

## Annex 5 - DESNZ Central Grants and Loans Team – Standard Terms and Conditions August 2021

### 1. Introduction

1.1 These Terms and Conditions apply to the Grant Recipient receiving the Grant from the Secretary of State for Energy Security and Net Zero up to the Maximum Sum, specified in Paragraph 5 of the Grant Offer Letter.

1.2 The Grant is offered under an Act of Parliament, that is listed in Paragraph 3 of the Grant Offer Letter.

### 2. Definitions and Interpretation of the Grant Funding Agreement

2.1 In the Terms and Conditions and the Grant Offer Letter the following definitions apply:

**Aggregate Job Target** means the calculation of the average number of jobs over the entire Monitoring Period set out in Schedule 2 to the Grant Offer Letter.

**Approved Signatory** means the Chief Finance Officer of the Grant Recipient or a Director with proper delegated authority, acting on behalf of the Grant Recipient, who should be listed on Companies House records and should not appear on the Disqualified Directors Register.

**Asset** means any assets purchased, acquired or developed through Eligible Expenditure under the Grant Funding Agreement.

**Asset Retention Period** means the period that the Assets must be retained, as set out in Schedule 5 to the Grant Offer Letter.

**Department Personal Data** means any Personal Data supplied for the purposes of, or in connection with, the Grant Funding Agreement by the Secretary of State 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.

**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.

**Code of Conduct** means the most recent version of Code of Conduct for Recipients of Government General Grants published by the Cabinet Office and available on request from the Department.

**Commencement Date** means the date on which the Grant Funding Agreement comes into effect and is specified in Schedule 5 to the Grant Offer Letter.

**Conclusion Date** has the meaning given to it in Schedule 5 to the Grant Offer Letter.

**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 Commencement Date of the Grant Offer Letter, 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) Department 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 10 of these Terms and 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 body acting on the specifically delegated authority of the Secretary of State as defined in Regulation 2 of the Public Contracts Regulations 2015 (as amended).

**Controller and Processor** have the meaning given to them in the Data Protection Legislation.

**Created Job** means a job that has been created, as a direct result of the Funded Activities and permanently employed directly by the Grant Recipient. The job should be a net increase not a job moved from another location or reclassified by job title.

**Crown Body** means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government 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 UKGDPR, (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.

**Deliverables** means collectively the agreed outputs, outcomes and key performance indicators of the Funded Activities described in Schedule 2 to the Grant Offer Letter.

**Department** means the Department for Energy Security and Net Zero and any successor government department.

**Direct Job** means a job that has been created or safeguarded, as a direct result of the Funded Activities and permanently employed directly by the Grant Recipient. In the case of a Created Job, the job should be a net increase not a job moved from another location or reclassified by job title.

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

**Document Retention Period** has the meaning given to it in Schedule 5 to the Grant Offer Letter.

**Domestic Law** means an 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 which replaces EU law as a consequence of the UK leaving the European Union.

**Duplicate Funding** means grant funding, provided by any public sector organisation or any other Third Party to the Grant Recipient, which is for the same purpose for which the Grant was made.

**Economic Actor** has the meaning given to it in Article 363 of the Trade and Cooperation Agreement.

**Eligibility Criteria** mean the Secretary of State's selection criteria used to determine who should be grant recipients including the Grant Recipient.

**Eligible Expenditure** means the expenditure incurred and defrayed by the Grant Recipient during the Investment Period for the purposes of delivering the Funded Activities which is specified in Schedule 3 to the Grant Offer Letter. Eligible

Expenditure must comply in all respects with the eligibility rules set out in Paragraph 5 of these Terms and Conditions. Expenditure incurred or defrayed prior to the Commencement Date will not be considered Eligible Expenditure.

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

**Event of Default** means an event or circumstance set out in Paragraph 23.1 of these Terms and Conditions.

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

**Fixed Assets** means any Assets which consist of land, buildings, plant and equipment acquired, developed, enhanced, or constructed in connection with the Funded Activities through Eligible Expenditure under the Grant Funding Agreement.

**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.

**Full-Time Equivalent Job or FTE** means a full-time job of 30 hours or more a week. Two part-time jobs of 15 hours or more a week count as one full-time equivalent job.

**Funded Activities** means the activities defined in Schedule 1 to the Grant Offer Letter.

**Grant or Grant Award** means the sum or sums the Secretary of State will pay to the Grant Recipient in accordance with Paragraph 4 and subject to the provisions set out at Paragraph 23 of these Terms and Conditions.

**Grant Claim** means the payment request claim submission provided by the Grant Recipient to the Secretary of State for payment of the Grant, with any supporting evidence requested by the Secretary of State.

**Grant Drawdown Period** means the period set out in Schedule 5 to the Grant Offer Letter within which the Grant can be drawn down, if the requirements specified in the Grant Funding Period have been fully met.

**Grant Funding Agreement** means the collective combination of:

- a) the Grant Offer Letter together with its Schedules;
- b) if applicable, any additional agreed variation to the Grant Offer Letter and/or its Schedules;
- c) these Terms and Conditions; and
- d) if applicable, any variation to these Terms and Conditions agreed by the Secretary of State and the Grant Recipient.

**Grant Instalments** means the instalments in which the Secretary of State shall pay the Grant as set out in Schedule 4 to the Grant Offer Letter.

**Grant Offer Letter** means the letter the Secretary of State issued to the Grant Recipient detailing the nature of the Grant award.

**Grant Payment Requirements** means all of the requirements listed in Schedule 4 to the Grant Offer Letter in respect of a Grant Instalment.

**Grant Recipient** means the sole or joint legal entity named in Paragraph 1 of the Grant Offer Letter, who will receive the Grant to deliver the Funded Activities, Deliverables and Investment as specified in the Schedules to the Grant Offer Letter.

**Group** means the Grant Recipient, any subsidiary or any holding company or parent undertaking from time to time of the Grant Recipient, and any subsidiary from time to time of a holding company or parent undertaking of the Grant Recipient. Each company in a Group is a member of the Group.

**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 or any successor legislation.

**Ineligible Expenditure** means expenditure incurred by the Grant Recipient which is not Eligible Expenditure specified in Schedule 3 to the Grant Offer Letter and/or that set out in Paragraph 5 of these Terms and 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 semiconductor 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.

**Intervention Rate** means the fiscal value of the Grant represented as a proportion of the relevant investment cost and may be discounted for time.

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

**Investment** means the Eligible Expenditure and Ineligible Expenditure detailed in Schedule 3 to the Grant Offer Letter which the Grant Recipient has committed to make.

**Investment Period** has the meaning given to it in Schedule 5 to the Grant Offer Letter.

**Job Retention Period** means the period that the Created Jobs, Direct Jobs and/or Safeguarded Jobs must be retained in order to comply with the Grant Funding Agreement, as specified in Schedule 5 to the Grant Offer Letter.

