



Department
for Work &
Pensions



European Union
European
Social Fund

DRAFT: THIS IS NOT AN OFFER

European Social Fund Funding Agreement

Funding Agreement

between

The Secretary of State for Work and Pensions

and

[Insert Grant Recipient Organisation Name]

Project Name: **[Insert Project Name]**

Project Number: **[insert ECLAIMS Project Reference Number]**

1	DEFINITIONS	4
2	INTERPRETATION	13
3	GRANT	14
4	THE APPLICATION AND ACCEPTANCE OF GRANT TERMS	15
5	GRANT CLAIMS.....	16
6	THE EXPENDITURE PROFILE	18
7	DECOMMITMENT OF EUROPEAN SOCIAL FUND RESOURCES.....	19
8	CHANGES TO THE PROJECT.....	19
9	LEGISLATION, PROCUREMENT, TENDERING AND STATE AID LAW.....	19
10	PUBLICITY	21
11	EVENTS OF DEFAULT, MATERIAL BREACH AND RIGHTS RESERVED FOR BREACH OF THE FUNDING AGREEMENT.....	22
12	ASSIGNMENT OR CHARGING OF THE FUNDING AGREEMENT.....	27
13	MONITORING PROGRESS, REPORTING AND NOTIFICATION.....	28
14	ACCOUNTING RECORDS AND SUPPORTING EVIDENCE	31
15	CONFIDENTIALITY.....	32
16	THE SECRETARY OF STATE DATA.....	34
17	DATA PROTECTION	34
18	SECURITY REQUIREMENTS	37
19	GRANT RECIPIENT WARRANTIES	38
20	NOTICES.....	39
21	VALUE ADDED TAX	40
22	GOOD FAITH AND COOPERATION.....	40
23	INSURANCE.....	40
24	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999.....	40
25	JURISDICTION	41
26	MISCELLANEOUS	41

27 TERMINATION CLAUSE 42
ACCEPTANCE..... 43

SCHEDULE 1 THE PROJECT SPECIFIC CONDITIONS

SCHEDULE 2 EXPENDITURE PROFILES

SCHEDULE 3 TARGETS

SCHEDULE 3A UNDERPERFORMANCE METHODOLOGY

SCHEDULE 4 APPLICATION

THIS Agreement is dated

20

PARTIES

1. **THE SECRETARY OF STATE FOR WORK AND PENSIONS** whose principal address is Caxton House, Tothill Street, London SW1H 9NA (**the Secretary of State**); and
2. **[INSERT GRANT RECIPIENT DETAILS] [(INSERT REGISTERED NUMBER IF APPLICABLE)] of [INSERT ADDRESS] (Grant Recipient).**

BACKGROUND

- A The Commission of the European Union ('European Commission') has adopted the Operational Programme for England, setting out its contribution to the Union strategy to improve employment opportunities, strengthen social inclusion, fight poverty, promote education, skills and life-long learning and develop active, comprehensive and sustainable inclusion policies and thereby contribute to economic, social and territorial cohesion;
- B The Secretary of State as the managing authority for the Operational Programme pursuant to Article 123(1) of Regulation 1303 wishes to offer the Grant and the Grant Recipient agrees to accept the Grant on the terms and conditions of this Funding Agreement;
- C This Funding Agreement serves as the document described in Article 125(3)(c) of Regulation 1303, setting out the conditions for support for the operation concerned and the specific requirements concerning the products or services to be delivered under the operation, the financing plan and the time-limit for execution.

IT IS AGREED THAT:

1 DEFINITIONS

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

"Agreed Activity End Date" means the date specified as such in the Project Specific Conditions and being the date that all of the Project Activities shall be finished and complete.

"Agreed Financial Completion Date" means the date specified as such in the Project Specific Conditions and being the date that all of the expenditure eligible for grant will have been defrayed.

"Application" means the application for Grant (and any annexures thereto) which is contained in Schedule 4.

“Audit” means an audit/monitoring verification carried out pursuant to Articles 125 and 127 of Regulation 1303 by the Secretary of State in its role as ‘managing authority’ or the Government Internal Audit Agency in its role as ‘audit authority’, or any audit by the European Commission, European Court of Auditors or, where relevant, the National Audit Office.

“Change” means in relation to the Project as defined in the Application any of the following changes (in accordance with clause 8):-

- (a) a change in the Ownership, Control and Nature of Business of the Grant Recipient;
- (b) a change in the nature or purpose of the Project;
- (c) any change to the Eligible Expenditure;
- (d) any change to the Expenditure Profile;
- (e) any change to any of the Key Milestone Dates;
- (f) any change to any of the Targets.

“Committed” means, in relation to any Match Funding, either:-

- (a) funding (which shall constitute all or any part of the Match Funding requirement contained in this Funding Agreement) which has been committed to the Grant Recipient in writing pursuant to which a third party makes available an amount to the Grant Recipient and which shall not be subject to any conditions precedent or conditions subsequent which are (in the opinion of the Secretary of State acting reasonably) unacceptable; or
- (b) funding which shall constitute all or any part of the Match Funding requirement contained in this Funding Agreement which shall be provided from the Grant Recipient’s own resources the availability of which shall be evidenced to the Secretary of State.

“Completed Project” means a Project that has been physically completed or fully implemented and in respect of which all related payments have been made by the Grant Recipient and the corresponding public contribution has been paid to the Grant Recipient.

“Completion” means completion of the Project Activities to the satisfaction of the Secretary of State.

“Conditions” means the terms and conditions upon which the Grant is payable as contained in clauses 1 to 27 of the main body of this Funding Agreement and the Project Specific Conditions at Schedule 1.

“Confidential Information” means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments,

trade secrets, know-how, personnel, and suppliers of the owner of the Confidential Information, including all intellectual property rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential.

“Contracting Authority” means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 or Regulation 2 of the Public Contracts Regulations 2015 (as amended) other than the Secretary of State.

“Contribution Rate” means the percentage rate of Eligible Expenditure at which Grant is paid as contained in the Project Specific Conditions and may be the Youth Employment Initiative Contribution Rate and/or the General European Social Fund Contribution Rate.

“Correction” means an amount to be repaid or withheld from the Grant payable as determined following the finding of an Irregularity and calculated, where relevant, by reference to the published guidelines on flat-rate corrections, for example as set out in the National European Structural and Investment Funds Procurement Requirements and the Guidelines for Determining Financial Corrections.

“Crown Body” means any Secretary of State, office or agency of the Crown.

“Data” means:-

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Grant Recipient by or on behalf of the Secretary of State; or (ii) which the Grant Recipient is required to generate, process, store or transmit pursuant to this Funding Agreement; or
- (b) any Personal Data for which the Secretary of State or the Grant Recipient is the Data Controller.

“Data Controller” shall have the same meaning as set out in the Data Protection Legislation.

“Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

“Data Processor” shall have the same meaning as set out in the Data Protection Legislation.

“Data Protection Legislation” means (i) the General Data Protection Regulation (Regulation (EU) 2016/679), the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Laws as

amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy including where applicable the guidance and codes of practice issued by the Information Commissioner as may in in force from time to time.

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

“Data Subject” shall have the same meaning as set out in the Data Protection Legislation.

“Data Subject Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

“Delivery Partner” means a third party that (in collaboration with the Grant Recipient) shall deliver the Project, itself defray expenditure to be claimed and carry out the Project Activities in accordance with clause 4 and which third party is not intended by either party to be providing services or works under a contract for services or works.

“Eligibility Rules” means the rules governing eligibility of expenditure for payment of European Social Fund (including for the Youth Employment Initiative) contained in:

- (a) Regulation 1304;
- (b) Regulation 1303; and
- (c) The National European Social Fund Eligibility Rules.

“Eligible Expenditure” means expenditure in relation to this Project that complies in all respects with the Eligibility Rules.

“Eligible General European Social Fund Expenditure” means the expenditure set out in the profile at [\[Schedule 2/Schedule 4\]](#).

“Eligible Youth Employment Initiative Expenditure” means the expenditure set out in the profile at [\[Schedule 2/Schedule 4\]](#).

“Environmental Information Regulations” means the Environmental Information Regulations 2004 (SI No 2004/3391) together with any guidance and/or codes of practice issued by the ‘Information Commissioner’ (as referred to therein) or relevant Government Department in relation to these regulations.

