

**ILLUSTRATIVE**

*(NB. These Terms and Conditions are based on the Cabinet Office Model Grant Funding Agreement and may be updated if a new version of the Model Agreement is issued before the grant documents for Heat Pump Ready Stream 2 projects are signed.)*

THE DEPARTMENT OF BUSINESS ENERGY AND INDUSTRIAL STRATEGY

and

**[THE GRANT RECIPIENT]**

**GRANT FUNDING AGREEMENT FOR HEAT PUMP READY PROGRAMME, STREAM 2:  
TOOLS AND TECHNOLOGY**

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**This Grant Funding Agreement** is made on [insert date of signature]

**Between:**

- (1) SECRETARY OF STATE FOR THE DEPARTMENT OF BUSINESS, ENERGY AND INDUSTRIAL STRATEGY whose principal address is at 1 Victoria Street, Westminster, London, SW1H 0ET (the “**Authority**”)
- (2) [INSERT THE FULL NAME OF THE GRANT RECIPIENT], whose principal address is at [ADDRESS] (the “**Grant Recipient**”).

**In relation to:**

**Project Name:** [insert project name]

**Project Number:** [insert project number (if applicable) otherwise remove].

## **BACKGROUND**

- (A) The Grant is made pursuant to Section 5 of the Science and Technology Act 1965. If the payment of the Grant is subject to the satisfaction of conditions, those conditions precedent and the date for satisfaction are set out in the Grant Funding Letter
- (B) The Authority ran a competition for grant applications in respect of Heat Pump Ready Programme Stream 2 Tools and Technology.
- (C) The Grant Recipient was successful under that competition and the Authority awarded it a grant to deliver the project detailed in Annex 1.
- (D) The Authority will provide the Grant to the Grant Recipient as provided for in this Grant Funding Agreement.
- (E) The Grant Recipient will use the Grant solely for the Funded Activities.

The conditions collectively (the **Conditions**) are as follows:

### **1. INTRODUCTION**

- 1.1. This Grant Funding Agreement sets out the conditions which apply to the Grant Recipient receiving the Grant from the Authority up to the Maximum Sum.
- 1.2. The Authority and the Grant Recipient have agreed that the Authority will provide the Grant up to the Maximum Sum as long as the Grant Recipient uses the Grant in accordance with this Grant Funding Agreement.
- 1.3. The Authority makes the Grant to the Grant Recipient on the basis of the Grant Recipient’s grant application a copy of which is attached at Annex 1 Part B.
- 1.4. The Parties confirm that it is their intention to be legally contractually bound by this Grant Funding Agreement

### **2. DEFINITIONS AND INTERPRETATION**

2.1. Where they appear in these Conditions:

**Annex** means the annexes attached to these Conditions which form part of the Grant Funding Agreement;

**Asset** means any assets that are to be purchased or developed using the Grant including equipment or any other assets which may be a Fixed Asset or Major Asset as appropriate in the relevant context, and **Assets** will be construed accordingly

**Asset Owning Period** means the period during which the Assets are recorded as Assets in the Grant Recipient's accounts;

**Authority Personal Data** means any Personal Data supplied for the purposes of, or in connection with, the Grant Funding Agreement by the Authority to the Grant Recipient;

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

**Code of Conduct** means the Code of Conduct for Recipients of Government General Grants published by the Cabinet Office in November 2018 which is available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/754555/2018-11-06\\_Code\\_of\\_Conduct\\_for\\_Grant\\_Recipients.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/754555/2018-11-06_Code_of_Conduct_for_Grant_Recipients.pdf), including any subsequent updates from time to time;

**Commencement Date** means the date on which the Grant Funding Agreement comes into effect, being the **[Insert commencement date]**;

**Confidential Information** means any information (however conveyed, recorded or preserved) disclosed by a Party or its personnel to another Party (and/or that Party's personnel) whether before or after the date of the Grant Funding Agreement, including but not limited to:

- (a) any information that ought reasonably to be considered to be confidential (whether or not it is so marked) relating to:
  - (i) the business, affairs, customers, clients, suppliers or plans of the disclosing Party; and
  - (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;
- (c) the Authority Personal Data;
- (d) any information derived from any of the above.

Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure (otherwise than by breach of paragraph 11 of these Conditions);
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a Third Party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

**Contracting Authority** means any contracting authority (other than the Authority) as defined in regulation 2 of the Public Contracts Regulations 2015 (as amended);

**Controller and Processor** take the meaning given in the GDPR;

**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;

**Crown Body** means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

**Data Protection Legislation** means (i) the GDPR; (ii) the Data Protection Act 2018 to the extent that it relates to the processing of Personal Data and privacy; and (iii) all applicable Law relating to the processing of Personal Data and privacy;

**De Minimis Regulation** means Commission Regulation (EU) 1407/2013;

**De Minimis State Aid** means State aid granted pursuant to the De Minimis Regulation;

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

**Domestic Law** means an applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation which replaces EU law as a consequence of the UK leaving the European Union;

**Duplicate Funding** means funding provided by a Third Party to the Grant Recipient, which is for the same purpose for which the Grant was made, but has not been declared to the Authority;

**Eligibility Criteria** mean the Authority's selection criteria used to determine who should be grant recipients including the Grant Recipient;

**Eligible Expenditure** means the expenditure incurred by the Grant Recipient during the Funding Period for the purposes of delivering the Funded Activities which comply in all respects with the eligibility rules set out in paragraph 5 of these Conditions;

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

**Event of Default** means an event or circumstance set out in paragraph 26.1;

**Financial Year** means from 1 April to 31 March;

**Fixed Assets** means any Asset which consists of land, buildings, plant and equipment acquired, developed, enhanced, constructed in connection with the Funded Activities;

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

**Funded Activities** means the activities set out in Annex 2;

**Funding Period** means the period for which the Grant is awarded starting on the Commencement Date and ending on 31<sup>st</sup> March 2025.

**General Data Protection Regulation** and **GDPR** means the General Data Protection Regulation (EU) 2016/679;

**Grant** means the sum or sums the Authority will pay to the Grant Recipient in accordance with paragraph 4 and subject to the provisions set out at paragraph 26.

**Grant Claim** means the payment request **claim form** submitted by the Grant Recipient to the Authority for payment of the Grant;

**Grant Funding Agreement** means these Conditions together with its annexes and schedules including but not limited to the Annex 1 Grant Funding Letter;

**Grant Funding Letter** means the letter the Authority issued to the Grant Recipient dated [REDACTED], a copy of which is set out in Annex 1;

**Grant Manager** means the individual who has been nominated by the Authority to be the single point of contact for the Grant Recipient in relation to the Grant;

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

**Ineligible Expenditure** means expenditure incurred by the Grant Recipient which is not Eligible Expenditure and as set out in paragraph 5 of these Conditions;

**Information Acts** means the Data Protection Legislation, FOIA and the EIR, as amended from time to time;

**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 any modifications, amendments, updates and new releases of the same and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**IP Completion Day** has the meaning given to it in the European Union (Withdrawal) Act 2018;

**IPR Material** means all material produced by the Grant Recipient or its Representatives in relation to the Funded Activities during the Funding Period (including but not limited to, materials expressed in any form of report, database, design, document, technology, information, know how, system or process);

**Instalment Period** means the intervals set out in Annex 3 when the Authority will release payment of the Grant to the Grant Recipient during the Funding Period;

**Joint Controllers** means where two or more Controllers jointly determine the purposes and means of processing;

**Law** mean any applicable law, statute, byelaw, regulation, order, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation;

**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;

**Major Asset** means an Asset being used for the Funded Activities which is not a Fixed Asset but has a value as at the date of this funding Agreement of at least £ 10,000.

**Match Funding** means any contribution to the Funded Activities from a Third Party to the Grant Recipient to meet the balance of the Eligible Expenditure not supported by the Grant;

**Maximum Sum** means the maximum amount of the Grant the Authority will provide to the Grant Recipient for the Funded Activities subject to paragraph 26;

**Northern Ireland Protocol** means the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;

**Party** means the Authority or Grant Recipient and **Parties** shall be each Party together;

**Personal Data** has the meaning given to it in the Data Protection Legislation as amended from time to time;

**Procurement Regulations** means the Public Contracts Regulations 2015, Concession Contracts Regulations 2016, Defence Security Public Contracts Regulations 2011 and the Utilities and Contracts Regulations 2016 together with their amendments, updates and replacements from time to time;

**Prohibited Act** means:

- (a) directly or indirectly 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 the Funding Agreement; or
  - (ii) showing or not showing favour or disfavour to any person in relation to the Funding Agreement;
- (b) committing any offence:
  - (iii) under the Bribery Act;
  - (iv) under legislation creating offences in respect of fraudulent acts; or
  - (v) at common law in respect of fraudulent acts in relation to the Funding Agreement; or
- (c) defrauding or attempting to defraud or conspiring to defraud the Authority or the Crown;

**Publication** means any announcement, comment or publication of any publicity material by the Grant Recipient concerning the Funded Activities or the Authority;

**Remedial Action Plan** means the plan of action submitted by the Grant Recipient to the Authority following an Event of Default pursuant to the Rectification Plan process set out in paragraphs 26.4;

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

**Special Payments** means ex gratia expenditure by the Grant Recipient to a third party where no legal obligations exist for the payment and/or other extra-contractual expenditure. Special Payments may include, but is not limited to, out-of-court settlements, compensation or additional;

**State Aid Law** means the law embodied in Articles 107- 109 of the Treaty on the Functioning of the European Union and any related legislation adopted by the Council, European Parliament and/or the Commission (including implementing legislation) decisions and communications to the extent it applied or continues to apply at any time in the United Kingdom;

**Third Party** means any person or organisation other than the Grant Recipient or the Authority;

**Trade and Cooperation Agreement** means the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (as that agreement is modified or supplemented from time to time in accordance with any provision of it or of any other future relationship agreement);

**Unspent Monies** means any monies paid to the Grant Recipient in advance of its Eligible Expenditure, which remains unspent and uncommitted at the end of the Financial Year, the Funding Period or because of termination or breach of these Conditions;

**VAT** means value added tax chargeable in the UK;

**Working Day** means any day from Monday to Friday (inclusive) which is not specified or proclaimed as a bank holiday in England and Wales pursuant to section 1 of the Banking and Financial Dealings Act 1971 including Christmas Day and Good Friday.

2.2. In these Conditions, unless the context otherwise requires:

- (1) the singular includes the plural and vice versa;
- (2) reference to a gender includes the other gender and the neuter;
- (3) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
- (4) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (5) any reference in these Conditions which immediately before IP Completion Day was a reference to (as it has effect from time to time):
  - (i) any EU regulation, EU decision, EU tertiary legislation or provision of the European Economic Area (“**EEA**”) agreement (“**EU References**”) which forms part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
  - (ii) any EU institution or EU authority or other such EU body shall be read on and after IP Completion Day as a reference to the UK institution, authority or body to which its functions were transferred;

- (6) 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";
- (7) 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;
- (8) 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 the Grant Funding Agreement;
- (9) references to "paragraphs" and "Annexes" are, unless otherwise provided, references to the paragraphs and annexes of these Conditions 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
- (10) the headings in these Conditions are for ease of reference only and will not affect the interpretation or construction of these Conditions.

