

TERMS AND CONDITIONS OF FUNDING

1. Definitions

In this Agreement the following terms shall have the following meanings:

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Commencement Date: shall be the date set out in the Offer Letter.

Data Protection Legislation: up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

GDPR: the General Data Protection Regulation ((EU) 2016/679).

Governing Body: the governing body of the Recipient including its directors or trustees.

Grant Funding: the sum as set out in the Offer Letter and to be paid to the Recipient in accordance with the terms and conditions of this Agreement.

Grant Period: the period as defined in the Offer Letter.

NDDC: North Devon District Council of Lynton House, Commercial Road, Barnstaple, Devon EX31 1DG.

Offer Letter: the letter from NDDC accompanying this Agreement offering the Grant Funding to the Recipient for the Project, including all specifications, patterns, plans, drawings, reports and other documents which are incorporated or referred to therein.

Prohibited Act: means:

- (a) offering, giving or agreeing to give to any servant of NDDC any gift or consideration of any kind as an inducement or reward for:
 - (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with NDDC; or
 - (ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with NDDC;
- (b) entering into this Agreement or any other contract with NDDC where a commission has been paid or has been agreed to be

paid by the Recipient or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to NDDC;

- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with NDDC; or
- (d) defrauding or attempting to defraud or conspiring to defraud NDDC.

Project: the project as described in the Offer Letter.

Recipient: means the recipient of the Grant Funding to which the Offer Letter is addressed.

2. Purpose of Grant Funding

- 2.1 The Recipient shall only use the Grant Funding for the Project and in accordance with the terms and conditions set out in this Agreement. The Grant Funding shall not be used for any other purpose without the prior written agreement of NDDC.
- 2.2 The Recipient shall not make any significant change to the Project without NDDC's prior written agreement.
- 2.3 The Recipient agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Project or any related administration costs that NDDC is funding in full under this Agreement.

3. Payment of Grant Funding

- 3.1 The Parties have agreed that the Grant Funding will be paid to the Recipient in accordance with the Grant Procedure subject to the necessary funds being available when payment falls due. The Recipient agrees and accepts that payments of the Grant Funding can only be made to the extent that NDDC has available funds.
- 3.2 No Grant Funding shall be paid unless and until NDDC is satisfied that:
 - (a) such payment will be used for proper expenditure in respect of the Project;
 - (b) the Recipient has obtained any necessary planning and statutory consents to carry out the Project;

- (c) the Recipient has obtained match funding to be able to complete the Project, where this is applicable; and
 - (d) the Recipient has complied with any further requirements set out in the Offer Letter.
- 3.3 The amount of the Grant Funding shall not be increased in the event of any overspend by the Recipient, or any costs incurred by the Recipient in the event of any slippage, in respect of the Project.
- 3.4 The Recipient shall promptly repay to NDDC any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Grant Funding monies have been paid in error before all conditions attaching to the Grant Funding have been complied with by the Recipient.

4. Use of Grant Funding

- 4.1 The Grant Funding shall be used by the Recipient for the Project.
- 4.2 The Recipient shall not use the Grant Funding to:
 - (a) make any payment to members of its Governing Body;
 - (b) purchase buildings or land; or
 - (c) pay for any expenditure commitments of the Recipient entered into before the Commencement Date except in respect of the Project

unless this has been approved in writing by NDDC.

- 4.3 The Recipient shall not spend any part of the Grant Funding on the Project after the Grant Period to which that Grant Funding relates expires.
- 4.4 There will be no additional funding available from NDDC for liabilities arising once the Project has been completed, although the Recipient shall not be prevented from applying to NDDC for an alternative project.

5. Accounts and records

- 5.1 The Grant Funding shall be shown in the Recipient's accounts as a fund allocated to the Project and shall not be included under general funds.
- 5.2 The Recipient shall keep accurate and up-to-date accounts and records of the receipt and expenditure of the Grant Funding monies received by it.
- 5.3 The Recipient shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Grant Funding for a period of at least six years following receipt of any Grant

Funding monies to which they relate. NDDC shall have the right to review, at NDDC's reasonable request, the Recipient's accounts and records that relate to the expenditure of the Grant Funding and shall have the right to take copies of such accounts and records.