“European Union Procurement Law” includes, but is not restricted to EC Directives 2004/18/EC, 2004/17/EC and 2007/66/EC as implemented by the Public Contracts Regulations 2006 (SI No 5/2006), as amended, Directive

2014/24/EU as implemented by the Public Contracts Regulations 2015 and the Utilities Contracts Regulations 2006 (SI No 6/2006), as amended, and includes the EU Commission Interpretative Communication (2006/C 179/02), the Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union.

“Event of Default” means an event or circumstance as defined by clause 11.1.

“Expenditure” means either Youth Employment Initiative Expenditure or General European Social Fund Expenditure (as appropriate in the context).

“Expenditure Profile” means the information provided by the Grant Recipient detailing the spend forecast for the carrying out of the Project Activities and defrayal of expenditure including the Start Date and the Agreed Financial Completion Date and which is contained in **[Schedule 2/Schedule 4]**.

“Financial Year” means the calendar year.

“Final Payment Date” means the date of the final payment of Grant to the Grant Recipient.

“Funding Agreement” means this agreement including the Schedules.

“General European Social Fund Contribution Rate” means the percentage rate in respect of Eligible General European Social Fund Expenditure as is specified the Project Specific Conditions at Schedule 1.

“General European Social Fund Maximum Sum” means the maximum amount of Grant payable in respect of Eligible General European Social Fund Expenditure as is specified in the Project Specific Conditions.

“Grant” means the grant of European Social Fund (including, where applicable, funding for the Youth Employment Initiative) payable pursuant to this Funding Agreement up to the Maximum Sum as set out in the Project Specific Conditions.

“Grant Claim” means a claim for Grant using the Secretary of State’s System on line facility.

“Grant Recipient Equipment” means the hardware, computer and telecoms devices and equipment made available by the Grant Recipient or its sub-contractors (but not hired, leased or loaned from the Secretary of State) for the provision of the Project Activities.

“Grant Recipient Personnel” means all employees, agents, consultants and contractors of the Grant Recipient and/or of any sub-contractor.

“Grant Recipient Software” means software which is owned by or licensed to the Grant Recipient, including software which is or will be used by the Grant

Recipient for the purposes of complying with its obligations pursuant to this Funding Agreement.

“Grant Recipient System” means the information and communications technology system used by the Grant Recipient in performing its obligations under this Funding Agreement including the Grant Recipient Software, Grant Recipient Equipment and related cabling (but excluding the Secretary of State System).

“Guidelines for Determining Financial Corrections” means the Guidelines for determining financial corrections to be made to expenditure co financed by the Structural and Investment Funds from time to time in force and notified to the Grant Recipient by the Secretary of State and which (those subsisting on the date of this Funding Agreement) are:-

- Commission Decision C(2013) 9527 19.12.2013 on the setting out and approval of the guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management for non-compliance with the rules on public procurement.

“Information Communications and Technology Environment” means the Secretary of State System and the Grant Recipient System.

“Information” has the meaning given in the Freedom of Information Act 2000.

“Information Commissioner” has the meaning given in the Freedom of Information Act 2000.

“Instalment Period” means the period referred to in the Project Specific Conditions.

“Intellectual Property Right” means all patents, know-how, registered trade marks, registered designs, utility models, applications and rights to apply for any of the foregoing unregistered design rights, unregistered trade marks, 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.

“Interpretative Communication” means the Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives (2006/C 179/02)

“Irregularity” means any breach of Union law, or of national law relating to its application (including, but not limited to, the Structural and Investment Funds Regulations, State Aid Law and European Union Procurement Law) resulting from an act or omission by a Grant Recipient or a Delivery Partner (and/or its agents and subcontractors), which has, or would have, the effect of

prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union.

“Key Milestone Dates” means those milestones to achieve the Project which are contained in the Project Specific Conditions.

“Law” means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body.

“Losses” means all costs, charges, fees, expenses, fines and losses (including, loss of profit, loss of reputation) and all interest penalties and legal and other professional costs and expenses.

“Malicious Software” means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

“Match Funding” means the contribution to the Project to meet the balance of Eligible Expenditure not supported by Grant and the Match Funding details are contained in the Project Specific Conditions.

“Match Funding Longstop Date” means the last date by which the Grant Recipient is to provide evidence to the Secretary of State that any Match Funding listed as indicative is fully Committed].

“Material Breach” means a breach of this Funding Agreement (including an anticipatory breach) which is not minimal or trivial in its consequences as further set out in clause 11.

“Maximum Sum” means the maximum amount of Grant to be provided by the Secretary of State for the support of the Project and includes the Youth Employment Initiative Maximum Sum and the General European Social Fund Maximum Sum.

“National European Social Fund Eligibility Rules” means the National Eligibility Rules published from time to time by the Secretary of State and contained on the Website, the version subsisting at the date of this Funding Agreement being [*European Social Fund Programme for England 2014-20 National Eligibility Rules, July 2017*].

“National European Structural and Investment Fund Publicity Guidance” means the guidance on publicity and the branding guidelines for Structural and Investment Funds published from time to time by the Secretary of State on the Website, the version subsisting at the date of this Funding Agreement being [*England 2014 to 2020 European Structural and Investment Funds*]

Growth Programme, European Regional Development Fund and European Social Fund Branding and Publicity Requirements, July 2017].

“National European Structural and Investment Fund Guidance on Procurement” means the guidance published from time to time by the Secretary of State and contained on the Website, the version subsisting at the date of this Funding Agreement being [*Procurement Law, ESIF Compliance Guidance Note (ESIF-GN-1-001 version 5 (20 February 2017))*].

“National Rules” means the national rules set out in the National European Structural Investment Funds Procurement Requirements as published from time to time.

“Not Eligible” means expenditure that is not Eligible Expenditure.

“Ownership, Control and Nature of Business” shall be construed in accordance with section 840 of the Income and Corporation Taxes Act 1988 and section 1162 of the 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 the Secretary of State and the Grant Recipient.

“Personal Data” shall have the same meaning as set out in the Data Protection Legislation.

“Process” has the meaning given to it under the Data Protection Legislation.

“Programme Guidance” means the guidance on the European Social Fund Operational Programme 2014-20 published from time to time by the Secretary of State and contained on the Website, the version subsisting at the date of this Funding Agreement being [*European Social Fund Operational Programme 2014-20 Programme Guidance, December 2016*].

“Procurement Law” includes, but is not restricted to EC Directives 2004/18/EC, 2004/17/EC and 2007/66/EC, the Public Contracts Regulations 2006 (SI No 5/2006), as amended, Directive 2014/24/EU the Public Contracts Regulations 2015 and the Utilities Contracts Regulations 2006 (SI No 6/2006), as amended, and includes the Interpretative Communication , the Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union’.

“Project” means the project fully described in the Application.

“Project Activities” means all the activities to be carried out and implemented in the Project and described in the Application and this Funding Agreement and anything incidental thereto.

“Project Specific Conditions” means those conditions which are specific to the Project and are contained in Schedule 1.

“Project Specific Eligible Expenditure” means Eligible Expenditure which is specific to this Project and is contained in [Schedule 2/Schedule 4].

“Project Change Request Form” means the prescribed form for the purpose of requesting consent to a Change determined from time to time by the Secretary of State.

“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.

“Regulation 480” means Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation 1303.

“Regulation 821” means Commission Implementing Regulation (EU) No 821/2014 of 28 July 2014 supplementing Regulation 1303.

“Regulation 1303” means Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 which sets out common provisions on the Structural and Investment Funds, as amended.

“Regulation 1304” means Regulation (EU) No 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund.

“Regulatory Bodies” means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Funding Agreement or any other affairs of the Secretary of State and "Regulatory Body" shall be construed accordingly.

“Secretary of State System” means the Secretary of State’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Secretary of State or the Grant Recipient in connection with this Funding Agreement which is owned by or licensed to the Secretary of State by a third party and which interfaces with the Grant Recipient System or which is necessary for the Secretary of State to comply with the terms of this Funding Agreement.

“Security” means any mortgage, charge, guarantee or other security interest securing an obligation of the Grant Recipient (or a relevant guarantor) required by the Secretary of State as specified (if required) in the Project Specific Conditions.

“Small to Medium Sized Enterprise” means a small to medium sized enterprise as set out in the ‘General Block Exemption Regulation’ (Commission Regulation (EU) No 651/2014).

“Start Date” is the date specified as such in the Project Specific Conditions being the earliest date that the expenditure incurred by the Grant Recipient in relation to the Project can be Eligible Expenditure.

“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 on the Functioning of the European Union.

“Structural and Investment Funds” means together the European Regional Development Fund (ERDF) and the European Social Fund (ESF).