2.3. Where there is any conflict between the documents that make up this Grant Funding Agreement the conflict shall be resolved in accordance with the following order of precedence:

- 2.3.1. the Conditions set out within this Grant Funding Agreement;
- 2.3.2. Schedule 1 – The Authority's Grant Funding Letter;

## CONDITIONS

### 3. DURATION AND PURPOSE OF THE GRANT

- 3.1. The Funding Period starts on [ ] (the **Commencement Date**) and ends on 31<sup>st</sup> March 2025 unless terminated earlier in accordance with this Grant Funding Agreement.
- 3.2. The Grant Recipient will ensure that the Funded Activities start on [xx Month 20xx] but where this has not been possible, that they start no later than 3 months after the Commencement Date.
- 3.3. The Grant Recipient shall use the Grant solely for the delivery of the Funded Activities. The Grant Recipient may not make any changes to the Funded Activities.
- 3.4. If the Authority wants to make a change to the Funded Activities (including for example reducing the Grant or removing some of the Funded Activities from the Grant) it may do so on 3 months written notice to the Grant Recipient.

### 4. PAYMENT OF GRANT

- 4.1. Subject to the remainder of this paragraph 4 the Authority shall pay the Grant Recipient an amount not exceeding [total grant funding amount]. The Authority shall pay the Grant in pound sterling (GBP).

- 4.2. The Grant Recipient must complete and sign the Confirmation of Bank Details and Signatories (Annex 4) as part of their acceptance of the Grant. No payment can be made in advance of receipt of a correctly completed and signed form.
- 4.3. The signatory must be the chief finance officer or someone with proper delegated authority. Any change of bank details must be notified immediately on the same form and signed by an approved signatory. Any change of signatory must be notified to the Authority for approval, as soon as known.
- 4.4. The Grant represents the Maximum Sum the Authority will pay to the Grant Recipient under the Funding Agreement. The Maximum Sum will not be increased in the event of any overspend by the Grant Recipient in its delivery of the Funded Activities. The Grant Recipient agrees that the Maximum Sum is the amount agreed as the GBP value, at the Commencement Date.
- 4.5. The Authority will only pay the Grant to the Grant Recipient in respect of Eligible Expenditure incurred by the Grant Recipient to deliver the Funded Activities. The Authority will not pay the Grant until it is satisfied that the Grant Recipient has paid for the Funded Activities in full and the Funded Activities have been delivered during the Funding Period.
- 4.6. The Grant Recipient will provide the Authority with evidence of the costs/payments, which are classified as Eligible Expenditure in paragraph 5.2, which may include (but will not be limited to) receipts and invoices or any other documentary evidence specified by the Authority.
- 4.7. The Grant Recipient shall declare to the Authority any Match Funding which been approved or received, before the Commencement Date. If the Grant Recipient intends to apply for, is offered or receives any further Match Funding during the Funding Period, the Grant Recipient shall notify the Authority before accepting or using any such Match Funding. On notifying the Authority of the Match Funding the Grant Recipient shall confirm the amount, purpose and source of the Match Funding and the Authority shall confirm whether it is agreeable to the Grant Recipient accepting the Match Funding. If the Authority does not agree to the use of Match Funding the Authority shall be entitled to terminate the Grant Funding Agreement in accordance with paragraph 26.1.9 and where applicable, require all or part of the Grant to be repaid.
- 4.8. Where the use of Match Funding is permitted the Grant Recipient shall set out any Match Funding it receives in the format required by Annex 3 and send that to the Authority. This is so the Authority knows the total funding the Grant Recipient has received for the Funded Activities.
- 4.9. The Grant Recipient agrees that:
  - 4.9.1. it will not apply for, or obtain, Duplicate Funding in respect of any part of the Funded Activities which have been paid for in full using the Grant;
  - 4.9.2. the Authority may refer the Grant Recipient to the police should it dishonestly and intentionally obtain Duplicate Funding for the Funded Activities;
  - 4.9.3. The Authority will not make the first payment of the Grant and/or any subsequent payments of the Grant unless or until, the Authority is satisfied that:
    - (i) the Grant will be used for Eligible Expenditure only; and
    - (ii) if applicable, any previous Grant payments have been used for the Funded Activities or, where there are Unspent Monies, have been repaid to the Authority.
- 4.10. The Grant Recipient shall submit by the **tenth** Working Day of the month following the end of the relevant Instalment Period the Grant Claim together with a copy of Annex 5 of these

Conditions (Eligible Expenditure) and any other documentation as prescribed by the Authority, from time to time.

- 4.11. Unless otherwise stated in these Conditions, payment of the Grant will be made within 30 days of the Authority approving the Grant Recipient's Grant Claim.
- 4.12. 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.
- 4.13. The Authority reserves the right not to pay any Grant Claims, which are not submitted within the period set out in paragraph 4.10 or Grant Claims, which are incomplete, incorrect or submitted without the full supporting documentation.
- 4.14. The Grant Recipient shall promptly notify and repay immediately to the Authority any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where the Grant Recipient is paid in error before it has complied with its obligations under the Grant Funding Agreement. Any sum, which falls due under this paragraph 4.14, shall fall due immediately. If the Grant Recipient fails to repay the due sum immediately the sum will be recoverable summarily as a civil debt.
- 4.15. 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 paying that Third Party. The Authority has no responsibility for paying Third Party invoices.
- 4.16. Onward payment of the Grant and the use of sub-contractors shall not relieve the Grant Recipient of any of its obligations under the Grant Funding Agreement, including any obligation to repay the Grant.
- 4.17. The Grant Recipient may not retain any Unspent Monies without the Authority's prior written permission.
- 4.18. If at the end of the relevant Financial Year there are Unspent Monies, the Grant Recipient shall repay such Unspent Monies to the Authority no later than 30 days of the Authority's request for repayment.

## **5. ELIGIBLE AND INELIGIBLE EXPENDITURE**

- 5.1. The Authority will only pay to the Grant in respect of Eligible Expenditure incurred by the Grant Recipient to deliver the Funded Activities and the Grant Recipient will use the Grant solely for delivery of the Funded Activities (as set out in Annex 2 of these Conditions).
- 5.2. The following costs/payments will be classified as Eligible Expenditure if incurred for the purposes of the Funded Activities:
  - 5.2.1. Fees charged or to be charged to the Grant Recipient by the external auditors/accountants for reporting/certifying that the grant paid was applied for its intended purposes.
  - 5.2.2. giving evidence to Parliamentary Select Committees;
  - 5.2.3. attending meetings with government ministers or civil servants to discuss the progress of a taxpayer funded grant scheme;
  - 5.2.4. responding to public consultations, where the topic is relevant to the objectives of the Funded Activities. To avoid doubt, Eligible Expenditure does not include the Grant

Recipient spending the Grant on lobbying other people to respond to any such consultation (unless explicitly permitted in the Grant Funding Agreement);

5.2.5. providing independent, evidence based policy recommendations to local government, departments or government ministers, where that is the objective of a taxpayer funded grant scheme, for example, 'What Works Centres'; and

5.2.6. providing independent evidence based advice to local or national government as part of the general policy debate, where that is in line with the objectives of the Grant.

5.3. The Grant Recipient may not in any circumstance claim the following non-exhaustive list as Eligible Expenditure: The list below does not override activities which are deemed eligible in these Conditions:

5.3.1. Paid for lobbying, which means using the Grant to fund lobbying (via an external firm or in-house staff) in order to undertake activities intended to influence or attempt to influence Parliament, government or political activity; or attempting to influence legislative or regulatory action;

5.3.2. using the Grant to directly enable one part of government to challenge another on topics unrelated to the agreed purpose of the grant;

5.3.3. using the Grant to petition for additional funding;

5.3.4. expenses such as for entertaining, specifically aimed at exerting undue influence to change government policy;

5.3.5. input VAT reclaimable by the grant recipient from HMRC;;

5.3.6. payments for activities of a political or exclusively religious nature;

5.4. Other examples of expenditure, which are prohibited, include the following:

5.4.1. contributions in kind;

5.4.2. interest payments or service charge payments for finance leases;

5.4.3. gifts;

5.4.4. statutory fines, criminal fines or penalties civil penalties, damages or any associated legal costs;

5.4.5. payments for works or activities which the grant recipient, or any member of their Partnership has a statutory duty to undertake, or that are fully funded by other sources;

5.4.6. bad debts to related parties;

5.4.7. payments for unfair dismissal or other compensation;

5.4.8. depreciation, amortisation or impairment of assets owned by the Grant Recipient ;

5.4.9. the acquisition or improvement of Assets by the Grant Recipient (unless the Grant is explicitly for capital use – this will be stipulated in the Grant Funding Letter); and

5.4.10. liabilities incurred before the commencement of the Grant Funding Agreement unless agreed in writing by the Authority.

## **6. ANNUAL GRANT REVIEW**

6.1. The Authority will review the Grant annually. The Authority will take into account the Grant Recipient's delivery of the Funded Activities against the agreed outputs set out in Annex 6 of these Conditions by the Grant Recipient in accordance with paragraph 7.2 of these Conditions.

- 6.2. Each annual review may result in the Authority deciding that (for example a non-exclusive list includes):
- 6.2.1. the Funded Activities and the Grant Funding Agreement should continue in line with existing plans;
  - 6.2.2. there should be an increase or decrease in the Grant for the subsequent Financial Year;
  - 6.2.3. the outputs should be re-defined and agreed;
  - 6.2.4. the Grant Recipient should provide the Authority with a draft Remedial Action Plan setting out the steps the Grant Recipient will take to improve delivery of the Funded Activities;
  - 6.2.5. the Authority should recover any Unspent Monies;
  - 6.2.6. the Grant be terminated in accordance with paragraph 26.11 of these Conditions.
- 6.3. If the Grant Recipient is required to submit a draft Remedial Action Plan in accordance with paragraph 6.2.4 the Remedial Action Plan process set out in paragraph 26.4 to 26.10 shall apply.
- 6.4. The Grant Recipient may make representations to the Authority regarding the Authority's decision made in accordance with paragraph 6.2. The Authority is not however obliged to take such representations into account when making its decision as any such decision will be final and at the Authority's absolute discretion.

## **7. MONITORING AND REPORTING**

- 7.1. The Grant Recipient shall closely monitor the delivery and success of the Funded Activities throughout the Funding Period to ensure that the aims and objectives of the Funded Activities are achieved.
- 7.2. The Grant Recipient shall provide the Authority with all reasonable assistance and co-operation in relation to any ad-hoc information, explanations and documents as the Authority may require, from time to time, so the Authority may establish if the Grant Recipient has used the Grant in accordance with the Grant Funding Agreement.
- 7.3. The Grant Recipient shall also provide the Authority with annual report and quarterly reports to be determined by the Authority on:
- 7.3.1. the progress made towards achieving the agreed outputs and the defined longer term outcomes set out in Annex 6 of these Conditions. Where possible, the report will quantify what has been achieved by reference to the Funded Activities' targets; and
  - 7.3.2. if relevant, provide details of any Assets either acquired or improved using the Grant.
- 7.4. The Grant Recipient will permit any person authorised by the Authority reasonable access, with or without notice, to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Grant Recipient's fulfilment of its obligations under the Grant Funding Agreement and will, if so required, provide appropriate oral or written explanations to such authorised persons as required during the Funding Period.

