

Dated

Date

Grant Agreement

between

SECRETARY OF STATE FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY

and

LEAD IMPLEMENTING PARTNER

DRAFT

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## AGREEMENT- TERMS AND CONDITIONS

### 1. INTRODUCTION

1.1. The following standard terms and conditions apply to organisations receiving financial assistance (a **“Grant Recipient”**) from the Secretary of State for Business, Energy and Industrial Strategy (**“the Authority”**). These conditions should be read in conjunction with the Grant Offer Letter issued by the Authority and its Appendices and Schedules (the **“Offer Letter”**) and appended hereto. The terms and conditions set out in this document, together with the Offer Letter, and accompanying Annexes together comprise the **“Agreement”** pursuant to which financial assistance (in the form of the Grant) is given by the Authority to the Grant Recipient.

1.2. The Grant Recipient should note that:

- i. the Authority has the discretion to enter into this Agreement under the International Development Act 2002.
- ii. the Authority is not permitted to pay Grants in advance of need, and payments will be made pursuant to Annex 2 (Project Quarterly Work Plan);
- iii. all references to **“the Financial Year”** refer, unless expressly indicated otherwise, to the Cabinet Office’s own financial year, which runs from 1 April to 31 March; and
- iv. failure to comply with the conditions of the Agreement may result in the Grant payments being suspended, reduced, reclaimed or withheld, and/or the Grant offer being withdrawn.
- v. The Authority has appointed the Grant Manager to act as its representative in the administration, management and reporting of this Grant in accordance with Clause 3 and Annex 1. A nominated officer from this organisation will act as the representative of the Grant Manager.

1.3 The Grant Recipient acknowledges that this Grant is not consideration for any taxable supply for UK VAT purposes and that the Authority’s obligation does not extend to paying you any amounts in respect of UK VAT in addition to any Grant.

### 2. DEFINITIONS AND INTERPRETATION

2.1. In this Agreement the following terms will have the following meanings:

**“Aid Diversion”** means any event, including fraud, corruption, bribery, theft, terrorist financing, money laundering and other misuse of funds that prevents funds being directed to the aid outcomes or recipients intended;

**“Annex/es”** means the annexes attached to this Agreement;

**“Asset”** means any tangible or intangible assets that are purchased or developed using Grant monies, including equipment or any other assets, and Assets will be construed accordingly;

**“Background IPRs”** means any Intellectual Property Rights vested in or licensed to the Parties before the Effective Date and/or created by the Parties independently of the Funded Activities;

**“Beneficiary”** means any organisation, government body or individual in a developing country that receives technical assistance, financial support or other benefit through the Funded Activities of this grant.

**“Breach”** means a failure to comply (by act or omission) with any of the Terms and Conditions of the Agreement;

**“Bribery Act”** means the Bribery Act 2010;

**“Change of Control”** means the sale of all or substantially all the assets of a Party; any merger, consolidation or acquisition of a Party with, by or into another corporation, entity or person, or any change in the ownership of more than fifty percent (50%) of the voting capital stock of a Party in one or more related transaction.

**“Confidential information”** means all confidential information (however recorded or preserved) disclosed by a Party or its personnel to another Party and that Party’s personnel whether before or after the Effective Date, including but not limited to:

- (a) any information that would be regarded as confidential by a reasonable business person relating to:
  - (i) the business, affairs, customers, clients, suppliers or plans of the disclosing Party;
  - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party; and
- (b) any information developed by the Parties in the course of delivering the Funded Activities;

**“Domestic Successor”** means:

- (a) a body that takes over the functions of the EU Commission in the UK on the date the UK withdraws from the European Union; or
- (b) the relevant courts in England which take over the functions of the Court of Justice of the European Union in England on the date the UK withdraws from the European Union

**“Downstream Partner”** means any person, organisation, company or other third party representative engaged by the Grant Recipient as part of this Agreement.

**“Disposal”** means the disposal, sale, transfer of the grant or any interest in any Asset and includes any contract for disposal;

**“DPA 2018”** means the Data Protection Act 2018 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”;

**“Data Protection Legislation”**: means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

**“Effective Date”** means the date upon which this Agreement is signed by the Parties.

**“EIR”** means the Environmental Information Regulations 2004;

**“Eligible Expenditure”** means expenditure in relation to the Funded Activities that complies in all respects with the eligibility rules set out in Annex 3 of this Agreement;

**“Fixed Assets”** means any Asset which consists of land, buildings, plant and equipment acquired, developed, enhanced, constructed or owned by the Grant Recipient in connection with the Funded Activities;

**“FOIA”** means the Freedom of Information Act 2000;

**"Funded Activities"** means the activities set out in Annex 2 of this Agreement;

**"Funded Activity Specific IPRs"**

means:

- a) IPRs in or arising out of the Funded Activities, items provided pursuant to the Agreement and all updates and amendments to the same created or arising during the Funding Period;
- b) any materials, data and other works of any kind whatsoever created or compiled in the course of the performance of this Agreement in which IPRs may subsist;
- c) the IPRs in any modifications, updates and developments to the Authority's Background IPRs and modifications, amendments, updates and new releases of the Grant Recipient's Background IPRs which arise specifically in the course of the provision of the services and the performance of the Grant Recipient's obligations under this Agreement;
- d) any personal data provided or available to the Grant Recipient for the purposes of this Agreement; and/or
- e) any data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible or other media, and which are supplied to the Grant Recipient by or on behalf of the Authority; or the Grant Recipient is required to receive, commission, generate, process, store or transmit pursuant to this Agreement.

**"Funding Period"** means the period for which the Grant is awarded starting on the Effective Date and ending on **end date**;

**"GDPR"** means the **General Data Protection Regulation 2016/679** of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

**"Grant"** means the sum or sums of money (in GBP) to be provided to the Grant Recipient in accordance with this Agreement;

**"Grant Manager"** means **ICF Consulting Ltd** who has been appointed by the Authority under **UK Partnering for Accelerated Climate Transitions ("UK PACT") Lot 2: Green Recovery Challenge Fund** to manage the Grant and this Agreement on the Authority's behalf as set out in Clause 3 and Annex 1.

**"HRA"** means the Human Rights Act 1998;

**"Ineligible Expenditure"** means expenditure which is not Eligible Expenditure as set out in Annex 3 of this Agreement;

**"Information Acts"** means the Data Protection Legislation, Freedom of Information Act 2000 and the Environmental Information Regulations 2004;

**"Intellectual Property Rights" or "IPRs" means** copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs,

know-how, trade secrets and other rights in Confidential Information which includes guidance, specifications, instructions, toolkits, plans, data, drawings, patterns, software, models and designs, technical specifications, user manuals, operating manuals, process definitions and procedures and any modifications, amendments, updates and new releases of the same;

**“Instalment Period”** means the period referred to in Annex 2;

**“KPIs** means the Key Performance Indicators set out in Annex 4 of this Agreement;

**“Law”** means any applicable law, subordinate legislation within the meaning of Section 2f (1) of the Interpretation Act 1978, statute, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation;

**“LED”** means the Law Enforcement Directive (Directive (EU) 2016/680) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA;

**“Losses”** means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and **“Loss”** will be interpreted accordingly;

**“Material Breach”** means a breach of the Agreement (including an anticipatory breach) which is not minimal or trivial in its consequences;

**“Maximum Sum”** means the maximum amount of the Grant to be provided by the Authority to the Grant Recipient for the Funded Activities;

**“Minimum Requirements of the Scheme”** means the agreed KPIs and Outcomes in addition to the requirements set out in the Annexes, which tailor the Agreement to the particular Funded Activity.

