

## **General terms and conditions of East Hampshire District Council for grants awarded**

- A. The Recipient has applied to the Council for Financial Contribution(s) towards the cost of the Project.
- B. The Council has agreed to pay a Financial Contribution to the Recipient in the amount specified in the Grant Application File to this Agreement only for the purposes of the Project.
- C. These terms and conditions, the Grant Application File and the Grant Award Letter sets out the basis on which the Financial Contribution is made by the Council to the Recipient.
- D. These terms and conditions are intended to ensure that the Financial Contribution is used solely for the purpose for which it is awarded which is funding towards the Project.
- E. The Council and the Recipient confirm their mutual intention to be legally bound by this Agreement, acknowledging that the obligations imposed herein constitute valid legal and binding obligations enforceable against either party. The Recipient expressly agrees to provide remedies, including but not limited to the repayment of the Financial Contribution, in the event of non-compliance with their obligations outlined herein.

### **Now it is agreed**

#### **1. Definitions and Interpretation**

- 1.1 In this Agreement, unless the context otherwise requires the following terms shall have the meanings given to them below: -

<b>“Agreement”</b>	The terms and conditions set out herein, in combination with the Grant Application File and the Grant Award Letter.
<b>“Commencement Date”</b>	Within 12 months from the date the Recipient receives the Financial Contribution.
<b>“Control”</b>	Has the meaning given in section 1124 of the Corporation Tax Act 2010 and “change of Control” shall be construed Accordingly.
<b>“Council”</b>	East Hampshire District Council of Bedford Road, Petersfield, Hampshire, GU32 3LJ.
<b>“Data Protection Legislation”</b>	The UK GDPR, the UK Law Enforcement Directive, the Data Protection Act 2018, the Privacy and Electronic

Communications (SI 2003 /2426) as amended and all other applicable legislation and regulatory requirements relating to the processing of personal data and privacy in England and Wales.

<b>“Financial Contribution”</b>	As defined in the Grant Award Letter.
<b>“Financial Contribution Term”</b>	As defined in the Grant Award Letter.
<b>“Grant Application File”</b>	The electronic file held by the Council which holds the grant application form and any other relevant information relating to the Financial Contribution
<b>“Grant Award Letter”</b>	Details of the Financial Contribution and the Project
<b>“Intellectual Property Rights”</b>	Those rights under the Copyright, Design and Patents Act 1988 as amended.
<b>“Parties”</b>	The Council and Recipient collectively.
<b>“Project”</b>	The project more specifically defined in the Grant Award Letter.
<b>“Project Period”</b>	The Project Period shall be defined in the Grant Award Letter or earlier termination under the terms of this Agreement.
<b>Recipient</b>	The party who will receive the Financial Contribution from the Council.
<b>“Site”</b>	As defined in the Grant Award Letter
<b>“UK GDPR”</b>	Has the meaning given to it in section 3(10) of the Data Protection Act 2018 (as supplemented by section 205(4) of the Data Protection Act 2018).

1.2 The **titles** or **headings** appearing in this Agreement are for reference only and shall not affect its construction.

1.3 A reference to any Act of Parliament, order, regulation, statutory instrument or similar, shall include a reference to any amendment or replacement of it. Reference to any Act of Parliament shall also include any subsidiary legislation made under it.

## **2. Recipient's Obligations**

- 2.1 Prior to the commencement of the Project, the Recipient will obtain all necessary permissions and consents required for the implementation of the Project and retain copies of all permissions and consents.
- 2.2 The Recipient shall maintain current and accurate records of all works and services carried out in the delivery of the Project and such records shall include full details of expenditure of the Financial Contribution and if so required the Recipient shall provide the Council with reasonable access to such records and data and otherwise promptly provide to the Council on reasonable request such evidence as the Council may require in order to confirm expenditure of the Financial Contribution.
- 2.3 The Recipient shall fulfil all obligations specified in this Agreement.
- 2.4 The Recipient shall ensure that the Financial Contribution is spent exclusively on the delivery of the Project as set out in the Grant Application File and not for any other purpose unless agreed in writing and signed by both Parties.
- 2.5 The Recipient shall not apply for or obtain duplicate funding for any part of the Project that the Council is funding pursuant to this Agreement.
- 2.6 The Recipient shall provide to the Council any information in connection with the Project or this Agreement within a reasonable time from the Council's requests.
- 2.7 The Recipient undertakes that the Financial Contribution received from the Council will be declared in any future applications for funding.