- 5.4 The Recipient shall comply and facilitate NDDC's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and NDDC.

6. Monitoring and reporting

- 6.1 The Recipient shall closely monitor the expenditure of the Grant Funding monies for the Project throughout the Grant Period to ensure that this Agreement is being adhered to.
- 6.2 The Recipient shall on request provide NDDC with such information, explanations and documents as NDDC may reasonably require, including any Project specific monitoring or reporting requirements set out in the Offer Letter, in order for it to establish that the Grant Funding has been used properly in accordance with this Agreement.
- 6.3 The Recipient shall permit any person authorised by NDDC such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Recipient's fulfilment of the conditions of this Agreement and shall, if so required, provide appropriate oral or written explanations from them.
- 6.4 The Recipient shall provide NDDC with a final report within 5 days of completion of the Grant Period which shall confirm whether the Project has been successfully and properly completed and detailing how the Grant Funding was used to complete the Project.

7. Acknowledgment and publicity

- 7.1 The Recipient shall acknowledge the Grant Funding in its annual report and accounts, including an acknowledgement of NDDC as the source of the Grant Funding.
- 7.2 Neither party shall publish any material referring to the other party without the prior notice to the other party.
- 7.3 In any relevant materials that refer to the Project and in any relevant written or spoken public presentations about the Project:
 - (a) the Recipient shall acknowledge the support of NDDC; and
 - (b) NDDC shall acknowledge the Recipient's involvement in the Project.
- 7.4 The Recipient agrees to participate in and co-operate with all promotional activities relating to the Project that may be instigated and/or organised by NDDC given adequate and reasonable notice.

8. Freedom of information

- 8.1 The Recipient acknowledges that NDDC is subject to the requirements of, and requests pursuant to, the Freedom of Information Act 2000 (**FoIA**) and the Environmental Information Regulations 2004 (**EIR**) and that NDDC may be obliged (subject to the application of any relevant exemption and, where applicable, the public interest test) to disclose information (including commercially sensitive information) pursuant to such requests.
- 8.2 Where practicable, NDDC shall consult with the Recipient before disclosing any information which relates to the subject matter of this Agreement. The Recipient shall use its best endeavours to respond to any such consultation promptly and acknowledges that it is for NDDC to determine whether or not such information should be disclosed.
- 8.3 When requested to do so by NDDC, the Recipient shall promptly provide any information in its possession relating to the Project, the Project or this Agreement and assist and co-operate with NDDC to enable it to respond to a request for information under the FoIA or EIR within the time limit set out in the relevant legislation.
- 8.4 Subject to clause 8.1 both parties shall ensure that they treat as confidential and shall not disclose to any other person or use for an unauthorised purpose, and that all persons engaged by them treat as confidential and are bound by undertakings of confidentiality, any information marked or clearly identified as confidential information obtained from the other party in the course of the performance of this agreement except to the extent that the information is now or subsequently becomes public knowledge through no fault of the party in question or as required by law.

9. Data protection

Both Parties will comply with all applicable requirements of and all their obligations under the Data Protection Legislation which arise in connection with the Agreement.

10. Withholding, suspending and repayment of Grant Funding

- 10.1 The Recipient will not be required to repay all or part of the Funding to NDDC unless NDDC requires that it does so (at NDDC's absolute discretion) in the following circumstances:
- (a) the Recipient uses the Grant Funding for purposes other than those for which they have been awarded;
 - (b) NDDC considers that the Recipient has not made satisfactory progress in using the Grant Funding in respect of the Project;
 - (c) the Recipient is, in the reasonable opinion of NDDC, delivering the Project in a negligent manner;

