Supplier may only invoice the Fund on or after delivery and acceptance of the Goods or supply and acceptance of the Services. Invoices will not be accepted unless they quote the number of the relevant Order. Invoices shall be sent to the Fund.
   3. Unless otherwise stated in the Order, the Fund shall pay the Price in respect of the Goods and the Services within 30 days after receipt by the Fund of a valid and accurate invoice or, if later, after acceptance of the Goods or Services in question by the Fund.
   4. The Fund shall be entitled to deduct from the Price:
      1. any amount which is disputed by the Fund, pending resolution of such dispute (including related costs and expenses); and
      2. any sums owing by the Supplier to the Fund on any contract.
5. Royalties
   1. All royalties, licence fees or similar expenses for the supply or use of any invention, process, drawing, model, plan or information in connection with the Contract shall be deemed to have been included in the Price. The Supplier shall indemnify the Fund from and against all claims and proceedings that may be made against the Fund, and any damages, costs and expenses incurred by the Fund in respect of any such supply or use.
6. Delivery and warranties
   1. The Goods shall be delivered to, and the Services shall be performed at, the place(s) and on the date(s) stated in the Order, in either case during the Fund’s usual business hours. The Fund reserves the right to amend any delivery instructions. Delivery shall be deemed to be made on receipt of the Goods and/or the Services by the Fund in accordance with all terms of the Contract.
   2. If for any reason the Fund requests delivery, installation or performance to be delayed, the Supplier shall agree to such request at no extra cost to the Fund and the provisions of this clause 7 shall apply to any such revised date for delivery, installation or performance.
   3. A delivery note stating the number of the Order and the description and quantity of Goods supplied must accompany each consignment of the Goods and must be displayed prominently. The Fund shall be under no obligation to accept delivery or performance by instalments unless previously agreed in writing.
   4. Risk of damage to or loss of the Goods shall pass to the Fund upon delivery to the Fund in accordance with the Contract. Transit and offloading of the Goods shall be at the Supplier’s risk.
   5. The title in the Goods shall pass to the Fund upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Fund once payment has been made and the Goods have been appropriated to the Contract.
   6. The Supplier warrants that the Services shall be performed and the Goods shall be supplied and delivered using reasonable skill and care and in accordance with any standards set out in the Order.
7. Acceptance
   1. The Fund shall be entitled to reject all or any part of the Goods delivered or Services performed which are not in accordance with the Contract, including a right to reject defective Goods even if the defect is minor.
   2. The Fund shall not be deemed to have accepted any Goods and/or Services until the Fund has had a reasonable time to inspect or test them following delivery or, if later, within a reasonable time after any latent defect has become apparent.
8. Force Majeure
   1. Neither the Supplier nor the Fund shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or the Services, if the delay or failure was beyond that party’s reasonable control.
   2. If any delay or failure to which clause 9.1 applies continues for more than three months, then either party may terminate the Contract without any further liability to the other party save that which it has already incurred under the Contract prior to termination.
9. Confidentiality
   1. All information supplied to the Supplier by the Fund, or which comes to the attention of the Supplier, at any time in connection with the Contract shall be regarded as confidential and (unless that information is or becomes publicly known other than by a breach of these terms and conditions) the Supplier shall not without the prior written consent of the Fund publish or disclose to any third party such information, or use such information for any purpose other than the purpose of implementing the Order.
   2. The obligations under this clause 10 shall remain in force notwithstanding completion, cancellation or termination of the Contract.
10. PUBLICITY
    1. The Supplier shall not publicise the Contract in any way or communicate with representatives of the general or technical press, radio, television or other communications media in relation to the Goods or Services. In response to any media or other enquiries relating to the Fund, the Supplier must refer the caller to the Fund’s branding team, and shall inform the Fund’s branding team of the enquiry as soon as practicable.
11. PROTECTION OF PERSONAL DATA AND SECURITY OF DATA

12.1In this clause 12, the terms, “processes”, “data controller” and data processor” shall have the same meanings given to them under Data Protection Legislation.

