

Urban Tree Challenge Fund

Grant Funding Agreement (Terms and Conditions)

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This Grant Funding Agreement is made on the Commencement Date.

Between:

- (1) Forestry Commission, whose principal address is at 620 Bristol Business Park, Coldharbour Lane, Bristol, BS16 1EJ (the "**Authority**")
- (2) THE GRANT RECIPIENT, whose full name and principal address are recorded on the Grant Offer Letter from the Authority (the "**Grant Recipient**")

In relation to: Urban Tree Challenge Fund (UTCF)

BACKGROUND

- (A) The Grant is made pursuant to section 98 of the NERC Act 2006.
- (B) 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 Offer Letter.
- (C) The Authority ran a competition for grant applications in respect of the Urban Tree Challenge Fund.
- (D) The Grant Recipient was successful under that competition and the Authority awarded it a grant to deliver the Funded Activities.
- (E) The Authority will provide the Grant to the Grant Recipient as provided for in this Grant Funding Agreement.
- (F) 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 shall be comprised of the following documents, incorporated by reference herein:
 - (1) The Terms and Conditions set out within this Grant Funding Agreement;
 - (2) The Annexes to this Grant Funding Agreement;
 - (3) The Authority's Grant Offer Letter and the Grant Recipient's Acceptance Letter;
 - (4) The Grant Recipient's UTCF Application Form;
 - (5) Agreement Map.

- 1.2. 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.
- 1.3. 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.
- 1.4. The Authority makes the Grant to the Grant Recipient on the basis of the Grant Recipient's grant application form for the provision of urban tree planting.
- 1.5. 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:

Acceptance means the acceptance of this Grant Funding Agreement by the Grant Recipient, confirmed by the Grant Recipient signing and returning the Acceptance Letter, within fifteen (15) days from the date of the Grant Offer Letter.

Acceptance Letter means the signed letter the Grant Recipient returns to the Authority to confirm acceptance of the Grant Offer;

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

Application Form means the Grant Recipient's final application form for the UTCf Grant scheme, submitted and approved by the Authority;

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 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;

Capital Payments means Grant Funding payments for items and activities that are paid for as Standard Cost Items.

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, including any subsequent updates from time to time;

Commencement Date means the date on which the Grant Recipient confirms Acceptance of this Grant Funding Agreement;

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:

- (e) was public knowledge at the time of disclosure (otherwise than by breach of paragraph 11 of these Conditions);
- (f) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (g) is received from a Third Party (who lawfully acquired it) without restriction as to its disclosure; or
- (h) 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;

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;

Domestic Successor means, as the context requires, either:

- (a) a body that takes over the functions of the European Commission in the United Kingdom on the date it withdraws from the European Union; or
- (b) the relevant court in England which takes over the functions of the Court of Justice of the European Union in England on the date the United Kingdom withdraws from the European Union;

Duplicate Funding means funding provided by a Third Party (for the avoidance of doubt, including a government entity other than the Authority) 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 4;

Funding Period means the period for which the Grant is awarded starting on the Commencement Date and ending on the respective dates set out in Annex 3.

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 **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, the Application Form, Agreement Map and the Grant Offer and Acceptance Letters;

Grant Offer Letter means the letter the Authority issued to the Grant Recipient confirming the Grant Offer.

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 the Grant Offer Letter 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;

Maintenance Period means the period of time over which tree establishment must be maintained, as further set out in Annex 3. The Maintenance Period commences when the final Capital Payment is made under the Grant and continues for five (5) years.

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 Remedial Action Plan process set out in paragraphs 26.7;

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 section 2, Title VII of the Common Rules on Competition, Taxation and Approximation of Laws – Consolidated Versions of the Treaty on European Union and the Treaty for the Functioning of the European Union to the extent it continues to apply in the United Kingdom;

Succession means the transfer of the legal interest in the whole or part of the Eligible Land and subject to the Grant, held by the Grant Recipient at the Commencement Date of the Agreement, from the Grant Recipient to a Successor;

Successor means a third party who obtains the legal interest in the whole or part of the Eligible Land subject to the Grant, held by the Grant Recipient at the Commencement Date of the Grant Funding Agreement, from the Grant Recipient;

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. The further special Definitions at Annex 2 shall apply to these Conditions.

