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Hillier Nurseries Limited  
Ampfield House  
Ampfield  
Romsey  
Hampshire  
SO51 9PA

25 November 2013

## **RURAL DEVELOPMENT PROGRAMME FOR ENGLAND (RDPE)**

### **RURAL ECONOMY GRANT (REG)**

Dear Sirs

#### **RDPE 2007 - 2013**

#### **Axis: 1 Improving the Competitiveness of the Agricultural and Forestry Sector**

#### **Relevant Priority Measure: 125**

#### **Project: REG 62928-RDPE-SE Morley Rainwater Harvesting and Water Management Project**

- 1 I am writing on behalf of the Secretary of State for the Department for Environment, Food and Rural Affairs ("the Secretary of State") with reference to your Full application received on 22 March 2013 for grant assistance towards the costs of the above project under the Rural Economy Grant (REG) scheme of the Rural Development Programme for England (RDPE).
- 2 I am pleased to inform you that the Department for Environment, Food and Rural Affairs (Defra) has approved your Application for a Grant from the RDPE. We now offer Hillier Nurseries Limited ("the Grant Recipient") a Grant of



The European Agricultural Fund for Rural Development: Europe investing in rural areas



£79,526.00 which is 40% of the Eligible Expenditure up to the maximum sum of £198,815.00 for the Project on the terms set out in this Offer Letter.

3 The Grant is offered on the terms of:

- (a) this letter (including its Schedules) ("the Offer Letter"); and
- (b) the attached Standard Conditions of Grant (including its Annexures) ("the Standard Conditions"); and
- (c) the Project Specific Conditions of Grant contained in Schedule 1 to this Offer Letter ("the Project Specific Conditions"); and
- (d) any Project Specific Eligible Expenditure contained in Schedule 1 to this Offer Letter ("the Project Specific Eligible Expenditure").
- (e) the carrying out of the Project Activities fully described in the Application but which can be briefly described as the construction of a 30,000m<sup>3</sup> reservoir filled using rainwater harvesting techniques at Ampfield House, Winchester Road, Ampfield, Romsey, Hampshire, SO51 9PA;
- (f) the subsequent use of the Assets for the Approved Use during their Useful Economic Life; and
- (g) the achievement of the Targets contained in Schedule 1 to this Offer Letter, which will further the objectives and relevant measure of the RDPE.

4 The amount of the grant available and payment of the grant will be in accordance with the Expenditure Profile contained in Schedule 1. The grant award will be paid from the RDPE Measure 125 and is awarded as a state aid under Commission regulation (EC 1698/2005) of 20 September 2005 in accordance with Article 88 (1).

5 The Key Dates of the Grant are:

	<b>Key Dates</b>		<b>Date</b>
<b>a)</b>	The start date, being the earliest date that expenditure incurred by you in relation to the project can be Eligible Expenditure.		25 November 2013
<b>b)</b>	The anticipated completion date, being the date by which you anticipate that you will have achieved completion of the project activities.		31 October 2014
<b>c)</b>	The final claim date, being the date you will have submitted your final claim to Defra		20 December 2014
<b>d)</b>	The end date being the final date upon which Defra shall make any payment of grant to you.		31 January 2015
<b>e)</b>	<b>Claim Summary</b>	<b>Grant Amount Claimed</b>	

	Claim 1	£25,106.00	30 September 2014
	Final Claim	£54,420.00	20 December 2014

- 6 The principal contact for this Project in Defra is Tim Gill at the RDPE Delivery Team at:

c/o AHVLA, Woodham Lane, New Haw, Addlestone, Weybridge, Surrey, KT15 3NB

Telephone: 01932 357 083.

In any correspondence please quote the Project reference number 62928-RDPE-SE.

- 7 If you wish to receive the Grant in support of the Project and you are willing to comply with the Standard Conditions and the Project Specific Conditions, please sign the Acknowledgement on both the original and duplicate of this Offer Letter and return one copy to me. Please do not detach the Acknowledgement from the Offer Letter and keep both attached to the Schedules, the Standard Conditions and any amending or supplementary documents enclosed with this letter. Please ensure that you read the Standard Conditions and the Project Conditions carefully since by signing and returning the Acknowledgement you declare that you understand and will be bound by them.
- 8 This offer of grant will remain open for acknowledgment for 30 working days from the date of this Offer Letter and will automatically lapse if it is not accepted on or before that date.

Yours sincerely

**Dr Jacquie Middleton – Area Lead**

**RDPE Delivery Team South East**

Signed on behalf of the Secretary of State for the Department for Environment, Food and Rural Affairs

## **Acknowledgment of Offer of Grant**

1. We acknowledge receipt of the Offer Letter and confirm that we wish to receive Grant for support of the Project, which is conditional on the following terms:
  - a. The Offer Letter including Schedule 1;
  - b. The Standard Conditions including its Annexures; and
  - c. The Project Specific Conditions.

all of which are annexed to this Acknowledgment.

2. We have signed both copies of this Acknowledgment of the Offer Letter in the space indicated below and will return one copy to Defra. We also confirm that we have all funding required to pay for expenditure which is not Eligible Expenditure but is needed to enable us to complete the Project and achieve the Targets. We have signed this Acknowledgment in confirmation that we have read and understood the Offer Letter with its Schedules and the Standard Conditions and the Project Specific Conditions of this Grant and agree to be bound by it to comply with all such terms and conditions.
3. We wish to nominate the following individual to have sole delegated authority to sign grant claim forms and any future variation documentation on behalf of Hillier Nurseries Ltd.

Name:

Signature:

**Please note: This will be the only signature accepted and will be held on file and checked with each claim.**

**SIGNED** for and on behalf of **Hillier Nurseries Limited**

Signature:

Name: John Hillier

Date:

Signature:

Name: Robert Hillier

Date:

Signature:

Name: Mike Perrett

Date:

Signature:

Name: Andrew McIndoe

Date:

Signature:

Name: Hossein Arshadi

Date:

Signature:

Name: Kevin Hobbs

Date:

## Offer Letter and Acknowledgment - Schedule 1

### Part 1: Project Specific Conditions

1. You confirm that:
  - 1.1 the Grant Recipient shall carry out the project as described in the Application, moreover, for the avoidance of doubt and without prejudice to Clause 9 of the Standard Conditions, the building work and development of the premises described in the Application at Hillier Nurseries Limited, Ampfield House, Winchester Road, Ampfield shall be carried out as described in the Architect Plan. Any Material Change to the Architect Plan must be agreed with Defra in writing;
  - 1.2 the Grant is conditional upon the Grant Recipient carrying out the project in accordance with the terms and conditions of the planning consent reference 12/02635/FULLS issued by Test Valley Borough Council on (13 February 2013);
  - 1.3 except for the grant, no public sector funding, or other aid or assistance from central or local government body or authority, any statutory undertaking, any other public body or authority, or any other body funded by public money, is being provided or will be provided for the project, except as set out in the application;
  - 1.4 you have declared to Defra any support you have received in the last three years that has been notified to us as coming under state aid rules;
  - 1.5 where any goods, services or other benefits are supplied to any undertaking in connection with the project, they will be supplied in return for payment at the market rate or, if there is no market rate, at a price that reflects full costs plus a reasonable margin;
  - 1.6 it is the Grant Recipient's responsibility to purchase, install and maintain a plaque or billboard to acknowledge the grant support received from Defra and the European Commission, in accordance with the standard conditions of the Rural Development Programme for England (RDPE) grant. A project receiving grant of £40,000 or over will require a plaque and a project receiving grant of £400,000 or over will require a billboard. Please see Annexure A for further details. The plaque or billboard shall be on display at the project location at the earliest opportunity following the Start Date and must be in place prior to the final grant claim submission.
2. The Grant Recipient must comply with the following project specific conditions:
  - 2.1 The Grant Recipient shall attend an inception meeting by 1 May 2014

- 2.2 The Grant Recipient shall provide written confirmation **prior** to submission of the first claim that all conditions imposed as part of the planning permission by Test Valley Borough Council Planning Department have been met
- 2.3 The eligible cost of £61,250 for the reservoir liner within budget heading Reservoir will be withdrawn if it is determined that this item is not required. This cost cannot be transferred to other areas of the project. The Grant Recipient shall notify Defra whether the liner will be required **prior** to the submission of the first claim.
- 2.4 Together with the final claim, the applicant must supply a map highlighting the following:
- New reservoir
  - New irrigation system
  - New hydrants
- 2.5 The grant recipient shall act as a demonstration nursery for businesses considering similar investment and agreed to host up to 3 visits per annum over the project period where requested by industry of Defra.
- 2.6 The grant recipient shall submit their end of year accounts for the next three years to demonstrate the growth in profitability that the project has delivered to the business.
- 2.7 The grant recipient shall ensure that progress reports include updates on the monitoring that has been undertaken during the period and evidence how the new equipment has improved the nursery's financial and water sustainability.