* 1. The Parties acknowledge that for the purposes of Data Protection Legislation, the Fund is the data controller and the Supplier is the data processor of any Personal Data. **Schedule 1** sets out what personal data is to be processed in the course of this contract.
  2. The Supplier shall and shall procure that its staff and sub-contractors shall comply with all Data Protection Legislation in relation to any Personal Data processed.
  3. Without limiting clauses 12 .2 and 12. 3, the Supplier shall at all times (and shall ensure that at all times its staff):
     1. process Personal Data only in accordance with the documented instructions received from the Fund and during the term of this Agreement. The Supplier shall immediately inform the Fund if, in the Supplier’s opinion, an instruction from the Fund infringes the Data Protection Legislation or any other applicable law;
     2. ensure that any person to whom it provides the Personal Data is subject to appropriate confidentiality obligations;
     3. disclose any Personal Data only on a need to know basis to staff directly concerned with the provision of the Goods and/or Services;
     4. not transfer or direct the transfer of any Personal Data to any third party or process or direct the processing of Personal Data outside of the European Economic Area in each case without the Fund’s prior written consent (which consent may be subject to conditions as directed by the Fund);
     5. keep all Personal Data confidential, and have in place now and shall on a continuing basis take appropriate technical and organisational measures to keep all Personal Data confidential and secure and to protect against unauthorised or unlawful processing, accidental loss, destruction, damage, alteration, disclosure or access;
     6. upon request by the Fund, promptly do such other acts in relation to the Personal Data, or any part thereof, as the Fund shall request to enable the Fund to comply with its obligations under the Data Protection Legislation;
     7. notify the Fund promptly (and at least within 2 (two) Working Days) if it receives a request from a Data Subject or a complaint relating to a Data Subject and promptly provide the Fund with all such data, information, cooperation and assistance as is required by the Fund in order to respond to and resolve the request or complaint within any applicable time frames;
     8. provide such information and allow for and contribute to audits, including inspections, conducted by the Fund or an auditor mandated by the Fund, as is reasonably necessary to enable the Fund to satisfy itself of the Supplier’s compliance with this clause 12 and the Data Protection Legislation;
     9. on termination or expiry of this Agreement, and at any other time on the Fund’s request, either return or destroy (as elected by the Fund) the Personal Data (including all copies of it) and confirm in writing that it has complied with this obligation; and
     10. notify the Fund without undue delay on becoming aware of any Personal Data Breach and promptly following notification, provide such data, information and assistance as is required by the Fund in order for the Fund to notify the Personal Data Breach to the Information Commissioner and/or Data Subject(s) and otherwise fulfil its obligations under Data Protection Legislation.

1. FREEDOM OF INFORMATION
   1. The Supplier shall make available at its own cost any information reasonably requested by the Fund in connection with the Supplier’s performance under this Contract and shall allow such access to its premises and contact with its employees as is necessary for these purposes. The Fund may share information about this Contract with other lottery distributors, Government departments and other organisations with a legitimate interest in lottery funding as well as with members of the public who make a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
   2. In particular, the Supplier shall, and shall procure that its employees or sub-contractors shall, provide all necessary information and assistance as reasonably requested by the Fund, within the timeframes reasonably specified by the Fund, to enable the Fund to respond to any request for information it receives in compliance with the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
   3. The Fund shall be responsible for determining in its absolute discretion whether any commercially sensitive information or other information is exempt from disclosure or may be disclosed either without consulting the Supplier or following consultation with the Supplier and having taken its views into consideration.
2. AUDIT AND RECORDS
   1. The Supplier shall maintain true and correct records including accountancy information in connection with the work of the Supplier in executing this Contract. The Supplier shall retain such records for a period of not less than twenty-four months after delivery of the Goods and/or completion of the Services unless a longer retention period is requested by the Fund.
   2. The Fund may from time to time undertake an audit of all records relating to this Contract. Where the Fund elects to undertake an audit, the Supplier shall be given reasonable notice of the Fund's intention and shall provide such access and assistance as the Fund reasonably requires, at no cost to the Fund, to complete such audit.
   3. Statutory retention periods for financial and other records are not affected nor altered by this clause 13.
3. NATIONAL AUDIT OFFICE ACCESS
   1. For the purpose of:
      1. the examination and certification of the Fund’s accounts; or
      2. any examination pursuant to section 6(1) of the National Audit Act 1993 (or any re-enactment thereof) of the economy, efficiency and effectiveness with which the Fund has used its resources,

the Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier, and may require, at the Supplier’s expense, the Supplier to produce such oral or written explanation as they consider necessary.

1. Health and SAFETY
   1. The Supplier shall be responsible for its observance, and the observance by its employees and subcontractors, of all safety precautions necessary for the protection of the Supplier, its employees, subcontractors and any other persons involved in the provision of the Goods and/or Services, including all precautions required to be taken by or under any Act of Parliament and including any regulations or bye-law of any local or other authority. The Supplier shall co-operate fully with the Fund to ensure the proper discharge of these duties.
2. TERMINATION
   1. The Fund may terminate the Contract if the Supplier fails to perform any of its obligations under the Contract and such failure continues for a period of seven (7) days after written notice thereof is provided by the Fund to the Supplier.
   2. The Fund shall have the right to terminate the Contract immediately if the Supplier becomes (or, in the reasonable opinion of the Fund, is at serious risk of becoming) insolvent or unable to pay its debts as they fall due.
   3. Without prejudice to any other provisions of these terms and conditions, the Fund may terminate the Contract at any time by serving seven (7) days’ written notice to the Supplier. If the Fund terminates the Contract under this clause 16.3, the Fund shall will pay the Supplier on a proportional basis for any Goods and/or Services performed up to and including the effective date of termination where such Goods and/or Services have not previously been paid for. Such payment shall be in full and final settlement of the Fund’s liability under the Contract in relation to the payment for Goods and/or Services.
   4. Where any part of the Price has been paid for Services or parts of Services not performed prior to the effective date of termination, or for Goods not delivered prior to the effective date of termination, the Supplier shall repay to the Fund, within seven (7) days after termination, an amount equal to such sum and any duties or taxes paid by the Fund to the Supplier in respect of such part of the Price.
   5. Termination of the Contract, however it arises, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.
3. Liability
   1. Nothing in these terms and conditions shall limit or exclude either party’s liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable), for fraud or fraudulent misrepresentation or for any other matter in respect of which it would be unlawful for that party to exclude or restrict liability.
   2. The Fund’s liability under the Contract is limited to, in the case of Goods, the Price for such Goods, or, in the case of Services, to the Price paid or to be paid for such Services. However, where the Services have been provided or will be provided for more than twelve (12) months, the Fund’s liability is limited to the Price which has been paid for the Services during the twelve (12) months prior to the event to which the liability relates or, where the Services have not yet been provided for a period of twelve (12) months or more, the Fund’s liability is limited to the Price to be paid for the first twelve (12) months of Services provision.
4. insurance
   1. The Supplier shall take out and maintain insurance policies in respect of the potential liabilities that may arise under the Contract with a reputable insurance company for the term of the Contract and for six years after its termination or expiry to cover the liabilities that may arise under or in connection with the Contract and shall produce to the Fund on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
5. NON-SOLICITATION
   1. During the term of the Contract and for a period of six (6) months following the termination of the Contract for any reason whatsoever, neither party shall solicit or entice away from the other party or employ or attempt to employ any individual who is, or has been, engaged as an employee of the other party, or refer or introduce the other party’s employees to any third party for the purposes of the contracting or engagement by that third party, except that neither party shall be in breach of this clause 19.1 if it hires an individual as a result of a recruitment campaign not specifically targeted to any employees of the other party.
6. WAIVER
   1. A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
7. THIRD PARTY RIGHTS
   1. The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of The Contracts (Rights of Third Parties) Act 1999.