2.3. 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.

2.4. 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:

2.4.1 the Conditions set out within this Grant Funding Agreement;

2.4.2 Schedule 1 – The Authority’s Grant Offer Letter;

3. DURATION, PURPOSE AND CONDITIONS OF THE GRANT

- 3.1. The Funding Period starts on the Commencement Date and ends on the respective dates set out in Annex 3, unless terminated earlier in accordance with this Grant Funding Agreement.
- 3.2. The Grant Recipient shall comply with its obligations regarding the Maintenance Period as set out in Annex 3.
- 3.3. Where the Grant is paid in instalments, for example, to support phased planting, the Agreement shall continue in force for five years after the date the final Grant payment is paid, that is, to the end of the Maintenance Period.
- 3.4. 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.
- 3.5. 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 thirty (30) Working Days written notice to the Grant Recipient.
- 3.6. The Parties may agree to delay the planting by amending the planting season stated in the Grant Offer Letter in one-year increments but will not be extended beyond 31 March 2025. The party requesting the extension must make their request in writing, no less than one month before the expiry of the Grant Funding Agreement.

Neither party shall be under any obligation to agree to an extension requested by the other party. The extension shall take effect once it has been confirmed in writing by the Authority.

- 3.7. The Grant Recipient acknowledges and agrees that work undertaken before the Commencement Date of this Grant Funding Agreement will not be funded.
- 3.8. The Grant Recipient confirms that all required licences, consents and permissions will be in place prior to commencing the Funded Activities.
- 3.9. The fund cannot be used to support replacement trees, the Grant Recipient confirms that the land is free of trees and existing tree pits have been empty for a period of 3 years.

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 the total sum set out in the Grant Offer Letter. The Authority shall pay the Grant in pound sterling (GBP).
- 4.2. The Grant Recipient must complete and sign the FC Supplier Creation Form as part of their acceptance of the Grant, unless the Grant Recipient is already set up as a supplier with the Authority and has a supplier reference number.
- 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.
- 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. On request, the Grant Recipient will provide the Authority with evidence of the costs, which are classified as Eligible Expenditure pursuant to paragraph 5.1 and as set out in Annex 1, 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 has 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 the Application Form 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. Match Funding from other Nature for Climate Fund workstreams (examples including, but not limited to, the Local Authority Treescapes Fund or Trees Call to Action Fund) is not acceptable.
- 4.10. The Grant Recipient agrees that:
- 4.10.1. 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;
- 4.10.2. the Authority may refer the Grant Recipient to the police should it dishonestly and intentionally obtain Duplicate Funding for the Funded Activities;
- 4.10.3. 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.
- 4.11. The Grant Recipient shall submit by the 31st March of the relevant Instalment Period the Grant Claim together with any other documentation as prescribed by the Authority, from time to time. The Authority will accept one Grant Claim per financial year.
- 4.12. 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.

- 4.13. 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.
- 4.14. The Authority reserves the right not to pay any Grant Claims, which are not submitted within the period set out in paragraph 4.1110 or Grant Claims, which are incomplete, incorrect or submitted without the full supporting documentation.
- 4.15. 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 4.154, shall fall due immediately. If the Grant Recipient fails to repay the due sum within 60 days the sum will be recoverable summarily as a civil debt.
- 4.16. 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.
- 4.17. 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.
- 4.18. The Grant Recipient may not retain any Unspent Monies without the Authority's prior written permission.
- 4.19. 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.
- 4.20. If the Grant Recipient is required to repay grant funds under any other Government grant scheme, part or all of the Grant Recipient's UTCF Grant claim may not be paid out to the Grant Recipient but instead used to repay what is owed to Government. Similarly, if the Grant Recipient is required to repay grant funds under their UTCF Grant agreement, such funds may be collected via other grant schemes held by the Grant Recipient with Government.