**Joint Controllers** means where two or more Controllers jointly determine the purposes and means of processing of Personal Data.

**Law** means 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.

**Large Enterprise** means any entity engaged in an economic activity, irrespective of its legal form which is neither a Small Enterprise or Medium Enterprise.

**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.

**Match Funding** means any contribution to the Funded Activities from any Third Party to the Grant Recipient to meet the balance of the Eligible Expenditure that is not otherwise supported by the Grant.

**Maximum Sum** means the maximum amount of the Grant the Secretary of State will provide to the Grant Recipient for the Funded Activities as set out in Paragraph 5 of the Grant Offer Letter.

**Medium Enterprise** has the meaning given to it in Article 2 of EU recommendation 2003/361.

**Monitoring Officer** means the individual, within the Department, who has been nominated by the Secretary of State to be the single point of contact for the Grant Recipient in relation to the Grant.

**Monitoring Period** means the period from the Commencement Date to the Conclusion Date in which the Secretary of State will actively monitor the Funded Activities, Deliverables, Eligible Expenditure and Ineligible Expenditure, as specified in Schedule 5 to the Grant Offer Letter.

**No Obligation To Pay Dates** or **NOPDs** mean those dates described as such in Schedule 4 to the Grant Offer Letter.

**Northern Ireland Protocol** means the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement.

**Party** means the Secretary of State or Grant Recipient and **Parties** shall be each Party together.

**Personal Data** has the meaning given to it in the Data Protection Legislation.

**Premises** mean the premises identified in Schedule 1 to the Grant Offer Letter, owned or operated by the Grant Recipient where the Funded Activities are undertaken.

**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 Secretary of State or the Crown any gift, consideration or advantage 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 Grant Funding Agreement; or
  - (ii) showing or not showing favour or disfavour to any person in relation to the Grant Funding Agreement;
- b) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation creating offences in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts in relation to the Funding Agreement;
- c) defrauding or attempting to defraud or conspiring to defraud the Secretary of State, the Department or the Crown; or
- d) any activity practice or conduct which would constitute one of the offences listed under (b) or (c) above if such activity practice or conduct had been carried out in the UK.

**Publication** means any announcement, comment or publication of any publicity material by the Grant Recipient concerning the grant supported Assets, Eligible Expenditure, the Funded Activities or the Secretary of State.

**Related Party** means any holding company from time to time of the Grant Recipient and any subsidiary from time to time of the Grant Recipient, or any subsidiary of any such holding company.

**Remedial Action Plan** means the plan of action submitted by the Grant Recipient to the Secretary of State following an Event of Default.

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

**Safeguarded Job** means an existing job which would be lost within 12 months from the Commencement Date without the provision of the Grant and which is safeguarded as a direct result of the Funded Activities and permanently employed directly by the Grant Recipient. Jobs can only be classed as safeguarded by one single grant award at a time.

**Secretary of State** means Secretary of State for Energy Security and Net Zero.

**Small Enterprise** has the meaning given to it in Article 2 of EU recommendation 2003/361.

**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 or any Domestic Law which replaces such State Aid Law following the UK's exit from the European Union.

**Terms and Conditions** means these Terms and Conditions together with any appendices.

**Third Party** means any person or organisation other than the Grant Recipient, the Department, or Secretary of State.

**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).

**UK General Data Protection Regulation** and **UKGDPR** has the meaning given to it in Section 3(10) (as supplemented by Section 205(4)) of the Data Protection Act 2018.

**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 Investment Period or because of termination or breach of these Terms and 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 or alternatively, if the Funded Activities are being delivered in Northern Ireland or Scotland, means any day from Monday to Friday (inclusive) which is not a statutory bank holiday in Northern Ireland or Scotland.



2.2 In these Terms and Conditions, unless the context otherwise requires:

2.2.1 the singular includes the plural and vice versa;

2.2.2 reference to a gender includes the other gender and the neuter;

2.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;

2.2.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

2.2.5 the words "including", "other", "in particular", "for example" and similar words will not limit the generality of the preceding words and will be construed as if they were immediately followed by the words "without limitation";

2.2.6 references to "writing" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing will be construed accordingly;

2.2.7 references to "representations" will be construed as references to present facts, to "warranties" as references to present and future facts and to "undertakings" as references to obligations under the Grant Funding Agreement;

2.2.8 references to "Paragraphs" and "Annexes" are, unless otherwise provided, references to the Paragraphs and Annexes of these Terms and 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

2.2.9 the headings in these Terms and Conditions are for ease of reference only and will not affect the interpretation or construction of these Terms and Conditions.

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

2.3.1 these Terms and Conditions; and

2.3.2 the terms of the Grant Offer Letter and schedules to the Grant Offer Letter.

### **Conditions 3. Duration and Purpose of the Grant**

3.1 The Grant Recipient will ensure that the Funded Activities start on the

Commencement Date but where this has not been possible, that they start no later than 2 months after the Commencement Date and conclude on or before the Conclusion Date.

3.2 The Grant Recipient shall use the Grant solely for the delivery of the Funded Activities, to achieve the Deliverables and/or to contribute to the Eligible Expenditure. The Grant Recipient may not make any changes to the Funded Activities or Eligible Expenditure.

3.3 If the Secretary of State wants to make a change to the Funded Activities or Eligible Expenditure (including for example reducing the Grant or removing some of the Funded Activities from the Grant) they may do so on reasonable written notice to the Grant Recipient.

#### **4. Payment of Grant**

4.1 Subject to the remainder of this Paragraph 4, the Secretary of State shall pay the Grant Recipient an amount not exceeding the Maximum Sum. The Secretary of State shall pay the Grant in pound sterling (GBP) and into a bank account located in the United Kingdom.

4.2 The Grant Recipient must complete and sign the Confirmation of Bank Details Form, provided as Schedule 6 to the Grant Offer Letter, as part of their acceptance of the Grant. No payment will be made in advance of receipt of a correctly completed and signed form.

4.3 The signatory must be an Approved Signatory. 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 Secretary of State for approval, as soon as known.

4.4 The Grant represents the Maximum Sum the Secretary of State will pay to the Grant Recipient under the Grant Funding Agreement. The Maximum Sum will not under any circumstances be increased in the event of any overspend by the Grant Recipient in its delivery of the Funded Activities.

4.5 The Grant Recipient shall ensure that any Pre-Payment Conditions set out in Paragraph 7 of the Grant Offer Letter are satisfied and acknowledges that the Secretary of State shall not be obliged to make any payment of the Grant until it is satisfied that those pre-conditions have been satisfied.