## Part 2: Project Specific Eligible Expenditure

### 2.1 Eligible Project Costs and Grant Claim

Expenditure Sub Headings	Description of item	Chosen Supplier	Eligible Expenditure £	Grant Rate %	Grant Amount £	Date grant to be claimed by
Preliminaries	Soil Suitability Test	Dove Associates	£750.00	40.00	£300.00	30/09/2014
Preliminaries	Topographical Survey	Dove Associates	£765.00	40.00	£306.00	30/09/2014
Reservoir	Reservoir Liner	Stacey Contracts	£61,250.00	40.00	£24,500.00	30/09/2014
	Sump Construction	Stacey Contracts	£23,643.00	40.00	£9,457.20	20/12/2014
	Sump Pumping Systems	Powerflow Services	£15,760.00	40.00	£6,304.00	20/12/2014
	Reservoir Pumping System	Powerflow Services	£23,203.00	40.00	£9,281.20	20/12/2014
	Reservoir Construction	Stacey Contracts	£39,744.00	40.00	£15,897.60	20/12/2014
	Grassland Slope Covering	Stacey Contracts	£4,200.00	40.00	£1,680.00	20/12/2014
Electrics	Power Supply to Sump Pumps	Solent Electrical Services	£5,140.00	40.00	£2,056.00	20/12/2014
	Power supply to reservoir pumps	Solent Electrical Services	£11,472	40.00	£4,588.80	20/12/2014
Management	Project management, progress and financial oversight	Dove Associates	£12,888.00	40.00	£5,155.20	20/12/2014
<b>Total</b>			<b>£198,815.00</b>		<b>£79,526.00</b>	



## 2.2 Ineligible Project Costs

Ineligible Items	Ineligible Expenditure
Environmental Surveys - Phase 1	£1,750.00
Planning Consultancy	£4,500.00
Design Engineering	£1,695.00
Environmental Surveys - Stages 1 & 2	£3,000.00
Environmental Surveys - Stage 3 + Licence	£2,000.00
Construction translocation pond	£1,200.00
Purchase of newt protective fencing	£3,500.00
Environmental Surveys - Stage 4	£19,400.00
Destructive search of land for newts prior to construction	£2,120.00
Environmental Surveys - Stage 5	£2,900.00
Temporary Heras fencing hire for three months	£4,500.00
Native Grass Seed & Wildflower Conservation Mix	£760.00
Inflation Contingency	£10,745.00
Environmental Survey Stage 6	£3,550.00
Panel Engineer	£4,000
<b>Total</b>	<b>£65,620.00</b>

**NB: the eligible expenditure noted above cannot be added to, reduced or the specification altered without the prior written approval by the Defra RDPE Delivery team.**

**The final claim must be a minimum of 15% of the total grant offer amount.**

## Part 3: Outputs and Milestones

### SCHEDULE THREE TABLES

#### Indicators and Milestones

Date		Indicators/milestones
<b>Baselines:</b>		<b>Number of Full Time Employees = Hilliers 441 (FTE) Morleys = 11 (FTE)</b>
		<b>Turnover = £29,729,466</b>
		<b>Year one = 1 Sept 2013 to 31 Aug 2014</b>
		<b>Year two = 1 Sept 2014 to 31 Aug 2015</b>
		<b>Year three = 1 Sept 2015 to 31 Aug 2016</b>
Ongoing		Applicant to ensure compliance with publicity requirements as per contract ( <i>sign/plaque displayed on building, on going publicity should ensure reference is made to the REG support received</i> )
Year 1	April 2014	Reservoir construction commences
	September 2014	First grant claim to have been submitted together with relevant evidence of completion and payment.
Year 2	October 2014	Completion of reservoir
	December 2014	Second and final claim to have been submitted together with relevant evidence of completion and payment.
	August 2015	Report on progress together with report on outputs. Saving of 32,610m <sup>3</sup> mains water
Year 3	August 2016	Report on progress together with report on outputs. Saving of 36,530m <sup>3</sup> mains water
		Demonstration nursery for businesses considering similar investment and agree to host up to 3 visits per annum over the project period where requested by industry or Defra.
	August 2017	Report on progress together with report on outputs. Saving of 48,150m <sup>3</sup> mains water
Five years from final grant claim		End of Funding Contract Period

## EAFRD outputs

Measure code						
125	Improving and developing infrastructure related to the development and adaptation of agriculture and forestry	2012	31-Aug-2013	31-Aug-2014	31-Aug-2015	Total Project Outputs
	Number of operations supported		1	0	0	1
	Total volume of investment £		0	264435	0	264435
	Increase in agricultural gross value added in supported farms	9526031	6579417	10783343	11335968	28698728
	Type of livestock activity	No Livestock activity				
	Type of infrastructure operation	Water Management				
	Sector	Agriculture				
ALL	Outputs / Results Applicable to ALL PROJECTS:	Baseline - 31 Aug 2012	31-Aug-2013	31-Aug-2014	31-Aug-2015	Total Project Outputs
	Jobs (FTE)	10	1	0	0	1
	Of the above number of FTEs created:		1	0	0	1
	Of the above the number of FTEs representing safeguarded jobs		0	0	0	0
	Economic Growth: Level of turnover (£)	26216460	28313777	29729466	31215939	89259182
	Economic Growth: Level of profitability (net profit, £)	-156695	402512	661665	949709	2013886

### Part 4: Handling of VAT Payments

**You declared in your application that you are registered for VAT and will not be including VAT in your grant claims.**

DATED 25 November 2013

**Defra** (1)

**Hillier Nurseries Limited** (2)

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**STANDARD CONDITIONS OF THE RURAL  
DEVELOPMENT PROGRAMME FOR ENGLAND  
(RDPE) GRANT**

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## PARTIES

- (1) **Defra**, whose office is at **Nobel House, 17 Smiths Square, London, SW1P 3JR**
- (2) **Hillier Nurseries Limited**, Company Number **01260468**, whose registered office is at **Ampfield House, Ampfield, Romsey, Hampshire, SO51 9PA** ('the Grant Recipient')

## 1 INTRODUCTION

- A The Defra RDPE Delivery Team is the delivery body for the Rural Development Programme for England (RDPE) in the period 2007–13. The RDPE was adopted by the European Commission as a strategy for granting aid from the European Funds.
- B Defra has decided to support the Project because the appraisal of the Application indicates that the Project will further the objectives of the RDPE and Defra. The achievement of the Outputs is dependent on securing the continuous use of the Assets for the purposes of the Project throughout their useful economic life.
- C The Funding Agreement governs, among other things, the payment of Grant for the support of the Project, the use of Grant for meeting Eligible Expenditure, and the on-going obligations and liabilities of the Grant Recipient relating to the use and disposal of the Assets, the auditing of Eligible Expenditure and Defra's contingent right to recover Grant.
- D The Grant Recipient is to satisfy itself that the Grant is state aid compliant.

## IT IS AGREED THAT:

### 2 DEFINITIONS

- 2.1 In the Funding Agreement the following words and phrases shall have the following meanings:

**"Acknowledgment"** means the acknowledgment of the Offer Letter.

**"Anticipated Completion Date"** means the date specified as such in paragraph 6 of the Offer Letter.

**"Application"** means the Full application for Grant and all supporting papers submitted to Defra, including the details of Project Activities, the Business Plan (if there is one) and any amendments to any of these documents approved by Defra in writing prior to the date of the Offer Letter.

**"Approved Use"** means use of an Asset as set out in the Application for its Useful Economic Life.

**"Asset"** means either a Fixed Asset or a Major Asset as appropriate in the relevant context and **"Assets"** shall be construed accordingly.



**"Business Plan"** means any document that contains the estimates, forecasts, timetable or other particulars relating to the Project, including the execution of the Project Activities, the intended use of the Assets and the achievement of the Targets.

**"Capital Expenditure"** means items that can be capitalised onto the project balance sheet and included on its asset register.

**"Completion"** means completion of the Project Activities to the satisfaction of Defra.

**"Conditions"** means together all of the conditions of Grant contained in all or any of the Offer Letter (including its Schedules) and the Standard Conditions (including its Annexures).