5. ELIGIBLE AND INELIGIBLE EXPENDITURE

- 5.1. The Authority will only pay 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 1 of these Conditions).

- 5.2. For the avoidance of doubt, the following costs/payments will not be classified as Eligible Expenditure, even if incurred for the purposes of the Funded Activities, and the Grant Funding may not be used for payment of these:
- 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.
 - 5.2.7. 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;
 - 5.2.8. using the Grant to directly enable one part of government to challenge another on topics unrelated to the agreed purpose of the grant;
 - 5.2.9. using the Grant to petition for additional funding;
 - 5.2.10. expenses such as for entertaining, specifically aimed at exerting undue influence to change government policy;
 - 5.2.11. input VAT reclaimable by the grant recipient from HMRC;
 - 5.2.12. payments for activities of a political or exclusively religious nature;
- 5.3. Other examples of expenditure, which are not Eligible Expenditure and are prohibited, include the following:

- 5.3.1. contributions in kind (specifically contribution in goods; including but not limited to any kinds, types or size of trees; as differentiated money);
- 5.3.2. interest payments or service charge payments for finance leases;
- 5.3.3. gifts;
- 5.3.4. statutory fines, criminal fines or penalties civil penalties, damages or any associated legal costs;
- 5.3.5. 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;
- 5.3.6. bad debts to related parties;
- 5.3.7. payments for unfair dismissal or other compensation;
- 5.3.8. depreciation, amortisation or impairment of assets owned by the Grant Recipient ;
- 5.3.9. 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 Offer Letter); and
- 5.3.10. liabilities incurred before the commencement of the Grant Funding Agreement unless agreed in writing by the Authority.

6. ANNUAL GRANT REVIEW – NOT USED

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. Upon request from the Authority the Grant Recipient shall also provide the Authority with an annual report on:
 - 7.3.1. the progress made towards achieving the agreed outputs and the defined longer term outcomes set out in the Application Form. 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 4 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 any annual report):
 - 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. Upon request from the Authority 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 a statement showing that the Grant has been certified by an independent and appropriately qualified auditor. Accompanied by the Grant Recipient's annual audited accounts.
- 8.2. The Authority may, at any time during and up to five (5) 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 five (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. if applicable 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.

Retention of documents

- 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 seven (7) years from the date on which the Funding Period ends.
- 8.6. The Grant Recipient shall take before and after photographs of each planting area, retain them for a period of seven (7) years and make them available to the Authority upon written request, to be provided by the Grant Recipient within five (5) working days of such request.
- 8.7. 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 seven (7) years from the date on which the Funding Period ends.
- 8.8. Upon request of the Authority the Grant Recipient will promptly provide revised forecasts of income and expenditure.
- 8.9. Where the Grant Recipient is a company registered at Companies House, the Grant Recipient must file their annual return and accounts by the dates specified by Companies House.
- 8.10. Where the Grant Recipient is a registered charity, the Grant Recipient must file their charity annual return by the date specified by the Charity Commissioner.
- 8.11. Upon request of the Authority, the Grant Recipient shall provide the Authority with copies of their annual return, accounts and charity annual return (as applicable).
- 8.12. If a Grant Recipient fails to comply with paragraphs [8.8] through [8.10] of these Conditions the Authority may suspend funding or terminate the Grant Funding Agreement in accordance with paragraph 26.1.2 of these Conditions.

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, FOI & EIR 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. 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) must comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data;
 - (ii) must be individually and separately responsible for its own compliance;
 - (iii) and do not and must not Process any Personal Data as Joint Controllers.
 - (iv) at their own cost enters into such specific agreements as may be reasonably required to enable each other to comply with their respective duties under the Data Protection Legislation as a result of the arrangements contemplated by this Grant Funding Agreement and give each other all reasonable assistance (including review by each party's legal advisors) in so complying.
- 14.3. The Parties acknowledge and agree that this Grant Funding Agreement does not require either Party to act as a Processor of the other. In the event that there is any change which requires either Party to act as a Processor the Parties agree, at their own cost, to enter into the standard data protection clauses set out in the Crown Commercial Services Procurement Policy Note 02/18 (as amended or replaced from time to time).