“Structural and Investment Funds Regulations” means Regulation 1303, Regulation 1304 and any delegated acts or implementing acts adopted under those Regulations.

“Sub-Processor” means: any third Party appointed to process Personal Data related to this Agreement on behalf of the Grant Recipient.

“Targets” means the outputs and results identified and detailed in the milestone table contained in the Project Specific Conditions and [Schedule 3/Schedule 4].

“Third Party Software” means software which is owned or licensed by any third party which is or will be used by the Grant Recipient for the purposes of this Funding Agreement.

“Transaction List” means the transaction checklist relevant to a particular Grant Claim as determined by the Secretary of State.

“Website” means the national website for European Structural and Investment Funds in England: <https://www.gov.uk/european-growth-funding>.

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

“Youth Employment Initiative Contribution Rate” means the percentage rate in respect of Eligible Youth Employment Initiative Expenditure and is specified in the Project Specific Conditions.

“Youth Employment Initiative Maximum Sum” means the maximum amount of Grant payable in respect of Eligible Youth Employment Initiative Expenditure and is specified in the Project Specific Conditions.

2 INTERPRETATION

In this Funding Agreement:

- 2.1 reference to any statute 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;

- 2.2** 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;
- 2.3** reference to 'this Funding Agreement' includes any variations made from time to time pursuant to these terms;
- 2.4** reference to "Published" by the Secretary of State shall include an electronic version contained on the Website;
- 2.5** 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;
- 2.6** reference to "determined" or "determine" means, unless the contrary is indicated a determination made at the discretion of the person making it;
- 2.7** where the consent approval or agreement of the Secretary of State required pursuant to the terms of this Funding Agreement, it shall not be construed as having been given unless provided in writing;
- 2.8** words importing one gender shall include both genders and the singular shall include the plural and vice versa;
- 2.9** the Guidelines for Determining Financial Corrections and the National European Social Fund Eligibility Rules shall have the same force and effect as if expressly set out in the body of this Funding Agreement;
- 2.10** the headings in this Funding Agreement shall not affect its interpretation;
- 2.11** In the event of a conflict between the following elements comprising this Funding Agreement the priority shall prevail in the following descending order;
 - (a) The conditions set out at Schedule 1 ("Project Specific Conditions")
 - (b) The conditions set out in the main body of this Funding Agreement
 - (c) The Application.

3 GRANT

- 3.1** In consideration of the Parties' respective obligations contained in this Funding Agreement the Secretary of State offers the Grant and the Grant Recipient accepts the Grant up to the Maximum Sum on the terms and conditions of this Funding Agreement.
- 3.2** Grant will only be paid in respect of Eligible Expenditure.

3.3 Eligible Expenditure excludes:-

- (a) payments made by the Grant Recipient (or Delivery Partners) that are Not Eligible;
- (b) payments that are the subject of an Irregularity or a suspected Irregularity.

3.4 Subject to entering into this Funding Agreement Eligible Expenditure that has been defrayed on or after the Start Date may be claimed pursuant to this Funding Agreement. For the avoidance of doubt the reference to Grant and the provisions of this Funding Agreement shall apply to all claims and Expenditure beginning on the Start Date. If the Funding Agreement is not entered into for any reason there shall be no expectation of Grant and any expenditure incurred in that case shall be entirely for the account and at the risk of the applicant.

4 THE APPLICATION AND ACCEPTANCE OF GRANT TERMS

4.1 The Grant Recipient warrants to the Secretary of State that the Application is accurate in all respects, having made proper and full enquiry in relation to the same. The Secretary of State has based its decision to offer and pay the Grant (and has relied) upon the representations made by the Grant Recipient in the Application and in all documents and information provided as part of the appraisal process. No disclaimer or other statement that precludes the right of any person to rely upon the Application or any other document that forms part of the Application, or has a similar effect, shall apply with respect to the Secretary of State or affect the Secretary of State's right to enforce any provision of the Funding Agreement.

4.2 For the avoidance of doubt, clause 4.1 is intended to ensure that:-

- (a) no disclaimer of liability for the contents of the Application affects the Secretary of State's right to recover any sum under this Funding Agreement; and
- (b) there is reserved to the Secretary of State (notwithstanding clause 26.12) any rights of action or remedies for any mistake, negligent misstatement, misrepresentation or error of judgment made in the Application upon which the Secretary of State has relied in agreeing to provide Grant to the Grant Recipient.

4.3 The Grant Recipient accepts and agrees to all of the terms having made full and proper enquiry before giving the warranties contained in this Funding Agreement.

4.4 The Grant Recipient acknowledges that the Grant has been offered to it to carry out the Project Activities specified within the Application and achieve the Targets within the time limits set out in this Funding Agreement and the Key Milestone Dates set out in the table contained in the Project Specific Conditions.

- 4.5** The Grant Recipient may with the consent of the Secretary of State task a Delivery Partner to carry out certain of the Project Activities provided that such shall not in any way reduce any of the obligations or liability of the Grant Recipient under this Funding Agreement. If Consent is given the Delivery Partner shall be named in the Project Specific Conditions.
- 4.6** For the avoidance of doubt the Grant Recipient shall be liable for the acts of its Delivery Partner including any Corrections resulting therefrom.

5 GRANT CLAIMS

5.1 Amount of Grant payable

- (a) The total amount of Grant payable in respect of Eligible Youth Employment Initiative Expenditure will be either the Youth Employment Initiative Maximum Sum, or an amount calculated by applying the Youth Employment Initiative Contribution Rate to the actual Eligible Youth Employment Initiative Expenditure, whichever is the lower.
- (b) The total amount of Grant payable in respect of Eligible General European Social Fund Expenditure will be either the General European Social Fund Maximum Sum, or an amount calculated by applying the General European Social Fund Contribution Rate to the actual Eligible General European Social Fund Expenditure, whichever is the lower.
- (c) The total amount of Grant paid to the Grant Recipient shall not exceed the Maximum Sum.

5.2 Match Funding Arrangements

- (a) The payment of Grant is conditional upon the receipt by the Grant Recipient of the Match Funding or the Match Funding being Committed.
- (b) The Match Funding shall be compliant with the provisions of the Eligibility Rules.
- (c) The Grant Recipient shall notify the Secretary of State in writing immediately of any failure by the Grant Recipient or a third party to make a contribution due under the Match Funding, or any circumstance that affects or might affect the payment or availability of Match Funding.

5.3 Conditions Precedent to the payment of Grant

The Secretary of State will not make the first payment of Grant and/or any subsequent payment of Grant unless all of the following preconditions have been complied with:-

- (a) the relevant Grant Claim is made on the Secretary of State System on line facility;
- (b) the expenditure is Eligible Expenditure;
- (c) the Grant Recipient has satisfied the Secretary of State that the Grant Recipient has sufficient Match Funding Committed at the Start Date to achieve Completion of the Project by the Agreed Project Completion Date;
- (d) the Grant Recipient has satisfied the Secretary of State that the Grant Recipient has all funding needed to pay for expenditure in relation to the Project which is Not Eligible Expenditure;
- (e) that Eligible Expenditure has been defrayed (that is that Eligible Expenditure has been incurred and that payment has been made by the Grant Recipient or a Delivery Partner) in respect of any Eligible Expenditure to which a Grant Claim relates;
- (f) any Security required as set out in the Project Specific Conditions is in place to the extent stated; and
- (g) the Conditions have been fully complied with provided that the Secretary of State may waive in whole or in part any Condition/s without prejudicing the Secretary of State's right to require subsequent fulfilment of such Condition/s;

provided always that the payment of a Grant Claim shall not operate as a waiver of any of the obligations in this clause 5.3 or exclude the right for the Secretary of State to exercise any of its rights under this Funding Agreement.

5.4 Grant Claims Procedure

- (a) The Grant Recipient shall make all Grant Claims in arrears, for each Instalment Period.
- (b) Except for the final Grant Claim, each Grant Claim is to be submitted by the [25th Working Day/60th Calendar Day] following the end of the Instalment Period for which the Grant Claim is made.
- (c) The first Grant Claim made at the end of the first Instalment Period shall relate to all Eligible Expenditure incurred and paid by the Grant Recipient from the Start Date. Subsequent Grant Claims shall relate to all Eligible Expenditure incurred and paid by the Grant Recipient in an Instalment Period and (subject to clause 5.4(i)) may relate to Eligible Expenditure incurred and paid by the Grant Recipient in a previous Instalment Period which has not previously been claimed.