**“Monitoring and Evaluation Partner”** means Oxford Policy Management who has been appointed by the Authority to conduct monitoring, evaluation and learning of the Funded Activities on behalf of the Authority.

**“Party”** means the Authority or Grant Recipient, and **“Parties”** shall be interpreted accordingly. Note that the Grant Manager and their respective organisation is not a Party;

**“Procurement Regulations”** means the Public Contracts Regulations 2015, Concession Contracts Regulations 2016, Utilities Contracts Regulations 2016 and Defence Security Public Contracts Regulations 2011;

**“Prohibited Act”** means:

- (a) offering, giving or agreeing to give to any servant of the Authority or the Crown 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
  - (ii) showing or not showing favour or disfavour to any person in relation to this Agreement;
- (b) 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 or omissions in relation to this Agreement; or
- (c) defrauding or attempting to defraud or conspiring to defraud the Authority or the Crown, whether by acts or omissions;

**“Public Accounts Committee”** the select committee of the British House of Commons which is responsible for overseeing government expenditures;

**“Representatives”** means any of the Parties’ duly authorised directors, employees, officers, agents, professional advisors and consultants;

**“Remedial Action Plan”** means the agreed remedial plan of action developed by the Grant Recipient and agreed by the Authority to remedy a KPI failure, as set out in clause 14.3;

**“State Aid”** will have the meaning given in Article 107(1) Treaty for the Functioning of the European Union;

**“Terms and Conditions”** means the terms and conditions set out in this Agreement and upon which the Grant is payable;

**“UK PACT Communications Delivery Partner” Palladium** who has been appointed by the Authority to manage communications for the UK PACT Programme.

**“Unspent Monies”** means any monies:

- (a) paid to the Grant Recipient which remain unspent and uncommitted at the end of an Instalment Period; or
- (b) remain unspent and uncommitted at the end of the Financial Year in which the Instalment Period occurs;

**“Working Day”** means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday in England.

2.2. In this Agreement, unless the context otherwise requires:

- 2.2.1. the singular includes the plural and vice versa;
- 2.2.2. reference to a gender includes the other gender and the neuter;
- 2.2.3. references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
- 2.2.4. a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- 2.2.5. the words **“including”**, **“other”**, **“in particular”**, **“for example”** and similar words will not limit the generality of the preceding words and will be construed as if they were immediately followed by the words **“without limitation”**;
- 2.2.6. references to **“writing”** include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing will be construed accordingly;



- 2.2.7. references to “**representations**” will be construed as references to present facts, to “**warranties**” as references to present and future facts and to “**undertakings**” as references to obligations under this Agreement;
- 2.2.8. references to “**Clauses**” and “**Annexes**” are, unless otherwise provided, references to the clauses and annexes of this Agreement and references in any Annex to parts, paragraphs and tables are, unless otherwise provided, references to the parts, paragraphs and tables of the Annex in which these references appear; and
- 2.2.9. the headings in this Agreement are for ease of reference only and will not affect the interpretation or construction of this Agreement; and
- 2.2.10. references to an Act or other legislation refer to UK legislation (unless otherwise stated).

### **3. GRANT MANAGER ROLES AND RESPONSIBILITIES**

- 3.1. The Authority has appointed the Grant Manager to act on its behalf under this Agreement.
- 3.2. The Grant Manager shall carry out the duties assigned to him and shall exercise the authority delegated to him by the Authority in Annex 1. Unless and until the Authority notifies the Grant Recipient otherwise, the Grant Manager shall be deemed to have the full authority of the Authority under the Agreement in respect of the delegated rights and responsibilities set out in Annex 1.

### **4. PURPOSE AND SCOPE OF GRANT**

- 4.1. The Parties acknowledge and agree that nothing in this Agreement or the provision of Grant monies gives or is intended to give rise to contractual relations.
- 4.2. The Grant Recipient must use the Grant only for the delivery of the Funded Activities set out in Annex 2 of this Agreement and must not, without the prior written consent of the Authority, make any material changes to the Funded Activities.
- 4.3. Except where authorised by Parliament, the Grant must not be used to support activity which influences or attempts to influence the UK Parliament, Government or political parties, to propagate a religion or belief, or to influence the awarding or renewal of contracts or grants, or to influence UK legislative or regulatory action.
- 4.4. The Authority makes no commitment to renewing or continuing funding after the term of this Agreement and will not be liable for any additional cost incurred by the Grant Recipient either during or after the Funding Period.
- 4.5. Where the Grant Recipient intends to apply to a third party for other funding for the Funded Activity, it will notify the Authority in advance of its intention to do so and, where such funding is obtained, it will provide the Authority with details of the amount and purpose of that funding.
- 4.6. The Grant Recipient agrees and accepts that it will not apply for duplicate funding in respect of any part of the Funded Activities or any related administration costs that the Authority is funding in full under this Agreement.
- 4.7. The Grant Recipient will seek to ensure that feedback on the Funded Activities from Beneficiaries (for example, feedback gathered through the Annual Review process or through regular monitoring by the Grant Recipient or the Monitoring and Evaluation Partner), the Grant Manager and from the Authority is integrated at appropriate stages in project design, mobilisation, delivery, monitoring, evaluation, reporting and annual review processes and takes account of the voices of both women and men. The Grant Recipient

should work with, through and represent the diversity of communities in order to respond to their needs more effectively and strengthen accountability.

- 4.8. The Grant Recipient is solely accountable for compliance with the provisions of this Agreement including where the Grant Recipient engages any Downstream Partner(s). The Grant Recipient will reflect the provisions of this Agreement as necessary in any arrangement(s) with any Downstream Partner(s) to ensure both the Grant Recipient and Downstream Partner(s) are compliant with the provisions of this Agreement.
- 4.9. The Grant Manager and the Authority will not be responsible for the activities of the Grant Recipient or any Downstream Partner(s) in connection to this Agreement, or otherwise, nor will the Grant Manager or Authority be responsible for any costs incurred by the Grant Recipient or its Downstream Partner(s), including any costs relating to terminating their engagement or the engagement of any other person, company or organisation.

## **5. PAYMENT (DISBURSEMENT) OF GRANT AND REPORTING**

- 5.1. The Grant will be paid only in respect of Eligible Expenditure incurred by the Grant Recipient to deliver the Funded Activities. Eligible Expenditure has been set out in Annex 3.
- 5.2. The Grant represents the Maximum Sum the Authority will pay to the Grant Recipient under this Agreement. The actual amount paid to the Grant Recipient will be determined in accordance with the Grant claims process set out in the Grant Offer Letter.
- 5.3. The funding amount is agreed as per the Sterling (GBP) value, as at the date of agreement. The Authority's preferred currency for disbursements is in GBP.
- 5.4. The Grant Recipient is responsible for monitoring and managing any exchange rate fluctuations across the life of the Funded Activities. Where significant exchange rate gains or losses are being accumulated the Grant Recipient should agree with the Authority how these are managed.
- 5.5. Where costs are incurred in foreign currency the Grant Recipient will use the exchange rate stated in OANDA ([www.oanda.com](http://www.oanda.com)) for the date on which the purchase was made or services acquired by the Partner, unless, by exception, explicitly approved in writing in advance.
- 5.6. In line with UK Government financial regulations, the Authority will not pay in advance of operational or commercial need and justification will be required for any payment prior to Grant Recipient disbursement. Where a payment in advance is approved and the Grant Recipient is holding the Authority's funds, prior to disbursement, funds should be held in a minimum risk interest bearing account. Any interest accruing from these investments will be re-invested within the Funded Activities.
- 5.7. Each Grant claim must be submitted in accordance with the timescales stipulated in the Project Quarterly Work Plan (Annex 2), together with any other documentation as prescribed by the Authority.
- 5.8. The Project Quarterly Work Plan (Annex 2) can be amended by the Authority during the term of the Grant from time to time, to reflect changes in the timetable of the Funded Activities. The Authority will consult the Grant Recipient before making such changes.
- 5.9. The Grant Recipient may propose changes to the Project Quarterly Work Plan (Annex 2) to the Authority during the term of the Grant for consideration but the Authority reserves the right not to agree any such changes.
- 5.10. Time for payment of the Grant claim will not be of the essence. The Authority will have no liability to the Grant Recipient for any Losses caused by a delay in the payment of a Grant claim howsoever arising.