- (d) the Recipient obtains duplicate funding from a third party for the Project;
- (e) the Recipient obtains funding from a third party which, in the reasonable opinion of NDDC, undertakes activities that are likely to bring the reputation of NDDC into disrepute;
- (f) the Recipient provides NDDC with any materially misleading or inaccurate information;
- (g) the Recipient commits or committed a Prohibited Act;
- (h) any member of the Governing Body, employee or volunteer of the Recipient has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project or the Project; or (b) taken any actions which, in the reasonable opinion of NDDC, bring or are likely to bring NDDC's name or reputation into disrepute;
- (i) the Recipient ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- (j) the Recipient becomes insolvent, or it is declared bankrupt, or it is 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;
- (k) the Recipient fails to comply with any of the terms and conditions set out in this Agreement and fails to rectify any such failure within 30 days of receiving written notice detailing the failure;
- (l) the Recipient has not used the Grant Funding within 6 months (or such other time as NDDC may decide) of expiry of each Grant Period to which that Grant Funding was provided; or
- (m) the Recipient concludes the Project without using all of the Grant Funding provided to it by NDDC.

10.2 Where NDDC requires the repayment of all or part of the Grant Funding in line with clause 10.1, it shall notify the Recipient of this fact and the Recipient shall forthwith repay to NDDC any money not used for the Project or such amount of money as NDDC may specify in writing.

10.3 Wherever under the Agreement any sum of money is recoverable from or payable by the Recipient (including any sum that the Recipient is liable to pay to NDDC in respect of any breach of the Agreement), NDDC may unilaterally deduct that sum from any sum then due, or

which at any later time may become due to the Recipient under the Agreement or under any other agreement or contract with NDDC.

- 10.4 Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on it using the Grant Funding for the Project or its compliance with this Agreement it will notify NDDC as soon as possible so that, if possible, and without creating any legal obligation, NDDC will have an opportunity to provide assistance in resolving the problem or to take action to protect NDDC and the Grant Funding monies.

11. Anti-discrimination and Human rights

- 11.1 The Recipient shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement as if the Recipient were a public body (as defined in the Human Rights Act 1998) and shall ensure that it does not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
- 11.2 The Recipient shall undertake, or refrain from undertaking, such acts as NDDC requests so as to enable NDDC to comply with its obligations under the Human Rights Act 1998.

12. Limitation of liability

- 12.1 NDDC accepts no liability for any consequences, whether direct or indirect, that may come about from the use of the Grant Funding for the Project or from withdrawal of the Grant Funding. The Recipient shall indemnify and hold harmless NDDC, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the Project, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties.
- 12.2 Subject to clause 12.1, NDDC's liability under this Agreement is limited to the payment of the Grant Funding.

13. Warranties

The Recipient warrants, undertakes and agrees that:

- (a) it has all necessary resources and expertise to use the Grant Funding for the Project (assuming due receipt of the Grant Funding);
- (b) it has not committed, nor shall it commit, any Prohibited Act;

- (c) it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify NDDC immediately of any significant departure from such legislation, codes or recommendations;
- (d) it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Project;
- (e) it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- (f) it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- (g) all financial and other information concerning the Recipient which has been disclosed to NDDC is to the best of its knowledge and belief, true and accurate;
- (h) it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Grant Funding;
- (i) it is not aware of anything in its own affairs, which it has not disclosed to NDDC or any of NDDC's advisers, which might reasonably have influenced the decision of NDDC to make the Grant Funding on the terms contained in this Agreement.

14. Duration

- 14.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until the anniversary of the expiry of the Grant Period or for so long as any Grant Funding monies remain unspent by the Recipient, whichever is longer.
- 14.2 Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

15. Termination

NDDC may terminate this Agreement and any Grant Funding payments on giving the Recipient three months' written notice should it be required to do so by financial restraints or for any other reason.

16. Assignment

The Recipient may not, without the prior written consent of NDDC, assign, transfer, sub-contract, or in any other way make over to any

third party the benefit and/or the burden of this Agreement or, except as contemplated as part of the Project, transfer or pay to any other person any part of the Grant Funding.

17. Waiver

No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

18. Notices

All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, e-mailed, or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered or if e-mailed all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

19. Dispute resolution

19.1 In the event of any complaint or dispute (which does not relate to NDDC's right to withhold funds or terminate) arising between the parties to this Agreement in relation to this Agreement the Parties should first seek to resolve such dispute by consultation.