4.6 When the Grant Recipient believes that the Grant Payment Requirements relating to a Grant Instalment have been satisfied, it shall submit a Grant Claim to the Secretary of State. The Grant Claim shall be in a form specified by the Secretary of State and shall be accompanied by the following:

4.6.1 A Monitoring Report showing the progress made towards achieving the agreed Deliverables and the Grant Recipient's performance of the Funded Activities. Where possible, the report will quantify what has been achieved by reference to the Funded Activities' targets;

4.6.2 A statement of Eligible Expenditure and Ineligible Expenditure incurred or defrayed;

4.6.3 A copy of the Grant Recipient's most up to date financial statements and accounts; and

4.6.4 such other information that the Secretary of State may request including receipts and invoices or any other documentary evidence that demonstrates Eligible Expenditure has been incurred and/or defrayed.

4.7 The Secretary of State reserves the right not to pay any Grant Claims, which are not submitted by the relevant NOPD for the applicable Grant Instalment or Grant Claims, which are incomplete, incorrect or submitted without the full supporting documentation.

4.8 The Secretary of State will review the Grant Claim submitted by the Grant Recipient and shall only pay the relevant Grant Instalment to the Grant Recipient once the Secretary of State is satisfied that the Grant Claim contains all the information specified in Paragraph 4.6 and relevant Grant Payment Requirements have been achieved.

4.9 Where an Aggregate Job Target has been specified in Schedule 2, if the Grant Recipient fails to achieve the Aggregate Job Target then the Secretary of State may reduce the amount of Grant payable in accordance with the terms set out in Schedule 2.

4.10 The Grant Recipient shall declare to the Secretary of State any Match Funding or Duplicate Funding from any other source which has been approved or received before the Commencement Date.

4.11 If the Grant Recipient intends to apply for, is offered or receives any further Match Funding or Duplicate Funding from any other source during the Investment Period, the Grant Recipient shall notify the Secretary of State before accepting or using any such Match Funding or Duplicate Funding. On notifying the Secretary of State of the Match Funding or Duplicate Funding the Grant Recipient shall confirm the amount, purpose and source of the Match Funding or Duplicate Funding, and supply the terms and conditions attached to that offer. The Secretary of State shall confirm whether it is agreeable to the Grant Recipient accepting or using the Match Funding. If the Secretary of State does not agree to the acceptance or use of Match Funding the Secretary of State shall be entitled to terminate the Grant Funding Agreement in accordance with Paragraph 23 of these Terms and Conditions and where applicable, require all or part of the Grant to be repaid, with interest.

4.12 Where the acceptance or use of Match Funding is permitted the Grant Recipient shall set out any Match Funding it receives in a format agreed with the Secretary of State. This should be sent to the Secretary of State. This is so the Secretary of State knows the total funding the Grant Recipient has received for the Funded Activities.

4.13 The Grant Recipient agrees that:

4.13.1 it will not apply for, or obtain, Duplicate Funding in respect of any part of the Funded Activities and/or Eligible Expenditure which have been or may be paid for in full using the Grant.

4.13.2 the Secretary of State may refer the Grant Recipient to the police should it dishonestly and intentionally obtain Duplicate Funding for the Funded Activities.

4.13.3 The Secretary of State will not make the first payment of the Grant and/or any subsequent payments of the Grant unless or until, the Secretary of State 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 Secretary of State.

4.14 Unless otherwise stated in these Terms and Conditions or in the Grant Offer Letter, payment of a Grant Instalment will be made within 30 days of the Secretary of State approving the Grant Recipient's Grant Claim for that Grant Instalment.

4.15 The Secretary of State will have no liability to the Grant Recipient for any Losses caused by a delay in the payment of a Grant Claim howsoever arising.

4.16 The Grant Recipient shall promptly notify and repay immediately with interest when applicable to the Secretary of State 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 4.16, shall fall due immediately. If the Grant Recipient fails to repay the due sum immediately or within any other timeframe expressly specified in writing by the Secretary of State, the sum will be recoverable summarily as a civil debt.

4.17 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 Secretary of State has no responsibility for paying any Third Party invoices.

4.18 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 with interest.

4.19 The Grant Recipient may not retain any Unspent Monies without the Secretary of State's prior written permission.

4.20 If by the Conclusion Date there are Unspent Monies, the Grant Recipient shall repay such Unspent Monies to the Secretary of State no later than 30 days of the Secretary of State's request for repayment, with interest.

## **5. Eligible and Ineligible Expenditure**

5.1 The Secretary of State will only pay the Grant in respect of Eligible Expenditure incurred and defrayed by the Grant Recipient to deliver the Funded Activities and the Grant Recipient will use the Grant solely for delivery of the Funded Activities.

5.2 In addition, the following costs/payments may in some occasional instances be classified as Eligible Expenditure if incurred and defrayed for the purposes of the Funded Activities where this has been expressly agreed in writing by the Secretary of State in advance:

5.2.1 giving evidence to Parliamentary Select Committees;

5.2.2 attending meetings with government ministers or civil servants to discuss the progress of a taxpayer funded grant scheme;

5.2.3 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);

5.2.4 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

5.2.5 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.

### **Prohibited use of grant**

5.3 The Grant Recipient may not in any circumstances claim the following non-exhaustive list as Eligible Expenditure:

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 (Her Majesty's Revenue and Customs) or any successor body; and

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

5.3.7 contributions in-kind;

5.3.8 interest payments, service charge payments or arrangement fees for finance leases or other forms of financing or hire purchase agreements;

5.3.9 gifts;

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

5.3.11 payments for works or activities which the Grant Recipient, or any associated party has a statutory duty to undertake, or that are fully funded by other sources;

5.3.12 bad debts to related parties;

5.3.13 payments for unfair dismissal or other compensation;

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

5.3.15 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

5.3.16 liabilities incurred before the Commencement Date or beyond the Conclusion Date unless expressly agreed in writing by the Secretary of State.

## **6. Grant Review**

6.1 The Secretary of State will review the Grant at intervals to be determined by the Secretary of State. The Secretary of State may carry out more than one review. The Secretary of State will take into account the Grant Recipient's delivery of the Funded Activities against the Deliverables in accordance with Paragraph 7.2 of these Terms and Conditions.

6.2 Each review may result in the Secretary of State deciding that (for example a nonexclusive list includes):

6.2.1 the Funded Activities and the Grant Funding Agreement must 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 Deliverables should be re-defined and agreed;

6.2.4 the Grant Recipient should provide the Secretary of State with a draft Remedial Action Plan setting out the steps the Grant Recipient will take to improve delivery of the Funded Activities; or

6.2.5 the Secretary of State should recover any Unspent Monies with interest.

6.3 If the Grant Recipient is required to submit a draft Remedial Action Plan the process set out in Paragraphs 23.8 to 23.14 inclusive shall apply.