- 5.11. The Authority reserves the right not to pay any Grant claims which are not submitted within the period set out in clause 5.7. Incomplete and/or incorrect Grant claims, which include Grant claims without the full supporting documentation, will be returned unpaid.
- 5.12. The Grant Recipient must notify the Authority promptly if at any time it becomes aware that it is unable to make a Grant claim in accordance with clause 5.7.
- 5.13. In the event of the Grant Recipient spending more money on the Funded Activities than originally anticipated under this Agreement, the Authority will not be obliged to increase the Grant amount.
- 5.14. The Grant will be paid into a bank account in the name of the Grant Recipient which must be an ordinary business bank account. The Authority must approve the bank before payments can be made.
- 5.15. Where the Grant Recipient enters into a contract with a third party in connection with the Funded Activities the Grant Recipient will remain responsible for settling payment in respect of those invoices. Third party invoices must not be submitted to the the Authority for payment. Onward payment of the Grant and the use of sub-contractors shall not relieve the Grant Recipient of any of its obligations under the Agreement, including any obligation to repay the Grant.
- 5.16. The Authority will not make the first payment of the Grant and/or any subsequent payment of the Grant unless, or until the Authority is satisfied that:
- i. such Grant payment will be used for Eligible Expenditure; and
  - ii. any previous Grant payments have been used for the Funded Activities or, where there are Unspent Monies, have been repaid to the Authority in accordance with clause 9.5 of this Agreement or deducted from the value of the next payment.
- 5.17. All outstanding claims must be submitted no later than six months after the end of the Funding Period

## 6. DUE DILIGENCE

- 6.1. In utilising the resources, the Grant Recipient will exercise the same care in the discharge of its functions under this Agreement as it exercises with respect to the administration and management of its own resources and affairs. The Grant Recipient will co-operate fully with any due diligence assessment by the Authority, of the Grant Recipient's own internal controls and system prior to or during the implementation of this Agreement and take appropriate action on any recommendations arising. Due diligence assessments may be conducted every 3 years or earlier if there is a significant change to the Grant Recipient's procedures and controls or operating environment. A range of tools may be used to conduct the assessment and continuation of this Agreement will be dependent on the Authority being satisfied that the Grant Recipient has sufficient capacity and capability to deliver the project and manage the Grant.
- 6.2. The Grant Recipient will undertake suitable due diligence and take the necessary steps prior to transferring the Grant and at regular intervals throughout the implementation to assess the internal controls and systems of any Downstream Partners. These assessments will be shared with the Authority, upon request and should determine, relative to project risk:
- the reliability, integrity and efficiency of the Downstream Partners' controls, systems and processes including compliance with applicable legislation, regulations, rules, policies and procedures;
  - whether the Downstream Partner can successfully deliver the relevant outputs based on its processes, past experience and whether they have the sufficient staff capacity and capability available;
  - the Downstream Partner's ability to correctly manage and account for aid monies and assets as well as its financial health; and

- where appropriate, whether the Downstream Partner has sufficient capacity and capability to properly monitor and control its implementing partners.

## **7. ASSETS - DISPOSAL, CHANGE OF USE AND ASSIGNMENT**

- 7.1. The Authority reserves the right to determine the outcome of any Assets purchased in part or fully from the Grant.
- 7.2. The Grant Recipient will establish and maintain an inventory of all such assets.
- 7.3. The Grant Recipient must seek approval from the Authority if the Grant Recipient or its Downstream Partner(s) wish to dispose of, transfer or change the use of any Asset and must not sell any Asset without prior written permission from the Authority.
- 7.4. Any proceeds will be surrendered to the Authority in full, unless otherwise agreed by the Authority.
- 7.5. The Grant Recipient may not, without the prior written consent of the Authority, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement.

## **8. SPENDING CONTROLS – MARKETING, ADVERTISING, COMMUNICATIONS AND CONSULTANCY**

- 8.1. As part of the government's efficiency and reform programme, public funding for marketing, advertising, communications and consultancy is closely controlled. The Grant Recipient must seek permission from the UK PACT Communications Delivery Partner prior to any proposed expenditure in these areas, either in connection with, or using funding provided, under this Agreement. A complete list of the controlled activities can be found at <https://www.gov.uk/government/publications/cabinet-office-controls>.
- 8.2. The Grant Recipient should provide evidence that any marketing, advertising, communications and consultancy expenditure carried out in connection with, or using funding provided under this Agreement will deliver measurable outcomes that meet government objectives and can secure value for money.

## **9. REDUCTION AND RECOVERY OF GRANT**

- 9.1. It is the Authority's intention that the Grant will be paid to the Grant Recipient in full and in accordance with Annex 2 (Project Quarterly Work Plan) of this Agreement.
- 9.2. Without prejudice to the Authority's other rights and remedies, the Authority may withhold or suspend payment of the Grant and/or require the Grant Recipient to repay any Unspent Monies if any of the events set out in clause 9.7 and clause 14 arise.
- 9.3. If the Grant Recipient fails to comply with any of the Terms and Conditions of this Agreement the Authority may require that all or part of the Grant be repaid.
- 9.4. The Grant Recipient may not retain any portion of the Grant that has not been used by the end of the Financial Year in the Funding Period without the Authority's written permission and must repay such Unspent Monies to the Authority within 30 Working Days of a request for repayment.
- 9.5. Where all or a proportion of the Grant remains unspent as a result of termination or breach of this Agreement such unspent monies, as calculated by the Authority, must be repaid to the Authority within 30 Working Days of a request for repayment.

- 9.6. If any amount repayable in accordance with clauses 9.4 and/or 9.5 is not repaid within 30 Working Days of a request for repayment, the Authority reserves the right to unilaterally deduct that amount from any other sum which is due or which may later become due under this Agreement.
- 9.7. If the Grant Recipient is wound up or goes into liquidation, administration, receivership or bankruptcy (or any similar procedure in the Grant Recipient's domestic law), or enters into any compromise or other arrangement of its debts with its creditors, the Authority will be entitled to recover any Grant money that has not been spent and/or may withhold any further payments. If any of the money is held by Downstream Partners, the Grant Recipient must attempt to recover those sums from its Downstream Partners.

## **10. LOSSES, GIFTS AND SPECIAL PAYMENTS**

- 10.1. In connection with this Agreement, the Grant Recipient must obtain prior written consent from the Authority before:
- i. writing off any debts or liabilities;
  - ii. offering to make any special payments; and
  - iii. giving any gifts.
- 10.2. The Grant Recipient will keep a record of all gifts, both given and received, in connection with the Grant or any Funded Activity.