19.2 Should the complaint or dispute remain unresolved within 14 days either party may refer the matter to an appropriate senior member of staff within NDDC and the Recipient with an instruction to attempt to resolve the dispute by agreement within 28 days, or such other period as may be mutually agreed by NDDC and the Recipient.

20. Status

20.1 This Agreement shall not create any partnership or joint venture between NDDC and the Recipient, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

20.2 Where there is any conflict between the terms of these Terms and Conditions of Grant Funding and the Offer Letter, the terms of the Offer Letter shall prevail.

21. Contracts (Rights of Third Parties) Act 1999

This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

22. Governing law

This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

Schedule 1 Grant Procedure

1. Pre-commencement procedures

- 1.1 Before commencing, or agreeing to commence, any works on the Project which will require the Grant Funding the Recipient shall provide NDDC with a quotation, summary or invoice of itemised works for which the Grant Funding is required in pursuance of the Project.
- 1.2 The Recipient confirms that it is aware that NDDC will not transfer any Grant Funding to the Recipient for an amount that the Recipient has incurred unless NDDC has provided prior approval for the relevant quote, summary or invoice setting out that amount prior to it being incurred by the Recipient. For the avoidance of doubt, NDDC will confirm its acceptance or otherwise of the quote, summary or invoice in writing (which may include email) to the Recipient.
- 1.3 Where NDDC does not approve a quote, summary or invoice, as referred to in paragraph 1.1, it shall provide its reasons for doing so in writing which the Recipient shall fully consider and shall subsequently seek a revised version of that a quote, summary or invoice in accordance with NDDC's instructions.
- 1.4 For the avoidance of doubt a revised version of a quote, summary or invoice referred to in clause 1.3 shall also be subject to NDDC's approval in line with clause 1.2.
- 1.5 In the event that the Recipient disagrees with Council's position in respect of a quote, summary or invoice it may make written representations to Council, setting out its reasoning, for Council's due consideration. Council's subsequent decision in respect of the same shall be final, however where a difference of opinion still remains this shall be dealt with in accordance with the dispute resolution procedure set out at clause 19.

2. Procedure for claims for the Grant Funding

- 2.1 Except where paragraph 2.2 applies, the Grant Funding, or such amount of the Grant Funding that has been used by the Recipient, shall be paid on completion of the Project and following receipt of the following documents which shall be to the satisfaction of Council:
 - (a) a completed Project Evaluation Form; and

- (b) evidence of expenditure shall include (but shall not be limited to):
 - (i) receipted invoices;
 - (ii) wage slips;
 - (iii) cash books; or
 - (iv) bank statements

2.2 Where the Recipient is unable to incur expenditure to carry out the Project without prior receipt of Grant Funding then the parties shall follow the following procedure:

- (a) the Recipient shall provide Council with details of the Grant Funding that it requires in advance of completion of the Project, and also shall include:
 - (i) its reasoning for requiring this money in advance of the completion of the Project;
 - (ii) evidential backing for requiring payment in advance of expenditure such as a cash-flow forecast; and
 - (iii) such other information as Council may request; and
- (b) Having considered the request and information provided by the Recipient pursuant to paragraph 2.2(a) Council may, at its absolute discretion, grant the Recipient up to 80% of the Grant Funding in advance of expenditure on the Project, with the remaining Grant Funding provided on completion of the Project in accordance with paragraph 2.1.

2.3 Where Council decides, on considering the Project or on request from the Recipient, that the Grant Funding shall be made to the Recipient in instalments or by way of staged payments then the Recipient shall, on request by Council, provide Council with a detailed breakdown of the likely instalments required with such other evidential detail as Council may require which Council shall then, at its absolute discretion, approve or amend in co-ordination with the Recipient.

2.4 In relation to paragraphs 2.2 and 2.3 the parties agree that, despite the fact that a portion of the Grant Funding may be granted in advance of expenditure, the Recipient shall nonetheless ensure that it acts in accordance with the pre-commencement procedures set out at paragraph 1 and that it obtains Council's approval for any quotations, summaries or invoices it intends to incur in pursuance of the Project prior to using the Grant Funding.