8. Prevention of fraud, corruption and bribery
   1. The Supplier warrants that it has in place, and undertakes that it will comply with, policies and procedures to avoid the risk of collusion, corruption, bribery and fraud within its organisation and in connection with its dealings with third parties. The Supplier also warrants that is not aware of, and has no reason to suspect that any of its employees or contractors have been involved in any collusion, corruption, bribery or fraud.
9. COMPLIANCE WITH LAWS
   1. The Supplier shall comply with all laws and regulations applicable to the supply of the Goods and/or Services (as applicable).
10. REPUTATION MANAGEMENT and Conflicts of interest
    1. The Supplier shall refrain from conduct that would adversely reflect on the Fund or be prejudicial to the reputation or standing of the Fund, and shall take reasonable steps to ensure that its officers, employees and contractors (if any) do not, engage in any activity that is incompatible with the aims and objectives of the Fund.
    2. The Supplier shall use its best endeavours to ensure that it and its staff are not placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of such persons and the duties owed to the Fund under the Contract. Immediately on becoming aware or suspecting such a conflict, the Supplier will disclose the particulars of the conflict to the Fund and co-operate with any reasonable measures implemented by the Fund to manage the conflict.
11. INDEPENDENT SUPPLIER
    1. The relationship of the parties is that of independent contractors dealing at arm’s length. Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way. The Supplier shall be solely responsible for all taxes, national insurance or other withholdings or contributions which may be payable out of, or as a result of the receipt of, any monies paid or payable in respect of the Goods and/or Services. The Supplier shall indemnify the Fund against all costs, claims, expenses (including legal expenses) and/or proceedings arising out of or in connection with the Supplier’s non-payment (or underpayment) of such taxes, national insurance or other withholdings or contributions.
12. Notices
    1. Notice given under the Contract shall be in writing, sent for the attention of the person named, and to the address given, in the Order (or such other address or person as the relevant party may notify to the other party) and shall be delivered either personally, by courier, or by recorded delivery. A notice is deemed to have been received on signature of a delivery receipt by an individual at the correct address for notices.
13. Variation
    1. No variation of the Contract shall be effective unless it is in writing and signed by a duly authorised representative from each party.
14. Entire agreement
    1. The Contract contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. However, nothing in this clause shall operate to limit or exclude either party’s liability for fraudulent misrepresentation.
15. GOVERNING LAW AND JURISDICTION
    1. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) (a “**Claim**”), shall be governed by, and construed in accordance with, the law of the region of the United Kingdom in which the office of the Fund placing the relevant Order is based, and the parties agree irrevocably that the courts of such region of the United Kingdom shall have exclusive jurisdiction to settle any Claim.

**Schedule 1 (Standard Terms and Conditions)**

Processing shall be as set out in clause 12 (Data Protection) of the Contract Details. The Supplier to process Personal Data in

the course of this contract and as set out below. Please return this signed schedule to [procurement@tnlcommunityfund.org.uk](mailto:procurement@tnlcommunityfund.org.uk).

|  |  |
| --- | --- |
| Company Name |  |
| Purchase Order Number or Contract Reference Number as assigned by The National Lottery Community Fund |  |

|  |  |
| --- | --- |
| Scope of Personal Data processing |  |
| Purpose of processing |  |
| Types of Personal Data to be processed |  |
| Categories of data subject |  |
| Any special category personal data (e.g. racial or ethnic origin, physical or mental health, trade union membership) or criminal records? |  |
| Lawful basis for processing under Data Protection Legislation |  |
| Sub processors and their location |  |
| Duration of processing |  |

Signed by authorised representative of **[INSERT NAME OF SERVICE PROVIDER]**

|  |  |  |  |
| --- | --- | --- | --- |
| Name: |  | Signature: |  |
| Position: |  | Date: |  |