- 7.5. The Grant Recipient will record in its financial reports the amount of Match Funding it receives together with details of what it has used that Match Funding for.
- 7.6. The Grant Recipient will notify the Authority as soon as reasonably practicable of:
- 7.6.1. any actual or potential failure to comply with any of its obligations under the Grant Funding Agreement, which includes those caused by any administrative, financial or managerial difficulties; and
  - 7.6.2. actual or potential variations to the Eligible Expenditure set out in Annex 5 of these Conditions and/or any event which materially affects the continued accuracy of such information.
- 7.7. The Grant Recipient represents and undertakes (and shall repeat such representations on delivery of its annual and quarterly reports):
- 7.7.1. that the reports and information it gives pursuant to this paragraph 7 are accurate;
  - 7.7.2. that it has diligently made full and proper enquiry of the matter pertaining to the reports and information given; and
  - 7.7.3. that any data it provided pursuant to an application for the Grant may be shared within the powers conferred by legislation with other organisations for the purpose of preventing or detecting crime.

## **8. AUDITING AND ASSURANCE**

- 8.1. Within six months of the end of each Financial Year the Grant Recipient will provide the Authority with independent assurance that the Grant has been used for delivery of the Funded Activities. To satisfy this requirement the Grant Recipient will provide annual accounts audited by an independent and appropriately qualified auditor where the Grant is clearly segregated from other funds.
- 8.2. The Authority may, at any time during and up to seven years after the end of the Grant Funding Agreement, conduct additional audits or ascertain additional information where the Authority considers it necessary. The Grant Recipient agrees to grant the Authority or its Representatives access, as required, to all Funded Activities sites and relevant records. The Grant Recipient will ensure that necessary information and access rights are explicitly included within all arrangements with sub-contractors.
- 8.3. If the Authority requires further information, explanations and documents, in order for the Authority to establish that the Grant has been used properly in accordance with the Grant Funding Agreement, the Grant Recipient will, within 5 Working Days of a request by the Authority, provide the Authority, free of charge, with the requested information.
- 8.4. The Grant Recipient shall:
- 8.4.1. nominate an independent auditor to verify the final statement of expenditure and income submitted to the Authority;
  - 8.4.2. identify separately the value and purpose of the Grant Funding in its audited accounts and its annual report; and
  - 8.4.3. maintain a record of internal financial controls and procedures and provide the Authority with a copy if requested.
- 8.5. The Grant Recipient shall retain all invoices, receipts, accounting records and any other documentation (including but not limited to, correspondence) relating to the Eligible Expenditure;

income generated by the Funded Activities during the Funding Period for a period of **[x]** years from the date on which the Funding Period ends.

- 8.6. The Grant Recipient shall ensure that all its sub-contractors retain each record, item of data and document relating to the Funded Activities for a period of **[x]** years from the date on which the Funding Period ends.
- 8.7. The Grant Recipient will promptly provide revised forecasts of income and expenditure:
  - 8.7.1. when these forecasts increase or decrease by more than **[x]** % of the original expenditure forecasts; and/or
  - 8.7.2. at the request of the Authority.

## **9. FINANCIAL MANAGEMENT AND PREVENTION OF BRIBERY, CORRUPTION, FRAUD AND OTHER IRREGULARITY**

- 9.1. 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.
- 9.2. The Grant Recipient must have a sound administration and audit process, including internal financial controls to safeguard against fraud, theft, money laundering, counter terrorist financing or any other impropriety, or mismanagement in connection with the administration of the Grant. The Grant Recipient shall require that the internal/external auditors report on the adequacy or otherwise of that system.
- 9.3. 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 Grant Recipient shall explain to the Authority what steps are being taken to investigate the irregularity and shall keep the Authority informed about the progress of any such investigation. The Authority may however request that the matter referred (which the Grant Recipient is obliged to carry out) to external auditors or other Third Party as required.
- 9.4. The Authority will have the right, at its absolute discretion, to insist that the Grant Recipient address any actual or suspected fraud, theft or other financial irregularity and/or to suspend future payment of the Grant to the Grant Recipient. Any grounds for suspecting financial irregularity includes what the Grant Recipient, acting with due care, should have suspected as well as what it actually proven.
- 9.5. The Grant Recipient agrees and accepts that it may become ineligible for Grant support and may be required to repay all or part of the Grant if it engages in tax evasion or aggressive tax avoidance in the opinion of Her Majesty's Revenue and Customs.
- 9.6. For the purposes of paragraph 9.4 "financial irregularity" includes (but is not limited to) potential fraud or other impropriety, mismanagement, and the use of the Grant for any purpose other than those stipulated in the Grant Funding Agreement. The Grant Recipient may be required to provide statements and evidence to the Authority or the appropriate organisation as part of pursuing sanctions, criminal or civil proceedings.

## **10. CONFLICTS OF INTEREST**

- 10.1. Neither the Grant Recipient nor its Representatives shall engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to the Grant Funding Agreement.

- 10.2. The Grant Recipient must have and will keep in place adequate procedures to manage and monitor any actual or perceived bias or conflicts of interest.

## **11. CONFIDENTIALITY**

- 11.1. Except to the extent set out in this paragraph 11 or where disclosure is expressly permitted, the Grant Recipient shall treat all Confidential Information belonging to the Authority as confidential and shall not disclose any Confidential Information belonging to the Authority to any other person without the prior written consent of the Authority, except to such persons who are directly involved in the provision of the Funded Activities and who need to know the information.
- 11.2. The Grant Recipient gives its consent for the Authority to publish the Grant Funding Agreement in any medium in its entirety (but with any information which is Confidential Information belonging to the Authority or the Grant Recipient redacted), including from time to time agreed changes to the Grant Funding Agreement.
- 11.3. Nothing in this paragraph 11 shall prevent the Authority disclosing any Confidential Information obtained from the Grant Recipient:
- 11.3.1. for the purpose of the examination and certification of the Authority's accounts; or pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
  - 11.3.2. to any government department, consultant, contractor or other person engaged by the Authority, provided that in disclosing information under the Authority only discloses the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate;
  - 11.3.3. where disclosure is required by Law, including under the Information Acts.
- 11.4. Nothing in this paragraph 11 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under the Grant Funding Agreement in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.

## **12. TRANSPARENCY**

- 12.1. 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 Grant Funding Agreement is not confidential.

## **13. STATUTORY DUTIES**

- 13.1. The Grant Recipient agrees to adhere to its obligations under the Law including but not limited to the Information Acts and the HRA.
- 13.2. Where requested by the Authority, the Grant Recipient will provide reasonable assistance and cooperation to enable the Authority to comply with its information disclosure obligations under the Information Acts.
- 13.3. 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.

- 13.4. The Grant Recipient acknowledges that the Authority, acting in accordance with the codes of practice issued and revised from time to time under the Information Acts, may disclose information concerning the Grant Recipient and the Grant Funding Agreement without consulting the Grant Recipient.
- 13.5. 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. Notwithstanding any other provision in the Grant Funding 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.

## **14. DATA PROTECTION AND PUBLIC PROCUREMENT**

### **Data Protection**

- 14.1. The Grant Recipient and the Authority will comply at all times with its respective obligations under Data Protection Legislation.
- 14.2. The Parties agree that for the purposes of the Data Protection Legislation the Grant Recipient is a **Joint Controller and the Authority is a Joint Controller** unless otherwise specified in Annex 8 of these Conditions.
- 14.3. The only processing that a Processor is authorised to do under this Grant Funding Agreement will be determined by the Controller and is set out in Annex 8 of these Conditions.
- 14.4. The Grant Recipient agrees that it is the Controller of any Personal Data processed by it pursuant to the Funded Activities and shall comply with the provisions set out in this paragraph 14 and Part 3 of Annex 8.
- 14.5. To the extent that the Grant Recipient and the Authority share any Personal Data for the purposes of this Grant Funding Agreement, the Parties accept that they are each a separate independent Controller in respect of such Personal Data. Each Party:
- (i) shall comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data;
  - (ii) will be individually and separately responsible for its own compliance; and
  - (iii) do not and will not Process any Personal Data as Joint Controllers.
- 14.6. Each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.

### **Public Procurement**

- 14.7. 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 the procurement of goods or services funded by the Grant.
- 14.8. Where the Grant Recipient is a Contracting Authority within the meaning of the Procurement Regulations the Grant Recipient will comply, as necessary, with the Procurement Regulations

when procuring goods and services in connection with the Grant Funding Agreement and the Authority shall not be liable for the Grant Recipient's failure to comply with its obligations under the Procurement Regulations.

## **15. SUBSIDY CONTROL**

- 15.1. The Grant Recipient will ensure that delivery of the Funded Activities does not put the Authority in breach of the UK's international obligations in respect of subsidies.
- 15.2. The Grant Recipient will maintain appropriate records of compliance with the relevant subsidy control regime and will take all reasonable steps to assist the Authority to comply with the same and respond to any proceedings or investigation(s) into the Funded Activities by any relevant court or tribunal of relevant jurisdiction or regulatory body.
- 15.3. The Grant Recipient acknowledges and represents that the Grant is being awarded on the basis that the Funded Activities being undertaken using the Grant do not affect trade in goods and wholesale electricity between Northern Ireland and the European Union and shall ensure that the Grant is not used in way that affects any such trade.
- 15.4. The Grant Recipient acknowledges and accepts that the Grant is awarded on the basis that it is in accordance with the subsidy control provisions of the EU-UK Trade Agreement and any Domestic Law which replaces State Aid Law following the UK's exit from the European Union and on the basis that the Funded Activities meet the conditions set out in Annex 9.

## **16. INTELLECTUAL PROPERTY RIGHTS**

- 16.1. Intellectual Property in all IPR Material will be the property of the Grant Recipient. Other than as expressly set out in these Conditions, neither Party 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.
- 16.2. The Grant Recipient grants to the Authority a non-exclusive irrevocable and royalty-free, sub-licensable, worldwide licence to use all public reports from the Funded Activities, for the purpose of supporting other projects.
- 16.3. Consistent with the good management of Intellectual Property Rights and the continued agreement of the Authority, the Grant Recipient shall use its best endeavours to:
  - 16.3.1. promote the dissemination of the IPR Materials; and
  - 16.3.2. once the Grant Recipient has performed the Funded Activities to the satisfaction of the Authority, Commercially Exploit any IPR Material to generate either capital or revenue or both.
- 16.4. If, within five years of its creation, any IPR Material has not been commercially exploited by the Grant Recipient, the Grant Recipient shall, if requested by the Authority, assign the IPR Material to the Authority, at no cost.
- 16.5. The Grant Recipient shall not transfer ownership of the IPR Material without the consent of the Authority.