## **11. BORROWING**

- 11.1. The Grant Recipient must obtain prior written consent from the Authority before:
- i. borrowing or lending money from any source;
  - ii. charging or agreeing any security over any Asset; and/or
  - iii. giving any guarantee, indemnities or letters of comfort,

that relate to any of the conditions of the Agreement, or have any impact on the Grant Recipient's ability to deliver the Funded Activities set out in the Agreement.

## **12. CHANGES TO THE AUTHORITY'S REQUIREMENTS**

- 12.1. The Authority will notify the Grant Recipient of any changes to Funded Activities.
- 12.2. The Grant Recipient will endeavour to accommodate any changes to the Authority's needs and requirements under this Agreement.

## **13. ACKNOWLEDGEMENT AND PUBLIC STATEMENTS**

- 13.1. Where applicable, the Grant Recipient will acknowledge the Grant in its annual report and accounts, including an acknowledgement of the Authority as the source of the Grant and will show the Grant Recipient's related expenditure as a restricted fund under the Funded Activities in the Grant Recipient's annual accounts.
- 13.2. The Grant Recipient will collaborate with the Authority and proactively look for ways to build support for development and raise awareness of Authority funding. The Grant Recipient will explicitly acknowledge the Authority's funding, in written and verbal communications about activities related to the funding, to the public or third parties, including in announcements, and through use, where appropriate, of official UK

Government logo(s) agreed with the Authority from time to time, unless agreed otherwise in advance. In using the Authority's name and logo, the Grant Recipient will comply with all reasonable branding guidelines issued by the Authority from time to time.

- 13.3. The Grant Recipient will provide a visibility statement in the form set out in Annex 5 of how and when they will acknowledge funding from the Authority and where they will use official UK Government logos, which should be approved by the Authority prior to the Grant Recipient releasing any public communications. The Grant Recipient will include reference to this in its progress reports and annual reviews.
- 13.4. The Grant Recipient will comply with all reasonable requests from the Authority to facilitate visits, provide reports, data, photographs and case studies that will assist the Authority in its promotional activities relating to the Funded Activities.
- 13.5. The Grant Recipient may use the official UK Government logos from time to time in conjunction with other donor logos, and where the number of donors to a project is such as to make co-branding impractical, acknowledgement of funding from the Authority should be equal to that of other co-donors making contributions of equivalent amounts to the Funded Activities

#### 14. TERMINATION

- 14.1. Either Party may terminate this Agreement at any time by giving at least **6 weeks** written notice to the other Party. The Grant Manager does not have the authority to terminate this Agreement.
- 14.2. The Authority may by notice in writing to the Grant Recipient terminate this Agreement with immediate effect if any of the following events occur:
  - a) The Grant Recipient intends to use, has used in the past, or uses the Grant for purposes other than those for which they have been awarded or fails to comply with any of the other obligations of the Agreement;
  - b) the Grant Recipient uses the Grant for Ineligible Expenditure;
  - c) the Grant Recipient fails, in the opinion of the Authority, to make satisfactory progress with the Funded Activities and in particular, with meeting the agreed outputs or fails to comply with the milestone targets set out in Annex 4 of this Agreement
  - d) following the implementation of a Remedial Action Plan the Authority considers that:
    - i. the milestone failure persists;
    - ii. the milestone failure has not been remedied to the satisfaction of the Authority; or
    - iii. the milestone failure reoccurs within a subsequent 6 month period from the date of approval of the Remedial Action Plan,
  - e) the Grant Recipient is, in the reasonable opinion of the Authority, delivering the Funded Activities in a negligent manner (in this context negligence includes but is not limited to failing to prevent or report actual or anticipated fraud or corruption or sexual exploitation abuse and harassment);
  - f) the Grant Recipient obtains duplicate funding from a third party for the Funded Activities;
  - g) the Grant Recipient obtains funding from a third party which, in the reasonable opinion of the Authority, undertakes activities that are likely to bring the reputation of the Funded Activities or the Authority into disrepute;
  - h) the Grant Recipient provides the Grant Manager or the Authority with any materially misleading or inaccurate information;
  - i) the Grant Recipient commits or committed a Prohibited Act;
  - j) the Authority determines (acting reasonably) that any director or employee of the Grant Recipient has:
    - (i) acted dishonestly or negligently at any time during the term of this Agreement and to the detriment of the Authority; or
    - (ii) taken any actions which unfairly bring or are likely to unfairly bring the Authority's name or reputation and/or the Authority into disrepute;
  - k) the Grant Recipient transfers, assigns or novates to any third party, or encumbers in any way, the Grant without the Authority's consent;

- l) the Grant 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);
- m) the Grant 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;
- n) the European Commission (or a Domestic Successor) or the Court of Justice of the European Union (or Domestic Successor) requires any Grant paid to be recovered by reason of a breach of State Aid Law or the Grant Recipient fails to comply with the provisions of the exemption or scheme under State Law that applies to the Funded Activities and the Grant;
- o) the Grant Recipient commits a Material Breach of the Agreement;
- p) the Grant Recipient fails to comply with any of the Terms and Conditions set out in the Agreement and fails to rectify such Breach within 30 days of receiving written notice from the Authority detailing the failure.
- q) that the Authority has reasonable grounds to consider that the Grant Recipient has failed to comply with the UN safeguarding rules including: that the Grant Recipient provide a safe and trusted environment which safeguards anyone who the organisation has contact with, including beneficiaries, staff, Downstream Partners and volunteers; that the Grant Recipient sets an organisational culture that prioritises safeguarding, so that it is safe for those affected to come forward, and to report incidents and concerns with the assurance they will be handled sensitively and properly; that the Grant Recipient takes this opportunity to review its safeguarding policies, procedures and measures to protect people and that these measures are embedded throughout the organisation; and that as part of its safeguarding policies and procedures, the Grant Recipient has absolute clarity as to how incidents and allegations will be handled should they arise, including reporting to the relevant authorities and to the Authority.

14.3. In the event of a Breach of the Agreement, the Authority may serve a notice on the Grant Recipient requiring remedial action to be taken within a specified period, to allow a Remedial Action Plan to be agreed in writing by the Parties. If the Breach cannot be remedied in accordance with the Remedial Action Plan, the failure to remedy the Breach will amount to a Material Breach. Where a Grant Recipient is found to have committed a Material Breach the Agreement will be terminated with immediate effect on receipt of notice in writing from the Authority.

14.4. In the event a change of government or in policy direction, or if the demand for the project significantly reduces or ceases to exist, this Agreement may be terminated by the Authority with immediate effect by notice in writing (such notice period as the Authority determines will be reasonable in all the circumstances).

14.5. The Grant Recipient shall notify the Authority immediately in writing and as soon as the Grant Recipient is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.

14.6. The Grant Recipient shall ensure that any notification made pursuant to 14.5 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

14.7. If the Authority, acting reasonably, considers that:

- i. the Change of Control will be materially detrimental to the Funded Activities and/or;
- ii. the new body corporate cannot continue to receive the Grant because they do not meet the Eligibility Criteria used to award the Grant to the Grant Recipient; and/or
- iii. the Authority believes that the Change of Control would raise national security concerns; and/or
- iv. the new body corporate intends to make fundamental changes to the purpose for which the Grant was given,

this Agreement may be terminated by the Authority with immediate effect by notice in writing (such notice period as the Authority determines will be reasonable in all the circumstances).