**"Confidential Information"** means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed and/or on whatever media it is stored) including but not limited to information which relates to the business, affairs, properties, assets, trading and other practices, goods, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, actual or potential clients, customers, suppliers or other third parties with whom either party deals or contracts, all personal data and sensitive personal data within the meaning of the DPA.

**"Defra"** means the Department for the Environment, Food and Rural Affairs and includes its statutory successors

**"Defrayed"** means the point at which payment has left the bank account of the Recipient

**"Disposal"** means a disposal of any Asset whether by the transfer or the grant of a lease or licence, of the Asset, or any part of the Asset, and "Dispose" shall be construed accordingly.

**"DPA"** means the Data Protection Act 1998.

**"Eligibility Rules"** means the rules on eligibility of expenditure contained in Articles 20 to 65 and 71 of Commission Regulation 1698/2005, which apply in accordance with Articles 13 to 39 and 53 to 55 of Commission Regulation 1974/2006, as amended.

**"Eligible Expenditure"** means Defrayed expenditure in relation to this Project within the Eligibility Rules and in relation to this Project also the Project Specific Eligible Expenditure and Eligible Expenditure may be either "Eligible Capital Expenditure" or "Eligible Revenue Expenditure" (as appropriate in the context).

**"End Date"** is the date specified as such in paragraph 5 of the Offer Letter.

**"Expenditure and Payment Profile"** means the programme for carrying out of Project Activities and payment of Grant including the Start Date and the Anticipated Completion Date and the End Date, and which is contained in Schedule 1- Part 2 of the Offer Letter.

**"EU Procurement Requirements"** includes, but is not restricted to the Public Contracts Regulations 2006 (SI 5/2006), the Utilities Contracts Regulations 2006, the EU Commission Interpretive Communication (2006/C 179/02) and the principles of transparency, non discrimination, equality of treatment, proportionality and mutual recognition in the EC Treaty.



**"Financial Year"** means from April 1<sup>st</sup> to 31<sup>st</sup> March

**"Fixed Asset"** means any asset that consists of land and/or buildings, plant, machinery or other thing that is, or is to be, fixed to any land and which is to be acquired, developed, enhanced, constructed and/or installed as part of the Project.

**"Funding Agreement"** means the agreement constituted by the Application, the Offer Letter (including the Schedules and the completed Acknowledgement of the Offer Letter), these Standard Conditions and any amending or supplementary documents attached to the Offer Letter, which takes effect upon the Grant Recipient first incurring Eligible Expenditure, provided that the Grant Recipient has at that time signed the Acknowledgment.

**"Grant"** means the grant of RDPE.

**"Grant Claim"** means a claim for Grant to be made using the claim form which is available from Defra on request.

**"Grant Recipient"** means the Hillier Nurseries Limited named as such in the Offer Letter.

**"Intellectual Property Rights"** means all patents, know-how, registered trademarks, registered designs, utility models, applications and rights to apply for any of the foregoing unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention discovery or process in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions

**"Intervention Rate"** means the percentage rate of Eligible Expenditure at which Grant is paid as contained in the Offer Letter and may be Capital Intervention Rate and/or Revenue Intervention Rate.

**"Key Milestone Dates"** means those milestones to achieve the Project which are contained in Schedule 1 – Part 3 of the Offer Letter.

**"Major Asset"** means an Asset which is not a Fixed Asset.

**"Material Breach"** means a breach of this Funding Agreement which in the opinion of Defra is deemed to be material.

**"Material Change"** means a change which is in the opinion of Defra is deemed to be material (including for the avoidance of doubt the receipt by the Recipient of any other European funding).

**"Maximum Sum"** means the maximum amount of Grant to be provided by Defra for the support of the Project

**"Offer Letter"** means the letter and Schedules, to which these Standard Conditions are annexed, and by which Defra offers Grant for the support of the Project on specified terms and conditions, and includes any variations agreed in writing by Defra and the Grant Recipient.

**"Outputs"** means the outputs identified and detailed in Schedule 1 - Part 3 of the Offer Letter which are the anticipated outputs, results and impacts of the Project

**"Ownership, Control and Nature of Business"** shall be construed in accordance with s 840 the Income and Corporation Taxes Act 1988 and s 1162 Companies Act 2006 and for the avoidance of doubt shall include an evaluation of dominant influence and shadow directorships in the grant recipient from time to time.

**"Parties"** means Defra and the Grant Recipient.

**"Planned Disposal"** means a disposal by the Grant Recipient of any interest in any of the Assets which:

- (a) is intended as a planned step in the implementation of the Project; and
- (b) is made by the grant of a lease, licence or other interest whereby the Grant Recipient will, on the termination of the interest, enjoy the same legal interest in the Asset concerned as the Grant Recipient enjoys prior to making the Disposal.

**"Prescribed Manner"** means where provision is made for any matter or value to be ascertained or any dispute to be determined "in the Prescribed Manner" the same shall be determined:

- (a) by agreement between Defra and the Grant Recipient; or
- (b) in default of such agreement by an independent chartered surveyor or (as appropriate) independent valuer to be appointed by agreement between Defra and the Grant Recipient or, in the absence of such agreement to be nominated upon the application of Defra or the Grant Recipient by the President (or other appropriate officer) of the Royal Institution of Chartered Surveyors; and
- (c) any such independent chartered surveyor or independent valuer shall:
  - (i) act as an expert;
  - (ii) afford to Defra and the Grant Recipient a reasonable opportunity to make representations (but not so as to prejudice the expert's right to reach his decision solely on the basis of his own expertise); and
  - (iii) determine who shall bear the fees and expenses of the expert and the costs of his appointment.

**"Project"** means the project fully described in the Application and briefly described in paragraph 3 (e) of the Offer Letter.

**"Project Activities"** means all the activities to be carried out and implemented in the Project and described in the Application.

**"Project Specific Conditions"** means those Conditions which are specific to the Project and are contained in Schedule 1 to the Offer Letter.

**"Project Specific Eligible Expenditure"** means Eligible Expenditure which is specific to this Project, and is contained in Schedule 1- Part 2 to the Offer Letter.

**"Public Sector Financial Assistance"** includes all funding received or receivable by the Grant Recipient from public sector bodies including for this purpose funding from the European Commission, government bodies (whether national or local) or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Acts 1993 and 1998.

**"Revenue Expenditure"** means ongoing spend that does not result in the purchase of a physical item.

**"RDPE"** means the Rural Development Programme for England

**"RDPE Regulations"** means Council Regulation (EC) 1698/2005, Commission Regulation (EC) 1974/2006, as amended, Commission Regulation (EC) 65/2011 and Statutory Instrument 2007/75, as amended, and Statutory Instrument 2011/1433.

**"Request for Information"** means any request for Information or Environmental Information within the meaning of Section 8 of the Freedom Of Information Act or Regulation 5 of the Environment Information Regulations, as appropriate.

**"SME"** means a Small to Medium Enterprise as defined by the European Commission recommendation of 6 May 2003 concerning the definition of micro, small and medium sized enterprises as the same may be amended from time to time.

**"Start Date"** is the date specified as such in paragraph 5 of the Offer Letter.

**"Statutory Requirements"** means any existing or future Acts of Parliament, statutory instruments or notices, orders, directions, requirements and/or schemes imposed by any authority under any enactment.

**"Useful Economic Life"** means in respect of any Asset the earlier of:

- (a) the period commencing on the End Date and expiring on the fifth anniversary of the End Date; or
- (b) the expiry of the economic life of the Asset having regard to the nature of the Asset and its depreciation.

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

### **3 INTERPRETATION**

In this Funding Agreement:

- 3.1 reference to any statute or any section thereof or legislation shall include any statutory extension or modification, amendment or re-enactment of such statutes and include all instruments, orders, bye-laws and regulations for the time being made, issued or given thereunder or deriving validity therefrom, and all other legislation of the European Union that is directly applicable to the United Kingdom;
- 3.2 reference to any clause, sub-clause, paragraph, sub-paragraph or schedule without further designation shall be construed as a reference to the clause, sub-clause, paragraph, sub-paragraph or schedule to this Funding Agreement so numbered;

- 3.3 this Funding Agreement includes any variations hereto made from time to time and any agreement expressed to be supplemental hereto;
- 3.4 reference to “including” shall be construed so as not to limit the generality of any words or expressions in connection with which it is used;
- 3.5 the consent approval or agreement of Defra required pursuant to the terms of this Funding Agreement shall not be construed as having been given unless provided in writing;
- 3.6 words importing one gender shall include both genders and the singular shall include the plural and vice versa;
- 3.7 a person being connected with the Grant Recipient (if applicable) shall be construed in accordance with the like provisions as are contained in Section 839 of the Income and Corporation Taxes Act 1988;
- 3.8 the Schedules to the Offer Letter and the Annexures annexed to these Standard Conditions have the same force and effect as if expressly set out in the body of this Funding Agreement;
- 3.9 any definitions which are contained in the Offer Letter are to have the same meaning in these Standard Conditions, and any definitions in these Standard Conditions will have the same meaning in the Offer Letter;
- 3.10 the headings in this Funding Agreement will not affect its interpretation;
- 3.11 where there are two or more persons included in the expression “the Grant Recipient” the obligations and warranties expressed to be entered into or given by the Grant Recipient shall be deemed to be entered into or given by such persons jointly and severally; and
- 3.12 at the absolute discretion of Defra any of the forms annexed to this Funding Agreement may change from time to time.