- 16.6. If, within five years of its creation, any IPR Material has not been commercially exploited by the Grant Recipient, the Authority may, at its absolute discretion, require the Grant Recipient to provide a non-exclusive irrevocable and royalty-free, sub-licensable, worldwide licence of the IPR Material to third parties nominated by the Authority. Should the Authority choose to exercise its discretion under this clause, it will notify the Grant Recipient in accordance with clause 3.
- 16.7. The Grant Recipient grants to the Authority a non-exclusive irrevocable and royalty-free, sub-licensable, worldwide licence to use all the IPR Material for the purpose of supporting the Funded Activities and other projects.
- 16.8. Ownership of Third Party software or other IPR necessary to deliver Funded Activities will remain with the relevant Third Party.
- 16.9. The Grant Recipient must ensure that they have obtained the relevant agreement from the Third Party proprietor 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 be responsible for obtaining and maintaining all appropriate licences to use the Third Party software.

## **17. ENVIRONMENTAL REQUIREMENTS**

- 17.1. The Grant Recipient shall perform the Funded Activities in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 17.2. The Grant Recipient shall pay due regard to the use of recycled products, so long as they are not detrimental to the provision of the Funded Activities or the environment, to include the use of all packaging, which should be capable of recovery for re-use or recycling.
- 17.3. The Grant Recipient shall take all possible precautions to ensure that any equipment and materials used in the provision of the Funded Activities do not contain chlorofluorocarbons, halons or any other damaging substances, unless unavoidable, in which case the Authority shall be notified in advance of their use. The Grant Recipient shall endeavour to reduce fuel emissions wherever possible.

## **18. ASSETS**

### **Inventory of the Assets**

- 18.1. The Grant Recipient [shall agree in advance with the Authority any plans to purchase or improve any Fixed Assets at a cumulative cost exceeding [ £10,000 and must keep a register of all Fixed Assets and Major Assets acquired or improved at a cost exceeding£ 10,000, wholly or partly using the Grant provided under the Grant Funding Agreement. Where the cost of purchasing or improving the Fixed Assets and Major Assets is less than £ 10,000 authorisation is not required, but the Asset should be recorded on the fixed asset register.
- 18.2. Assets purchased with Grant funding must only be used for delivery of the Funded Activities.
- 18.3. For each entry in the register the following particulars must be shown where appropriate:
  - 18.3.1. date of acquisition or improvement;

- 18.3.2. description of the Asset;
  - 18.3.3. cost, net of recoverable VAT;
  - 18.3.4. location of the Asset;
  - 18.3.5. serial or identification numbers;
  - 18.3.6. location of the title deeds;
  - 18.3.7. date of any Disposal;
  - 18.3.8. depreciation/amortisation policy applied;
  - 18.3.9. proceeds of any Disposal net of VAT; and
  - 18.3.10. the identity of any person to whom the Asset has been transferred or sold.
- 18.4. The Authority reserves the right to require the Grant Recipient to maintain the above particulars as set out in 18.3.1-18.3.10 for any additional items which the Authority considers material to the overall Grant.

#### **Disposal of Asset**

- 18.5. Where the Grant Recipient uses any of the Grant to develop, improve or purchase any Assets, the Grant Recipient must ensure that the Assets are maintained in good condition over the Asset Owing Period.
- 18.6. Assets purchased or improved using the Grant shall be owned by the Authority until ownership is transferred disposed or is otherwise agreed in writing by the Authority. The Authority reserves the right to determine the outcome of any Asset created as a result of the Funded Activities or purchased with the Grant.
- 18.7. The Grant Recipient must not dispose of any Assets that have been totally or partly bought, restored, conserved (maintained or protected from damage) or improved with the Grant without the prior written consent of the Authority. If the Authority grants consent to the Disposal, such consent may be subject to satisfaction of certain conditions, to be determined by the Authority.
- 18.8. If the Grant Recipient disposes of any Asset without the prior written consent of the Authority, the Grant Recipient must use all reasonable endeavours to achieve the market price for the Assets and must pay to the Authority a proportion of the proceeds of such sale, equivalent to the proportion of the purchase or development costs of the Assets that was funded by the Grant, provided that the Authority may at its discretion allow the Grant Recipient to keep all or a part of the relevant proceeds where:
- 18.8.1. the sale of the Assets takes place after the end of the Asset Owing Period;
  - 18.8.2. the proceeds of sale are to be applied directly to the purchase by the Grant Recipient of assets that are equivalent to or replacements for the Assets; or
  - 18.8.3. the Authority is otherwise satisfied that the Recipient will apply those proceeds for purposes related to the Funded Activities.
- 18.9. The Grant Recipient shall hold the proceeds from the Disposal of any Asset on trust for the Authority.

## **Charging of any Asset**

- 18.10. The Grant Recipient shall not create any charge, legal mortgage, debenture or lien over any Asset without the prior written consent of the Authority.

## **19. INSURANCE**

- 19.1. The Grant Recipient will during the term of the Funding Period and for and for as long as it reasonably considers necessary following termination or expiry of these Conditions, ensure that it has and maintains, at all times adequate insurance with an insurer of good repute to cover claims under the Grant Funding 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 the Funded Activities or the Grant Funding Agreement.
- 19.2. 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.

## **20. ASSIGNMENT**

- 20.1. The Grant Recipient will not transfer, assign, novate or otherwise dispose of the whole or any part of the Grant Funding Agreement or any rights under it, to another organisation or individual, without the Authority's prior approval.
- 20.2. Any approval given by the Authority will be subject to a condition that the Grant Recipient has first entered into a Grant Funding Agreement, authorised by the Authority, requiring the Grant Recipient to work with another organisation in delivering the Funded Activities.

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

- 21.1. The Grant Recipient must seek permission from the Authority prior to any proposed expenditure on advertising, communications, consultancy or marketing either in connection with, or using the Grant.
- 21.2. The Grant Recipient should provide evidence that any marketing, advertising, communications and consultancy expenditure carried out in connection with, or using the Grant will deliver measurable outcomes that meet government objective to secure value for money.

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

- 22.1. The Grant Recipient must obtain prior written consent from the Authority before:
- 22.1.1. writing off any debts or liabilities;
  - 22.1.2. offering to make any Special Payments; and
  - 22.1.3. giving any gifts,
- in connection with this Grant Funding Agreement.
- 22.2. The Grant Recipient will keep a record of all gifts, both given and received, in connection with the Grant or any Funded Activities.

## **23. BORROWING**

- 23.1. In accordance with paragraph 17.10 and this 22, the Grant Recipient must obtain prior written consent from the Authority before:
- 23.1.1. borrowing or lending money from any source in connection with the Grant Funding Agreement; and
  - 23.1.2. giving any guarantee, indemnities or letters of comfort that relate to the Grant Funding Agreement, or have any impact on the Grant Recipient's ability to deliver the Funded Activities set out in the Grant Funding Agreement.

## **24. PUBLICITY**

- 24.1. The Grant Recipient gives consents to the Authority to publicise in the press or any other medium the Grant and details of the Funded Activities using any information gathered from the Grant Recipient's initial Grant application or any monitoring reports submitted to the Authority in accordance with paragraph 7.2 of these Conditions.
- 24.2. The Grant Recipient will comply with all reasonable requests from the Authority to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Authority in its promotional and fundraising activities relating to the Funded Activities.
- 24.3. The Authority consents to the Grant Recipient carrying out any reasonable publicity about the Grant and the Funded Activities as required, from time to time.
- 24.4. Any publicity material for the Funded Activities must refer to the programme under which the Grant was awarded and must feature the Authority's logo. If a Third Party wishes to use the Authority's logo, the Grant Recipient must first seek permission from the Authority.
- 24.5. The Grant Recipient will acknowledge the support of the Authority in any materials that refer to the Funded Activities and in any written or spoken public presentations about the Funded Activities. Such acknowledgements (where appropriate or as requested by the Authority) will include the Authority's name and logo (or any future name or logo adopted by the Authority) using the templates provided by the Authority from time to time.
- 24.6. 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.

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

- 25.1. The Authority will notify the Grant Recipient of any changes to their activities, which are supported by the Grant.
- 25.2. The Grant Recipient will accommodate any changes to the Authority's needs and requirements under these Conditions.

## **26. CLAWBACK, EVENTS OF DEFAULT, TERMINATION AND RIGHTS RESERVED FOR BREACH AND TERMINATION**

### **Events of Default**

- 26.1. The Authority may exercise its rights set out in paragraph 26.3 if any of the following events occur:

- 26.1.1. the Grant Recipient uses the Grant for a purpose other than the Funded Activities;
- 26.1.2. the Grant Recipient fails to comply with its obligations under the Grant Funding Agreement, which is material in the opinion of the Authority;
- 26.1.3. where delivery of the Funded Activities do not start within three (3) months of the Commencement Date and the Grant Recipient fails to provide the Authority with a satisfactory explanation for the delay, or failed to agree a new date on which the Funded Activities shall start with the Authority;
- 26.1.4. the Grant Recipient uses the Grant for Ineligible Expenditure;
- 26.1.5. the Grant Recipient fails, in the Authority's opinion, to make satisfactory progress with the Funded Activities and in particular, with meeting the Agreed Outputs set out in Annex 6 of these Conditions;
- 26.1.6. the Grant Recipient fails to:
- (i) submit an adequate Remedial Action Plan to the Authority following a request by the Authority pursuant to paragraph 26.3.4 or paragraph 6.2.4; or
  - (ii) improve delivery of the Funded Activities in accordance with the Remedial Action Plan approved by the Authority;
- 26.1.7. the Grant Recipient is, in the 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);
- 26.1.8. the Grant Recipient fails to declare Duplicate Funding;
- 26.1.9. the Grant Recipient fails to declare any Match Funding in accordance with paragraph 4.7;
- 26.1.10. the Grant Recipient receives funding from a Third Party which, in the opinion of the Authority, undertakes activities that are likely to bring the reputation of the Funded Activities or the Authority into disrepute;
- 26.1.11. the Grant Recipient provides the Authority with any materially misleading or inaccurate information and/or any of the information provided in their grant application or in any subsequent supporting correspondence is found to be incorrect or incomplete to an extent which the Authority considers to be significant;
- 26.1.12. the Grant Recipient commits or has committed a Prohibited Act or fails to report a Prohibited Act to the Authority, whether committed by the Grant Recipient, its Representatives or a Third Party, as soon as they become aware of it;
- 26.1.13. the Authority determines (acting reasonably) that the Grant Recipient or any of its Representatives has:
- (i) acted dishonestly or negligently at any time during the term of the Grant Funding 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. Actions include omissions in this context;

- (iii) transferred, assigns or novates the Grant to any Third Party without the Authority's consent;
- (iv) failed to act in accordance with the Law; howsoever arising, including incurring expenditure on unlawful activities;

26.1.14. 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);

26.1.15. the Grant Recipient becomes insolvent as defined by section 123 of the Insolvency Act 1986, 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;

26.1.16. the European Commission or the Court of Justice of the European Union requires any Grant paid to be recovered by reason of a breach of State Aid Law through its application under Article 10 of the Northern Ireland Protocol.