14.8. Where the Authority believes that the provisions of this Agreement have not been fulfilled by the Grant Recipient or if any of the Grant Recipient's activities may significantly impair the implementation or development value of the Funded Activities, the Authority will discuss its concerns with the Grant Recipient in an attempt to resolve any issues. Following such discussions, this Agreement may be suspended or terminated by the Authority.

## **15. AMENDMENT OR VARIATION OF THE AGREEMENT**

15.1. No amendment or variation to this Agreement will be effective unless it is in writing, agreed and signed by the Representatives on behalf of each of the Parties.

## **16. CONSEQUENCES OF TERMINATION AND SUPPORT FOR TRANSFER OF RESPONSIBILITY**

16.1. Nothing in this Agreement will affect any provision of this Grant which is expressly or by implication intended to apply or continue to apply upon termination of this Agreement, for any reason.

16.2. If the Authority terminates this Agreement in accordance with clause 14.1 the Authority may pay the Grant Recipient's reasonable costs in respect of the delivery of the Funded Activities performed up to the termination date. Reasonable costs will be identified by the Grant Recipient and will be subject to the Grant Recipient demonstrating that they have taken adequate steps to mitigate their costs. For the avoidance of doubt, the decision as to whether to pay reasonable costs and the amount of reasonable costs payable will be determined solely by the Authority.

16.3. The Authority, or the Grant Manager, will not be liable to pay any of the Grant Recipient's costs or those of any contractor or supplier related to any transfer or termination of the employment of any employees engaged in the provision of the Funded Activities prior to the date of termination.

16.4. Upon receiving notice of termination from the Authority, the Grant Recipient will review, amend and implement the agreed exit plan or equivalent with the the Authority.

## **17. DISPUTE RESOLUTION**

17.1. The Parties will use all reasonable endeavours to negotiate in good faith, and settle amicably, any dispute that arises during the continuance of the Agreement.

17.2. In the event that a dispute arises as a result of the Agreement, the dispute will be referred in the first instance to the Parties Representatives.

17.3. If the dispute cannot be resolved between the authorised points of contact within a maximum of 14 days, then the matter will be escalated to a formal meeting between the Grant Manager, Authority and the Grant Recipient's Chief Executive (or equivalent), who shall seek to resolve the dispute in good faith. If the dispute is not resolved within 30 days after escalation to the Grant Manager, Authority and the Grant Recipient's Chief Executive (or equivalent), either Party may refer the dispute to the English courts for resolution in accordance with Clause 32 (*Governing Law*).

17.4. Without prejudice to any other rights or remedies that the Authority may have, the Authority reserves the right to seek injunctive or other appropriate relief for sufficiently serious, time-critical, actual or anticipated Breach.



**18. PROJECT COMPLETION REVIEW**

- 18.1. The Grant Recipient will submit a project completion report (using the template provided by the Authority in Annex 8) within 4 weeks of the completion of the Funded Activities providing a final assessment of the extent to which the activities achieved their objectives (“**the Project Completion Report**”).
- 18.2. The Authority will carry out a project completion review at the end of the project, which will provide a final assessment of the extent to which the Funded Activities achieved their objectives. The Authority will have regard to the reports produced by the Grant Recipient in accordance with clause 18.1 and 19 and may make further requests to the Grant Recipient for information. The Grant Recipient will co-operate with the Authority in this regard and will provide information to the Authority as necessary upon request to enable the project completion review to be effectively carried out.
- 18.3. The Grant Recipient will provide the project final financial documents (that is, all Grant claims including evidence to be provided in accordance with the Grant Offer Letter) to the Authority within 4 weeks of the completion of the Funded Activities.

**19. MONITORING, REPORTING, INTERNAL AUDIT AND ASSURANCES**

- 19.1. The Grant Recipient must provide the Grant Manager, Authority and the Monitoring and Evaluation Partner with all reasonable assistance and co-operation in relation to any ad-hoc information requests made by the Authority in relation to the Funded Activities.
- 19.2. Without prejudice to these obligations, the Grant Recipient must also:
- i. provide Quarterly Progress Reports by the **11<sup>th</sup> working day of July, October, January and April** to the Authority using the templates in Annex 7;
  - ii. ensure that Quarterly Progress Reports are signed off by the project lead within the Grant Recipient.
  - iii. upon the request of the Authority, meet with Authority representatives to discuss progress;
  - iv. invite Grant Manager and Authority representatives (the assigned project manager and head of programme) to key project events (such as launch events, dissemination events, and seminars) and facilitate that attendance (by agreeing with the Authority items, such as an agenda and attendance list in advance).
  - v. provide key project deliverables (e.g. reports) in draft for the Authority to review and provide feedback before finalisation and submission of the final output (in accordance with such feedback).
- 19.3. Where the Grant Recipient has obtained funding from a third party for its delivery of part of the Funded Activities, the Grant Recipient will include the amount of such funding in each Quarterly Progress Report and its financial reports together with details of what that funding has been used for.
- 19.4. The Grant Recipient will permit any person authorised by the Authority such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Grant Recipient's fulfilment of the conditions of this Agreement and will, if so required, provide appropriate oral or written explanations from them.
- 19.5. Where requested by the Authority, the Grant Recipient shall co-operate with the Monitoring and Evaluation Partner in respect of the monitoring and evaluation of this Agreement and provide the Monitoring and Evaluation Partner with any requested information and records.
- 19.6. The Grant Recipient will notify the Authority as soon as reasonably practicable of:
- i. any financial, administrative, managerial difficulties that may hinder or prevent the Grant Recipient from fulfilling its obligations under the Agreement;
  - ii. any actual or potential material failure to meet any of the Terms and Conditions of the Agreement;

- iii. actual or potential material variations to the Eligible Expenditure agreed in accordance with the Grant Offer Letter or Annex 3 of this Agreement; and
  - iv. any change in the information on costs (whether actual or estimated) of carrying out the Funded Activities or any event which materially affects the continued accuracy of such information.
- 19.7. The Grant Recipient will represent and undertake that the reports and information it gives pursuant to this clause 19 are accurate and that it has diligently made full and proper enquiry of the matter pertaining to the reports and information given.
- 19.8. Throughout the Grant Period, the Grant Recipient will maintain an internal audit function which will operate in accordance with the International Standards on Auditing (UK and Ireland) or the generally agreed accounting practices as they apply from time to time.
- 19.9. The Grant Recipient will comply with (and facilitate the Authority's compliance with) all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Authority.
- 19.10. The Grant Recipient will permit (and comply with) any surveys of management controls and systems, including internal audit reviews, as may be required by the Authority.
- 19.11. The Grant Recipient must present the Project Quarterly Work Plan (Annex 2) and the Eligible Expenditure form (Annex 3) to their external independent qualified auditor for certification. The external independent qualified auditor's report should state whether, in their opinion, the grant paid to the Grant Recipient, was applied in accordance with the Agreement.
- 19.12. The Grant Recipient's Chief Executive (or equivalent) should ensure that the systems governing the Grant funding are subject to independent review.
- 19.13. The systems in place to govern the Grant funding should be appropriate to the size of Grant Recipient organisation, the amount of Grant, risk to the public funds provided and cost of the review. These arrangements may be reviewed by the Authority in line with HM Treasury's Public Sector Internal Audit Standards.
- 19.14. The Grant Recipient (and any person acting on behalf of the same) will at the request of the Authority permit (a) the Comptroller and Auditor General or appointed representatives; and (b) the Authority or its Representatives access at all reasonable times to all documents (including computerised documents and data) and other information as are connected to the Grant payable under this Agreement for the purpose of the Funded Activities.
- 19.15. The documents, data and information referred to in clause 19.14 are such which any internal auditors, external auditors, the Authority (or its Representatives) or the Comptroller and Auditor General or any department or other public body may reasonably require for the purposes of audit or for carrying out examinations into the economy, efficiency and effectiveness with which the Grant Recipient has used the Grant. In particular, the Grant Recipient will retain such information as would be necessary to provide assurance that the Grant Recipient delivered the Minimum Requirements of the Scheme.
- 19.16. Clauses 19.13 and 19.14 do not constitute a requirement for the examination, certification or inspection of the accounts of the Grant Recipient or its partners by the Comptroller and Auditor General under section 6(3) of the National Audit Act 1983. The Comptroller and Auditor General will seek access in a measured manner to minimise any burden on the Grant Recipient and will avoid duplication of effort by seeking and sharing information with any successor to the Audit Commission, Wales Audit Office or Audit Scotland as appropriate.