- 14.4. In the event that the Parties believe that there is a Joint Controller relationship, the Parties must seek to agree and enter into a Data Processing Joint Controller Agreement, all Parties acting reasonably. With respect to compliance with the Data Protection Legislation only and in the event of a conflict between the conditions of this agreement and any Data Processing Joint Controller Agreement, the terms of the Data Processing Joint Controller Agreement must take precedence.
- 14.5. Each Party must, with respect to its processing of Personal Data as a separate, 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 UK GDPR.

FOIA & EIR

- 14.6. The Grant Recipients acknowledges that the Authority is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs).
- 14.7. The Grant Recipients agrees to provide all necessary assistance and cooperation which is reasonably requested by the Authority for the purposes of complying with its obligations under the FOIA and EIRs. If the Grant Recipient is required to supply information pursuant to a FOIA/EIR request, it shall supply all such information which is within its possession or control within 5 Working Days (or such other period as the Authority shall reasonably require).
- 14.8. If the Grant Recipient receives a FOIA/EIR request from a member of the public, it shall not respond to the request but shall forward the request to the Authority within two (2) Working Days of receipt.
- 14.9. The Authority shall determine in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of FOIA and/or the EIRs.

PUBLIC PROCUREMENT

- 14.10. 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.
- 14.11. 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. SUBSIDIES

- 15.1. The Grant Recipient will ensure that delivery of the Funded Activities do 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 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 the Funded Activities being undertaken are not subject to subsidy control obligations because of the nature of the Funded Activities. The Grant Recipient shall ensure that measures are taken (where necessary), and maintained, to ensure that the Grant shall not be used to cross-subsidise any economic activity.
- 15.1. The Grant is awarded on the basis that it is outside the scope of the Trade and Co-operation Agreement by virtue of Article 3.2(4) of Title XI of that Agreement, it may be subject to the conditions set out in the De minimis Schedule in these Conditions. If De minimis applies the award of Grant will be conditional upon the receipt by the Authority of the declaration form in Annex 5.

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 the IPR Material for the purpose of supporting other projects.
- 16.3. Ownership of Third Party software or other IPR necessary to deliver Funded Activities will remain with the relevant Third Party.
- 16.4. 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.
- 17.4. The Grant Recipient shall take all possible actions to source Biosecure Planting Stock, to reduce the risk of introducing or spreading harmful plant pests and diseases.

18. ASSETS – NOT USED

19. INSURANCE

- 19.1. The Grant Recipient will during the term of the Funding Period and for five (5) years after 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.
- 19.3. Where the Grant Recipient receives more than fifty (50) per cent of the Grant Recipient's total income from public funds, the Grant Recipient will notify the Authority. The Authority will review the nature of the control of the Grant Recipient's organisation to determine any resulting requirement for reclassification which may in turn change the insurance requirements under the Grant Funding Agreement.

20. ASSIGNMENT, SUCCESSION AND NOVATION

- 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 written approval.
- 20.2. The Grant Recipient shall notify the Authority if there is a change affecting any part of the Land, which could prejudice the carrying out of the Funded Activities, including (without limitation) changes to any lease or tenancy, grant of a new leasehold interest over all or part of the land, permanent boundary changes, grant of a licence or any contractual interest in the land, acquisition of any new land or a Succession (**'Notifiable Change'**) no later than three (3) months of the Notifiable Change taking place.
- 20.3. With the prior written agreement of the Authority and at its sole discretion, the Grant Recipient may novate this Grant Funding Agreement to a Successor pursuant to a Novation Agreement (Novation), within twelve (12) months of completion of a Succession, such Novation at all times to be subject to paragraph 26. The Grant Recipient acknowledges and agrees that if a Succession occurs and a Novation Agreement executed by the Grant Recipient and the Successor is not received by the Authorised Representative on or before twelve (12) months after the Succession for any reason, the Authority may exercise its discretion to recover the full amount of the Grant and any other sums actually received by the Grant Recipient pursuant to this Agreement and to terminate this Agreement in accordance with paragraph 26.
- 20.4. The Authority's form of Novation Agreement shall be used for any Novation of this Grant Funding Agreement.
- 20.5. From and including the date of the Novation, the Grant Recipient agrees that it shall not be entitled to any further sums under the terms of this Grant Funding Agreement; and if a breach of any requirement of this paragraph occurs, the Authority may exercise its discretion to recover from the Grant Recipient the full sums of the Grant received by the Grant Recipient pursuant to the terms of this Grant Funding Agreement and to terminate this Grant Funding Agreement in accordance with paragraph 26.