26.1.17. a court, tribunal or independent body or authority of competent jurisdiction requires any Grant paid to be recovered by reason of breach of the UK's obligations under the Trade and Cooperation Agreement or the terms of any UK subsidy control legislation;

26.1.18. The Grant Recipient breaches the Code of Conduct and/or fails to report an actual or suspected breach of the Code of Conduct by the Grant Recipient or its Representatives in accordance with paragraph 31.2;

26.1.19. The Grant Recipient undergoes a Change of Control which the Authority, acting reasonably, considers:

26.1.20. will be materially detrimental to the Funded Activities and/or;

26.1.21. 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;

26.1.22. the Authority believes that the Change of Control would raise national security concerns and/or;

26.1.23. the new body corporate intends to make fundamental change(s) to the purpose for which the Grant was given.

26.2. Where, the Authority determines that an Event of Default has or may have occurred, the Authority shall notify the Grant Recipient to that effect in writing, setting out any relevant details, of the failure to comply with these Conditions or pertaining the Event of Default, and details of any action that the Authority intends to take or has taken.

### **Rights reserved for the Authority in relation to an Event of Default**

26.3. Where, the Authority determines that an Event of Default has or may have occurred, the Authority shall take any one or more of the following actions:

26.3.1. suspend or terminate the payment of Grant for such period as the Authority shall determine; and/or

26.3.2. reduce the Maximum Sum in which case the payment of Grant shall thereafter be made in accordance with the reduction and notified to the Grant Recipient; and/or

- 26.3.3. require the Grant Recipient to repay the Authority the whole or any part of the amount of Grant previously paid to the Grant Recipient. Such sums shall be recovered as a civil debt; and/or
- 26.3.4. give the Grant Recipient an opportunity to remedy the Event of Default (if remediable) in accordance with the procedure set out in paragraphs 26.4 to 26.10;
- 26.3.5. terminate the Grant Funding Agreement.

### **Opportunity for the Grant Recipient to remedy an Event of Default**

- 26.4. Where the Grant Recipient is provided with an opportunity to submit a draft Remedial Action Plan in accordance with paragraph 26.3.4, the draft Remedial Action Plan shall be submitted to the Authority for approval, within 5 Working Days of the Grant Recipient receiving notice from the Authority.
- 26.5. The draft Remedial Action Plan shall set out:
  - 26.5.1. full details of the Event of Default; and
  - 26.5.2. the steps which the Grant Recipient proposes to take to rectify the Event of Default including timescales.
- 26.6. On receipt of the draft Remedial Action Plan and as soon as reasonably practicable, the Authority will submit its comments on the draft Remedial Action Plan to the Grant Recipient.
- 26.7. The Authority shall have the right to accept or reject the draft Remedial Action Plan. If the Authority rejects the draft Remedial Action Plan, the Authority shall confirm, in writing, the reasons why they have rejected the draft Remedial Action Plan and will confirm whether the Grant Recipient is required to submit an amended Remedial Action Plan to the Authority.
- 26.8. If the Authority directs the Grant Recipient to submit an amended draft Remedial Action Plan, the Parties shall agree a timescale for the Grant Recipient to amend the draft Remedial Action Plan to take into account the Authority's comments.
- 26.9. If the Authority does not approve the draft Remedial Action Plan the Authority may, at its absolute discretion, terminate the Grant Funding Agreement.
- 26.10. The Authority shall not by reason of the occurrence of an Event of Default which is, in the opinion of the Authority, capable of remedy, exercise its rights under either paragraph 26.3.3 or 26.3.4 unless the Grant Recipient has failed to rectify the default to the reasonable satisfaction of the Authority.

### **General Termination rights – Termination for Convenience**

- 26.11. Notwithstanding the Authority's right to terminate the Grant Funding Agreement pursuant to paragraph 26.3.4 above, either Party may terminate the Grant Funding Agreement at any time by giving at least 3 months or written notice to the other Party.
- 26.12. If applicable, all Unspent Monies (other than those irrevocably committed in good faith before the date of termination, in line with the Grant Funding Agreement and approved by the Authority as being required to finalise the Funded Activities) shall be returned to the Authority within 30 days of the date of receipt of a written notice of termination from the Authority.
- 26.13. If the Authority terminates the Grant Funding Agreement in accordance with paragraph 26.11 the Authority may choose to 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 amount of reasonable costs payable will be determined solely by the Authority.

- 26.14. The Authority will not be liable to pay any of the Grant Recipient's costs or those of any contractor/supplier of the Grant Recipient related to any transfer or termination of employment of any employees engaged in the provision of the Funded Activities.

### **Change of Control**

- 26.15. 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, provided such notification does not contravene any Law.

- 26.16. The Grant Recipient shall ensure that any notification made pursuant to paragraph 26.15 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

- 26.17. Where the Grant Recipient has been awarded to a consortium and the Grant Recipient has entered into a collaboration agreement, the notification required under paragraph 26.15 shall include any changes to the consortium members as well as the lead Grant Recipient.

- 26.18. Following notification of a Change of Control the Authority shall be entitled to exercise its rights under paragraph 26.1 of these Conditions providing the Grant Recipient with notification of its proposed action in writing within three (3) months of:

- (i) being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or
- (ii) where no notification has been made, the date that the Authority becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

- 26.19. The Authority shall not be entitled to terminate where an approval was granted prior to the Change of Control.

### **27. EXIT PLAN**

- 27.1. Where the Authority requires the Grant Recipient to prepare an Exit Plan to allow the cessation or seamless transfer of the Funded Activities, the Grant Recipient shall prepare the Exit Plan within three (3) months of the signing of the Grant Funding Agreement and shall comply with the exit provisions set out in Annex 9 of these Conditions.

### **28. DISPUTE RESOLUTION**

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

- 28.2. All disputes and complaints (except for those which relate to the Authority's right to withhold funds or terminates the Grant Funding Agreement) shall be referred in the first instance to the Parties Representatives.

- 28.3. If the dispute cannot be resolved between the Parties Representatives within a maximum of three (3) months, then the matter will be escalated to formal meeting between the Grant Manager and the Grant Recipient's chief executive (or equivalent).

## **29. LIMITATION OF LIABILITY**

- 29.1. 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.
- 29.2. Subject to this paragraph 29, the Authority's liability under this Grant Funding Agreement is limited to the amount of Grant outstanding.

## **30. VAT**

- 30.1. If VAT is held to be chargeable in respect of the Grant Funding Agreement, all payments shall be deemed to be inclusive of all VAT and the Authority shall not be obliged to pay any additional amount by way of VAT.
- 30.2. All sums or other consideration payable to or provided by the Grant Recipient to the Authority at any time shall be deemed to be exclusive of all VAT payable and where any such sums become payable or due or other consideration is provided, the Grant Recipient shall at the same time or as the case may be on demand by HMRC in addition to such sums, or other consideration, pay to HMRC all the VAT so payable upon the receipt of a valid VAT invoice.

## **31. CODE OF CONDUCT FOR GRANT RECIPIENTS**

- 31.1. The Grant Recipients acknowledges that by signing the Grant Funding Agreement it agrees to take account of the Code of Conduct, which includes ensuring that its Representatives undertake their duties in a manner consistent with the principles set out in the Code of Conduct.
- 31.2. The Grant Recipient shall immediately notify the Authority if it becomes aware of any actual or suspected breaches of the principles outlined in the Code of Conduct.
- 31.3. The Grant Recipient acknowledges that a failure to notify the Authority of an actual or suspected breach of the Code of Conduct may result in the Authority immediately suspending the Grant funding, terminating the Grant Funding Agreement and taking action to recover some or all of the funds paid to the Grant Recipient as a civil debt in accordance with paragraph 26.1.18.

## **32. NOTICES**

- 32.1. All notices and other communications in relation to this Grant Funding Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, e-mailed, or mailed (first class postage prepaid) to the address of the relevant party, as referred to in Annex 7 or otherwise notified in writing. All notices and other communications must be marked for the attention of the contact specified in Annex 7 (Contact Details). If personally delivered or if e-mailed all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any Working Day they shall be deemed received on the next Working Day) and if mailed all such communications shall be deemed to have been given and received on the second Working Day following such mailing.

## **33. GOVERNING LAW**

33.1. These Conditions will be governed by and construed in accordance with the law of England and the Parties irrevocably submit to the exclusive jurisdiction of the English courts.

**SIGNED by:** .....  
**Signature**

**Matthew Bilson, Deputy  
Director for Strategy and  
Evaluation,  
for and on behalf of the  
Department of Business,  
Energy and Industrial  
Strategy.** .....  
**Title**  
.....  
**Date**

**SIGNED by** .....  
**Signature**

**[insert authorised  
signatory's  
name]** .....  
**Title**  
**for and on behalf of [insert  
name of Recipient]** .....  
**Date**

**ANNEX 1 – GRANT FUNDING LETTER AND GRANT APPLICATION  
PART A - GRANT FUNDING LETTER**

**[Include a copy of your Grant Funding Letter]**

**ANNEX 1**

**PART B – GRANT RECIPIENT'S [GRANT APPLICATION]**

**[Include the Grant Recipient's application here]**

## ANNEX 2 –THE FUNDED ACTIVITIES

**[Guidance: You need to set out here is sufficient detail what the purpose of the grant is so you can monitor if the grant money is being spent for that purpose or not. Make this description flexible enough so the Grant Recipient has some scope for operational flexibility and a degree of freedom in its decision-making (within the parameters of the Funded Activities). Remember though the Grant Recipient is required to gain the Authority's permission to amend the Funded Activities or to use the Grant for other purposes]**

1. **Background/purpose of the Grant**

1.1. Background **[guidance: set out here what the policy objective is together with how this will be met by the provision of the grant].**

1.2. **Aims and objectives of the Funded Activities**

**Guidance: set out here the aims and objective together with the outcomes and impacts resulting from the Funded Activities to demonstrate the need and benefit of the Grant**

2. **Funded Activities**

**[Guidance: set out here what the funded activities are. Include a project plan and any milestones you will be monitoring the delivery of the grant against. Make sure this section is consistent with the Grant Recipient's grant application.]**

## ANNEX 3 – PAYMENT SCHEDULE

**Guidance: You need to set out here how the department will pay the grant. For example, set out whether it will be a single block sum, or in instalments.**

**Consider if you are linking payment of the grant to specific project milestones or not. Make sure it corresponds to what you said about payment in the documents you issued when calling for grant applications.**

**Below is a suggested payment schedule which sets out the minimum level of information required to meet the grant standards. Amend it as you need to so that you have an accurate record of how and when the grant will be paid. The Cabinet Office Centre of Excellence also has a template payment schedule which Departments may wish to use instead. A copy of the schedule is available [here](#).**

**Departments must have regard to the HM Treasury guidance, *Managing Public Money*<sup>1</sup> and should only make payment of the grant on evidence of need or qualification, depending on the terms of the grant scheme.**

**Paragraph 4.3 of the Grant Funding Agreement requires the Grant Recipient to [declare any Match Funding before signing the Grant Funding Agreement /obtain prior written approval from the Authority before applying for/or accepting Match Funding].**

**All Match Funding must also be recorded in the Match Funding table below.**

INSTALMENT/ INSTALMENT PERIOD	GRANT SUM PAYABLE	PAYMENT MILESTONE (month and year)	DATE/
<b>Year 1</b>			
1 <sup>st</sup>			
2 <sup>nd</sup>			
3 <sup>rd</sup>			
4 <sup>th</sup>			
<b>Total for Year 1</b>			
<b>Year 2</b>			
1 <sup>st</sup>			
2 <sup>nd</sup>			
3 <sup>rd</sup>			
4 <sup>th</sup>			
<b>Total for Year 2</b>			
<b>Funding retained from previous year(s)</b>			
<b>Total for Grant</b>			

<sup>1</sup> <https://www.gov.uk/government/publications/managing-public-money>

**Approved Match Funding**

<b>GRANT FUNDING PERIOD</b>	<b>TOTAL MATCH FUNDING RECEIVED</b>	<b>MATCH FUNDING PAYMENT DATE</b>
Year 1		
Year 2		
Year 3		



**Part 4: Authorised signatories**

The names and specimen signatures of people authorised to sign claim forms on behalf of the person who signed the Grant Funding Agreement are shown below. These signatures are binding on this organisation in respect of the Agreement.