- 19.17. The Grant Recipient shall provide a reasonable assurance report from an external independent qualified auditor in the form in Schedule 1 to the Offer Letter ("**Reasonable Assurance Report**") in accordance with this Clause 19.17 and Clause 19.18
- i. where the total amount of the Grant is £1 million (one million pounds) or more, the Grant Recipient shall provide a Reasonable Assurance Report with each Grant claim, Or
  - ii. where the Grant Recipient incurs Eligible Expenditure of £100,000 (one hundred thousand pounds) or more over the course of any 12 month period starting from the date of this Grant, the Grant Recipient shall provide a Reasonable Assurance Report in accordance with Clause 19.18
- 19.18. Where Clause 19.17(ii) applies the Grant Recipient shall provide a Reasonable Assurance Report:
- i. where the Funding Period is less than or equal to 18 months, at the end of the Funding Period addressing all previous grant claims made during the Funding Period; or
  - ii. where the Funding Period is more than 18 months both:
    - A. at the end of each 12 month period starting from the date of this Grant addressing all grant claims made during that period; and
    - B. at the end of the Funding Period, addressing all grant claims made in the period from the date of the last Reasonable Assurance Report provided under Clause 19.18(ii)(A) up to the end of the Funding Period.
- 19.19. Upon receipt of a Reasonable Assurance Report, where the Authority considers that Grant funding was paid towards any costs that were not Eligible Expenditure under previous grant claims, the Authority will either:
- i. require repayment by the Grant Recipient of funding paid towards costs which were not Eligible Expenditure before further Grant funding is provided, or
  - ii. offset funding paid towards costs which were not Eligible Expenditure under previous Grant claims against the costs the Grant Recipient has claimed for incurred Eligible Expenditure in the final Grant claim.

## 20. RISK MANAGEMENT

- 20.1. The Grant Recipient will develop and maintain an up to date risk register that, as a minimum, enables individual risks to be clearly identified, an assessment of their likelihood and impact, how they will be dealt with and escalated and who is responsible for monitoring and reporting on them.
- 20.2. The Grant Recipient will manage all risks in relation to this project unless otherwise agreed as part of the risk register and in writing with the Authority. Where the Grant Recipient transfers risk to any Downstream Partner, the Grant Recipient will remain accountable to the Authority for the effective management of that risk.
- 20.3. The Grant Recipient will maintain an up to date and accurate record of Downstream Partners in receipt of the Authority's funds and/or inventory or assets funded by the Authority. This delivery chain risk map should demonstrate how funds flow from the initial source to end beneficiaries, and the risks and potential risks along the chain. The format of the risk map should be agreed between the Grant Recipient and the Authority.
- 20.4. The delivery chain risk map should be updated regularly by the Grant Recipient and when there are material changes to the project risk assessment and/or to downstream partners of the Grant Recipient in the chain. As a minimum the Grant Recipient will provide the Authority with an updated delivery risk map at the following intervals:
- i. within 60 days of the commencement of this Agreement;
  - ii. annually, as part of the annual review Process; and
  - iii. at the end of the project, as part of the project completion review process

**21. HEALTH, SAFETY AND SECURITY**

- 21.1. The Grant Recipient is responsible for all security arrangements in relation to this Agreement including the health, safety and security of any person employed or otherwise engaged as part of this Agreement, including those employed or engaged by any Downstream Partners.
- 21.2. The Grant cannot be used to fund any insurance premiums intended to cover medical expenses, injury or disablement, and death unless, by exception, explicitly agreed in writing with the Authority in advance.

**22. ACCOUNTS AND RECORDS**

- 22.1. Where this Agreement is for a term longer than one Financial Year, the Grant Recipient must provide the following details to the Authority before the end of each Financial Year:
- i. a schedule of the Funded Activities and estimates of income and expenditure for the next Financial Year, together with forecast outturns for the current year;
  - ii. a statement setting out the total Grant agreed for the year;
  - iii. details of any additional funding for delivery of the Funded Activities, other than the Grant, with full details of how it is to be spent;
  - iv. the level of balances relating to the Grant held by the Grant Recipient at the end of the Financial Year.
- 22.2. The Grant Recipient will provide revised forecasts of expenditure:
- i. when these forecasts increase or decrease by more than 15% of the original expenditure forecasts; and/or
  - ii. where the Grant Recipient is requesting a material change to the forecast
  - iii. at the request of the Authority.
- 22.3. The Grant Recipient will keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of Grant monies received from the Authority and any income generated from the Funded Activities.
- 22.4. The Grant will be shown in the Grant Recipient's separate account as a restricted fund and will not be included or mixed with the Grant Recipient's general funds or other monies.
- 22.5. The Grant Recipient will, and will ensure that all its Downstream Partners, keep all original accounting records relating to the Funded Activities, including invoices, receipts, VAT records, accounts and any other relevant documents relating to the expenditure of the Grant for a period of at least six years following receipt of any Grant monies to which they relate.
- 22.6. Where the Grant funding allows for capital spend, the Grant Recipient must keep a register of Fixed Assets, including all land and building acquired or improved with Grant funding.
- 22.7. The Grant Recipient will within 5 Working Days of a request by the Authority, provide the Authority with such further information, explanations and documents as the Authority may reasonably require, in order for the Authority to establish that the Grant has been used properly in accordance with this Agreement.
- 22.8. Where the Grant Recipient is a company registered at Companies House (or equivalent), the Grant Recipient must file their annual return and accounts by the dates specified by Companies House (or equivalent).
- 22.9. Where the Grant Recipient is a registered charity, the Grant Recipient must file their charity annual return by the date specified by the Charity Commissioner (or equivalent).

- 22.10. The Grant Recipient must provide the Authority with copies of their annual return, accounts and charity annual return (as applicable) within five days of filing them at Companies House and/or the Charity Commissioner (or equivalent). If a Grant Recipient fails to comply with clauses 22.8 and 22.9 the Authority may terminate this Agreement or suspend payment of the Grant at the Authority's discretion.