## **3. Accounting**

- 3.1 The Recipient shall keep detailed accounts of expenditure in connection with the Project for a period of 12 years and shall provide the Council or its representative with such accounting information in connection with the Project as the Council may reasonably request, including copies of payment certificates, invoices, bank statements and certificates of practical completion.
- 3.2 The Recipient shall comply and facilitate the Council's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Council.

## **4. Payment of Financial Contributions**

- 4.1 The Council undertakes to pay the Financial Contribution to the Recipient for the purpose of the Project as specified and detailed in the Grant Application File.
- 4.2 The Financial Contribution will be payable in accordance with the Grant Award Letter.
- 4.3 If the Recipient engages a contractor, then the Recipient warrants that they have undertaken a competitive process taking into consideration the Council's best value obligations under the Local Government Act 1999 in selecting a contractor to undertake any necessary works or to provide any service or goods under the Project and will provide documentary evidence of this to the Council upon request.
- 4.4 No Financial Contribution shall be paid unless and until the Council is satisfied that such payment will be used for proper expenditure in the delivery of the Project and that the Recipient's budget shall cover the Project. The Parties agree there will be no additional funding available from the Council apart from the Financial Contribution and the Council shall not be liable to the Recipient for any further money. The payment shall encompass the entire Project Period.
- 4.5 The Recipient shall complete the Project deliverables and/or milestones within the time scales set out in this Agreement, where the Recipient fails to comply with any time scales or where there is an underspend by the Recipient, the Council shall be entitled to retain the unspent monies. Unless stated otherwise by the Council in writing any time scales for achievement of the Project shall be of the essence.
- 4.6 The amount of the Financial Contribution shall not be increased in the event of any overspend in the delivery of the Project or otherwise.
- 4.7 The Financial Contribution shall be paid into a bank account in the name of the Recipient which must be an ordinary business bank account.
- 4.8 Prior to any payment being authorised by the Council the Recipient shall have supplied to the Council its bank account details and names and specimen signatures of its two authorised officers on the organisation's official headed paper.
- 4.9 The Recipient shall promptly repay to the Council 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 Financial Contribution monies have been paid in error before all conditions attaching to the Financial Contribution have been complied with by the Recipient.

## **5. Publicity**

- 5.1 With the prior approval of the Council the Recipient shall acknowledge the support of the Council for the Project in any materials that refer to the Project and in any written or spoken public presentations about the Project. This acknowledgment shall be in accordance with any supplementary publicity guidance provided to the Recipient in writing via email by the Council from time to time.
- 5.2 The Council will publish details of the Financial Contribution on its website and issue press notices.
- 5.3 The parties may from time to time wish to undertake other publicity in connection with the Project. The Recipient shall not publicise the fact of the Council's involvement without first notifying the Council of the proposal for publicity, the parties will discuss the same in good faith.

## **6. Termination and Recovery of Financial Contribution ('Clawback')**

- 6.1 If in the Council's reasonable opinion, after consultation with the Recipient, the Council is of the view that the Recipient is in material or persistent breach of any of its obligations under this Agreement, the Council may seek to recover all, or a part of the Financial Contribution paid to the Recipient or on its behalf or refuse to make further payments or terminate this Agreement.
- 6.2 In the event of permanent closure of any part of the Project or partial delivery of the Project having the benefit of the Financial Contribution such that the said part of the Project has not been delivered or is not available for use, the Council shall seek to recover all or part of the Financial Contribution at its sole discretion.
- 6.3 The Council may terminate this Agreement where the Recipient or the Recipient's contractor who is executing the Project on the Recipient's behalf commits an act of insolvency under the Insolvency Act 1986 (as amended) or where the Recipient undergoes a change of Control, the Council shall seek to recover all or part of the Financial Contribution at its sole discretion.
- 6.4 The Recipient shall repay the Financial Contribution back to the Council immediately in the event the Financial Contribution is not used by the Recipient for delivery of the Project in whole or part.
- 6.5 Prior to exercising its right to recover under clause 6.1 and/or 6.2 above, the Council shall use all reasonable endeavours to discuss breaches with the Recipient to give the Recipient a reasonable opportunity to remedy breaches.
- 6.6 In the event of the Council seeking repayment of all or any part of the Financial Contribution, the Financial Contribution shall be amortised at the rate of 4% above the Bank of England base rate over a period of 10