Name		Name	
Position in the organisation		Position in the organisation	
Signature		Signature	
Date		Date	

**Part 5: Grant recipient declaration**

To be completed by the person who signed the Grant Letter/ Grant Funding Agreement

- I certify that the information given on this form is correct.
- I agree that following discussions, any overpayments can be automatically recovered from future payments.

Name	Signature ( <i>the person who signed the agreement</i> )
Date	

Return this form to the address indicated in the Grant Letter, alongside a signed Grant Funding Agreement.

**General Data Protection Regulation (2018):** The information on this form will be recorded on the Authority's computer system. The information provided will be used for paying your fees and will not be passed to anyone outside of the Authority without the permission of the Grant Recipient.



## ANNEX 6 – AGREED OUTPUTS AND LONG TERM OUTCOMES

**[Guidance: In accordance Grant Standard 8 all government grants must have outputs agreed and longer-term outcomes defined, wherever possible, to enable active performance management, including regular reviews and adjustments where deemed necessary. You should set out here details of the agreed milestones/agreed outcomes of the Funded Activities. You should also consider whether the outputs should have a measure per output, and for multi-year show which year output relates to]**

**[The agreed outputs and long term outcomes should enable the Department to monitor the whether the Funded Activities are being undertaken and/or whether action needs to be taken by the Department to adapt the aims/objectives of the Funded Activities or terminate the agreement.]**

**[The outputs should only be used to determine whether the grant-aided task has been performed. They should not seek to impose a system of service credits.]**

The Grant Recipient is required to achieve the following milestones and performance measures in connection with the Grant:

### Agreed Outputs

- 1.
- 2.
- 3.
- 4.

Outputs measured Year 1	Measure	Frequency (annually/quarterly/monthly/other)
Year 2		

## ANNEX 7 – CONTACT DETAILS

The main departmental contact in connection with the Grant is:

Name of contact	[REDACTED]
Position in organisation	[REDACTED]
Email address	[REDACTED]
Telephone number	[REDACTED]
Fax number	[REDACTED]
Postal address	[REDACTED]

This information is correct at the date of the Grant Funding Agreement. The Authority will send you a revised contact sheet if any of the details changes.

The Grant Recipient's main contact in connection with the Grant Funding Agreement is:

Reference	
Organisation	[REDACTED]
Name of contact	[REDACTED]
Position in organisation	[REDACTED]
Email address	[REDACTED]
Telephone number	[REDACTED]
Fax number	[REDACTED]
Postal address	[REDACTED]

Please inform the Authority if the Grant Recipient's main contact changes.

## ANNEX 8 – DATA PROTECTION PROVISIONS

### DATA PROTECTION LEGISLATION PARAGRAPH DEFINITIONS:

Where they appear in this Annex 8:

**Breach, Data Protection Officer and Data Subject**, take the meaning given in the GDPR.

**Data Protection Impact Assessment**: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**Data Loss Event**: any event that results, or may result, in unauthorised access to Personal Data held by the Processor under these Conditions, and/or actual or potential loss and/or destruction of Personal Data in breach of these Conditions, including any Personal Data Breach.

**Data Subject Request**: a request made by, or on behalf of, a data subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**LED**: Law Enforcement Directive (*Directive (EU) 2016/680*).

**Processor Personnel**: means all directors, officers, employees, agents, consultants and Recipients of the Processor and/or of any sub-Processor engaged in the performance of its obligations under these Conditions.

**Protective Measures**: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

**Sub-processor**: any Third Party appointed to process Personal Data on behalf of that Processor related to these Conditions.

### DATA PROTECTION

#### 1. DATA PROTECTION

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Grant Recipient is the Processor unless otherwise specified in this Annex 8. The only processing that the Processor is authorised to do is listed in Part 1 of Annex 8 by the Controller and may not be determined by the Processor.
- 1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
  - (a) a systematic description of the envisaged processing operations and the purpose of the processing;

- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of data subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

1.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under these Conditions:

- (a) process that Personal Data only in accordance with this Annex 8, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that :
  - (i) the Processor Personnel do not process Personal Data except in accordance with these Conditions (and in particular Part 1 of Annex 8);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Processor's duties under this paragraph;
    - (B) are subject to appropriate confidentiality undertakings with the Processor or any sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any Third Party unless directed in writing to do so by the Controller or as otherwise permitted by these Conditions; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU (which for the purposes of this limb (d) shall be deemed to include the UK) unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or DPA 2018 Section 75) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

1.5 Subject to paragraph 1.6, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);

- (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under these Conditions;
  - (e) receives a request from any Third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Data Loss Event.
- 1.6 The Processor's obligation to notify under paragraph 1.5 shall include the provision of further information to the Controller in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Controller following any Data Loss Event;
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this paragraph. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
  - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 1.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to these Conditions, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this paragraph 1.11 such that they apply to the Sub-processor; and
  - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 1.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

- 1.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this paragraph by replacing it with any applicable controller to processor standard paragraphs or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to these Conditions).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend these Conditions to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 1.15 Where the Parties include two or more Joint Controllers in respect of Personal Data under this Grant Funding Agreement as identified in Part 1 of Annex 8 in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Part 2 of Annex 8 in replacement of paragraphs 1.1 to 1.14 for the Personal Data under Joint Control.

## ANNEX 8

### Part 1: Schedule of Processing, Personal Data and Data Subjects

This Annex shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Annex shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: **[Insert Contact details]**
2. The contact details of the Processor's Data Protection Officer are: **[Insert Contact details]**
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Grant Recipient is the Processor in accordance with paragraph 1.1.
Subject matter of the processing	<b>[Guidance: this should be a high level, short description of what the processing is about i.e. its subject matter of the contract.]</b>  <b>[Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public. ]</b>
Duration of the processing	<b>[Guidance: clearly set out the duration of the processing including dates.]</b>
Nature and purposes of the processing	<b>[Guidance: Please be as specific as possible, but make sure that you cover all intended purposes.]</b> <b>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</b>  <b>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</b>
Type of Personal Data being Processed	<b>[Guidance: examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</b>
Categories of Data Subject	<b>[Guidance: examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</b>

<p>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p><b><i>[Guidance: describe how long the data will be retained for, how it be returned or destroyed]</i></b></p>
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**ANNEX 8**  
**Part 2: Annex for Joint Controller Agreements**

**[Guidance: insert only where Joint Controller applies]**

In this Annex the Parties must outline each Party's responsibilities for:

- providing information to data subjects under [Article 13 and 14](#) of the GDPR.
- responding to data subject requests under [Articles 15-22](#) of the GDPR
- notifying the Information Commissioner (and data subjects) where necessary about data breaches
- maintaining records of processing under [Article 30](#) of the GDPR
- carrying out any required Data Protection Impact Assessment
- The agreement must include a statement as to who is the point of contact for data subjects.

The essence of this relationship shall be published.

**[Guidance: You may wish to incorporate some paragraphs equivalent to those specified in Annex 8 paragraph 1.2-1.14. Guidance can be found in Annex 1 of Schedule 11 (Processing Personal Data) in the Model Agreement for Services Schedules.**

**You may also wish to include an additional paragraph apportioning liability between the Parties arising out of data protection of data that is jointly controlled.**

**Where there is a Joint Control relationship, but no Controller to Processor relationship under the contract, this completed Annex 8 Part 2 should be used instead of Annex 8 paragraph 1.1-1.15]**

**ANNEX 8**  
**Part 3: Annex for Independent Controller**

**[Guidance: insert only where the Parties are separate independent Controllers]**

1. The Parties acknowledge that for the purpose of Data Protection Legislation the Grant Recipient is the Controller of any Personal Data processed by it pursuant to the Funded Activities. To the extent that the Grant Recipient and the Authority share any Personal Data for the purposes specified in paragraph 4, the Parties acknowledge that they are each separate independent Controllers in respect of such data.
2. The Grant Recipient shall (and shall procure that any of its Representatives shall) adhere to all applicable provisions of the Data Protection Legislation and not put the Authority in breach of the Data Protection Legislation.
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.
4. Subject to clause 6(b), the Grant Recipient agrees that the Authority and its Representatives may use Personal Data which the Grant Recipient provides about its staff and partners involved in the Funded Activities to exercise the Authority's rights under this Agreement and or to administer the Grant or associated activities. Furthermore, the Authority agrees that the Grant Recipient and its Representatives may use Personal Data which the Authority provides about its staff involved in the Funded Activities to manage its relationship with the Authority.
5. The Grant Recipient agrees that the Authority may share details of the Grant, including the name of the Grant Recipient's organisation, with the UK Government [and that these details may appear on the Government Grants Information System database which is available for search by other funders.
6. The Authority and the Grant Recipient shall:
  - (a) ensure that the provision of Personal Data to the other Party is in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
  - (b) ensure that it only shares Personal Data with the other Party to the extent required in connection with Funded Activities.
7. Where a Party (the "**Data Receiving Party**") receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data shared pursuant to this Agreement:
  - 7.1. the other Party shall provide any information and/or assistance as reasonably requested by the Data Receiving Party to help it respond to the request or correspondence, at the Data Receiving Party's cost; or
  - 7.2. where the request or correspondence is directed to the other party and/or relates to the other Party's Processing of the Personal Data, the Data Receiving Party will:
  - 7.3. promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
  - 7.4. provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.

8. Each Party shall promptly notify the other upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to this Agreement and shall:
  - 8.1. do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
  - 8.2. implement any measures necessary to restore the security of any compromised Personal Data;
  - 8.3. work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - 8.4. not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
9. Without limiting any other provision of this Annex 8, Part 3, each of the Parties shall, on request, provide such information and assistance as is reasonably requested by the other Party to assist the other Party in complying with the Data Protection Legislation in respect of the Personal Data.
10. The Authority and the Grant Recipient shall not retain or process Personal Data for longer than is necessary to perform the respective obligations under this Agreement.
11. The Grant Recipient will notify the Authority of any change to its constitution, legal form, membership structure (if applicable) or ownership, and of any complaint or investigation by any regulatory body or the police into its activities or those of its staff or officers or volunteers.