6.4 The Grant Recipient may make representations to the Secretary of State regarding the Secretary of State's decision made in accordance with Paragraph 6. The Secretary of State is not however obliged to take such representations into account when making its decision as any such decision will be final and at the Secretary of State'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 Monitoring Period, to ensure that the aims and objectives of the Funded Activities are achieved.

7.2 The Grant Recipient shall provide the Secretary of State with all reasonable assistance and co-operation in relation to any ad-hoc information, explanations and documents as the Secretary of State may require, from time to time, so the Secretary of State 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 Secretary of State with reports during the Monitoring Period at intervals to be determined by the Secretary of State on:

7.3.1 the progress made towards achieving the agreed Deliverables and the Grant Recipient's performance of the Funded Activities. 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, purchased, developed, or improved using the Grant.

7.4 The Grant Recipient shall provide the Secretary of State a statement of actual Eligible Expenditure and Ineligible Expenditure incurred and/or defrayed in respect of the Funded Activities, supported by receipts and defrayment evidence if requested by the Secretary of State during the Monitoring Period.

7.5 The Grant Recipient will permit any person authorised by the Secretary of State 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 up to the end of the Monitoring Period.

7.6 The Grant Recipient will record in its financial reports to the Secretary of State the amount of Match Funding it receives together with details of what it has used that Match Funding for and any terms and conditions attached to that funding.

7.7 The Grant Recipient will notify the Secretary of State as soon as reasonably practicable of:

7.7.1 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 or trading/market difficulties; and

7.7.2 actual or potential variations to the Eligible Expenditure and/or any event which materially affects the continued accuracy of such information.

7.8 The Grant Recipient represents and undertakes (and shall repeat such representations on delivery of its reports):

7.8.1 that the reports and information it gives pursuant to this Paragraph 7 and Paragraph 8 are accurate;

7.8.2 that it has diligently made full and proper enquiry of the matter pertaining to the reports and information given; and

7.8.3 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 The Grant Recipient will provide the Secretary of State with independent assurance in the form of an Independent Accountant's Report that the Grant has been used for delivery of the Funded Activities and Eligible Expenditure each year during the Monitoring Period. The template in Annex 2 of these Terms and Conditions must be used in all instances, unless expressly specified in writing by the Secretary of State. To satisfy this requirement the Grant Recipient will provide this Independent Accountant's Report certified by an independent and appropriately qualified auditor, which must be accompanied by the Grant Recipient's annual audited accounts and most recent management accounts (including Profit and Loss, Balance Sheet and Cash Flow Statement).

8.2 The Secretary of State may, at any time during the Documentation Retention Period, conduct additional audits or ascertain additional information where the Secretary of State considers it necessary. The Grant Recipient agrees to grant the Secretary of State 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 Secretary of State requires further information, explanations, documents or evidence, in order for the Secretary of State 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 Secretary of State, provide the Secretary of State, 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 Eligible Expenditure submitted to the Secretary of State;

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 Secretary of State with a copy if requested.

8.5 The Grant Recipient shall keep adequate records to support the amount, date and nature of the Eligible Expenditure, which is funded from the Grant, demonstrating an audit trail of the transaction lifespan. The Grant Recipient must also maintain a copy of the Grant Offer Letter, its Schedules, and relevant supporting documents to demonstrate that it has complied with all the requirements of the Grant Funding Agreement. This requires retaining all invoices, receipts, accounting records and any other documentation (including but not limited to, correspondence) relating to the Eligible Expenditure for the Document Retention Period.

8.6 The Grant Recipient will promptly provide revised forecasts of income and expenditure:

8.6.1 when these forecasts increase or decrease by more than 10% of the original expenditure forecasts; and/or

8.6.2 at the request of the Secretary of State.

8.7 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.

8.8 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.

8.9 The Grant Recipient shall provide the Secretary of State with copies of their annual return, accounts and charity annual return (as applicable) within five days of filing them at Companies House and/or the Charity Commissioner. If a Grant Recipient fails to comply with Paragraphs 8.7 or 8.8 of these Terms and Conditions it shall constitute an Event of Default under Paragraph 23.1.

## **9. Financial Management and Prevention of Bribery, Corruption, Fraud and Other Irregularity / Conflict of Interest**

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 Secretary of State may require that the 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 Secretary of State as soon as they are identified. The Grant Recipient shall explain to the Secretary of State what steps are being taken to investigate the irregularity and shall keep the Secretary of State informed about the progress of any such investigation. The Secretary of State may however request that the matter is referred (which the Grant Recipient is obliged to carry out) to external auditors or other Third-Party as required.

9.4 The Secretary of State 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 with interest 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 Secretary of State or the appropriate organisation as part of pursuing sanctions, criminal or civil proceedings.

### **Conflicts of Interest**

9.7 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.

9.8 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.

### **Relationship with the Secretary of State**

9.9 Nothing in the Grant Funding Agreement creates a relationship of employment, agency, partnership or joint venture between the Parties. Accordingly, the Grant Recipient must not hold themselves out as having any such relationship with the Secretary of State.

### **Further Funding**

9.10 The Secretary of State is under no obligation to provide the Grant Recipient with any further funding in respect of the Funded Activities or for any other purpose.

### **10. Confidentiality**

10.1 Except to the extent set out in this Paragraph 10 or where disclosure is expressly permitted, the Grant Recipient shall treat all Confidential Information belonging to the Secretary of State as confidential and shall not disclose any Confidential Information belonging to the Secretary of State to any other person without the express prior written consent of the Secretary of State, except to such persons who are directly involved in the provision of the Funded Activities and who need to know the information.

10.2 The Grant Recipient gives its consent for the Secretary of State to publish the Grant Funding Agreement in any medium in its entirety (but with any information which is Confidential Information belonging to the Secretary of State or the Grant Recipient redacted), including from time-to-time agreed changes to the Grant Funding Agreement.

10.3 Nothing in this Paragraph 10 shall prevent the Secretary of State disclosing any Confidential Information obtained from the Grant Recipient:

10.3.1 for the purpose of the examination and certification of the Secretary of State's accounts; or pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Secretary of State has used its resources;

10.3.2 to any government department, consultant, contractor or other person engaged by the Secretary of State, provided that in disclosing information under the Secretary of State 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; or

10.3.3 where disclosure is required by Law, including under the Information Acts.

10.4 Nothing in this Paragraph 10 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.

## **11. Transparency**

11.1 The Secretary of State 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.

## **12. Statutory Duties**

12.1 The Grant Recipient agrees to adhere to its obligations under the Law including but not limited to the Information Acts and the HRA.

12.2 Where requested by the Secretary of State, the Grant Recipient will provide reasonable assistance and cooperation to enable the Secretary of State to comply with its information disclosure obligations under the Information Acts.