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 in connection with 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. 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 does not occur within the financial year within which the Grant Recipient is due to claim payment 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 the Application Form;
 - 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

- (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 Co-operation 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 35.2.
- 26.1.19. The Grant Authority breaches any of the Conditions under paragraph 20 regarding Assignment, Succession/Novation and Notifiable Changes if, in the opinion of the Authority, the tree planting subject of the Funded Activities has not achieved Establishment by the end of the Maintenance Period.
- 26.1.20. The Grant Recipient undergoes a Change of Control which the Authority, acting reasonably, considers:
- (i) will be materially detrimental to the Funded Activities and/or;
 - (ii) the new body corporate cannot continue to receive the Grant because they do not meet the Eligibility Criteria used to award the Grant to the Grant Recipient;
 - (iii) the Authority believes that the Change of Control would raise national security concerns and/or;
 - (iv) the new body corporate intends to make fundamental 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
 - 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 26.7 to 26.13; and/or
 - 26.3.5. terminate the Grant Funding Agreement.
- 26.4. If any sum becomes repayable under paragraph 26 of the Grant Funding Agreement, it shall be treated as a debt owing by the Grant Recipient to the Authority until such time as the outstanding amount is repaid. A recovery order will be issued to the Grant Recipient specifying the amount to be repaid and the date by which repayment must be made.
- 26.5. If the Grant Recipient fails to make a repayment within 60 days of the date of the relevant recovery order, the Authority reserves the right to charge interest on the outstanding debt at a daily rate equivalent to the Bank of England base rate plus 1%.
- 26.6. Where any sum is repayable under the Grant Funding Agreement and the Grant Recipient has failed to repay the outstanding amount within the period specified in the recovery order, the Authority reserves the right, at its absolute discretion, to deduct the outstanding debt from future payments due to the Grant Recipient under this Grant Funding Agreement and any other agreement the Authority may have with the Grant Recipient, or to terminate the Grant Funding Agreement in accordance with 26.3.5.

Opportunity for the Grant Recipient to remedy an Event of Default

- 26.7. 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 five (5) Working Days of the Grant Recipient receiving notice from the Authority.
- 26.8. The draft Remedial Action Plan shall set out:
- 26.8.1. full details of the Event of Default; and
 - 26.8.2. the steps which the Grant Recipient proposes to take to rectify the Event of Default including timescales.

- 26.9. 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.
- 26.10. 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.
- 26.11. 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.
- 26.12. If the Authority does not approve the draft Remedial Action Plan the Authority may, at its absolute discretion, terminate the Grant Funding Agreement.
- 26.13. 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

- 26.14. Notwithstanding the Authority's right to terminate the Grant Funding Agreement pursuant to paragraph 26.3.4 above, the Authority may terminate the Grant Funding Agreement at any time by giving at least [three (3) months] written notice to the Grant Recipient.
- 26.15. If the Grant Recipient seeks to terminate or withdraw from this Grant Funding Agreement without fulfilling its obligations thereunder, or without novating this Grant Funding Agreement to a Successor in accordance with paragraph 20, the Authority reserves its legal rights and its right to seek to reclaim all sums provided to the Grant Recipient under this Grant Funding Agreement.
- 26.16. 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.
- 26.17. If the Authority terminates the Grant Funding Agreement in accordance with paragraph 26.14 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.