#### **4 ELIGIBLE EXPENDITURE**

- 4.1 Grant will only be paid in respect of Eligible Expenditure.
- 4.2 Eligible Expenditure excludes:
- (a) payments made by the Grant Recipient that are ineligible by virtue of any provision in the Eligibility Rules; and
  - (b) any payment made by the Grant Recipient before the agreed Start Date within Paragraph 5 of the Offer Letter or after the agreed End Date within Paragraph 5 of the Offer Letter; and after the RDPE programme end date of 31 March 2015.
  - (c) any cash payment made by the Grant Recipient for any items on which grant aid will be claimed.

## 5 THE APPLICATION

5.1 In appraising the Project and determining the merits of providing Grant support for it, Defra has relied on the Application. No disclaimer or other statement that precludes the right of any person to rely upon the Application and/or the contents of the Business Plan or any other document that forms part of the Application, or has a similar effect, shall apply with respect to Defra or affect Defra's right to enforce any provision of the Funding Agreement.

5.2 For the avoidance of doubt, clause 5.1 is intended to ensure that:

- (a) no disclaimer of liability for the contents of the Application affects Defra's right to recover any sum under this Funding Agreement; and
- (b) there is reserved to Defra any rights of action or remedies for any mistake, misrepresentation or error of judgment made in the Application upon which Defra has relied in agreeing to provide Grant to the Grant Recipient.

## 6 GRANT CLAIMS

### 6.1 Amount of Grant payable

- (a) The total amount of Grant payable in respect of Eligible Expenditure will be either the Maximum Sum, or an amount calculated by applying the Intervention Rate to the actual Eligible Expenditure, whichever is lower.
- (b) The total amount of Grant paid to the Grant Recipient cannot exceed the Maximum Sum.

### 6.2 Grant Claim Conditions

Defra will not make the payment of Grant unless all of the following preconditions have been complied with:

- (a) the Grant Recipient has satisfied Defra that the Grant Recipient has (and continues to have) sufficient Match Funding to complete the Project by the Anticipated Completion Date;
- (b) the Grant Recipient has satisfied Defra that the Grant Recipient has (and continues to have) all funding needed to pay for expenditure in relation to the Project which is not Eligible Expenditure;
- (c) that Eligible Expenditure has been incurred and that payment has been Defrayed by the Grant Recipient in respect of any Eligible Expenditure to which a Grant Claim relates;
- (d) no European Union or Defra investigation has been commenced or is pending in respect of the Project or the Grant Recipient, or if there has been a European Union investigation, it has been concluded to the satisfaction of Defra;
- (e) these Standard Conditions and the Project Specific Conditions have been complied with and/or implemented and/or achieved (as appropriate at the relevant time of the Grant Claim).

### **6.3 Grant Claims Procedure**

- (a) The Grant Recipient is entitled to claim payment of Grant in arrears on the dates set out in the Expenditure and Payment Profile.
- (b) The Grant Claim made on the payment date in the Expenditure and Payment Profile shall relate to all Eligible Expenditure incurred and paid by the Grant Recipient from the Start Date
- (c) The Grant Claim shall include invoices and bank statements in such format and detail as may be acceptable to Defra relating to the amount of such Grant Claim.
- (d) Where Grant Claims are made for items on a proportional basis the Grant Recipient will also provide itemised records to demonstrate how the amounts that are eligible for grant funding relate to each of the original invoices and/or salary records
- (e) Each Grant Claim is to be submitted to the principal contact in Defra who is named in Paragraph 6 of the Offer Letter.
- (f) Defra will normally meet a Grant Claim within 30 Working Days of receipt, but this is subject to the Grant Recipient satisfactorily meeting any request for further particulars about the Eligible Expenditure specified in the Grant Claim or any other details provided for in the Grant Claim.
- (g) The Grant Recipient must notify Defra promptly in writing if at any time it becomes aware that it is unable to make a Grant Claim in accordance with the Expenditure and Payments Profile.

## **7 THE EXPENDITURE AND PAYMENT PROFILE**

- 7.1 If in any financial year (“the relevant year”) there is a shortfall in the amount of Eligible Expenditure by reference to the amount planned in the Expenditure and Payment Profile, Defra will be under no obligation to pay Grant for any additional Eligible Expenditure in the following year or any later financial year.
- 7.2 Defra may in its absolute discretion agree to vary the Expenditure and Payment Profile but such variations will only be valid where made by a formal ‘Variation Letter’ signed by both parties.

## **8 DECOMMITMENT OF RDPE RESOURCES**

- 8.1 The Grant Recipient acknowledges that the financial consequences that flow from a departure from the Expenditure and Payment Profile in any financial year could include the loss of RDPE resources allocated for the RDPE (if in that year there is under-spending for the RDPE as a whole).
- 8.2 Unexpended RDPE resources not required to meet Eligible Expenditure will be decommitted by Defra (that is, will no longer be available for payment by Defra).

- 8.3 In order to avoid decommitment, if during any financial year of the RDPE Defra is reasonably satisfied that there will be a shortfall in Eligible Expenditure and that the Grant Recipient will be unable to make up that shortfall then, Defra may reduce the Grant allocated for the Project and use the amount of the reduction for any other purpose of the RDPE. The amount to be re-allocated under these circumstances is determinable at the absolute discretion of Defra, but will not exceed the amount of the shortfall in Eligible Expenditure.
- 8.4 Where the right reserved in clause 8.3 arises under circumstances that entitle Defra to exercise the rights reserved in clause 13, the right reserved to it in clause 8.3 is exercisable in addition and without prejudice to the exercise of the rights reserved in clause 13.

## **9 PROVISIONS RELATING TO THE FIXED ASSETS AND MAJOR ASSETS**

### **9.1 Inventory of the Fixed Assets and Major Assets**

The Grant Recipient must establish and maintain an inventory of all of the Assets for a **five year** period from the date of purchase. For each of the Assets the inventory must show the following particulars:

- (a) date of acquisition;
- (b) description of each Asset;
- (c) price paid net of recoverable VAT;
- (d) location of the Asset;
- (e) serial or identification numbers;
- (f) location of the title deeds (where relevant);
- (g) date and proceeds (net of VAT) of any Disposal; and
- (h) the name and address of any person to whom a Disposal is made.

### **9.2 Change of use of the Assets**

- (a) The Grant Recipient covenants with Defra that it will not use any Fixed Asset or Major Asset for any purpose other than the Approved Use throughout the Useful Economic Life of the Fixed Asset or the Major Asset (as appropriate).
- (b) During the Useful Economic Life of each Fixed Asset or Major Asset, the Grant Recipient shall not cease to use the Fixed Asset or the Major Asset, or any part of the Fixed Asset or Major Asset for the Approved Use without the prior written consent of Defra, and if such consent is given, it may be subject to any conditions which Defra may wish to impose. Such conditions may include repayment by the Grant Recipient to Defra of all or part of the Grant paid to the Grant Recipient under this Funding Agreement.
- (c) If the Grant Recipient wishes to obtain Defra's consent to a change of the use of a Fixed Asset or Major Asset for any purpose other than the Approved Use, the

Grant Recipient must submit particulars of the new proposed use to Defra and explain in writing how the change of use will not prejudice the achievement of the Outputs or how the new proposed use will achieve objectives of equal value for the implementation of the RDPE.

- (d) As a condition of any Disposal of the whole or any part of any Fixed Asset during the Useful Economic Life of the Project Defra may require that the Grant Recipient shall procure that the disposer executes a deed of covenant regarding future changes of use from the Approved Use.