12.3 On request from the Secretary of State, the Grant Recipient will provide the Secretary of State with all such relevant documents and information relating to the Grant Recipient's data protection policies and procedures as the Secretary of State may reasonably require.

12.4 The Grant Recipient acknowledges that the Secretary of State, 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.

12.5 The Secretary of State 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 Secretary of State will be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Acts.

## **13. Data Protection and Public Procurement**

13.1 The Grant Recipient and the Secretary of State will comply at all times with its respective obligations under Data Protection Legislation.

13.2 To the extent that the Grant Recipient and the Secretary of State 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:

13.2.1 shall comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data;

13.2.2 will be individually and separately responsible for its own compliance; and

13.2.3 do not and will not Process any Personal Data as Joint Controllers.

13.3 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 UKGDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UKGDPR.

13.4 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.

13.5 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 Secretary of State shall not be liable for the Grant Recipient's failure to comply with its obligations under the Procurement Regulations.

#### **14. Subsidy Control**

14.1 The Grant Recipient is responsible to ensure that the delivery of the Funded Activities and associated Eligible Expenditure costs do not result in a breach of the UK's international obligations in respect of subsidies.

14.2 The Grant Recipient will maintain appropriate records of compliance with the UK's international obligations in relation to subsidies until the end of the Documentation Retention Period and will take all reasonable steps to assist the Secretary of State to comply with the same.

14.3 The Grant Recipient will take all reasonable steps to assist the Secretary of State to:

14.3.1 respond to any proceedings or investigation(s) into the Funded Activities by any relevant court or tribunal of relevant jurisdiction or regulatory body; or

14.3.2 respond to any requests from the European Union for information regarding the Funded Activities or the Grant pursuant to the Trade and Cooperation Agreement.

14.4 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 or wholesale electricity between Northern Ireland and the European Union and must ensure that the Grant shall not be used in way that affects any such trade.

14.5 The Grant Recipient acknowledges and accepts that the Grant is awarded on the basis specified in Paragraph 24 of the Grant Offer Letter.

14.6 Where Paragraph 24 of the Grant Offer Letter states that the Grant is being made relying on the basis that the UK's international obligations in respect of subsidies do not apply, the Grant Recipient acknowledges and accepts that the Grant is awarded on the basis that the Funded Activities being undertaken using the Grant are, and will remain, non-economic activities. The Grant Recipient shall ensure that measures are taken (where necessary), and maintained, to ensure that the Grant is not used to cross-subsidise any economic activity.

14.7 Where Paragraph 24 of the Grant Offer Letter states that the Grant has been awarded on the basis that it is outside the scope of the Trade and Cooperation Agreement by virtue of Article 364(4), the Grant will be subject to the conditions outlined in Annex 3 and will be conditional upon the receipt by the Secretary of State of the Small Amount of Financial Assistance Declaration Form in Annex 3.

14.8 The Grant Recipient should inform the Secretary of State of any likely or actual variation or deviation from the Funded Activities, Deliverables, Eligible Expenditure and/or Ineligible Expenditure costs, especially where Investment is reduced. Therefore, any forecasted changes to the spend profile or any forecasted alternative expenditure require express written agreement from the Secretary of State. It is Grant Recipient's responsibility to ensure that any such changes do not give rise to a breach of the UK's international obligations in respect of subsidies. Any breach of UK's international obligations in respect of subsidies that necessitates a repayment of the Grant, with interest, will be enforced by the Secretary of State.

14.9 In the event that the Eligible Expenditure is reduced during the lifetime of the Funded Activities after the Grant has been paid and maximum Intervention Rates have been specified in Paragraph 5 of the Grant Offer Letter, the maximum Intervention Rate awarded in each category as identified in Paragraph 5 of the Grant Offer Letter must not be exceeded. Where the Grant Recipient has already received Grant and a maximum Intervention Rate is exceeded, this will immediately necessitate a repayment of some or all of the Grant as appropriate, with interest, and this will be enforced by the Secretary of State. The maximum Intervention Rate awarded in each category will be reviewed by the Secretary of State at regular intervals throughout the Monitoring Period and after the Investment has been completed.

14.10 The Grant Recipient must confirm that they are a viable enterprise/going concern (which shall be defined by the Secretary of State by reference to the particular characteristics of the Grant Recipient prior to the Commencement Date) and commit to informing the Secretary of State as soon as reasonably practicable of any change in this status during the Monitoring Period. The Secretary of State reserves the right to terminate the Grant Funding Agreement if there is a status change in this regard.

14.11 The Grant Recipient consents to the publication of the following information by the Secretary of State: Company name; Company identifier; size and type of company/business (including whether it is a Small Enterprise, Medium Enterprise or Large Enterprise) on the Commencement Date; region in which the Company is located; sector of activity; amount of Grant; subsidy instrument; date of granting;

objective of the subsidy; granting authority; the duration of Grant and any other time limits attached to the Grant and reference of the subsidy measure.

14.12 In accepting this Grant, the Grant Recipient specifically accepts that they understand that compliance with the UK's international obligations in relation to subsidies is a mandatory requirement. Should any circumstances arise under the UK's international obligations in relation to subsidies which require the Grant Recipient to repay any or all of the Grant, it must comply immediately.

14.13 The Grant Recipient shall provide the Secretary of State with all information and assistance necessary in order for it to comply with all reporting requirements under the UK's international obligations in relation to subsidies.

## **15. Intellectual Property Rights**

15.1 Intellectual Property in all IPR Material will be the property of the Grant Recipient. Other than as expressly set out in these Terms and Conditions, neither Party will have any right to use any of the other Party's names, logos or trademarks on any of its products or services without the other Party's prior written consent.

15.2 The Grant Recipient grants to the Secretary of State 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.

15.3 Ownership of Third-Party software or other IPR necessary to deliver Funded Activities will remain with the relevant Third Party.

15.4 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.

## **16. Environmental Requirements**

16.1 The Grant Recipient shall perform the Funded Activities in accordance with the Department'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.

16.2 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.

16.3 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 Secretary of State shall be notified in advance of their

use. The Grant Recipient shall endeavour to reduce fuel emissions wherever possible.

## **17. Compliance with anti-slavery and human trafficking laws and policies**

17.1 In performing its obligations under this Grant Funding Agreement, the Grant Recipient shall:

17.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;

17.1.2 have and maintain throughout the Monitoring Period its own policies and procedures to ensure its compliance;

17.1.3 not engage in any activity, practice or conduct that would constitute an offence under Sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and

17.1.4 include in its contracts with its direct subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this Paragraph 17.

## **18. Assets Inventory of the Assets**

18.1 If Schedule 3 of the Grant Funding Letter specifically allows the purchase of Assets as Eligible Expenditure, the Grant Recipient must keep a register of all these Assets acquired or improved wholly or partly using the Grant provided under the Grant Funding Agreement.