- 26.18. 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.
- 26.19. Expiry or termination of the Grant Funding Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of expiry or termination which existed at or before the date of expiry or termination.

Change of Control

- 26.20. 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.
- 26.21. The Grant Recipient shall ensure that any notification made pursuant to paragraph 26.20 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
- 26.22. 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 26.20 shall include any changes to the consortium members as well as the lead Grant Recipient.
- 26.23. 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,
- 26.24. The Authority shall not be entitled to terminate this Grant Funding Agreement where an approval for the Change of Control was granted by the Authority to the Grant Recipient prior to the Change of Control.

27. EXIT PLAN – NOT USED

28. VARIATION

- 28.1. The Authority reserves the right to vary or amend this Grant Funding Agreement, the amount of Grant funding and its Conditions. Any variation will be effected in writing and notified to the Grant Recipient in advance. The Authority shall endeavour to give such notice as is reasonable and proportionate, having regard to the nature of the variation and its consequences to the Grant Recipient.

29. SEVERABILITY

- 29.1. If any term, condition or provision of the Grant Funding Agreement is held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in the Grant Funding Agreement.

30. FORCE MAJEURE

- 30.1. If the Grant Recipient is prevented from complying with its obligations under the Grant Funding Agreement due to force majeure or exceptional circumstances, the Authority must be notified in writing, within 15 Working Days from the date on which the Grant Recipient (or any person authorised to act on behalf of the Grant Recipient) is in a position to do so.

- 30.2. Force majeure or exceptional circumstances may include:

- 30.2.1. the Grant Recipient's death or long-term professional incapacity;
- 30.2.2. a severe natural disaster gravely affecting the Land;
- 30.2.3. the accidental destruction of livestock buildings on the Land;
- 30.2.4. an epizootic or a plant disease affecting part or all of the Grant Recipient's crops, trees or livestock; or
- 30.2.5. expropriation of all or a large part of the Land (provided that the expropriation could not have been anticipated at the time the application for funding was made).

- 30.3. The Authority will consider the facts on a case-by-case basis in deciding whether or not the Grant Recipient is relieved of all or part of its obligations under the Grant Funding Agreement and whether all or part of the Grant should be suspended or repaid.

31. WAIVER

- 31.1. No failure or delay by either party to exercise any right or remedy under the Grant Funding Agreement shall be construed as a waiver of any other right or remedy.

32. DISPUTE RESOLUTION

- 32.1. Any dispute arising between the Parties or any complaint or appeal by the Grant Recipient concerning the Authority's actions in connection with the Grant Funding Agreement shall be resolved according to the Authority's actions complaint

procedure which is set out here:
<https://www.gov.uk/government/organisations/forestry-commission/about/complaints-procedure>. Information on this process can also be obtained from: The Executive Office, England National Office, 620 Bristol Business Park, Coldharbour Lane, Bristol, BS16 1EJ. Tel: 0300 067 4000 or by email at nationalenquiries@forestrycommission.gov.uk.

33. LIMITATION OF LIABILITY

- 33.1. 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.
- 33.2. Subject to this paragraph 33, the Authority's liability under this Grant Funding Agreement is limited to the amount of Grant outstanding.
- 33.3. The Grant Funding Agreement shall not create any partnership or joint venture between the Authority and the Grant Recipient, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

34. VAT

- 34.1. 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.
- 34.2. 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.

35. CODE OF CONDUCT FOR GRANT RECIPIENTS

- 35.1. 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.

35.2. 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.

35.3. 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 26.3.3.

36. NOTICES

36.1. 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 the Application Form or otherwise notified in writing. All notices and other communications must be marked for the attention of the contact specified in the Application Form. 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.

37. GOVERNING LAW

37.1. 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.