- (d) Each Grant Claim is to be submitted using the Secretary of State System on line facility. Each Grant Claim shall include accounting documents of verifiable value (which shall include the Transaction List) in such format and detail as may be acceptable to the Secretary of State relating to the amount claimed in such Grant Claim.
- (e) The Secretary of State will normally meet a Grant Claim within 30 days of receipt, but this is subject to:
 - (i) The Grant Claim being submitted by the deadline referred to in paragraph (b) above; and
 - (ii) 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.
- (f) The time for payment of the Grant Claim shall not be of the essence. The Secretary of State shall have no liability to the Grant Recipient for any Losses caused by a delay in the payment of a Grant Claim howsoever arising.
- (g) The Grant Recipient must notify the Secretary of State promptly if at any time it becomes aware that it is unable to make a Grant Claim in accordance with the Expenditure Profile.
- (h) If the Grant Recipient intends to submit a Grant Claim in accordance with paragraph (b) above which is not in accordance with the Expenditure Profile, it must notify the Secretary of State of the changes it wishes to make to the Expenditure Profile.
- (i) For the avoidance of doubt, no changes may be made to the Expenditure Profile unless approved by the Secretary of State in accordance with clause 8 and the Secretary of State shall be under no obligation to pay a Grant Claim for expenditure which is not in line with the Expenditure Profile.
- (j) A progress report in respect of the Project must be submitted with each Grant Claim, and at such other times as the Secretary of State may notify to the Grant Recipient.
- (k) By submitting a Grant Claim the Grant Recipient warrants to the Secretary of State that there is no Event of Default or Material Breach subsisting by reference to the facts and circumstances existing on each such date.

6 THE EXPENDITURE PROFILE

- 6.1** 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 Profile, the Secretary of State will be under no obligation to pay Grant for any

additional Eligible Expenditure in the following year or any later Financial Year.

- 6.2** If in any Financial Year (the "relevant year") there is an overspend in the amount of Eligible Expenditure by reference to the amount planned in the Expenditure Profile, the Secretary of State will be under no obligation to pay Grant in the following year or any later Financial Year which was overspent in any relevant year.

7 DECOMMITMENT OF EUROPEAN SOCIAL FUND RESOURCES

- 7.1** The Grant Recipient acknowledges that the financial consequences that flow from a departure from the Expenditure Profile in any Financial Year could include the loss of European Social Fund resources allocated for the Operational Programme (if in that year there is under-spending for the Operational Programme as a whole).

- 7.2** If during any Financial Year of the Operational Programme the Secretary of State 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, the Secretary of State may reduce the Grant allocated for the Project and use the amount of the reduction for any other purpose of the Operational Programme. The amount to be re-allocated under these circumstances is determinable by the Secretary of State, but may not exceed the amount of the anticipated shortfall in Eligible Expenditure.

- 7.3** Where the right reserved in clause 7.2 arises under circumstances that also entitle the Secretary of State to exercise the rights reserved in clause 11, the right reserved to the Secretary of State in clause 7.2 is exercisable in addition and without prejudice to the exercise of the rights reserved to the Secretary of State in clause 11.

8 CHANGES TO THE PROJECT

- 8.1** All Changes must be approved by the Secretary of State prior to the relevant Change being deemed to be effective. The Grant Recipient shall request the Change on a Project Change Request Form. The Secretary of State shall either agree to the change request or reject the change request within 60 days of the date of the Project Change Request Form.

- 8.2** Until such time as a Change is made in accordance with this clause, the parties shall, unless otherwise agreed in writing, continue to perform this Funding Agreement in compliance with its terms before such Change.

9 LEGISLATION, PROCUREMENT, TENDERING AND STATE AID LAW

9.1 General

- (a) The Grant Recipient must comply and secure compliance with the Structural and Investment Funds Regulations and the Grant Recipient hereby warrants that it shall not act or omit to act in any way that may

cause the Grant Recipient, a Delivery Partner or the Secretary of State to breach the Structural and Investment Funds Regulations.

- (b) Further to clause 9.1(a), the Grant Recipient acknowledges that in accordance with Article 6 of Regulation 1303, the Project must comply with applicable Union law and the national law relating to its application.

9.2 State Aid Law

- (a) The Grant Recipient has undertaken its own independent assessment of the compatibility of the Project with State Aid Law and confirms to the Secretary of State that the Project is structured so it is compliant with State Aid Law. Where the Secretary of State has provided its views on any aspect of State Aid Law, the Grant Recipient confirms that it has considered this information alongside all other sources of State Aid Law available at the time of entering into this Funding Agreement (including regulations and decisions published on the European Commission website) in undertaking its own assessment of the Project's compliance. The Secretary of State has taken into account the Grant Recipient's representations on State Aid Law compliance in deciding to offer the Grant.
- (b) The Grant Recipient shall procure and maintain the necessary expertise and resources to deliver the Project in accordance with the State Aid Law for the full term of the Project. The Grant Recipient agrees to maintain appropriate records of compliance with the State Aid Law and agrees to take all reasonable steps to assist the Secretary of State to comply with State Aid Law requirements and respond to any investigation(s) instigated by the European Commission into the Project or by the European Court of Auditors.
- (c) A finding of State Aid non-compliance in respect of the Project by the European Commission or a Court of competent jurisdiction may lead to Grant Recipient being ordered to repay the Grant with interest in accordance with the European Commission's reference rates.

9.3 ESIF Procurement Requirements

- (a) The Grant Recipient warrants that it has provided full details of all contracts for goods, works or services which will form part of the Project and for which it will claim reimbursement.
- (b) Where the Grant Recipient is a 'contracting authority' within the meaning of Procurement Law the Grant Recipient warrants that:
 - (i) In relation to any contracts listed in the Application which have already been awarded, it has complied with, and where relevant, has secured that its Delivery Partners have complied with all applicable Procurement Law in force at the date the procurement was commenced in relation to the Project; and

- (ii) In relation to any contracts listed in the Application which are yet to be awarded, it shall comply with, and where relevant, shall secure that its Delivery Partners shall comply with, all applicable Procurement Law in force at the date of commencement of the procurement process in relation to the Project.

Provided that where, having regard to the Interpretative Communication, the contract awards do not have a sufficient connection with the functioning of the Internal Market, the Grant Recipient warrants that it has complied with or shall comply with clause 9.4 below.

9.4 National Rules

Where:

- (a) the Grant Recipient is not a 'contracting authority' subject to Procurement Law in relation to the Project; or
- (b) it is a contracting authority and the contract award does not have a sufficient connection to the 'Internal Market'

the Grant Recipient warrants that:

- (i) In relation to any contracts listed in the Application which have already been awarded, it has ensured that its processes met, and where relevant, has secured that its Delivery Partners have ensured that their processes met, with the National Rules published at the date of the Application; and
- (ii) In relation to any contracts listed in the Application which are yet to be awarded, it shall comply with, and where relevant, shall secure that its Delivery Partners shall comply with the relevant version of the National Rules published at the date of commencement of the procurement process.

It is the Grant Recipient's sole responsibility to ensure compliance with the Regulations.

10 PUBLICITY

10.1 The Grant Recipient shall and shall procure that its Delivery Partners and sub-contractors at all times comply with:-

- (a) Articles 115 and Annex XII of Regulation 1303;
- (b) Article 20 of Regulation 1304 relating to the Youth Employment Initiative; and
- (c) Chapter II and Annex II of Regulation 821.

- 10.2** The Secretary of State has published the National European Structural and Investment Fund Publicity Guidance to assist the Grant Recipient to comply with the Regulations referred to in the paragraph above. This guidance is not compulsory and does not have to be followed as a condition of this Funding Agreement. It is the Grant Recipient's sole responsibility to ensure compliance with the Regulations.
- 10.3** The obligations in this clause shall continue after this Funding Agreement is terminated.
- 10.4** The Grant Recipient hereby gives consent to the Secretary of State to publicise in the press or any other medium the Grant and the details of the Project using any information gathered from the Application or the monitoring of the Project Activities.