18.2 For each entry in the register the following particulars must be shown where appropriate:

18.2.1 date of acquisition or improvement;

18.2.2 description of the Asset;

18.2.3 serial number of the Asset;

18.2.4 cost, net of recoverable VAT;

18.2.5 location of the Asset;

18.2.6 serial or identification numbers;

18.2.7 location of the title deeds;

18.2.8 date of any Disposal;

18.2.9 depreciation/amortisation policy applied;



18.2.10 proceeds of any Disposal net of VAT; and

18.2.11 the identity of any person to whom the Asset has been transferred or sold.

18.3 The Secretary of State reserves the right to require the Grant Recipient to maintain the above particulars as set out in Paragraph 18.2 for any additional items which the Secretary of State considers material to the overall Grant.

### **Disposal of Asset**

18.4 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 and retained at the Premises for the Asset Retention Period.

18.5 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 during the Asset Retention Period without the prior written consent of the Secretary of State. If the Secretary of State grants consent to the Disposal, such consent may be subject to satisfaction of certain conditions, to be determined by the Secretary of State.

### **Charging of any Asset**

18.6 The Grant Recipient must not create any charge, legal mortgage, debenture or lien over any Asset during the Asset Retention Period without the express prior written consent of the Secretary of State.

## **19. Insurance**

19.1 The Grant Recipient must ensure that it has and maintains, at all times during the Monitoring Period 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 Secretary of State 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 50% of the Grant Recipient's total income (turnover) from public funds, the Grant Recipient must notify the Secretary of State. The Secretary of State will review the nature of the control of Grant Recipient's organisation to determine any resulting requirement for

reclassification which may in turn change the insurance requirements under the Grant Funding Agreement.

## **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 Secretary of State's express written prior approval.

20.2 Any approval given by the Secretary of State will be subject to a condition that the Grant Recipient has first entered into a Grant Funding Agreement, authorised by the Secretary of State, requiring the Grant Recipient to work with another organisation in delivering the Funded Activities.

## **21. Marketing, Publicity or Communication**

21.1 The Grant Recipient gives consent to the Secretary of State 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, Monitoring Reports or any supporting information submitted to the Secretary of State in accordance with Paragraph 7 of these Terms and Conditions, unless the Secretary of State has provided specific waiver in writing.

21.2 The Grant Recipient will comply with all reasonable requests from the Secretary of State to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Secretary of State in its promotional and fundraising activities relating to the Funded Activities.

21.3 The Grant Recipient will not make, or permit any person to make, marketing, publicity or communications related in any way to the Funded Activities or Grant without the express prior written agreement of the Secretary of State.

21.4 Any marketing, publicity or communication material related in any way to the Funded Activities or Grant must refer to the Grant awarded.

21.5 The Secretary of State may require any marketing, publicity or communication material related in any way to the Funded Activities or Grant to feature the Department's logo. If a Third Party wishes to use the Department's logo, the Grant Recipient must first seek permission from the Secretary of State in writing.

21.6 The Grant Recipient must acknowledge the support of the Secretary of State and HM Government in any materials that refer to the Funded Activities or Grant and in any written or spoken public presentations about the Funded Activities. Such acknowledgements (where appropriate or as requested by the Secretary of State) will include the Department's name and logo (or any future name or logo adopted by the Secretary of State) using the templates provided by the Secretary of State from time to time.

21.7 In using the Department's name and logo, the Grant Recipient will comply with all reasonable branding guidelines issued by the Secretary of State and current at the time of publication.

21.8 The Secretary of State may publish the information relating to the Grant to promote HMG activity. Prior to publication the Secretary of State will consider any representations the Grant Recipient may make about information they may consider to be commercially sensitive.

21.9 The Secretary of State may be obliged to disclose information relating to the Grant under the Information Acts or any other requirement of Law.

21.10 The Grant Recipient must assist, and cooperate with, the Secretary of State, as reasonably requested, to enable the Secretary of State to comply with its obligations under the Information Acts.

## **22. Changes to the Department's Requirements**

22.1 The Secretary of State will notify the Grant Recipient of any changes to the Department's activities, which are supported by the Grant.

22.2 The Grant Recipient will accommodate any changes to the Department's needs and requirements under these Terms and Conditions.

## **23. Grant Recovery, Events of Default, Termination and Rights Reserved for Breach and Termination (including variation, reduction, withdrawal and repayment of Grant) Events of Default**

23.1 The Secretary of State may exercise the rights set out in Paragraph 23.7 including the right to vary or withhold any or all of the Grant payments and/or require repayment of Grant already paid to the Grant Recipient with interest, if at any time before the Conclusion Date, any of the following events occur:

### Pre-conditions

23.1.1 any Pre-Acceptance Conditions stated in Paragraph 6 of the Grant Offer Letter are not satisfied and/or cease to be satisfied;

### Funded Activities – Progress and Delivery

23.1.2 the Grant Recipient has entered into an arrangement to defray money or has already defrayed money on the Funded Activities or Eligible Expenditure before the Commencement Date unless expressly given permission in writing to do so by the Secretary of State;

23.1.3 delivery of the Funded Activities does not start within two months of the Commencement Date and the Grant Recipient fails to provide the Secretary of State with a satisfactory explanation for the delay, or fails to agree a new date on which the Funded Activities will start with the Secretary of State;

23.1.4 in the opinion of the Secretary of State, progress on the Funded Activities, including, without limitation to, progress towards reaching the Deliverables specified in Schedule 2 and/or Investment targets specified in Schedule 3 to the Grant Offer Letter, is not satisfactory;

23.1.5 in the opinion of the Secretary of State there is a significant change in the scale, nature or delivery of the Funded Activities and/or Eligible Expenditure from that set out in the Grant Offer Letter schedules which has not been agreed in advance with the Monitoring Officer or Case Officer;

23.1.6 in the opinion of the Secretary of State, the Grant Recipient is 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);

23.1.7 in the opinion of the Secretary of State, the future of the Funded Activities is in jeopardy;

23.1.8 the Grant Recipient fails to submit an adequate Remedial Action Plan to the Secretary of State following a request by the Secretary of State;

23.1.9 the Grant Recipient fails to improve delivery of the Funded Activities in accordance with any Remedial Action Plan in place;

23.1.10 If Schedule 2 to the Grant Offer Letter specifies an Aggregate Job Target and the Grant Recipient, having received and retained the full amount of the Grant, does not meet the Aggregate Job Target;

#### Funding Package

23.1.11 the arrangements for financing the Funded Activities have or are likely to change in any way;

23.1.12 the Grant Recipient fails to declare any Duplicate Funding or changes the arrangements for financing the Funded Activities and/or Eligible Expenditure without the express prior written approval from the Secretary of State;