years from the release date of the Financial Contribution or in the case of staged payments the first stage payment release date.

6.7 In the event that this Agreement is terminated pursuant to any notice served under this clause, repayment obligations of the Recipient will nevertheless remain in force for as long as they remain to be fulfilled.

6.8 In the event the Council at any time believes the Recipient to be in breach of the terms of this Agreement it may suspend making further payments under this Agreement.

6.9 The Council using its discretion reserves the right to recover all or part of the Financial Contribution in the event that the Project generates a profit.

## **7. Delivery of the Project**

7.1 The Recipient shall at all times comply with the provisions set out in the Grant Application File in relation to the delivery of the Project and will on reasonable request by the Council demonstrate to the Council how it is complying with this Agreement.

7.2 The Recipient shall monitor the delivery and success of the Project throughout the Project Period to ensure that the aims and objectives of the Project are being met and that this Agreement is being adhered to and shall comply with any other monitoring conditions required by the Council.

7.3 The Recipient shall ensure that the Project is delivered in a timely manner and in accordance with industry standard.

7.4 The Recipient shall permit any person authorised by the Council 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.

7.5 The Recipient shall permit any person authorised by the Council for the purpose to visit the Recipient at reasonable times and on reasonable notice to monitor the delivery of the Project.

7.6 The Recipient shall provide the Council with a final report on completion of the Project Period which shall confirm whether the Project has been successfully and properly completed.

## **8. Limitation of Liability**

8.1 The Council accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient running the Project, the use of the Financial Contribution or from withdrawal of the Financial

Contribution. The Recipient shall indemnify and hold harmless the Council, its employees, agents, against any losses, damages and other liabilities arising from or incurred by reason of the actions/and/or omissions of the Recipient in relation of the Project, the non- fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties.

8.2 Subject to clause 8.1 the Council's liability under this Agreement is limited to the payment of the Financial Contribution.

## **9. Expiry of Financial Contributions**

9.1 The Recipient must draw down the Financial Contributions at any time prior to the **Financial Contribution Term**. Where no draw down is made the money not drawn down may be treated as unspent as stated in clause 4.4.

9.2 Without prejudice to the Council's right in 9.1 provided the Recipient is able to show that it is making due progress with the Project, in relation to any funds which have not been drawn down by the Recipient within the Financial Contribution Term, the Council may extend the Financial Contribution Term for such period as may be reasonably required to complete the Project.

9.3 If, during the Financial Contribution Term, the Recipient is unable to show sufficient progress in the pursuit of the Project such failure shall be treated as a breach for the purposes of clause 6 and dealt with in accordance with the provisions of clause 6 above.

## **10. Insurance**

10.1 The Recipient shall ensure that at all times during the Project Period and following the completion of the Project it shall maintain at its own cost: -

10.1.1 Policies of insurance in respect of the full reinstatement value of any assets comprising the Project and all assets on the Site.

10.1.2 A policy or policies of insurance covering public liability for injury to persons or property with policy limits and provisions conforming to such requirements as are usual for organisations in the nature of the Recipient.

10.2 The Recipient shall deliver to the Council either at the time of renewal of the same or upon the reasonable request of the Council copies of the insurance policies referred to in clause 10.1 above together with such evidence as the Council may reasonably require that such policies are current and in force.

10.3 The Recipient agrees that it shall be responsible for the carrying out and unless stated otherwise the cost of all ongoing maintenance of the Project including buildings and the Site and all safety inspections.

## **11. Good Faith**

11.1 The Council and the Recipient agree and declare that during the term of this Agreement, all transactions and dealings between them shall be conducted in good faith and that they shall at all times act in good faith towards each other in connection with all matters pertaining to this Agreement.