11 EVENTS OF DEFAULT, MATERIAL BREACH AND RIGHTS RESERVED FOR BREACH OF THE FUNDING AGREEMENT

11.1 Events of Default

An Event of Default is the occurrence of any of the following:-

- (a) the Grant Recipient fails to comply with the Conditions;
- (b) the Project Activities are not commenced by the date which is 3 months after the Start Date;
- (c) the expenditure is not claimed in line with the Expenditure Profile;
- (d) Completion of the Project Activities has not been achieved by the Agreed Activity End Date;
- (e) a Change is made to the Project without the prior written approval of the Secretary of State, as required by clause 8;
- (f) the European Commission or a European Court requires any Grant paid to be recovered by reason of a breach of State Aid Law;
- (g) the Grant Recipient fails to comply with the provisions of the exemption or scheme (referred to in the Project Specific Conditions) under State Aid Law that applies to the Project and the Grant;
- (h) 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);

- (i) the Grant Recipient owes any sum to the Secretary of State under an agreement for the financial support of any other Project or activities;
- (j) if the Grant Recipient is a Small to Medium Sized Enterprise, but it ceases to be a Small to Medium Sized Enterprise, and it is a requirement arising out of State Aid Law that the Grant Recipient remains as a Small to Medium Sized Enterprise;
- (k) 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;
- (l) a petition is presented (other than a petition which, in the opinion of the Secretary of State, 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;
- (m) 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;
- (n) any petition is presented by any person (other than a petition which, in the opinion of the Secretary of State, 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.

11.2 Material Breach

A Material Breach is a breach of this Funding Agreement as defined in clause 11.1 above including but not limited to the occurrence of any of the following:-

- (a) any information given or representation made in the Application or in any correspondence, report or other document submitted to the Secretary of State relating to this Project or under this Funding Agreement is found to be incorrect or incomplete to an extent which the Secretary of State considers to be material;
- (b) any fraud has been committed by the Grant Recipient and/or its employees in connection with the Project;

- (c) a breach of the warranties by the Grant Recipient contained in and given pursuant to this Funding Agreement;
- (d) the Grant Recipient fails to materially comply with the Conditions;
- (e) the activities carried out by the Grant Recipient are distinct or different from the description set out in the Application having regard also to the intended function of the Project Activities and the end beneficiaries of the Project.

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

Where, the Secretary of State determines that an Event of Default or a Material Breach has or may have occurred, the Secretary of State may by written notice to the Grant Recipient take any one or more of the following actions:

- (a) suspend 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) cease to make payments of Grant to the Grant Recipient under this Funding Agreement and (in addition) require the Grant Recipient to repay to the Secretary of State the whole or any part of the amount of Grant previously paid to the Grant Recipient; and/or
- (d) terminate this Funding Agreement.

11.4 Opportunity for the Grant Recipient to remedy an Event of Default

- (a) If the Secretary of State gives written notice to the Grant Recipient pursuant to clause 11.3(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 the Secretary of State shall determine to be reasonable and as shall be set out in such written notice (or such extended period as the Secretary of State shall thereafter determine).
- (b) The written notice referred to in clause 11.4(a) above may include a requirement for the Grant Recipient to provide specified information to the Secretary of State to assist him to determine whether the default has been rectified to his satisfaction.
- (c) Where the rectification of the default requires a Change the procedure under clause 8 shall be followed.

- (d) 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 either clause 11.3(c) or clause 11.3(d) unless the Grant Recipient has failed to rectify the default pursuant to clause 11.4(a) within such period referred to in clause 11.4(a) to the satisfaction of the Secretary of State.

11.5 Continued rights of actions or remedies of the Secretary of State

The exercise by the Secretary of State of its rights under clause 11.3 shall be without prejudice to any other right of action or remedy of the Secretary of State in respect of any breach by the Grant Recipient of the provisions of this Funding Agreement.

11.6 Cessation of entitlement to Grant

If the Secretary of State exercises their right under clause 11.3(c) the Secretary of State shall give written notice to the Grant Recipient that the Secretary of State is ceasing to make payment of Grant and from the date of such notice the Secretary of State shall cease to be under any obligation to pay any amount of Grant to the Grant Recipient under the Funding Agreement.

11.7 Liability to meet demand for repayment of Grant and Covenant to Pay

- (a) Where the Secretary of State requires the Grant Recipient to repay any amount of Grant, the Grant Recipient shall repay the amount concerned within 20 Working Days of receiving the demand for repayment. The liability to meet such a demand shall be enforceable as a contractual debt.
- (b) Where the Secretary of State 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 the Secretary of State to the Grant Recipient under this Funding Agreement or under any funding agreement for the support of any other project or activities by the European Social Fund, or under any other agreement with the Secretary of State.
- (c) The Secretary of State may require interest to be paid on any amount repayable by the Grant Recipient in accordance with the rates published in the Official Journal of the European Union from time to time.

11.8 Corrections

- (a) Notwithstanding any other provision in this Funding Agreement the Secretary of State may impose a Correction. If a Correction is imposed a notice will be sent to the Grant Recipient setting out the Irregularity that the Secretary of State considers has occurred together with the level of Correction imposed having regard to any

applicable guidelines and/or the value of the Grant Claim to the extent that the Irregularity applies to it.

- (b) If a Correction is imposed the Grant Recipient shall either pay the amount or agree to the Correction being offset from a future Grant Claim as the case may be. The Secretary of State shall be at liberty to offset an amount of Grant in anticipation of a Correction pending the final outcome of any discussions or representations made by the Secretary of State and/or the Grant Recipient in respect of the Correction.
- (c) The Grant Recipient shall be at liberty to make representations in writing to the Secretary of State setting out the reasons it considers that the Correction should be adjusted together with evidence in sufficient detail to enable the Secretary of State to reconsider the requirement for the Correction provided always that the Secretary of State's decision shall be final and binding.

11.9 Exclusion of liability

- (a) Neither party shall be liable to the other party (so far as permitted by law) for indirect special or consequential loss or damage in connection with this Funding Agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- (b) Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Funding Agreement.
- (c) With respect to other claims so far as permitted by law the Secretary of State shall under no circumstances whatever be liable to the Grant Recipient whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any Losses arising under or in connection with this Funding Agreement that would exceed the amount of the Maximum Sum less any amount of Grant Paid.
- (d) Any clause limiting the Grant Recipient's liability does not apply in relation to a Correction that is applied in accordance with the terms of this Funding Agreement.

11.10 The Grant Recipient acknowledges that, by agreeing to this Funding Agreement, the Secretary of State may have overcommitted funds. The Grant Recipient therefore agrees that , in the case that the Secretary of State has insufficient funds to meet the full commitment under this Agreement, the Secretary of State may terminate this Agreement in accordance with Clause 27 hereof.

11.11 Reduction in grant for underperformance

- (a) This clause applies where the Secretary of State determines that the Grant Recipient has underperformed against the Targets to such a degree that a reduction in Grant may be made in accordance with the underperformance weightings and methodology set out in Schedule 3A.
- (b) Where this clause applies, the Secretary of State shall give written notice to the Grant Recipient specifying the Targets it has underperformed against and giving the Grant Recipient an opportunity to rectify that underperformance within such period as the Secretary of State shall determine to be reasonable and as shall be set out in such written notice (or such extended period as the Secretary of State shall thereafter determine).
- (c) The written notice referred to in the paragraph above may include a requirement for the Grant Recipient to provide specified information to the Secretary of State to assist him to determine whether that underperformance has been rectified to his satisfaction.
- (d) Where the rectification of the underperformance requires a Change, the procedure under clause 8 shall be followed.
- (e) Where the Grant Recipient fails to rectify the underperformance to the Secretary of State's satisfaction within the specified time period, the Secretary of State may by written notice to the Grant Recipient, reduce the amount of Grant allocated to the Project by an amount calculated in accordance with the underperformance weightings and methodology set out in Schedule 3A.
- (f) Where the amount of Grant is reduced under this clause, the Secretary of State shall either require the Grant Recipient to repay to the Secretary of State the whole or any part of the amount of Grant previously paid to the Grant Recipient and/or shall offset it from a future Grant Claim, as appropriate.

12 ASSIGNMENT OR CHARGING OF THE FUNDING AGREEMENT

12.1 The Grant Recipient may not, without the prior written consent of the Secretary of State, assign its rights under the Funding Agreement or charge the benefit of the Funding Agreement or novate the rights and liabilities of the Funding Agreement to a third party.

12.2 If the Grant Recipient wishes to assign, charge or novate its rights and liabilities under the Funding Agreement, it will give as much notice as possible of its proposals to the Secretary of State and will provide a full account of relevant circumstances and such further particulars as the Secretary of State

shall request concerning the party to which the Funding Agreement is proposed to be assigned, novated or charged.

12.3 The Secretary of State shall determine as to whether or not to give consent to an assignment or novation or charging of the Funding Agreement or as to any conditions to be imposed.