23.1.13 the Grant Recipient fails to declare any Match Funding in accordance with Paragraph 4.9 or 4.11 of these Terms and Conditions;

23.1.14 assistance for the Funded Activities is received or promised, additional to that disclosed by the Grant Recipient to the Secretary of State before the Commencement Date from an institution of the European Union, a Government Department, a local authority or any other partly or wholly publicly financed body or charitable fund;

23.1.15 the Grant Recipient uses the Grant for Ineligible Expenditure or for a purpose other than the Funded Activities and/or for Eligible Expenditure;

23.1.16 the Grant Recipient receives funding from a Third Party which, in the opinion of the Secretary of State, undertakes activities that are likely to bring the reputation of the Funded Activities or the Secretary of State or the Department into disrepute;

#### Information Submissions

23.1.17 the Grant Recipient provides the Secretary of State with any materially misleading or inaccurate information and/or any of the information provided in their grant application or in any subsequent supporting information or correspondence is found to be incorrect or incomplete to an extent which the Secretary of State considers to be significant;

23.1.18 in the opinion of the Secretary of State, any information the Grant Recipient has given in relation to the Funded Activities becomes incorrect or misleading due to a change in circumstances and is not corrected by the Grant Recipient, is shown to be or misleading, or any claim for Grant is based on misleading information;

23.1.19 the Secretary of State requests additional information from the Grant Recipient and the information provided does not comply with that request;

23.1.20 the Grant Recipient fails to comply with Paragraphs 8.7 or 8.8 of these Terms and Conditions;

#### Prohibited Acts

23.1.21 the Grant Recipient commits or has committed a Prohibited Act or fails to report a Prohibited Act to the Secretary of State, whether committed by the Grant Recipient, its Representatives, or a Third Party, as soon as they become aware of it;

23.1.22 the Secretary of State determines (acting reasonably) that the Grant Recipient or any of its Representatives has:

(a) acted dishonestly or negligently at any time during the term of the Grant Funding Agreement and to the detriment of the Secretary of State or the Department;

(b) taken any actions which unfairly bring or are likely to unfairly bring the Department's name or reputation and/or the Department into disrepute. Actions include omissions in this context;

(c) transferred, assigns or novates the Grant to any Third Party without the Secretary of State's written consent; or

(d) failed to act in accordance with the Law; howsoever arising, including incurring expenditure on unlawful activities,

23.1.23 in the opinion of the Secretary of State, any part of the Grant has been used to support activity intended to influence or attempt to influence Parliament, Government or political parties, or attempting to influence the awarding or renewal of contracts and grants or attempting to influence legislative or regulatory action.

### Eligible Expenditure and Assets

23.1.24 the Grant Recipient offers the Assets purchased as Eligible Expenditure as security to a Third Party without obtaining the Secretary of State's prior written consent;

23.1.25 the Grant Recipient uses the Grant to make purchases or other transactions for the benefit of a Related Party without obtaining the Secretary of State's express prior written consent;

23.1.26 the Grant Recipient ceases to own, or for a period of more than 3 months stops using for the purposes of the Funded Activities, any of the Assets purchased as Eligible Expenditure (including where appropriate, Premises).

### Insolvency and Change of Control

23.1.27 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).

23.1.28 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;

23.1.29 the Grant Recipient or its Parent Company undergoes a Change of Control which the Secretary of State, acting reasonably, considers:

- (a) will be materially detrimental to the Funded Activities;
- (b) 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;
- (c) the Secretary of State believes that the Change of Control would raise national security concerns; and/or
- (d) the new body corporate intends to make fundamental change(s) to the purpose for which the Grant was given.

### State Aid/Subsidy control

23.1.30 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.

23.1.31 a court, tribunal or independent body or authority of competent jurisdiction requires any Grant paid to be recovered with interest by reason of breach of the UK's obligations under the Trade and Co-operation Agreement, a breach of any of the

UK's international obligations in relation to subsidies, or the terms of any UK subsidy control legislation.

### Parental Guarantee

23.1.32 in the opinion of the Secretary of State, any Parental Guarantee referred to in Paragraph 6 of the Grant Offer Letter becomes ineffective for any reason whatsoever;

23.1.33 any event or series of events occurs which in the opinion of the Secretary of State will have a material adverse effect on the ability of the parent company to perform its obligations under the guarantee referred to in Paragraph 6 of the Grant Offer Letter;

### General

23.1.34 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;

23.1.35 the Grant Recipient fails to comply with Paragraph 17 of these Terms and Conditions; and/or

23.1.36 the Grant Recipient fails to comply with any part of the Terms and Conditions of the Grant Funding Agreement.

### **Leasing, Lease Finance or Hire Purchase**

23.2 The Secretary of State may vary the fiscal value of the Grant downwards and the payment sequence or arrangements if:

- (a) there is any change in the lease purchase, hire purchase or extended credit arrangements of the Investment to be provided for the Eligible Expenditure as set out in Schedule 3 of the Grant Offer Letter;
- (b) the lease purchase, hire purchase or extended credit arrangements are not made with a party independent of the Grant Recipient;
- (c) (with the exception of land and buildings acquired under leasehold) any lease purchase, hire purchase or extended credit arrangement used to finance Eligible Expenditure does not contain an obligation to purchase at the expiry of the terms of the lease or hire purchase or extended credit agreement; or
- (d) in the case of the lease of land and buildings, the lease does not continue for at least five (5) years if the Grant Recipient is a Large Enterprise or three (3) years if the Grant Recipient is classed as a Small Enterprise or Medium Enterprise after the Conclusion Date.

23.3 If any of the Assets purchased as Eligible Expenditure are to be provided under a lease finance agreement which is made by a leasing company to the Grant

Recipient, then the capital cost of that equipment (excluding VAT) shall be treated as having been committed by the Grant Recipient on the date on which the relevant lease finance agreement is signed, provided the Asset has been delivered to the Premises. However, no payment in respect of any instalment of Grant shall be made which would result in the total payments then made under the Grant Offer Letter exceeding the aggregate of:

- (a) the amounts then defrayed by the Grant Recipient on Eligible Expenditure of the Funded Activities which are not the subject of lease purchase or hire purchase agreements; and
- (b) the actual amounts then defrayed by Grant Recipient in respect of deposits and/or instalments on assets purchased as Eligible Expenditure which are the subject of lease purchase, hire purchase or extended credit agreements.

23.4 The Secretary of State will require repayment of any Grant that has been used to support activity intended to influence or attempt to influence Parliament, Government or political parties, or attempting to influence the awarding or renewal of contracts and grants or attempting to influence legislative or regulatory action.

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

23.6 Each of the above provisions (Paragraphs 23.2-23.5 inclusive) is without prejudice to any other provisions in the remainder of this Paragraph 23.