### **23. FINANCIAL MANAGEMENT**

- 23.1. The Grant Recipient will at all times comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act.
- 23.2. The Grant Recipient must have a sound administration and audit process, including internal financial controls to safeguard against fraud and theft, and will require that the internal/external auditors report on the adequacy or otherwise of that system. All cases of fraud or theft (whether proven or suspected) relating to the Funded Activities must be notified to the Authority as soon as they are identified. The Authority may then request their referral (which the Grant Recipient is obliged to carry out). The Grant Recipient may also notify the Authority's Counter Fraud Section at [counterfraud@beis.gov.uk](mailto:counterfraud@beis.gov.uk).
- 23.3. The Grant Recipient must be able to demonstrate that the systems of financial and manpower control, management and organisation will enable the Grant Recipient to meet the Funded Activities and objectives of this Agreement.
- 23.4. The Grant Recipient must comply with the recommendations of the Public Accounts Committee and any other expenditure controls specified by Government.
- 23.5. The Grant Recipient will not transfer, assign, novate or otherwise dispose of the whole or any part of the Grant or this Agreement or any rights under it, to another organisation or individual, unless the Grant Recipient has first entered into an agreement, authorised by the Authority, requiring the Grant Recipient to work with another organisation in delivering the Funded Activities.

### **24. GRANT RECIPIENT PERSONNEL**

- 24.1. The Grant Recipient will seek the Authority's prior written approval before creating or replacing staff in posts where they are responsible for delivery of the Funded Activity. The Grant Recipient will appoint replacement staff with appropriate qualifications and experience.

### **25. INTELLECTUAL PROPERTY RIGHTS**

- 25.1. Save as expressly granted elsewhere in this Agreement the Grant Recipient will retain all IPRs that are either:
- I. its Background IPRs; or
  - II. developed during the period of the Grant but are not Funded Activity Specific IPRs.
- 25.2. The Authority will retain:
- I. its Background IPRs; and
  - II. Funded Activity Specific IPRs, unless stated otherwise in the Annexes.
- 25.3. Other than as expressly set out in this Agreement, neither Party nor the Grant Manager will have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

- 25.4. Any materials including Funded Activity Specific IPRs produced using funding provided under this Agreement will be made available to the Grant Recipient for use in accordance with the Open Government Licence. The Open Government Licence (OGL) is a simple set of terms and conditions under which information providers in the public sector can license the use and re-use of their information. Provided that the Grant Recipient complies with the terms the Grant Recipient will have permission to use information anywhere in the world. The licence is also non-exclusive which means that the Grant Recipient will not be the only person able to make use of it. The Open Government Licence enables the Grant Recipient to use information for both commercial and non-commercial purposes.
- 25.5. The Authority, but not the Grant Manager, may freely share any information, know-how, system or process developed during the period of the Funded Activities to support similar projects.
- 25.6. Ownership of third party software or other IPR to deliver services will remain with the relevant third party.
- 25.7. The Grant Recipient must ensure that they have obtained the relevant agreement from the Authority before any additions or variations are made to the standard 'off-the-shelf' versions of any third party software and other IPR. The Grant Recipient will obtain and maintain all appropriate licences to use the third party software.

## **26. LIMITATION OF LIABILITY**

- 26.1. The Authority accepts no liability for any consequences, whether direct or indirect, that may come about from the Grant Recipient delivering/running the Funded Activities, the use of the Grant or from withdrawal, withholding or suspension of the Grant. The Recipient shall indemnify and hold harmless the Authority, its Representatives with respect to all actions, claims, charges, demands Losses and proceedings arising from or incurred by reason of the actions and/or omissions of the Grant Recipient in relation to the Funded Activities, the non-fulfilment of obligations of the Grant Recipient under this Grant Funding Agreement or its obligations to Third Parties.
- 26.2. Subject to this paragraph 26, the Authority's liability under this Grant Funding Agreement is limited to the amount of Grant outstanding.

## **27. INSURANCE**

- 27.1. The Grant Recipient will during the term of the Agreement and for 6 years (or such shorter period that the Parties may agree) after termination or expiry of this Agreement, ensure that it has and maintains, at all times adequate insurance with an insurer of good repute, with a level of cover sufficient to cover claims under this Agreement or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with this Agreement, taking into account the activities that the Grant Recipient intends to undertake, or procure the undertaking of, using the Grant. The Grant Recipient shall use reasonable endeavours to have the Authority as a named insured on any policy procured pursuant to this clause 27.1.
- 27.2. The Grant Recipient will upon request produce to the Authority its policy or policies of insurance or where this is not possible, a certificate of insurance issued by the Grant Recipient's insurance brokers confirming the insurances are in full force and effect together with confirmation that the relevant premiums have been paid.
- 27.3. Where the Grant Recipient receives more than 50% (per cent) of the Grant Recipient's total income from public funds, the Grant Recipient will notify the Authority. The Authority will review the nature of the control of Grant Recipient's organisation to determine any resulting requirement for reclassification which may in turn change the insurance requirements under the Agreement.

## 28. CONFLICTS OF INTEREST, AID DIVERSION AND FINANCIAL OR OTHER IRREGULARITIES

- 28.1. The Grant Recipient must have and will keep in place formal procedures that require the Grant Recipient's Representatives to declare any personal or financial interest in any matter concerning the grant funded activities and if a conflict of interest is identified the individual is to be excluded from any discussion or decision-making relating to the matter concerned.
- 28.2. The Grant Recipient shall immediately and without undue delay inform the Authority in accordance with Clause 28.3 of any event which interferes or threatens to materially interfere with this Agreement, whether financed in full or in part by the Authority, including credible suspicions of, or actual Aid Diversion. The Grant Recipient should assess credibility based on the source of the allegation, the content, and the level of detail or evidence provided.
- 28.3. The Grant Recipient should immediately contact the Authority's Counter Fraud Section at [counterfraud@beis.gov.uk](mailto:counterfraud@beis.gov.uk) in respect of any event in Clause 28.2. All information will be treated with the utmost confidentiality. Information can also be reported directly to the Authority's team managing the programme where appropriate and this will be immediately passed on to the Authority's Counter Fraud Section.
- 28.4. The Parties have a zero-tolerance approach towards Aid Diversion, including any associated inappropriate behaviour. The Grant Recipient shall fully co-operate with investigations into such events.
- 28.5. Notwithstanding any provisions in this Agreement or other contractual requirements, the Authority may recover from the Grant Recipient all or part of the funds paid under this Agreement in the event of actual or suspected Aid Diversion.
- 28.6. Consistent with local and international legislation and applicable United Nations Security Council resolutions, the Authority is firmly committed to the international fight against terrorism. It is the policy of the Authority to seek to ensure that none of its funds are used to provide support to individuals or entities associated with terrorism and that the Authority's staff and its programmes activity are compliant with counter terrorist financing legislation. In accordance with this policy, the Authority expects the Grant Recipient and all Downstream Partners to make themselves aware of, and comply with, their obligations under the relevant counter terrorist financing legislation.
- 28.7. The Grant Recipient will seek to ensure that none of the funds or assets provided under this Agreement are made available or used to provide support to individuals, groups or entities associated with terrorism including those named on the following lists as updated from time to time:
- HM Treasury's Office of Financial Sanctions Implementation – [Financial sanctions: consolidated list of targets](#)
  - UK Home Office – [Proscribed terrorist groups or organisations](#)
  - European Union – [Consolidated list of sanctions](#)
  - United Nations – [United Nations Security Council Sanctions List](#)
  - World Bank – [World Bank Listing of Ineligible Firms & Individuals](#)

## 29. TRANSPARENCY

- 29.1. The Authority and the Grant Recipient acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Information Acts, the content of the Agreement is not confidential information.
- 29.2. The Authority will be responsible for determining whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA. The Grant Recipient agrees that the Authority may make any redactions of this Agreement the Authority considers appropriate.