## **12. Intellectual Property Rights**

12.1 The Council and the Recipient agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, know-how and any other Intellectual Property Rights whatsoever owned by either the Council or the Recipient before the Commencement Date or developed by either party during the Project Period, shall remain the property of that party.

12.2 Where the Council has provided the Recipient with any of its Intellectual Property Rights for use in connection with the Project (including without limitation its name and logo), the Recipient shall, on termination of this Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by the Council.

## **13. Confidentiality and Freedom of Information**

13.1 Each party shall during the term of this Agreement and thereafter keep secret and confidential all Intellectual Property Rights or other business, technical or commercial information disclosed to it as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other party.

13.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property Rights, or other business, technical or commercial information which:

13.2.1 at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;



13.2.2 is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or

13.2.3 is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.

13.3 The Parties acknowledge that both parties are subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIRs**).

13.4 The Parties shall provide forthwith all necessary assistance and cooperation as reasonably requested by the other to enable the applicable party to comply with its obligations under the FOIA and EIRs within the timescales stated under the FOIA and EIRS.

#### **14. Statutory Obligations**

14.1 The Recipient under this Agreement and in undertaking the Project shall comply with the following:

14.1.1 Bribery Act 2010

14.1.2 Human Rights Act 1998

14.1.3 Modern Slavery Act 2015

14.1.4 Public Services (Social Value) Act 2012 as amended.

14.1.5 Health & Safety at Work etc Act 1974

14.1.6 Equalities Act 2010

14.1.7 and any subordinate legislation made under the Acts from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

#### **15. Data Protection**

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

## **16. Variations**

16.1 No deletion, addition or modification or variation to this Agreement shall be valid unless agreed in writing and signed by the authorised representatives of both parties.

## **17. Costs**

17.1 The parties shall bear their own costs and expenses in connection with this Agreement.

## **18. Assignment**

18.1 The Recipient may not, without the prior written consent of the Council, 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 Financial Contribution.

## **19. Contracts (Rights of Third Parties) Act 1999**

19.1 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement.

## **20. Jurisdiction and Interpretation**

20.1 This Agreement shall be governed exclusively by the jurisdiction of England and interpreted in accordance with English law.

20.2 In the event of any inconsistency between these terms and conditions and the Grant Award Letter, the former shall prevail.

## **21. Entire Agreement**

21.1 This Agreement represents the entire understanding between the parties in relation to the subject matter of the Agreement. If any of the terms and conditions become or are declared by a court of competent jurisdiction to be invalid or unenforceable such invalidity or unenforceability shall in no way impair or affect any other terms and conditions all of which shall remain in full force and effect.

## **22. Power to Contract**

22.1 Each of the parties warrants its powers to enter into this Agreement and that it has obtained the necessary authority approvals to do so.

## **23. Joint and Several liability**

23.1 Where the Recipient is not a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Agreement on behalf of the Recipient shall be jointly and severally liable for the Recipient's obligations and liabilities arising under this Agreement.

## **24. Partnership**

24.1 This Agreement shall not create any partnership or joint venture between the Council 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.

## **25. Severability**

25.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

25.2 If any provision or part-provision of this Agreement is deemed deleted under Clause 25.1 above the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **26. Waiver**

26.1 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.

## **27. Continuity**

27.1 The following clauses shall continue to have effect after termination of the Project: clause 4. (Payment of financial contribution), clause 6 (Termination and financial recovery of contribution), clause 7 (Delivery of the project), clause 8 (Limitation of liability), clause 13 Confidentiality and Freedom of Information and the Grant Award File (Details of Financial Contribution).

## **28. VAT**

- 28.1 The Recipient acknowledges that the Financial Contribution is not consideration for any taxable supply for VAT purposes. The Recipient also acknowledges that the Council's obligation does not extend to paying any amounts in respect of VAT in addition to the Financial Contribution.
- 28.2 If the Recipient is registered for VAT, or subsequently become liable to register for VAT, it must keep proper and up to date records and must make those records available to the Council and provide copies when requested.