**[Guidance: paragraph 12 below should be added where the Grant Recipient and Authority are both independent Controllers, the Grant Recipient is based in the European Economic Area (EEA) and there is data flow from the EEA to the UK.**

**The agreement of the Bridge in the EU-UK Trade and Cooperation Agreement enables businesses and public bodies across all sectors to continue to freely receive data from the EU (and EEA). Nonetheless ICO guidance is that public bodies that work with EU and EEA organisations who transfer personal data to them should as a sensible precaution, during the Bridge period, put in place alternative transfer mechanisms (which may include Standard Contractual Clauses), to safeguard against any interruption to the free flow of EU to UK personal data.**

**Paragraph 12 is not required in respect of data flows from the UK to the EEA because the UK has deemed the EU/EEA as adequate on a transitional basis. Paragraph 12 is also not appropriate for a use where:**

- a) **the Grant Recipient is a Controller based in the EEA and the Authority is a Processor. Such an arrangement is likely to be unusual in the context of a grant agreement and departments will need to discuss the incorporation of alternative Standard Contractual Clauses with lawyers in such circumstances; or**
- b) **the Grant Recipient is a Processor based in the EEA and the Authority is a Controller. In these circumstances departments should refer to DCMS' 'End of TP Departmental Guidance' available on GLD' LION network and discuss with their departmental lawyers.]**

12. In the event that both Parties are Controllers of the Personal Data, the Parties agree:
- 12.1. that without any further action being required they have entered into the Standard Contractual Clauses in the European Commission's decision 2004/915/EC set out in Part 4 to Annex 8 in respect of data transfers by the Grant Recipient outside of the European Economic Area;
  - 12.2. that, where no other appropriate safeguard or exemption applies, the Personal Data subject to this Grant Funding Agreement (and to which Chapter V of the GDPR applies) will be transferred in accordance with those Standard Contractual Clauses as of the date the Parties entered into those Standard Contractual Clauses;
  - 12.3. to use best endeavours to complete the annexes to the Standard Contractual Clauses promptly and at their own cost for the purpose of giving full effect to them; and
  - 12.4. that if there is any conflict between this Grant Funding Agreement and the Standard Contractual Clauses the terms of the Standard Contractual Clauses shall apply.

## ANNEX 8

### Part 4: Controller to Controller Standard Contractual Clauses

**[Guidance note: See Guidance note on paragraph 12, Part 3, Annex 8 above. If paragraph 12, Part 3, Annex 8 is used, the blank sections in this Part 4 should be populated in full]**

Standard contractual clauses for the transfer of personal data from the Community to third countries (controller to controller transfers)

#### Data transfer agreement

between

---

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(name)

---

---

(address and country of establishment)

hereinafter “data exporter”)

and

---

---

(name

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(address and country of establishment)

hereinafter “data importer”

each a “party”; together “the parties”.

#### Definitions

For the purposes of the clauses:

- a) “personal data”, “special categories of data/sensitive data”, “process/processing”, “controller”, “processor”, “data subject” and “supervisory authority/authority” shall have the same meaning as in Directive 95/46/EC of 24 October 1995 (whereby “the authority” shall mean the competent data protection authority in the territory in which the data exporter is established);
- b) “the data exporter” shall mean the controller who transfers the personal data;
- c) “the data importer” shall mean the controller who agrees to receive from the data exporter personal data for further processing in accordance with the terms of these clauses and who is not subject to a third country’s system ensuring adequate protection;

- d) “clauses” shall mean these contractual clauses, which are a free-standing document that does not incorporate commercial business terms established by the parties under separate commercial arrangements.

The details of the transfer (as well as the personal data covered) are specified in Annex B, which forms an integral part of the clauses.

## **I. Obligations of the data exporter**

The data exporter warrants and undertakes that:

- a) The personal data have been collected, processed and transferred in accordance with the laws applicable to the data exporter.
- b) It has used reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses.
- c) It will provide the data importer, when so requested, with copies of relevant data protection laws or references to them (where relevant, and not including legal advice) of the country in which the data exporter is established.
- d) It will respond to enquiries from data subjects and the authority concerning processing of the personal data by the data importer, unless the parties have agreed that the data importer will so respond, in which case the data exporter will still respond to the extent reasonably possible and with the information reasonably available to it if the data importer is unwilling or unable to respond. Responses will be made within a reasonable time.
- e) It will make available, upon request, a copy of the clauses to data subjects who are third party beneficiaries under clause III, unless the clauses contain confidential information, in which case it may remove such information. Where information is removed, the data exporter shall inform data subjects in writing of the reason for removal and of their right to draw the removal to the attention of the authority. However, the data exporter shall abide by a decision of the authority regarding access to the full text of the clauses by data subjects, as long as data subjects have agreed to respect the confidentiality of the confidential information removed. The data exporter shall also provide a copy of the clauses to the authority where required.

## **II. Obligations of the data importer**

The data importer warrants and undertakes that:

- a) It will have in place appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- b) It will have in place procedures so that any third party it authorises to have access to the personal data, including processors, will respect and maintain the confidentiality and security of the personal data. Any person acting under the authority of the data importer, including a data processor, shall be obligated to process the personal data only on instructions from the data importer. This provision does not apply to persons authorised or required by law or regulation to have access to the personal data.

- c) It has no reason to believe, at the time of entering into these clauses, in the existence of any local laws that would have a substantial adverse effect on the guarantees provided for under these clauses, and it will inform the data exporter (which will pass such notification on to the authority where required) if it becomes aware of any such laws.
- d) It will process the personal data for purposes described in Annex B, and has the legal authority to give the warranties and fulfil the undertakings set out in these clauses.
- e) It will identify to the data exporter a contact point within its organisation authorised to respond to enquiries concerning processing of the personal data, and will cooperate in good faith with the data exporter, the data subject and the authority concerning all such enquiries within a reasonable time. In case of legal dissolution of the data exporter, or if the parties have so agreed, the data importer will assume responsibility for compliance with the provisions of clause I(e).
- f) At the request of the data exporter, it will provide the data exporter with evidence of financial resources sufficient to fulfil its responsibilities under clause III (which may include insurance coverage).
- g) Upon reasonable request of the data exporter, it will submit its data processing facilities, data files and documentation needed for processing to reviewing, auditing and/or certifying by the data exporter (or any independent or impartial inspection agents or auditors, selected by the data exporter and not reasonably objected to by the data importer) to ascertain compliance with the warranties and undertakings in these clauses, with reasonable notice and during regular business hours. The request will be subject to any necessary consent or approval from a regulatory or supervisory authority within the country of the data importer, which consent or approval the data importer will attempt to obtain in a timely fashion.
- h) It will process the personal data, at its option, in accordance with:
  - (i) the data protection laws of the country in which the data exporter is established, or
  - (ii) the relevant provisions<sup>2</sup> of any Commission decision pursuant to Article 25(6) of Directive 95/46/EC, where the data importer complies with the relevant provisions of such an authorisation or decision and is based in a country to which such an authorisation or decision pertains, but is not covered by such authorisation or decision for the purposes of the transfer(s) of the personal data<sup>3</sup>, or
  - (iii) the data processing principles set forth in Annex A.

Data importer to indicate which option it selects: \_\_\_\_\_

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<sup>2</sup> “Relevant provisions” means those provisions of any authorisation or decision except for the enforcement provisions of any authorisation or decision (which shall be governed by these clauses).

<sup>3</sup> However, the provisions of Annex A.5 concerning rights of access, rectification, deletion and objection must be applied when this option is chosen and take precedence over any comparable provisions of the Commission Decision selected

Initials of data importer: \_\_\_\_\_;

- i) It will not disclose or transfer the personal data to a third party data controller located outside the European Economic Area (EEA) unless it notifies the data exporter about the transfer and
  - (i) the third party data controller processes the personal data in accordance with a Commission decision finding that a third country provides adequate protection, or
  - (ii) the third party data controller becomes a signatory to these clauses or another data transfer agreement approved by a competent authority in the EU, or
  - (iii) data subjects have been given the opportunity to object, after having been informed of the purposes of the transfer, the categories of recipients and the fact that the countries to which data is exported may have different data protection standards, or
  - (iv) with regard to onward transfers of sensitive data, data subjects have given their unambiguous consent to the onward transfer

### **III. Liability and third party rights**

- a) Each party shall be liable to the other parties for damages it causes by any breach of these clauses. Liability as between the parties is limited to actual damage suffered. Punitive damages (i.e. damages intended to punish a party for its outrageous conduct) are specifically excluded. Each party shall be liable to data subjects for damages it causes by any breach of third party rights under these clauses. This does not affect the liability of the data exporter under its data protection law.
- b) The parties agree that a data subject shall have the right to enforce as a third party beneficiary this clause and clauses I(b), I(d), I(e), II(a), II(c), II(d), II(e), II(h), II(i), III(a), V, VI(d) and VII against the data importer or the data exporter, for their respective breach of their contractual obligations, with regard to his personal data, and accept jurisdiction for this purpose in the data exporter's country of establishment. In cases involving allegations of breach by the data importer, the data subject must first request the data exporter to take appropriate action to enforce his rights against the data importer; if the data exporter does not take such action within a reasonable period (which under normal circumstances would be one month), the data subject may then enforce his rights against the data importer directly. A data subject is entitled to proceed directly against a data exporter that has failed to use reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses (the data exporter shall have the burden to prove that it took reasonable efforts).

### **IV. Law applicable to the clauses**

These clauses shall be governed by the law of the country in which the data exporter is established, with the exception of the laws and regulations relating to processing of the personal data by the data importer under clause II(h), which shall apply only if so selected by the data importer under that clause.

### **V. Resolution of disputes with data subjects or the authority**

- a) In the event of a dispute or claim brought by a data subject or the authority concerning the processing of the personal data against either or both of the parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
- b) The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
- c) Each party shall abide by a decision of a competent court of the data exporter's country of establishment or of the authority which is final and against which no further appeal is possible.

## **VI. Termination**

- a) In the event that the data importer is in breach of its obligations under these clauses, then the data exporter may temporarily suspend the transfer of personal data to the data importer until the breach is repaired or the contract is terminated.
- b) In the event that:
  - (i) the transfer of personal data to the data importer has been temporarily suspended by the data exporter for longer than one month pursuant to paragraph (a);
  - (ii) compliance by the data importer with these clauses would put it in breach of its legal or regulatory obligations in the country of import;
  - (iii) the data importer is in substantial or persistent breach of any warranties or undertakings given by it under these clauses;
  - (iv) a final decision against which no further appeal is possible of a competent court of the data exporter's country of establishment or of the authority rules that there has been a breach of the clauses by the data importer or the data exporter; or
  - (v) a petition is presented for the administration or winding up of the data importer, whether in its personal or business capacity, which petition is not dismissed within the applicable period for such dismissal under applicable law; a winding up order is made; a receiver is appointed over any of its assets; a trustee in bankruptcy is appointed, if the data importer is an individual; a company voluntary arrangement is commenced by it; or any equivalent event in any jurisdiction occurs

then the data exporter, without prejudice to any other rights which it may have against the data importer, shall be entitled to terminate these clauses, in which case the authority shall be informed where required. In cases covered by (i), (ii), or (iv) above the data importer may also terminate these clauses.