- 29.3. Subject to clause 29.1, the Grant Recipient consents to the Authority publishing the Agreement in its entirety (including any subsequent amendments or agreed redactions) and associated funding information to the general public, including but not limited to the publication of such on the Authority's website.
- 29.4. The Grant Recipient will publish to the International Aid Transparency Initiative (IATI) standard on all its funding from the Authority within six months of the start of this Agreement. The Authority expects the Grant Recipient to publish to the IATI standard on all its ODA funding from other sources and for Downstream Partners to publish to the IATI standard on their funding. The intention of this commitment is to allow traceability throughout the delivery chain. For more details on IATI standards see: <http://www.aidtransparency.net>

### **30. LEGISLATION, PROCUREMENT REQUIREMENTS, ONWARD GRANTS AND STATE AID LAW**

#### ***Legislation***

- 30.1. Where in relation to its activities and obligations under this Agreement the Grant Recipient is a Data Controller for the purposes of the Data Protection Legislation it will comply at all times with the Data Controller obligations specified in the Data Protection Legislation. The Grant Recipient must observe its obligations under FOIA, Data Protection Legislation, EIR and HRA, and under the common law duty of confidentiality, or similar obligations under the Grant Recipient's domestic law.
- 30.2. The Grant Recipient hereby acknowledges that the Authority is subject to requirements under the Information Acts. Where requested by the Authority, the Grant Recipient will provide reasonable assistance and cooperation to the Authority to assist the Authority's compliance with its information disclosure obligations.
- 30.3. On request from the Authority, the Grant Recipient will provide the Authority with all such relevant documents and information relating to the Grant Recipient's data protection policies and procedures as the Authority may reasonably require.
- 30.4. The Grant Recipient acknowledges that the Authority, acting in accordance with the codes of practice issued and revised from time to time under FOIA and/or EIR, may disclose information concerning the Grant Recipient and this Agreement without consulting with the Grant Recipient.
- 30.5. The Authority will take reasonable steps to notify the Grant Recipient of a request for information to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority will be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Acts.
- 30.6. The Grant Recipient must ensure that in providing development assistance (within the meaning of section 1 of the International Development Act 2002), it does not do so in a way that is likely to contribute to inequality between persons of different gender.

#### ***Cyber security***

- 30.7. Cyber security is the protection of systems, networks and data to prevent cybercrime. The Grant Recipient is responsible for managing cyber security risk under its own policies and procedures.

#### ***Procurement Law, Onward Grants and Value for Money***



- 30.8. The Grant Recipient will ensure that any of its Representatives involved in the Funded Activities will adopt such policies and procedures that are required in order to ensure that value for money has been obtained in any procurement of goods or services funded by the Grant.
- 30.9. Where the Grant Recipient is a contracting authority within the meaning of the Procurement Regulations the Grant Recipient warrants that it will comply, as necessary, with the applicable procurement laws when procuring goods and services.
- 30.10. Where the Grant Recipient reasonably considers that there is an objective justification for not complying with procurement rules and seeks to rely on such a justification, it will seek prior approval from the Authority, setting out the reasons for non-compliance in a structured business case.
- 30.11. The Grant Recipient will use the following best practice when carrying out procurement and authorising expenses to promote value for money and fairness:
- Use fair, open and objective competition to select Downstream Partners, to help ensure that the best value for money solution available in the market is used. Make sure that contract specifications are clearly expressed and output based so that Downstream Partners set out their proposals/solutions for meeting/delivering the requirements. Ensure all contracts within the EU above the threshold are appropriately advertised in the OJEU.
  - Cash payments should be minimised and used as a last resort, as cash is the biggest single risk of fraud and theft. Payments should be made ideally as a bank transfer
  - Manage contracts carefully to ensure that the Downstream Partners comply with it, outputs are delivered, and the price is reasonable. Contracts should be appropriate for local law. Make sure that the suppliers are real, that appropriate due diligence checks are undertaken and that the goods and services have been received before invoices are paid. Review long term contracts to ensure that competitiveness and value for money are still being achieved.
  - Ensure all contracts run for a clearly specified and limited period of time, ideally no more than three years. Do not automatically re-new contracts when they expires, but instead competitively re-tender them.
  - Management checks should be carried out on spending and should be open and be visible to staff as a deterrent to fraud.
  - Care should be taken when booking travel and accommodation, and when other expenses are refunded, to maintain value for money. The Grant Recipient should request receipts as proof of purchase for all expenses that are claimed to reduce the risk of fraud.
  - Any air travel funded by this programme must be economy class by default. If there is a clear business need for premium economy or business class, there may be an exemption, but the Authority must grant permission before the flight is booked.
  - Reasonable food expenses can be covered during work-related travel. However, alcoholic drinks cannot be claimed for.
- 30.12. The Grant Recipient will not include in any arrangement related to this project with any Downstream Partner(s) any provisions which limit Downstream Partner(s) from working directly with the Authority or any other organisation, except as required under clause 28.7.

#### **State aid**

- 30.13. The Grant Recipient will take all reasonable steps to ensure that where any awards, including onward grants, are made from the Funded Activities those awards are compatible with State Aid law including requesting such documentation from the award recipients as is necessary to ensure compliance with State Aid law.

**31. SAFEGUARDING FOR THE PREVENTION OF SEXUAL EXPLOITATION, ABUSE AND HARASSMENT**

- 31.1. The Grant Recipient will take all reasonable steps to prevent the sexual exploitation, abuse and harassment of any person linked to the delivery of this Agreement by both its employees and any Downstream Partner.
- 31.2. UK PACT use the same definition for Sexual Exploitation and Abuse and Sexual Harassment (SEAH) as UN and DFID which can be found here: <https://www.gov.uk/guidance/safeguarding-against-sexual-exploitation-and-abuse-and-sexual-harassment-seah-in-the-aid-sector>
- 31.3. The Parties have a zero-tolerance approach towards sexual exploitation, abuse and harassment. The Grant Recipient will immediately contact the Authority’s safeguarding hotline at [odasafeguardingconcerns@beis.gov.uk](mailto:odasafeguardingconcerns@beis.gov.uk) to report any credible suspicions of, or actual incidents of sexual exploitation, abuse or harassment related to this Agreement. The Grant Recipient should assess credibility based on the source of the allegation, the content, and the level of detail or evidence provided. All sexual activity with children (persons under the age of 18) is prohibited, regardless of the age of majority, or age of consent locally.
- 31.4. The Grant Recipient should also report any credible suspicions of, or actual incidents that are not directly related to this Agreement but would be of significant impact to their partnership with the Authority or the reputation of the Authority or UK aid. For example, events that affect the governance or culture of the Grant Recipient, such as those related to senior management, must be reported.
- 31.5. Both Parties will fully co-operate with investigations into such events, whether led by the Authority or any of its duly authorised representatives or agents, or the Grant Recipient.

**32. GOVERNING LAW**

- 32.1. This Agreement and any non-contractual obligations arising in connection with it will be governed by and construed in accordance with the law of England and Wales. Subject to the provisions of clause 15 (*Dispute Resolution*), the Parties irrevocably submit to the exclusive jurisdiction of the English courts to settle any dispute which may arise on any basis in connection with the validity, effect, interpretation, or performance of this Agreement, or the legal relationship established by this Agreement, or otherwise arising in connection with this Agreement.

**SIGNED by:**

.....  
**Signature**

**For and on behalf of the  
Secretary for State for Business,  
Energy and Industrial Strategy**

.....  
**Title**  
.....  
**Date**

**SIGNED by**

.....

**Signature**

for and on behalf of

.....

**Title**

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**Date**

DRAFT

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