ANNEX 1 – THE FUNDED ACTIVITIES

1. Background/purpose of the Grant

- 1.1. Trees and woodland in urban areas offer benefits for local economies, nature, local environments, and people. Urban trees cool air, reduce pollution, and improve health and wellbeing. But the availability of urban green space and urban trees varies across England, meaning these benefits are not felt equally across the country. The Urban Tree Challenge Fund (UTCF) is a key government offer to level up access to nature across the country, planting trees in socially deprived urban areas with low canopy cover, in proximity to healthcare and educational facilities.
- 1.2. The specific objectives of each grant will be detailed in the Application Form which sets out for each grant the following:
 - Part 3 Project Information – description of the project, reasons for planting, project objectives, forward strategy and evaluation of success.

2. Funded Activities

- 2.1. UTCF will fund the following items and activities, paid for as **Standard Cost items**:
 - Supply a standard tree, with a clear stem up to 1.8m from ground level with a head of branches. Standards come in a range of sizes and age is dependent on species and growth rate. Funding is based on a 14-16cm standard. Prepare a tree pit in a grass verge (other planting surfaces are acceptable, but the payment rate is fixed), with local authority approved pit edging. Plant tree with twin stakes, watering tube and mulch. Supply a lightweight steel mesh tree guard (the protection must be suitable for the planting location).
 - Water young tree in pit via tube applying a minimum of 60 litres per visit, 14 visits per season. Weed and check stake and ties, 7 visits per season. Per year for a three (3) year period.
- 2.2. Standard Costs have been defined for these items and activities, as detailed in Annex 4 Eligible Expenditure. Up to a maximum of half of the Standard Cost of these items and activities will be funded by the Authority (50% Intervention Rate).

ANNEX 2: SPECIAL DEFINITIONS AND INTERPRETATIONS APPLICABLE TO UTCF

Capital Payments means Grant Funding payments for items and activities that are paid for as Standard Cost Items or Actual Cost Items, or Additional Contributions.

FC Supplier Creation Form means the form provided by the Authority for completion by the Grant Recipient in order to be set up as a registered supplier on the Authority's financial system to receive payment.

Intervention Rate means the proportion of Standard Costs the Authority will pay.

Land means the land on which the Funded Activities will be or are to being carried out.

Maintenance Period as defined in Annex 3 - Clause 1.5.

Notifiable change as defined in Clause 20.2.

Standard Costs means the costs identified and set by the Authority for Capital Items subject of the Funded Activities (**Standard Cost Items**), based on the national averages for those items.

ANNEX 3 – GRANT FUNDING PERIOD

- 1.1. The Urban Tree Challenge Fund provides 50% funding of standard costs for planting standard trees and their establishment costs for 3 years following planting. The funding supports the cost of buying a tree, planting in grass, the cost of basic protection and the labour required to plant it.
- 1.2. Establishment payments support the cost of weeding, watering and checking trees during multiple visits over a 3-year period.
- 1.3. With respect to Capital Payments for tree planting the Grant Funding Period shall expire on 31st March 2023, or earlier if the Grant Recipient completes the Funded Activities before such date.
- 1.4. With respect to Capital Payments for watering, weeding, and checking trees the Grant Funding Period shall expire a maximum of three (3) years from the date of the final Capital Payment for tree planting to the Grant Recipient under this Grant Funding Agreement.
- 1.5. For a period of five (5) years after the final grant payment is made by the Authority to the Grant Recipient under this Grant Funding Agreement, the Grant Recipient shall use reasonable endeavours to ensure the trees planted by the Grant Recipient as part of the Funded Activities are maintained and become established (**'the Maintenance Period'**).
- 1.6. The Grant Recipient understands that if the trees are not established successfully by the end of the Maintenance Period the Grant support will be reclaimed pursuant to clause 26.1.2. The Grant Recipient understands that conversion to another land use after planting may be subject to the Environment Impact Assessment Regulations (Forestry) (England and Wales) Regulations 1999, as amended, as deforestation and that the current policy in England is that conversion of forest to other land uses shall not occur except in exceptional circumstances.