### **9.3 Disposal of the Assets**

- (a) Other than in respect of Planned Disposals, the Grant Recipient must not dispose of any interest in any Asset without the prior written consent of Defra. If Defra grants consent to the Disposal, such consent may be subject to satisfaction of certain preconditions.
- (b) All Disposals must be for a consideration which is the best that can reasonably be obtained in the open market, on an arms length basis, on normal market terms, at the time of such Disposal.
- (c) Where the Grant Recipient disposes of any interest in any Asset (other than by a Planned Disposal) without the prior written consent of Defra, then the proceeds of the Disposal (limited to the total amount paid by Defra to the Grant Recipient under this Funding Agreement) shall be immediately payable to Defra and may be recovered as a contractual debt if not paid within 20 Working Days of the date on which the proceeds of the Disposal are received.
- (d) The liability under clause 9.3(c) is separate from the liability to comply with any decision of Defra under clause 13 to require repayment of Grant of the whole or any part of the amount paid of the Grant.

## **10 MATERIAL CHANGES TO THE PROJECT**

- 10.1 Any proposed Material Change to the Project or any aspect of the Project Activities will require the prior written approval of Defra.
- 10.2 Clause 6.1 and paragraph 2 of the Offer Letter fixes the maximum amount which Defra will pay to the Grant Recipient for the support of the Project regardless of any increase in Eligible Expenditure. No approval to a Material Change to the Project or the Project Activities may be taken to approve the payment of an additional amount of Grant or imply any intention to consider paying an additional amount of Grant, unless it expressly makes provision to the contrary.
- 10.3 If either:
  - (a) the Grant Recipient does not seek the approval of Defra to any Material Change to the Project or the Project Activities; or
  - (b) Defra grants approval to any Material Change to the Project or the Project Activities subject to a requirement to repay the whole or any part of the amount paid of Grant,



THEN the Grant Recipient shall repay such amount as Defra may in its absolute discretion request, and the liability under this clause 10.3 is separate from the liability to comply with any decision of Defra under clause 13 to require repayment of Grant.

## **11 THE REGULATIONS**

- 11.1 The Grant Recipient must comply and secure compliance with the following legislation, insofar as relevant to the Project:
- (a) Council Regulation (EC) 1698/2005, Commission Regulation (EC) 1974/2006, Commission Regulation (EC) 65/2011, and with any other applicable legislation including Statutory Instrument 2007/75 and Statutory Instrument 2011/1433 all as may be amended from time to time;
  - (b) European Union state aid rules; and
  - (c) EU Procurement Regulations.
- 11.2 The Grant Recipient shall take all necessary measures to comply with the requirements of the Health and Safety at Work Act 1974 and any other statutes, regulations and codes of practice which may apply to staff and other persons working at the Grant Recipient's premises and shall provide Defra with its health and safety policy statement on request.

## **12 PUBLICITY**

- 12.1 The Grant Recipient shall install and maintain at each location where the Project is based or operates such explanatory plaques, billboards and other promotional material indicating the involvement of the European Union and Defra with the project as Defra may require, and shall comply with the most recent design requirements issued from time to time (See Annexure A for the Defra publicity guidelines).
- 12.2 No party shall make or permit any of its employees, agents or advisors to make any press or any public announcement or divulge or communicate to any person of any of the terms of this Funding Agreement without the approval of Defra (such approval not being unreasonably withheld or delayed).
- 12.3 The Grant Recipient agrees to Defra, RPA, and the European Union publishing information including the Grant Recipient's name, address and amounts of grant funding in their respective official publications and websites.
- 12.4 The obligations in this clause shall continue after this Funding Agreement is terminated, to a maximum of 7 years from the End Date and 10 years if State Aid applies.

## **13 EVENTS OF DEFAULT AND RIGHTS RESERVED FOR BREACH OF THE FUNDING AGREEMENT**

### **13.1 Events of Default**

An Event of Default is the occurrence, in the absolute discretion of Defra, of any of the following:

- (a) the Grant Recipient fails to comply with any of the Standard Conditions or the Project Specific Conditions;

- (b) the Project Activities are not commenced by the date which is 3 months after the Start Date;
- (c) Completion of the Project Activities has not been achieved by the Anticipated Completion Date;
- (d) a Material Change is made to the Project without the prior written approval of Defra;
- (e) the Grant Recipient Disposes of any Asset without the prior written consent of Defra;
- (f) the Approved Use of any Fixed Asset or any Major Asset has ceased before the expiry of its Useful Economic Life;
- (g) the Grant Recipient no longer has the financial resource to carry out and complete the Project;
- (h) a lack of progress towards achieving the Targets provides reasonable grounds for Defra to question the future benefits to be derived from the Project or to doubt whether the Project will be (or will continue to be) effective for RDPE implementation or good value for money;
- (i) the Commission or the European Court of Justice or the European Court of First Instance requires any Grant paid to be recovered by reason of a breach of state aid legislation;
- (j) any financial irregularities are identified in connection with the Project (and the Grant Recipient acknowledges that it is the duty of Defra to report financial irregularities to the Rural Payments Agency and Defra), or the Commission otherwise requires Defra to recover any of Grant paid under the Funding Agreement;
- (k) any information given or representation made in the Application or in any correspondence, report or other document submitted to Defra under this Funding Agreement is found to be incorrect or incomplete to an extent which Defra considers to be material;
- (l) any report or certificate made by the Grant Recipient's auditor or reporting accountant is unsatisfactory (where, for example, the report or certificate refers to a fundamental uncertainty or disagreement, or contains a material qualification, or states that the auditor or accountant is unable to form an opinion about any item, or reports that any amount is not correctly stated in the accounts or records examined);
- (m) the Grant Recipient owes any sum to Defra under an agreement for the financial support of any other project or activities;
- (n) there is any fraud on the part of the Grant Recipient;
- (o) there is a Material Change in the Ownership, Control and Nature of Business of the Grant Recipient within the period beginning on the date of this document and ending five years after the final payment of the Grant;

- (p) if the Grant Recipient is an SME, but it ceases to be an SME, and it is a state aid requirement that the Grant Recipient remains as an SME;
- (q) an encumbrancer takes possession or a receiver or administrative receiver or manager or sequestrator is appointed of the whole or any part of the undertaking assets rights or revenues of the Grant Recipient or a distress or other process is levied or enforced upon any of the assets rights or revenues of the Grant Recipient and any such action is not lifted or discharged within 10 Working Days;
- (r) a petition is presented (other than a petition which, in the opinion of Defra, is frivolous or vexatious and which is withdrawn or stayed within 10 Working Days) to, or any order is made by, any competent court for the appointment of an administrator in relation to the Grant Recipient;
- (s) the Grant Recipient is, or is adjudicated or found to be, insolvent or stops or suspends payment of its debts or is (or is deemed to be) unable to or admits inability to pay its debts as they fall due or proposes or enters into any composition or other arrangement for the benefit of its creditors generally or proceedings are commenced in relation to the Grant Recipient under any law regulation or procedure relating to reconstruction or adjustment of debts;
- (t) any petition is presented by any person (other than a petition which, in the opinion of Defra, is frivolous or vexatious and which is withdrawn or stayed within 10 Working Days) or any order is made by any competent court or any resolution is passed by the Grant Recipient for its winding-up or dissolution or for the appointment of a liquidator of the Grant Recipient; or
- (u) the Grant Recipient is in Material Breach of this Funding Agreement, other than as contained in (a) – (t) above.

### **13.2 Rights reserved for Defra in relation to an Event of Default**

Where an Event of Default has occurred Defra may by written notice to the Grant Recipient take any one or more of the following steps:

- (a) suspend the payment of Grant for such period as Defra shall determine;
- (b) vary the Maximum Sum in which case the payment of Grant shall thereafter be made in accordance with the variation notified to the Grant Recipient; or
- (c) cease to make payments of Grant to the Grant Recipient under this Funding Agreement and (in addition) require the Grant Recipient to repay to Defra the whole or any part of the amount of Grant previously paid to the Grant Recipient.

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

- (a) If Defra gives written notice to the Grant Recipient pursuant to clause 13.2(a) to suspend payment of Grant, such notice shall specify the relevant Event of Default and give the Grant Recipient an opportunity to rectify the relevant Event of Default within such period as Defra shall determine to be reasonable and as shall be set out in such written notice (or such extended period as Defra shall thereafter determine in its discretion).

- (b) Defra shall not by reason of the occurrence of an Event of Default which is, in the opinion of Defra, capable of remedy, exercise its rights under clause 13.2(c) unless the Grant Recipient has failed to rectify the default pursuant to clause 13.3(a) within such period referred to in clause 13.3(a) to the satisfaction of Defra.