12.4 If the Secretary of State consents to an assignment, charge or novation, then the Secretary of State may notify the Grant Recipient that the documentation giving effect to the assignment, charge or novation is to be approved by the Secretary of State and copies of all completed documents supplied to the Secretary of State upon completion of the same.

13 MONITORING PROGRESS, REPORTING AND NOTIFICATIONS

13.1 Submission of progress reports

- (a) The Grant Recipient must send to the Secretary of State, at such intervals as the Secretary of State shall notify in writing to the Grant Recipient, a report on progress made towards the achievement of the Targets. Without prejudice to any provision of any of this Funding Agreement conferring a remedy for failure to achieve any of the Targets, this obligation shall subsist until the Targets have been achieved.
- (b) The Grant Recipient must provide such additional information in such format as the Secretary of State may at any time require. This includes information about the progress of the Project Activities, the achievement of the Targets and any other information required to enable the Secretary of State to meet its reporting obligations and other obligations under State Aid Law and the Structural and Investment Funds Regulations.
- (c) The Grant Recipient warrants the accuracy of the reports and information it gives pursuant to this clause 13 and further warrants that it has diligently made full and proper enquiry of the subject matter pertaining to the reports and information given.

13.2 Notification by the Grant Recipient

The Grant Recipient shall notify the Secretary of State in writing:-

- (a) as soon as practicable thereafter firstly in the event of any 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 other funding obtained by the Grant

Recipient in relation to the Project, 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) as soon as practicable thereafter, of any event which might adversely affect the delivery of the Project by the Agreed Activity End Date;
- (e) forthwith, on the occurrence of an Event of Default.

13.3 Records

- (a) The Grant Recipient shall provide the Secretary of State with such information and documentation as the Secretary of State 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 shall comply with and assist the Secretary of State to comply with the requirements for an audit trail under the Structural and Investment Funds Regulations including (but not limited to) the detailed minimum requirements under Article 25 of Regulation 480.
- (c) The Grant Recipient must keep a record of all Eligible Expenditure, all quotes, tenders and procurement practices, all financial contributions made towards the Project and all income generated by the Project.
- (d) The Grant Recipient will provide to the Secretary of State such information as is available as to the number of persons employed in connection with the Project and such other information as may be requested by the Secretary of State as to the benefits derived from the provision of funding for the Project.
- (e) The Grant Recipient must comply with the requirements of the Secretary of State regarding the keeping of records available on the Secretary of State Website.

13.4 Retention of documents

- (a) Without prejudice to any other provision of this Agreement and the Grant Recipient's obligations pursuant to State Aid Law, the Grant Recipient will ensure that all documents relating to the Project and its implementation and financing are retained for a two year period from 31 December following the submission of the accounts in which the final expenditure of the Completed Project is included, in order that these may be made available to the European Commission and

European Court of Auditors upon request in accordance with Article 140 of Regulation 1303.

- (b) The Secretary of State shall notify the Grant Recipient of the start date of the two year period referred to in the paragraph above.
- (c) In addition to the obligation under paragraph (a) above, the Grant Recipient shall ensure that all documents relating to the Project and its implementation and financing are retained as necessary in order to demonstrate compliance with any applicable State Aid law, the Structural and Investment Funds Regulations and the obligations under this Funding Agreement. The Programme Guidance will include information to assist the Grant Recipient to determine how long documents should be retained for in order to demonstrate compliance.
- (d) The Grant Recipient will make available the documents relating to the Project and its implementation and financing if and when required to do so by the Secretary of State, the European Court of Auditors, the European Commission auditors, the National Audit Office (and also their respective auditors).
- (e) The documents referred to in this clause shall be kept and made available either in the form of the originals or certified true copies of the originals or on commonly accepted data carriers including electronic versions of original documents or documents existing in electronic version only. The Programme Guidance will provide information on commonly accepted data carriers and the procedure for certifying conformity with original documents.
- (f) Where documents exist in electronic form only, the computer systems used shall meet accepted security standards which ensure the documents held meet with national legal requirements and can be relied upon for audit purposes.

13.5 Conflicts of interest and financial irregularities

- (a) The Grant Recipient, any Delivery Partner and all officers, employees and other persons engaged or consulted by the Grant Recipient in connection with the Project shall not be in a position where there is a conflict 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. Any such conflicts must be reported to the Secretary of State in writing.
- (b) If the Grant Recipient has any grounds for suspecting any financial impropriety in the use of any amount paid under the Funding Agreement, it must notify the Secretary of State immediately, explain what steps are being taken to investigate the suspicion, and keep the

Secretary of State informed about the progress of the investigation. For these purposes “financial impropriety” includes fraud or other impropriety; mismanagement; use of Grant for improper purposes; and failure to comply with requirements in the Structural and Investment Funds Regulations relating to the control and propriety of Project expenditure.

- (c) The Secretary of State shall be entitled to interview employees of the Grant Recipient if fraud or other financial irregularity is suspected by the Secretary of State on the part of the Grant Recipient, its employees or agents in connection with the Project.

14 ACCOUNTING RECORDS, SUPPORTING EVIDENCE AND AUDIT

- 14.1** The Grant Recipient shall and shall procure that a Delivery Partner shall maintain full and accurate accounts and documentary evidence for the Project on an open book basis and the Grant Recipient will and shall Procure that a Delivery Partner will permit the Secretary of State and persons authorised by the Secretary of State to inspect audit and take copies of all reports books accounting records and vouchers which the Secretary of State properly considers relevant to the Project.
- 14.2** The Grant Recipient shall and shall procure that a Delivery Partner shall maintain either a separate accounting system or an adequate accounting code for all transactions relating to the operation without prejudice to national accounting rules.
- 14.3** The Grant Recipient shall and shall procure that a Delivery Partner shall comply with the Secretary of State’s audit monitoring and reporting requirements for grant recipients.
- 14.4** The Grant Recipient shall and shall procure that a Delivery Partner shall provide the Secretary of State with such other information as the Secretary of State may require in connection with the Project and the Project Activities.
- 14.5** The Grant Recipient shall and shall procure that a Delivery Partner shall cooperate fully and promptly with an Audit.
- 14.6** Without prejudice to any other provision of this Funding Agreement, where the Grant Recipient has been notified that the Project has been selected for Audit and
 - (a) the Grant Recipient has previously failed to comply fully and promptly with an Audit; or
 - (b) an Irregularity has previously been found in relation to the Project,the Secretary of State may, at his discretion, withhold payment of Grant until a subsequent Audit has been completed to the Secretary of State’s satisfaction.

15 CONFIDENTIALITY

15.1 Except to the extent set out in this clause 15 or where disclosure is expressly permitted elsewhere in this Funding Agreement, each party shall:-

- (a) treat the other party's Confidential Information as confidential and safeguard it accordingly; and
- (b) not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

15.2 Clause 15.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000, 'Code of Practice on Access to Government Information' or the Environmental Information Regulations;
- (b) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Funding Agreement; or
- (e) it is independently developed without access to the other party's Confidential Information.

15.3 The Grant Recipient may only disclose the Secretary of State's Confidential Information to the Grant Recipient Personnel who are directly involved in the Project and who need to know the information, and shall ensure that such Grant Recipient Personnel are aware of and shall comply with these obligations as to confidentiality.

15.4 The Grant Recipient shall not, and shall procure that the Grant Recipient Personnel do not, use any of the Secretary of State's Confidential Information received otherwise than for the purposes of this Funding Agreement.

15.5 Nothing in this Funding Agreement shall prevent the Secretary of State from disclosing the Grant Recipient's Confidential Information:

- (a) to any Crown body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed

to a third party which is not part of any Crown body or any Contracting Authority;

- (b) to any consultant, contractor or other person engaged by the Secretary of State;
- (c) (where such Confidential Information is contained in the Application, any Grant Claim or progress report submitted in respect of the Project), to any member of a Local Enterprise Partnership European Structural and Investment Funds Sub-Committee for the purpose of monitoring and evaluating the Project, subject to clause 15.7.
- (d) to a person receiving technical assistance in accordance with Regulation 1303 for the purpose of monitoring and evaluating the Project.
- (e) to enable the Secretary of State to meet its reporting obligations and other obligations under State Aid Law and the Structural and Investment Funds Regulations for the purpose of clause 13.1(b) of this Funding Agreement;
- (f) for the purpose of any audit pursuant to clause 14 of this Funding Agreement;
- (g) for the purpose of the examination and certification of the Secretary of State's accounts; or
- (h) for any examination pursuant to Section 6(1) or Section 7ZA of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Secretary of State has used its resources.