ANNEX 4 – ELIGIBLE EXPENDITURE SCHEDULE

Item of Expenditure	Funding rate - 50% of Standard Cost (£ in UK Sterling)
Supply a standard tree, with a clear stem up to 1.8m from ground level with a head of branches. Standards come in a range of sizes and age is dependent on species and growth rate. Funding is based on a 14-16cm standard. Prepare a tree pit in a grass verge (other planting surfaces are acceptable, but the payment rate is fixed), with local authority approved pit edging. Plant tree with twin stakes, watering tube and mulch. Supply a lightweight steel mesh tree guard (the protection must be suitable for the planting location).	£135.23
Water young tree in pit via tube applying a minimum of 60 litres per visit, 14 visits per season. Weed and check stake and ties, 7 visits per season.	£94.50 per year for three years

ANNEX 5: SUBSIDY

Part 1: DE-MINIMIS SUBSIDY

1. The Grant is awarded as in accordance with Article 3.2.4 of the Trade and Cooperation Agreement which enables the Grant Recipient to receive up to a maximum level of subsidy without engaging the Chapter 3 of the Trade and Cooperation Agreement (“de minimis subsidy”). The current threshold is 325,000 Special Drawing Rights to a single economic actor over any period of three fiscal years.
2. The Grant Recipient acknowledges and accepts that the de minimis limit comprises the total amount of de minimis subsidy the Grant Recipient may receive from the state during that period [or the specified period or previous 3 fiscal year period]. That subsidy aid will include subsidy aid relating to other projects, subsidy provided by other public authorities and their agents, and subsidy other than grants (for instance, foregone interest on loans).
3. The award of this Grant will be conditional upon the Grant Recipient providing the Authority with the de-minimis declaration form confirming how much de minimis subsidy, if any, it has received in the current and previous 2 year fiscal period.
4. The Authority may not pay the Grant Recipient the Grant if, added to any previous de minimis subsidy the Grant Recipient has received during the current and last two fiscal years, the Grant causes Grant Recipient to exceed the de minimis limit.
5. For the purposes of that declaration:
 - a. the fiscal year is the fiscal year used by its business; and
 - b. de minimis aid is aid granted to a single economic actor, which may include legal entities separate to Grant Recipient (such as current or former subsidiaries).
6. The Grant Recipient must retain the Grant Funding Agreement and the completed de minimis declaration and produce it on request by the Authority.
7. The Grant Recipient acknowledges that it is Grant Recipient’s responsibility to read the Trade and Cooperation Agreement (and implementing legislation) in its entirety, and seek advice (including legal advice) on its application to Grant Recipient’s business if appropriate.
8. The Grant Recipient acknowledges that the Authority and Grant Recipient are jointly and severally responsible for maintaining detailed records with the information and supporting documentation necessary to establish that all the conditions set out in this Grant Funding Agreement are fulfilled.

9. Such records must be maintained by the Grant Recipient and the Authority for 10 years following the granting of the subsidy.

DE MINIMIS DECLARATION FORM

Please tick the statement that applies:

	The Grant Recipient, and any other undertaking forming a single economic actor with Grant Recipient, have not received any subsidy (whether from or attributable to the Authority or any other public authority) during the current and two previous fiscal years.
	The Grant Recipient, and/or any other undertaking forming a single economic actor with the Grant Recipient, have received one or more subsidies during the current and two previous fiscal years particulars of which are set out in the table below.

Please insert the Grant Recipient's fiscal year _____

Particulars of any subsidy received during the current or previous two fiscal years:

Public Authority	Date Awarded	Total amount of subsidy ¹	Description of subsidy ²	Recipient ³	Date(s) received ⁴

Signed _____

For and on behalf of _____

Position _____

Date _____

¹ This should be the amount of subsidy awarded. However, please also inform us if the amount received differed.

² Please confirm the nature of the subsidy (e.g. a grant or a loan etc) and the purpose for which it was awarded (e.g. any project funded by it).

³ Please confirm the identity of the recipient of the subsidy if this is a separate entity forming part of a single economic actor with you.

⁴ Please inform us if the subsidy was paid by instalments.