#### **13.4 Continued rights of actions or remedies of Defra**

The exercise by Defra of its rights under clause 13.2 shall be without prejudice to any other right of action or remedy of Defra in respect of any breach by the Grant Recipient of the provisions of the Funding Agreement.

#### **13.5 Cessation of entitlement to grant**

If Defra exercises its right under clause 13.2(c) Defra shall give written notice to the Grant Recipient that Defra is ceasing to make payment of Grant and from the date of such notice Defra shall cease to be under any obligation to pay any amount of Grant to the Grant Recipient under the Funding Agreement.

#### **13.6 Liability to meet demand for repayment of Grant**

- (a) Where Defra requires the Grant Recipient to repay any amount of Grant, the Grant Recipient shall repay the amount concerned on receiving the demand for repayment. The liability to meet such a demand shall be enforceable as a contractual debt.
- (b) Where Defra makes a determination to recover any amount of Grant, it may recover the amount concerned by withholding or deducting the amount from any sum due from Defra or RPA to the Grant Recipient under a Funding Agreement for the support of any other project or activities by the RDPE, or under a different agreement with Defra or any another RPA administered scheme.
- (c) Defra or RPA are also entitled to charge interest on any amount repayable by the Grant Recipient at the rate equivalent to the London Inter-Bank Offered Rate (LIBOR) plus 1% from the date of notification of the requirement to make repayment.

### **14 ASSIGNMENT OR CHARGING OF THE FUNDING AGREEMENT**

#### **14.1 Assignment or charging of the Funding Agreement**

- (a) The Grant Recipient may not, without the prior written consent of Defra, assign its rights under the Funding Agreement or its right as security for any benefit or novate the Funding Agreement to a third party.
- (b) If the Grant Recipient wishes to enter into a novation of its rights and liabilities under the Funding Agreement, or to assign or charge the Funding Agreement, it will give as much notice as possible of its proposals to Defra and will provide a full account of relevant circumstances and such further particulars as Defra shall request concerning the party to which the Funding Agreement is to be assigned, novated or charged.

- (c) Defra shall have absolute discretion as to its decision as to whether to give consent to an assignment or novation or charging of the Funding Agreement or as to any conditions to be imposed.
- (d) If Defra consents to an assignment, novation or charge, then Defra may notify the Grant Recipient that the documentation is to be approved by Defra and copies of all completed documents supplied to Defra upon completion of the same.

## **15 MONITORING PROGRESS, TENDERING AND NOTIFICATION**

### **15.1 Submission of a Claim and Monitoring Form**

- (a) The Grant Recipient must submit a claim and to advise on the progress of the Project Activities to Defra in accordance with the Payment Profile at Schedule 1 – Part 2.
- (b) After the completion of the Project Activities, the Grant Recipient must send to Defra, at such intervals as Defra shall notify in writing to the Grant Recipient, a report on progress made towards the achievement of the Outputs. Without prejudice to any provision of any of these Standard Conditions conferring a remedy for failure to achieve any of the Outputs, this obligation shall subsist until the Outputs have been achieved or, if earlier, until the end of the Useful Economic Life of the Assets.
- (c) The Grant Recipient must provide such additional information in such format as Defra may at any time require. This includes information about the progress of the Project Activities, the achievement of the Outputs and any other information required to enable Defra or UK Government to meet its reporting obligations and other obligations under State Aid legislation and RDPE Regulations.

### **15.2 Value for money and procurement requirements**

- (a) The Grant Recipient warrants that it has complied with EU procurement regulations to date.
- (b) The Grant Recipient shall comply with current EU procurement regulations at all times.
- (c) Defra shall be entitled to request information to verify that there has been compliance with EU procurement regulations.

### **15.3 Tendering**

- (a) Defra's tendering procedure requirements are available on request from Defra and the Grant Recipient shall at all times comply with the requirements therein.
- (b) The Grant Recipient must, if required by Defra, provide an account in writing or by providing relevant documents of the procurement practices adopted for the Project Activities, and of how tenders have been assessed and tenderers have been selected.

#### **15.4 Notification by the Grant Recipient**

The Grant Recipient shall notify Defra in writing:

- (a) as soon as practicable thereafter firstly in the event of any Material Change in the information on costs (whether actual or estimated) of carrying out the Project Activities contained in the Application and secondly of any event which materially affects the continued accuracy of such information;
- (b) as soon as practicable thereafter, in the event of the receipt of any other Public Sector Financial Assistance or guarantees of other Public Sector Financial Assistance, or an offer of the same, in respect of any aspect of the Project or the Project Activities (or any part of it or them);
- (c) as soon as practicable thereafter, of any event which might adversely affect the carrying out and/or completion of the Project Activities or any part of them;
- (d) prior to any proposed Disposal of any Asset;
- (e) prior to any change of use of any Asset from the Approved Use;
- (f) as soon as practicable thereafter, of any event which might adversely affect the delivery of the Project by the Anticipated Completion Date;
- (g) within 5 Working Days of any Disposal, details of that Disposal of the whole or any part of the Assets up to that date, together with details and evidence of the consideration obtained and (if required by Defra) together with copies of all relevant documentation; and
- (h) forthwith, on the occurrence of an Event of Default.

#### **15.5 Records**

- (a) The Grant Recipient shall provide Defra with such information and documentation as Defra may require in connection with the Project from the date of the Funding Agreement to the date on which the Grant Recipient has fulfilled all its obligations under this Funding Agreement.
- (b) The Grant Recipient must keep a record of all Eligible Expenditure, all quotes, tenders and procurement practices, financial records, all financial contributions made towards the Project and all income generated by the Project (primarily through the use of the Assets).
- (c) The Grant Recipient will provide to Defra such information as is available as to the number of persons employed in connection with the Project, their names, addresses, National Insurance numbers and such other information as may be requested by Defra as to the benefits derived from the provision of funding for the Project.
- (d) The Grant Recipient must comply with the requirements of Defra regarding the keeping of records as may be issued to the Grant Recipient by Defra from time to time.

## **15.6 Retention of documents**

- (a) The Grant Recipient will ensure that all original documents relating to the Project and its implementation and financing are retained for at least **seven years** from the date of the final payment under the Funding Agreement, or **10 years** if State Aid applies.
- (b) The Grant Recipient will make available the original documents relating to the Project and its implementation and financing if and when required to do so by Defra, the European Court of Auditors, the European Commission auditors, the National Audit Office or RPA (and also their respective auditors).

## **15.7 Conflicts of interest and financial irregularities**

- (a) The Grant Recipient and all officers, employees and other persons engaged or consulted by the Grant Recipient in connection with the Project must be careful to avoid conflicts of interest. The Grant Recipient is required to have formal procedures obliging all such persons to declare any actual or potential personal or financial interest in any matter concerning the Project, and to be excluded from any discussion or decision-making relating to the matter concerned.
- (b) If the Grant Recipient has any grounds for suspecting any financial irregularity in the use of any amount paid under the Funding Agreement, it must notify Defra immediately, explain what steps are being taken to investigate the suspicion, and keep Defra informed about the progress of the investigation. For these purposes “financial irregularity” includes fraud or other impropriety; mismanagement; use of Grant for improper purposes; and failure to comply with requirements of the RDPE relating to the control and propriety of project expenditure.
- (c) All claims are checked to ensure that claimed items are eligible for grant and supported by documentation proving payment. If any items are deemed ineligible, including those that are not evidenced as being paid, they will not be considered for payment of grant. In addition, if the value of any ineligible items is more than 3% of the total eligible items, a penalty may be applied to your claim. The value of the penalty will be equal to the amount deemed non-eligible. For example, if you claim for £1,000 of grant but items equalling £100 are deemed ineligible, then the total eligible amount to be paid grant on is £900. As the amount found to be ineligible (£100) is more than 3% of £900 (it is 11%) a penalty will be applied. The amount of the penalty is equal to the amount found to be ineligible so in this case it would be £100. Therefore, in this example, payment would be made for £800 and £200 would be removed from your total grant offer i.e. in the event of a penalty being applied, you will not be given the opportunity to claim the amount deducted in any subsequent claim
- (d) Defra, shall be entitled to interview employees of the Grant Recipient if fraud or other financial irregularity is suspected by Defra or persons authorised by Defra (including for example Rural Payments Agency, Defra, the National Audit Office, Audit Commission, European Commission and European Court of Auditors staff), on the part of the Grant Recipient.