15.6 The Secretary of State shall use all reasonable endeavours to ensure that any Crown Body, government department, Contracting Authority, external auditor, employee, third party or Sub-contractor to whom the Grant Recipient's Confidential Information is disclosed pursuant to clause 15.5 is made aware of the Secretary of State's obligations of confidentiality.

15.7 The Secretary of State may agree not to disclose specified Confidential Information contained in the Application, any Grant Claim or progress report to a member of the Local Enterprise Partnership European and Structural Investment Sub-Committee where the Grant Recipient has requested in writing that such information be withheld, including where it is considered to be commercially sensitive.

15.8 Notwithstanding the foregoing the Grant Recipient hereby consents to the Secretary of State using and disclosing (including to the press) any techniques, ideas or know-how gained during the performance of the Project Activities and/or Funding Agreement. The Grant Recipient warrants to the Secretary of State that neither the Intellectual Property Rights nor any publication by the Secretary of State 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 the Secretary of State harmless against any and all claims, demands and proceedings arising directly or indirectly out of the Secretary of State'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.

16 THE SECRETARY OF STATE DATA

- 16.1** The Grant Recipient shall not delete or remove any proprietary notices contained within or relating to the Secretary of State Data.
- 16.2** The Grant Recipient shall not store, copy, disclose, or use the Secretary of State Data except as necessary for the performance by the Grant Recipient of its obligations under this Funding Agreement or as otherwise expressly authorised in writing by the Secretary of State.
- 16.3** The Grant Recipient shall take responsibility for preserving the integrity of the Secretary of State Data and preventing the corruption or loss of the Secretary of State Data.
- 16.4** If at any time the Grant Recipient suspects or has reason to believe that the Secretary of State Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Grant Recipient shall notify the Secretary of State immediately and inform the Secretary of State of the remedial action the Grant Recipient proposes to take.

17 DATA PROTECTION

- 17.1** With respect to the parties' rights and obligations under this Funding Agreement, the parties agree that the Secretary of State is the Data Controller and that the Grant Recipient is the Data Processor.
- 17.2** The Grant Recipient shall:-
- (a) process the Personal Data only in accordance with instructions from the Secretary of State (which may be specific instructions or instructions of a general nature as set out in this Funding Agreement or as otherwise notified by the Secretary of State to the Grant Recipient during the term of this Funding Agreement), unless the Grant Recipient is required to do so otherwise by Law. If it is so required, the Grant Recipient shall promptly notify the Secretary of State before processing the Personal Data unless prohibited by Law;
 - (b) process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Project Activities or as is required by Law or any Regulatory Body;
 - (c) not transfer Personal Data outside of the EU unless the prior written consent of the Secretary of State has been obtained and the following conditions are fulfilled:

- (i) the Secretary of State or the Grant Recipient has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Secretary of State;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Grant Recipient complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Secretary of State in meeting its obligations); and
 - (iv) the Grant Recipient complies with any reasonable instructions notified to it in advance by the Secretary of State with respect to the processing of the Personal Data.
- (d) take reasonable steps to ensure the reliability and integrity of any Grant Recipient Personnel who have access to the Personal Data and ensure that they;
- (i) are aware of and comply with the Grant Recipient's duties under this clause;
 - (ii) are subject to appropriate confidentiality undertakings with the Grant Recipient or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Secretary of State or as otherwise permitted by this Funding Agreement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data.
- (e) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- (f) before allowing any Sub-processor to process any Personal Data related to this Funding Agreement;
- (i) notify the Secretary of State in writing of the intended Sub-processor and processing;

- (ii) obtain the written consent of the Secretary of State;
 - (iii) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause 17 such that they apply to the Sub-processor; and
 - (iv) provide the Secretary of State with such information regarding the Sub-processor as the Secretary of State may reasonably require.
- (g) notify the Secretary of State (within five Working Days) if it receives:-
- (i) a request from a Data Subject to have access to that person's Personal Data; or
 - (ii) a complaint or request relating to the Secretary of State's obligations under the Data Protection Legislation;
- (h) provide all reasonable assistance to the Secretary of State in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Secretary of State, include:
- (i) a systematic description of the envisaged processing operations and the purposes of processing;
 - (ii) an assessment of the necessity and proportionality of the processing operations in relation to the Services; and
 - (iii) an assessment of the risks to the rights and freedoms of Data Subjects.
- (i) taking into account the nature of the processing, provide the Secretary of State with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under this clause 17 (and insofar as possible within the timescales reasonably required by the Secretary of State) including by promptly providing:
- (i) the Secretary of State with full details and copies of the complaint, communication or request;
 - (ii) such assistance as is reasonably requested by the Secretary of State to enable the Secretary of State to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (iii) the Secretary of State, at its request, with any Personal Data it holds in relation to a Data Subject;

- (iv) assistance as requested by the Secretary of State following a Data Loss Event;
 - (v) assistance as requested by the Secretary of State with respect to any request from the Information Commissioner's Office, or any consultation by the Secretary of State with the Information Commissioner's Office; and
 - (vi) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- (j) Provide a written description of the technical and organisational methods employed by the Grant Recipient for processing Personal Data (within the timescales required by the Secretary of State);
 - (k) At the written direction of the Secretary of State, delete or return Personal Data (and any copies of it) to the Secretary of State on termination of this Funding Agreement unless the Grant Recipient is required by Law to retain the Personal Data.
 - (l) Permit the Secretary of State or a representative of the Secretary of State to inspect and audit (subject to reasonable and appropriate confidentiality undertakings), the Grant Recipient's Data Processing activities (and/or those of its agents, subsidiaries and contractors) and comply with all reasonable requests or directions by the Secretary of State to enable the Secretary of State to verify and/or procure that the Grant Recipient is in full compliance with its Data Processing obligations under this Funding Agreement.

17.3 The Grant Recipient shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Funding Agreement in such a way as to cause the Secretary of State to breach any of its applicable obligations under the Data Protection Legislation.

18 SECURITY REQUIREMENTS

18.1 The Grant Recipient shall, as an enduring obligation throughout the term of this Funding Agreement, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the Information Communications and Technology Environment.

18.2 Notwithstanding clause 18.1, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the Secretary of State Data, assist each other to mitigate any losses and to restore the Project Activities to their desired operating efficiency.

18.3 Any cost arising out of the actions of the parties taken in compliance with the provisions of clause 18.2 shall be borne by the parties as follows:

- (a) by the Grant Recipient where the Malicious Software originates from the Grant Recipient Software, the Third Party Software or the Secretary of State Data (whilst the Secretary of State Data was under the control of the Grant Recipient); and
- (b) by the Secretary of State if the Malicious Software originates from the Secretary of State Software or the Secretary of State Data (whilst the Secretary of State Data was under the control of the Secretary of State).

19 GRANT RECIPIENT WARRANTIES

The Grant Recipient warrants, represents and undertakes for the duration of the term of this Funding Agreement that:-

- (a) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Grant Recipient's obligations under this Funding Agreement;
- (b) it has and will continue to have all necessary rights in and to the Grant Recipient Software or any Third Party Software and/or the Intellectual Property Rights, or any other materials made available by the Grant Recipient and/or the sub-contractors to the Secretary of State necessary to perform the Grant Recipient's obligations under this Funding Agreement;
- (c) in performing its obligations under this Funding Agreement, all Software used by or on behalf of the Grant Recipient will:
 - (i) be currently supported versions of that Software; and
 - (ii) perform in all material respects in accordance with its specification,
- (d) as at the Start Date all statements and representations in the Grant Recipient's Application are to the best of its knowledge, information and belief, true and accurate and that it will advise the Secretary of State of any fact, matter or circumstance of which it may become aware which would render any such statement, representation to be false or misleading; and
- (e) it shall at all times comply with Law in carrying out its obligations under this Funding Agreement;
- (f) it has the power and authority to execute, deliver and perform its obligations under this Funding Agreement and no limit on its powers will be exceeded as a result of the acceptance of the Funding or any of the terms pursuant to this Funding Agreement;
- (g) there has been no adverse change in the Grant Recipient's business, assets or financial condition since the submission of the Application to

the Secretary of State and that the Application is true in all respects on the date of this Funding Agreement;

- (h) no regulatory investigation by any United Kingdom or European Union authorities has been commenced or is pending in respect of the Project or the Grant Recipient, or if there has been a regulatory investigation, it has been concluded to the satisfaction of the Secretary of State.