- c) Either party may terminate these clauses if (i) any Commission positive adequacy decision under Article 25(6) of Directive 95/46/EC (or any superseding text) is issued in relation to the country (or a sector thereof) to which the data is transferred and

processed by the data importer, or (ii) Directive 95/46/EC (or any superseding text) becomes directly applicable in such country.

- d) The parties agree that the termination of these clauses at any time, in any circumstances and for whatever reason (except for termination under clause VI(c)) does not exempt them from the obligations and/or conditions under the clauses as regards the processing of the personal data transferred.

**VII. Variation of these clauses**

The parties may not modify these clauses except to update any information in Annex B, in which case they will inform the authority where required. This does not preclude the parties from adding additional commercial clauses where required.

**VIII. Description of the Transfer**

The details of the transfer and of the personal data are specified in Annex B. The parties agree that Annex B may contain confidential business information which they will not disclose to third parties, except as required by law or in response to a competent regulatory or government agency, or as required under clause I(e). The parties may execute additional annexes to cover additional transfers, which will be submitted to the authority where required. Annex B may, in the alternative, be drafted to cover multiple transfers.

Dated: \_\_\_\_\_

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FOR DATA IMPORTER

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\_\_\_\_\_

FOR DATA EXPORTER

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**ANNEX A****DATA PROCESSING PRINCIPLES**

- 1) Purpose limitation: Personal data may be processed and subsequently used or further communicated only for purposes described in Annex B or subsequently authorised by the data subject.
- 2) Data quality and proportionality: Personal data must be accurate and, where necessary, kept up to date. The personal data must be adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed.
- 3) Transparency: Data subjects must be provided with information necessary to ensure fair processing (such as information about the purposes of processing and about the transfer), unless such information has already been given by the data exporter.
- 4) Security and confidentiality: Technical and organisational security measures must be taken by the data controller that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process the data except on instructions from the data controller.
- 5) Rights of access, rectification, deletion and objection: As provided in Article 12 of Directive 95/46/EC, data subjects must, whether directly or via a third party, be provided with the personal information about them that an organisation holds, except for requests which are manifestly abusive, based on unreasonable intervals or their number or repetitive or systematic nature, or for which access need not be granted under the law of the country of the data exporter. Provided that the authority has given its prior approval, access need also not be granted when doing so would be likely to seriously harm the interests of the data importer or other organisations dealing with the data importer and such interests are not overridden by the interests for fundamental rights and freedoms of the data subject. The sources of the personal data need not be identified when this is not possible by reasonable efforts, or where the rights of persons other than the individual would be violated. Data subjects must be able to have the personal information about them rectified, amended, or deleted where it is inaccurate or processed against these principles. If there are compelling grounds to doubt the legitimacy of the request, the organisation may require further justifications before proceeding to rectification, amendment or deletion. Notification of any rectification, amendment or deletion to third parties to whom the data have been disclosed need not be made when this involves a disproportionate effort. A data subject must also be able to object to the processing of the personal data relating to him if there are compelling legitimate grounds relating to his particular situation. The burden of proof for any refusal rests on the data importer, and the data subject may always challenge a refusal before the authority.
- 6) Sensitive data: The data importer shall take such additional measures (e.g. relating to security) as are necessary to protect such sensitive data in accordance with its obligations under clause II.
- 7) Data used for marketing purposes: Where data are processed for the purposes of direct marketing, effective procedures should exist allowing the data subject at any time to “opt-out” from having his data used for such purposes.

8) Automated decisions: For purposes hereof “automated decision” shall mean a decision by the data exporter or the data importer which produces legal effects concerning a data subject or significantly affects a data subject and which is based solely on automated processing of personal data intended to evaluate certain personal aspects relating to him, such as his performance at work, creditworthiness, reliability, conduct, etc. The data importer shall not make any automated decisions concerning data subjects, except when:

a) (i) such decisions are made by the data importer in entering into or performing a contract with the data subject, and

(ii) (the data subject is given an opportunity to discuss the results of a relevant automated decision with a representative of the parties making such decision or otherwise to make representations to that parties.

Or

b) where otherwise provided by the law of the data exporter.

ANNEX B

DESCRIPTION OF THE TRANSFER

(To be completed by the parties)

Data Subjects

The personal data transferred concern the following categories of data subjects:

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Purposes of the transfer(s)

The transfer is made for the following purposes:

.....  
.....  
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.....

Categories of data

The personal data transferred concern the following categories of data:

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Recipients

The personal data transferred may be disclosed only to the following recipients or categories of recipients:

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Sensitive data (if appropriate)

The personal data transferred concern the following categories of sensitive data:

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.....

Data protection registration information of data exporter (where applicable)

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Additional useful information (storage limits and other relevant information)

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**Contact points for data protection enquiries**

**Data importer**

**Data exporter**

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## ANNEX 9 – SUBSIDY CONTROL

### SUBSIDY CONTROL DEFINITIONS APPLICABLE TO THIS GRANT:

**Experimental Development:** experimental development aims to develop new or improved products, processes, and services. It uses existing relevant knowledge and skills in fields including technology, science and business. Work involved in experimental development may include, but is not limited to prototyping, demonstrations, testing and validation, (including pilot tests). These could be completed in simulated or real-life situations.

Common results of experimental development include prototype and pilots (including versions which could be used commercially) and improvements to products or services. Experimental development does not need to result in a final product. Routine changes to existing products, processes or services are not classed as experimental development.

**Industrial Research:** this involves planned research or investigation aiming to gain new knowledge and skills for developing new products, processes, or services and/or significantly improving existing products, processes, or services. Work may include but isn't limited to; making component parts for complex systems, building prototypes in a lab, or with simulated interfaces to existing systems, and trailing short manufacturing runs (pilot lines) if relevant.

**Medium sized business:** a staff headcount of less than 250 people and a turnover of less than or equal to £45m, or a balance sheet total of less than or equal to £39m.

**Small sized business:** a staff headcount of less than 50 people and a turnover of less than or equal to £9m, or a balance sheet total of less than or equal to £9m.

The businesses that fall into the categories defined above are classed as Small and Medium Enterprises (SMEs). A **large sized business** in this context means any enterprise which is not a SME.

### SECTION 1

#### Award of Grant Support for Research and Development Projects

1. The Grant is awarded as support for [Experimental Development or Industrial Research].
2. The Grant may only be used to contribute to Eligible Expenditure covered by this letter where that expenditure is incurred by You in respect of eligible costs permitted by this scheme, where these are incurred as part of the Funded Activities. The amount of public funding (including the Grant) that You may receive for the Project must not exceed:
  - a. £...m (...Pounds) in total; and
  - b. a grant intensity being up to ... of Your total Eligible Expenditure incurred on the Funded Activities. *[Alternative drafting required for consortium projects.]*

3. For the purpose of paragraph 4, public funding includes any funding from, or attributable to, any public authority or additionally in the case of projects located in Northern Ireland, an EU institution.
4. Please inform the Authority in writing, and as soon as possible, if these circumstances cease to apply or the Grant Recipient has grounds to consider that they are likely to do so. The Grant Recipient must also provide the Authority with any evidence requested to satisfy it that the Grant Recipient has complied with the grant intensity requirements and that it has sufficient Match Funding in place.

## **SECTION 2**

### **General Conditions**

The Grant is awarded subject to the following understandings and conditions:

- (a) The Grant Recipient must comply with all applicable law regulation to ensure that all requirements are met;
- (b) The Grant Recipient is not entitled to the Grant or any payment of it if it is, or becomes, subject to a recovery order for the recovery of aid which has been declared by a court, tribunal or independent body or authority of competent jurisdiction by reason of a breach of the UK's obligations under the Trade and Co-operation Agreement, or the European Commission, to be illegal and incompatible with the Single Market.
- (c) The Grant Recipient confirms that it is not an ailing or insolvent company and the Grant Recipient commits to informing the Authority as soon as reasonably practicable of any change in this status; the Authority reserves the right to terminate the Grant Funding Agreement if the Grant Recipient's status changes;
- (d) The Grant Recipient confirms that, prior to the commencement of the Project, the Grant Recipient submitted an application which confirmed the undertaking's name and size, description of the Funded Activities (including its start and end dates), location of the Funded Activities, list of costs and type of funding and amount of public funding required;
- (e) The Grant Recipient informed the Authority of any other public funding applied for or awarded against the Eligible Expenditure; it is on this basis that the Authority has ensured that the total public funding for the Project is within the amounts permitted by this scheme;
- (f) In the case of Northern Ireland and projects located in England and Wales that fall within Article 10 of the Northern Ireland Protocol, the Authority is responsible for informing EU Commission of aid awards, including summary notification of the aid to the Commission via the electronic notification system and publication of details of the aid as required from 1 July 2016;

- (g) In the case of an award of aid in excess of £500,000 for projects located in Northern Ireland or in England and Wales that fall within Article 10 of the Northern Ireland Protocol, the Grant Recipient consents to the publication of the following information on the EU SANI System Database: name of the beneficiary, beneficiary's identifier, type of enterprise (SME/large) at the time of granting, region in which the beneficiary is located, at NUTS level 2, sector of activity at NACE group level, aid element, expressed as full amount in national currency, aid instrument, date of granting, objective of aid, granting authority, reference of the aid measure, name of the entrusted entity, and the names of the selected financial intermediaries;
- (h) In the case of a grant award in excess of £500,000 for projects located in in England and Wales that do not fall within Article 10 of the Northern Ireland Protocol, the Grant Recipient consents to the publication of the following information in the UK Transparency Database: name of the beneficiary, beneficiary's identifier, type of enterprise (SME/large) at the time of granting, region in which the beneficiary is located, at NUTS level 2, sector of activity at NACE group level, aid element, expressed as full amount in national currency, aid instrument, date of granting, objective of aid, granting authority, reference of the aid measure, name of the entrusted entity, and the names of the selected financial intermediaries;
- (i) The Grant Recipient is responsible individually, and jointly with the Authority, for maintaining detailed records with the information and supporting documentation necessary to establish that all the conditions set out in the Grant Funding Agreement and the subsidy control rules are fulfilled;
- (j) Such records shall be maintained for 10 years following the granting of the aid and shall be made available as required, or in the case of Northern Ireland, the European Commission itself within a period of 20 Working Days if requested;
- (k) The Authority may (without qualifying the generality of the Authority's monitoring rights under this Grant Funding Agreement) monitor the Grant Recipient's compliance with the requirements of paragraphs h) and i) and for the avoidance of doubt any failure to comply with those requirements (where applicable) shall be deemed a breach of the terms of this letter.