## **16 INSPECTION REQUIREMENTS**

### **16.1 Inspection facilities**

- (a) The Grant Recipient shall maintain full and accurate accounts and documentary evidence for the Project on an open book basis and the Grant Recipient shall permit Defra and persons authorised by Defra (including for example Rural Payments Agency, Defra, the National Audit Office, Audit Commission and European Commission and European Court of Auditors staff) to have access to the Grant Recipient's premises and records at all reasonable hours to inspect, audit and take copies of all reports, books, accounting, records and vouchers which Defra properly considers relevant to the Project.
- (b) The Grant Recipient shall comply with the RDPE audit monitoring and reporting requirements for Grant Recipients which is available in the REG Project Guide.
- (c) The Grant Recipient shall provide Defra with such other information as Defra may require in connection with the Project and the Project Activities.
- (d) Advance notice of a maximum of 14 calendar days will be given when arranging an inspection visit.

## **17 INTELLECTUAL PROPERTY RIGHTS**

- 17.1 The Intellectual Property Rights created by the Grant Recipient under the Project remain the property of the Grant Recipient, but subject always to the following provisions of this clause 17.
- 17.2 The Grant Recipient acknowledges that it is a condition of Defra's funding of the Project that Defra shall be entitled to make information and know-how relating to or derived from the Project (Project Related Know-how") publicly available. Defra will regard this Project Related Know-how as "best practice" notwithstanding that this Project Related Know-how may constitute Intellectual Property Rights belonging to the Grant Recipient or a third party and that such best practice will as a result enter the public domain.
- 17.3 The Grant Recipient agrees to provide to Defra upon request complete copies (where relevant) and access to full details of information and Project Related Know-how, (including the methods by which the Project was conducted) and all Intellectual Property Rights. The Grant Recipient shall provide whatever assistance and explanation is required by Defra to enable it effectively to exercise the right referred to in clause 17.2.
- 17.4 When exercising the right referred to in clause 17.2, Defra shall not be obliged to identify the Grant Recipient or anybody who has contributed to the Project, unless Defra publishes work belonging to the Grant Recipient or a material part thereof without amendment in which case due credit shall be given.
- 17.5 Defra's decision as to what constitutes best practice shall be final. Defra shall have the right to amend the Project Related Know-how or to combine information and know-how from two or more projects as it thinks fit to when compiling and publishing what it regards



as best practice in exercise of the right referred to in clause 17.2. Where Defra has amended Project Related Know-how or combined information and know-how from two or more projects it shall not identify the Grant Recipient as a contributor without the Grant Recipient's prior written consent.

- 17.6 The Grant Recipient warrants to Defra that neither the Intellectual Property Rights nor any publication by Defra of the Project Related Know-how will infringe, in whole or in part, any Intellectual Property Right of any other person and agrees to indemnify and hold Defra harmless against any and all claims, demands and proceedings arising directly or indirectly out of Defra's publication or use of the Project Related Know-how where this gives rise to or is alleged to give rise to an infringement of third party Intellectual Property Rights.
- 17.7 Defra reserves the right to request a royalty free licence in respect of Intellectual Property Rights without payment of any consideration to the Grant Recipient.

## **18 CONFIDENTIALITY**

- 18.1 This Funding Agreement and all documents and information provided by Defra to the Grant Recipient, and by the Grant Recipient to Defra, under or in connection with the performance of this Funding Agreement or during its negotiation is deemed to be Confidential Information. Subject to the duties of Defra pursuant to the FOIA, the Confidential Information shall not be used by either party except for the purpose for which it was made available. The Confidential Information shall not be disclosed by either party to any other person without the prior written consent of the other party. Each party shall use all reasonable endeavours to ensure that its employees, agents, professional and other advisors, managers and sub-contractors engaged in relation to this Project are under a similar obligation of confidentiality in respect of the Confidential Information. The above restriction shall not apply to the Confidential Information which:
- (a) the Grant Recipient can demonstrate to Defra's satisfaction it is already in the public domain other than as a result of a breach of this clause 18; or
  - (b) is disclosed to the Grant Recipient or to Defra (as appropriate), without any obligation of confidence, by a third party who has not derived it directly or indirectly from Defra or the Grant Recipient; or
  - (c) is trivial or cannot reasonably be considered to be confidential.
- 18.2 The obligations of confidentiality contained in this clause 18 shall continue after expiry or termination of this Funding Agreement howsoever occasioned.

## **19 FREEDOM OF INFORMATION**

Nothing in this Funding Agreement shall prevent Defra from disclosing any Information whether or not relating to the Project which Defra in its absolute discretion considers it is required to disclose in order to comply with the FOIA and/or the Environmental Information Regulations and any other statutory requirements whether or not existing at the date of this Funding Agreement.

## 20 DATA PROTECTION

- 20.1 In this clause 20 references to “personal data”, “data subjects” and “data processor” are to be interpreted as defined in the DPA and related case law. The Grant Recipient shall comply with all relevant provisions of the DPA and do nothing which causes, or may cause, Defra to be in breach of its obligations under the DPA. In particular, to the extent that the Grant Recipient acts as a data processor in respect of any personal data pursuant to this Funding Agreement, the Grant Recipient shall only process such personal data as is necessary to enable it to fulfil its obligations under this Funding Agreement.
- 20.2 The Grant Recipient warrants that it has appropriate technical and organisational measures in place to protect any personal data it is processing on Defra’s behalf against any unauthorised or unlawful processing and against any accidental loss, destruction or damage and undertakes to maintain such measures during the course of this Funding Agreement. The Grant Recipient shall also take all reasonable steps to ensure the reliability of its staff having access to any such personal data.
- 20.3 The Grant Recipient further warrants that it will monitor and maintain the integrity of its personal data and in full accordance with the Data Protection Principles.
- 20.4 Upon reasonable notice the Grant Recipient shall allow Defra access to any relevant premises owned or controlled by it to enable Defra to inspect its procedures described at clause 20.2 above and will upon Defra’s request from time to time prepare a report for it on the technical and organisational measures it has in place to protect the personal data it is processing on Defra’s behalf.
- 20.5 The Grant Recipient shall at its own cost, at Defra’s request, assist Defra to comply with any requests for access to personal data under section 7 of the DPA and in particular shall respond to any such request promptly to enable Defra to comply with its obligations under the DPA. When requested by Defra, the Grant Recipient shall at its own cost promptly provide it with any personal data relating to this Funding Agreement.
- 20.6 The Grant Recipient shall indemnify Defra against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against Defra by any person in respect of the DPA or equivalent applicable legislation in any other country which claims would not have arisen but for some act, omission, misrepresentation or negligence on the part of the Grant Recipient or its sub-contractors and hold it harmless against all costs, losses and liability whatsoever incurred by it arising out of any action or inaction on its part in relation to any of its obligations as set out in this Funding Agreement which results in Defra being in breach of its obligations under the DPA or equivalent applicable legislation in any other country.
- 20.7 The Grant Recipient warrants that it has submitted, pursuant to section 18(1) of the DPA, a notification to the Information Commissioner (as defined in the FOIA) and shall keep that notification up to date.
- 20.8 The Grant Recipient shall not transfer any personal data outside the European Union unless authorised in writing to do so by Defra.
- 20.9 Upon the termination of this Funding Agreement for whatever reason the Grant Recipient shall, unless notified otherwise by Defra or required by law, immediately cease any

processing of the personal data on Defra's behalf and as requested by Defra destroy or provide Defra with a copy on suitable media.

20.10 The Grant Recipient shall promptly carry out any request from Defra requiring it to amend, transfer or delete the personal data or any part of the personal data.

20.11 Where the Grant Recipient is required to collect any personal data on behalf of Defra, it shall ensure that it provides the data subjects from whom the personal data are collected with a data protection notice in a form to be agreed with Defra.

## **21 NOTICES**

21.1 Any notice demand or communication to be given or served under this Funding Agreement shall be in writing (not via email).

21.2 Any notice demand or communication to be given or served under this Funding Agreement shall be given or served:

(a) in the case of notice to be served upon Defra, by personal delivery or by sending it by pre-paid recorded postal delivery to the RDPE Delivery Team address shown at paragraph 6 of this Agreement or to such other address as may from time to time be notified by Defra; and

(b) in the case of notice to be served upon the Grant Recipient, by personal delivery or by sending it by pre-paid recorded postal delivery to the address specified in this Funding Agreement or such other address as may from time to time be notified by the Grant Recipient to Defra.

21.3 Any such notice shall (where sent by post) be deemed to have been served and received on the second working day following the day of posting and where delivered personally be deemed to have been given when delivery is made.