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

23.7 Where, the Secretary of State determines that an Event of Default has or may have occurred, the Secretary of State shall take any one or more of the following actions:

- (a) suspend, or terminate the payment of Grant for such period as the Secretary of State shall determine; and/or
- (b) 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
- (c) require the Grant Recipient to repay the Secretary of State the whole or any part of the amount of Grant previously paid to the Grant Recipient with interest. Such sums shall be recovered as a civil debt; and/or
- (d) give the Grant Recipient an opportunity to remedy the Event of Default (if remediable) in accordance with the procedure set out in Paragraphs 23.8 to 23.18; and/or
- (e) terminate the Grant Funding Agreement.

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



23.8 Where the Grant Recipient is provided with an opportunity to submit a draft Remedial Action Plan, the draft Remedial Action Plan shall be submitted to the Secretary of State for approval, within 5 Working Days of the Grant Recipient receiving notice from the Secretary of State.

23.9 The draft Remedial Action Plan shall set out:

- (a) full details of the Event of Default;
- (b) the steps which the Grant Recipient proposes to take to rectify the Event of Default including timescales; and
- (c) an updated Risk Register in the form prescribed by the Secretary of State from time to time.

23.10 On receipt of the draft Remedial Action Plan and as soon as reasonably practicable, the Secretary of State will submit their comments on the draft Remedial Action Plan to the Grant Recipient.

23.11 The Secretary of State shall have the right to accept or reject the draft Remedial Action Plan. If the Secretary of State rejects the draft Remedial Action Plan, the Secretary of State 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 Secretary of State.

23.12 If the Secretary of State 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 Secretary of State's comments.

23.13 If the Secretary of State does not approve the draft Remedial Action Plan the Secretary of State may, at its absolute discretion, exercise any of its rights under Paragraph 23.7.

23.14 The Secretary of State shall not by reason of the occurrence of an Event of Default which is, in the opinion of the Secretary of State, capable of remedy, exercise its rights under Paragraph 23.7 unless the Grant Recipient has failed to rectify the default to the reasonable satisfaction of the Secretary of State. The Grant Recipient must inform the Secretary of State urgently, in writing, if the Grant Recipient has any concerns that any of the grounds cited in Paragraph 23.1 of these Terms and Conditions, apply in their case. If they arise after the Grant Recipient has received a grant payment, they must not make any use of the Grant until the Secretary of State has authorised continued use of the Grant in writing.

23.15 A decision to require the Grant Recipient to repay the Grant will be communicated in writing, and they must make that repayment within 30 days of the

date of that letter or within any later reasonable deadline agreed by the Secretary of State in writing.

23.16 Interest will be calculated from the date of the Grant payment until the date it is repaid by the Grant Recipient, in accordance with the retail prices index (that index being taken as 0% for any period during which the index is negative).

23.17 Where the Grant Recipient fails to repay the Grant by the deadline specified at Paragraph 23.15 further interest on the outstanding sum (inclusive of interest already charged will accrue, after that deadline, at the statutory rate of interest under Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 or any other rate required by law in the circumstances if it is higher.

23.18 Any failure by the Secretary of State to exercise the Secretary of State's rights under the Grant Funding Agreement or any delay in doing so, shall not constitute a waiver of those rights unless the Secretary of State confirms that waiver in writing. Furthermore, any such waiver shall not be taken as a precedent for any other circumstances.

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

23.19 Notwithstanding the Secretary of State's right to terminate the Grant Funding Agreement pursuant to Paragraph 23.7 above, either Party may terminate the Grant Funding Agreement at any time by giving at least 3 months written notice to the other Party.

23.20 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 Secretary of State as being required to finalise the Funded Activities) shall be returned to the Secretary of State within 30 days of the date of receipt of a written notice of termination from the Secretary of State.

23.21 If the Secretary of State terminates the Grant Funding Agreement in accordance with Paragraph 23.19 the Secretary of State 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 Secretary of State.

23.22 The Secretary of State 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.

23.23 Nothing in the Grant Funding Agreement will affect any provision which is expressly or by implication intended to apply or continue to apply for any reason following termination of this Agreement.

## **Change of Control**

23.24 The Grant Recipient shall notify the Secretary of State 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.

23.25 The Grant Recipient shall ensure that any notification made pursuant to Paragraph 23.24 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

23.26 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 23.24 shall include any changes to the consortium members as well as the lead Grant Recipient.

23.27 Following notification of a Change of Control the Secretary of State shall be entitled to exercise its rights under Paragraph 23.7 of these Terms and Conditions by 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 Secretary of State becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

23.28 The Secretary of State shall not be entitled to terminate where an approval was granted prior to the Change of Control.

## **24. Exit Plan**

24.1 If the Secretary of State 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 a timescale set by the Secretary of State.

## **25. Dispute Resolution**

25.1 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.

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

25.3 If the dispute cannot be resolved between the Parties Representatives within a maximum of 6 months, then the matter will be escalated to formal meeting between the Monitoring Officer or Case Officer and the Grant Recipient's chief executive (or equivalent).

## **26. Limitation of Liability**

26.1 The Secretary of State 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 Secretary of State, the Department and its Representatives with respect to all actions, claims, charges, demands, Losses and proceedings arising from or incurred by reason of the actions and/or omissions of the Grant Recipient in relation to the Funded Activities, the non-fulfilment of obligations of the Grant Recipient under this Grant Funding Agreement or its obligations to Third Parties.

26.2 Subject to Paragraph 26.1, the Secretary of State's liability under this Grant Funding Agreement is limited to the amount of Grant outstanding.

## **27. VAT**

27.1 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 Secretary of State shall not be obliged to pay any additional amount by way of VAT.

27.2 All sums or other consideration payable to or provided by the Grant Recipient to the Secretary of State 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.

## **28. Code of Conduct for Grant Recipients**

28.1 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.

28.2 The Grant Recipient shall immediately notify the Secretary of State if it becomes aware of any actual or suspected breaches of the principles outlined in the Code of Conduct.

28.3 The Grant Recipient acknowledges that a failure to notify the Secretary of State of an actual or suspected breach of the Code of Conduct may result in the Secretary of State 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 23.1.22.

## **29. Notices**

29.1 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 Grant Offer Letter or as otherwise notified in writing. All notices and other communications must be marked for the attention of the contact specified in Paragraph 20 of the Grant Offer Letter. 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.

29.2 The contact at the Department will be the Monitoring Officer, specified in Paragraph 20 of the Grant Offer Letter, the contact at the Grant Recipient will be the Approved Signatory.

### **30. Governing Law**

30.1 These Terms and Conditions will be governed by and construed in accordance with the law of England and Wales and the Parties irrevocably submit to the exclusive jurisdiction of England and Wales.