21.4 If the Grant Recipient shall comprise more than one person the service of any notice demand request or other communication on any one of such persons shall constitute good service on all of them.

## **22 VALUE ADDED TAX**

22.1 The payment of the Grant by Defra under the Funding Agreement is believed to be outside the scope of Value Added Tax but if any Value Added Tax shall become chargeable all payments shall be deemed to be inclusive of all Value Added Tax and Defra shall not be obliged to pay any additional amount by way of Value Added Tax.

22.2 Input Value Added Tax will not be eligible expenditure for the purposes of claiming Grant (except where this cannot be reclaimed from HM Customs & Revenue).

## **23 GOOD FAITH AND COOPERATION**

23.1 The Grant Recipient covenants with Defra that:

(a) it shall at all times act with the utmost good faith towards Defra and will at all times co-operate with Defra;

- (b) it will comply with all Defra's reasonable requirements in relation to the Project from time to time; and
- (c) it will not do anything which will put Defra in breach of any of its obligations in relation to the Rural Development Programme for England.

## **24 INDEMNITY**

The Grant Recipient covenants with Defra that it will ensure that it maintains at all times adequate insurance cover with an insurer of good repute to cover all claims and liabilities under this 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 Project.

## **25 FORCE MAJEURE**

25.1 In the event that a breach of the grant conditions is caused by circumstances beyond the Grant Recipient's control ('a Force Majeure Event') and

- (a) the Grant Recipient could not have avoided the Force Majeure Event by taking reasonable action, and
- (b) the Grant Recipient has notified Defra in writing within 10 working days of the Force Majeure Event occurring, and
- (c) the notice above gives reasons for the delay or stoppage and its likely duration, and
- (d) the Grant Recipient takes all reasonable steps to overcome the delay or stoppage,

then Defra will suspend the performance of the grant conditions for the period that the Force Majeure Event continues and will not take enforcement action to recover or withhold payments.

25.2 During the period of the Force Majeure Event the Grant Recipient will be required to take all reasonable steps necessary to bring the Force Majeure Event to a close or to find a solution by which its obligations may be performed despite the Force Majeure Event

25.3 Once the Force Majeure Event has ceased the Grant Recipient will then be given a reasonable period of time for completion of its obligations given all the circumstances

25.4 If the Force Majeure Event continues for more than 60 consecutive days Defra may terminate the offer of Grant with immediate effect on giving written notice to the Grant Recipient

25.5 The decision as to whether the circumstances constitute a Force Majeure Event will be made at Defra discretion but may include death or long-term incapacity of the beneficiary, compulsory purchase of the Grant Recipient's relevant assets, natural disasters and epidemics.

## 26 JURISDICTION

This Funding Agreement shall be governed by and construed in accordance with the law of England and each party submits to the exclusive jurisdiction of the English Courts.

## 27 MISCELLANEOUS

- 27.1 Nothing in this Funding Agreement shall constitute a partnership or joint venture between the parties to this Funding Agreement or constitute the Grant Recipient as the agent of Defra for any purpose whatsoever.
- 27.2 A certificate by Defra as to any sum payable under this Funding Agreement by the Grant Recipient shall be conclusive save in the case of manifest error.
- 27.3 This Funding Agreement may only be amended by a deed duly executed by Defra and the Grant Recipient.
- 27.4 If at any time any of the provisions of this Funding Agreement become illegal, invalid or unenforceable in any respect under any law or regulation of any jurisdiction, neither the legality validity or enforceability of the remaining provisions of this Funding Agreement shall be in any way affected or impaired as a result.
- 27.5 No failure or delay on the part of Defra in exercising any right or power and no course of dealing between the parties to this Funding Agreement shall operate as a waiver nor shall any single or partial exercise of any right power or remedy of Defra prevent any other or further exercise of it or the exercise of any other right power or remedy of Defra. The rights and remedies available to Defra under this Funding Agreement are cumulative and are in addition to and not in substitution for any other rights or remedies which Defra would otherwise have, however arising.
- 27.6 Nothing contained in or done under this Funding Agreement and no consents given by Defra shall prejudice Defra's rights, powers or duties and/or obligations in the exercise of its functions or under any statutes, bye-laws, instruments orders or regulations.
- 27.7 Nothing in this Funding Agreement nor any other document shall impose any obligation or liability on Defra with respect to any actions of or obligations or liabilities assumed or incurred by the Grant Recipient or its agents, contractors or employees whether under contract, statute or otherwise.
- 27.8 Any approval by Defra or any person on behalf of Defra pursuant to this Funding Agreement of any matter submitted by the Grant Recipient for approval shall not be deemed to be an Acknowledgment by Defra of the correctness or suitability of the contents of the subject of the approval or consent.
- 27.9 The fact that Defra or its representatives have supplied or received any documents or information or attended any meeting shall not in itself imply approval of any matters raised in any such document, information or meeting or relieve the Grant Recipient of any obligation or liability in respect of the Project Activities or otherwise.
- 27.10 Nothing in this Funding Agreement shall affect the coming into force or the continuance in force of any provision of this Funding Agreement which is expressly or by implication to come into force or continue in force upon termination or expiry of this Funding Agreement.

27.11 This Funding Agreement contains all the terms which Defra has agreed in relation to the subject matter of this Funding Agreement and supersedes any prior written or oral agreements representations or understandings between Defra and the Grant Recipient.

## ANNEXURE A - PUBLICITY REQUIREMENTS

### Rural Development Programme for England 2007-2013 communications and publicity requirements

#### Publicity Material

- All publications (booklets, leaflets, letters, posters, websites, databases, etc) relating to the RDPE funded project must have clear indication on the title page of the EU and Defra and support.
- RDPE grant support must also be acknowledged in any press releases relating to the project.
- Logos are available from your Defra Project Manager. An example of the acknowledgement to be displayed in publications and on publicity material is provided below:

***This project is supported by the Rural Development Programme for England, for which Defra is the Managing Authority, part financed by the European Agricultural Fund for Rural Development: Europe investing in rural areas.***

- Websites must acknowledge support received from the EU and Defra on the homepage. There must be a weblink to the EU Commission's rural development page:  
[http://europa.eu/about-eu/basic-information/symbols/flag/index\\_en.htm](http://europa.eu/about-eu/basic-information/symbols/flag/index_en.htm)
- A draft version of all publicity material should be submitted to your Defra Project Manager for approval prior to printing or production.

#### Plaques and Billboards

To demonstrate that you have received RDPE support you should use a combination of the following:

- Display a plaque of at least A4 size (30 x 22cm) to acknowledge funding if total RDPE grant costs exceed £40,000 using the Defra approved Template.
- Billboards of at least 2mx 1.5m will need to be erected for projects with grant of over £400,000 using the Defra approved Template.
- A template is available from your Defra Project Manager to assist when commissioning your plaque/billboard. When the template has been completed a draft version must be submitted to Defra for approval prior to printing.
- The plaque should include both the Defra & EU logos, the acknowledgement strap line, project name and a description of the project.
- The plaque/billboard needs to be made of robust materials and if affixed outside to be weather resistant.
- The plaque/billboard should be mounted in a permanent manner in a prominent location relevant to the project.

- The plaque/billboard should remain mounted for a minimum of **seven years** from the date of the final payment of grant, or **10 years** if state aid applies.
- The plaque/billboard should be in situ at the earliest opportunity possible but at the very latest it must be in situ by the time the final claim is submitted. Photographic evidence should be submitted with your final claim.

Projects are rigorously audited to make sure everything has been done correctly and your project could be chosen by the auditors who will inspect the appropriate RDPE publicity regulations have been adhered to.

Please note that non-compliance of publicity is a breach of contract and may result in your grant claim being reduced, withdrawn or reclaimed.

### **Information for applicants**

To meet our obligations under the Data Protection Act 1998 we need to explain how we will handle the information you give us.

Because RDPE will involve expenditure of public money, there is public interest in how the money is spent. In addition, the EU Regulations require us to make a certain amount of information available about who has received money under the Rural Development Programme. Therefore Defra may, in certain circumstances, make information about your application and agreement publicly available for this purpose. It will also publish an annual list of all receiving financial support under the Programme, which will be available on a Government Website.

We may also need to disclose details about your application and agreement to other organisations or individuals for administration, evaluation or monitoring purposes. Such information may be released upon request under the Environmental Information Regulations 2004 or the Freedom of Information Act 2000.

Details disclosed may include your name, the name of your farm or business, grid references, the total area under agreement, the payment you receive, the location of fields and details of the environmental features and management options they contain.