20 NOTICES

20.1 Any notice demand or communication to be given or served under this Funding Agreement shall be in writing.

20.2 Subject to any other term of this Funding Agreement, any notice demand or communication to be given or served under this Funding Agreement upon the Secretary of State shall be given or served:

- (a) by personal delivery or by sending it by pre-paid recorded postal delivery to the address specified in the Funding Agreement for the attention of the ESF Programme or to such other address as may from time to time be notified by the Secretary of State;
- (b) by email to the email address specified in the Project Specific Conditions or such other address as may from time to time be notified by the Secretary of State; or
- (c) where directed to do so by the Secretary of State, using the Secretary of State's System on line facility, in accordance with the terms of use of that facility.

20.3 Any notice, demand or communication to be served upon the Grant Recipient, shall be given or served:

- (a) 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 the Secretary of State;
- (b) by email to the email address specified in the Project Specific Conditions or to such other address as may from time to time be notified by the Secretary of State; or
- (c) using the Secretary of State's System on line facility.

20.4 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. An email or notice given using the Secretary of State's on line facility shall be deemed delivered when sent unless an error message is received.

20.5 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.

21 VALUE ADDED TAX

21.1 The payment of the Grant by the Secretary of State 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 the Secretary of State shall not be obliged to pay any additional amount by way of Value Added Tax.

21.2 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 Value Added Tax 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 the Secretary of State in addition to such sums or other consideration pay to the Secretary of State all the Value Added Tax so payable upon the receipt of a valid Value Added Tax invoice.

22 GOOD FAITH AND COOPERATION

The Grant Recipient covenants with the Secretary of State that:-

- (a) it shall at all times act with the utmost good faith towards the Secretary of State and will at all times co-operate fully with the Secretary of State;
- (b) it will comply with all the Secretary of State's reasonable requirements in relation to the Project from time to time; and
- (c) it will not do anything which will put the Secretary of State in breach of any of its obligations in relation to the Operational Programme.

23 INSURANCE

The Grant Recipient covenants with the Secretary of State 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.

24 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not party to this Funding Agreement shall not have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Funding Agreement.

25 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.

26 MISCELLANEOUS

- 26.1** 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 the Secretary of State for any purpose whatsoever, and the Grant Recipient shall ensure that any Delivery Partner is made aware of this.
- 26.2** A certificate by the Secretary of State as to any sum payable under this Funding Agreement to the Grant Recipient shall be (save in the case of manifest error) conclusive evidence of the matter to which it relates and shall contain reasonable details of the basis of determination.
- 26.3** 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 nor enforceability of the remaining provisions of this Funding Agreement shall be in any way affected or impaired as a result.
- 26.4** No failure or delay on the part of the Secretary of State 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 the Secretary of State prevent any other or further or other exercise of it or the exercise of any other right power or remedy of the Secretary of State. The rights and remedies available to the Secretary of State under this Funding Agreement are cumulative and are in addition to and not in substitution for any other rights or remedies which the Secretary of State would otherwise have, however arising.
- 26.5** Nothing contained in or done under this Funding Agreement and no consents given by the Secretary of State shall prejudice the Secretary of State's rights, powers or duties and/or obligations in the exercise of its functions or under any statutes, bye-laws, instruments orders or regulations.
- 26.6** Nothing in this Funding Agreement nor any other document shall impose any obligation or liability on the Secretary of State 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.
- 26.7** Any approval by the Secretary of State or any person on behalf of the Secretary of State pursuant to this Funding Agreement of any matter submitted by the Grant Recipient for approval shall not be deemed to be an Acknowledgment by the Secretary of State of the correctness or suitability of the contents of the subject of the approval or consent.

- 26.8** The fact that the Secretary of State or their 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.
- 26.9** 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.
- 26.10** This Funding Agreement contains all the terms which the Secretary of State has agreed in relation to the subject matter of this Funding Agreement and supersedes any prior written or oral agreements representations or understandings between the Secretary of State and the Grant Recipient.
- 26.11** No term of this Funding Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Funding Agreement
- 26.12** Notwithstanding any other provisions of this Funding Agreement, the Secretary of State shall not be entitled to be reimbursed or to recover any monies that it has paid under this Funding Agreement to the extent that it has already been compensated or reimbursed in respect of that same amount pursuant to this Funding Agreement.

27 TERMINATION CLAUSE

- 27.1** This Agreement may be terminated by the Secretary of State at any time on the provision of three months' written notice to the Grant Recipient. In such circumstances, the Secretary of State shall only be liable to reimburse the Grant Recipient for all Eligible Expenditure incurred up to the point of termination and will not be liable for any other losses which may have incurred as a result of termination
- 27.2** Exercise of the right of termination shall not prejudice the exercise of any legal rights or remedies the Secretary of State may have against the Grant Recipient in respect of any breach of the terms of this Agreement.

ACCEPTANCE

This Funding Agreement has been entered into on the date stated at the beginning of it.

Signed for and behalf of

SECRETARY OF STATE FOR

WORK AND PENSIONS

Authorised Signatory: _____

Print Name: *[name to be inserted by the signatory – (please delete)]*

Signed for and on behalf of

[Grant Recipient Organisation]

Authorised Signatory:

Print Name:

SCHEDULE 1 THE PROJECT SPECIFIC CONDITIONS

1. Contribution Rates

The amount of Grant payable shall not exceed the maximum sum of [£insert grant amount] [amount in words] and has been determined as follows:

- (a) insert rate% (Youth Employment Initiative Contribution Rate for [insert CoR] region) of the Eligible Youth Employment Initiative Expenditure up to the Maximum Sum of £insert sum
- (b) insert rate % of the remainder of the eligible project (European Social Fund Contribution Rate for [insert CoR] region) up to the Maximum Sum of £insert sum
- (c) insert rate % of the remainder of the eligible project (Match Contribution Rate) up to the Maximum Sum of £insert sum.

2. The principal contact for this Project in the Department for Work and Pensions is [insert name and telephone number]. All correspondence, including any notices served pursuant to clause 20 in the main body of this Funding Agreement should be sent to the following address [insert address] or by email to [insert email address]. In any correspondence please quote the Project reference number found on the front page of this Funding Agreement.

3. Instalment Periods

The Instalment Period will be quarterly ending on 31 March, 30 June, 30 September and 31 December. The first Instalment Period will start following the date on which the correctly executed Funding Agreement is received by the principal contact named above.

4. Milestone Table

	Milestone	Date
a)	Start Date	[date this Agreement is correctly executed]
b)	Agreed Financial Completion Date	[]
c)	Agreed Activity End Date	[]
e)	The date of the submission of the first Grant Claim.	[]
f)	The date of the submission of the final Grant Claim.	[]
g)	[Match Funding Longstop Date]	[]
h)	[Longstop date for legal agreement with Delivery]	[within 30 days of the date of executing this]

	Partners (see clause 6 below)]		Funding Agreement.]
--	---------------------------------------	--	----------------------------

5. Match Funding

MA ADVISORY NOTE (to be removed before FA is issued): The split of Private and Public match-funding in the table must exactly mirror the Financial Annex(es) for the project, where used, and also the split of the same match-funding as recorded in EClaims. If there are any issues identified around the public/private match-funding types, the Funding Agreement should not be issued until these are resolved.

The Match Funding is detailed in the table below:

Funding Contributions		2016	2017	2018	2019	2020	Total
PUBLIC (List Funders)							0
XXXX		XXX	XXX	XXXX			0
PRIVATE (List Funders)							
XXXX		XXXX	XXX	XXX			XXX
ESF		XXXX	XXX	XXX			XXX
Total Public Sector Match		XXXX	XXX	XXX			XXX
Total Private Sector Match		XXXX	XXX	XXX			XXX
TOTAL		XXXX	XXX	XXX			XXX

OR WHERE THE MATCH FUNDING IS NOT FULLY COMMITTED, EG BECAUSE ONE MATCH FUNDER IS STILL TO CONFIRM, OR BECAUSE SME CONTRIBUTIONS REQUIRED:

- 5.1 Without prejudice to clause 5.2(a) of the conditions in the main body of this Funding Agreement, the Secretary of State accepts that as at the date of this Funding Agreement the Match Funding for the Project has been approved as set out in the table below:

Funding Contributions	Status: Committed/Indicative	2016	2017	2018	2019	2020	Total

PUBLIC Funders)	(List	[Indicative] [Committed]						0
XXXX		[Indicative] [Committed]	XXX	XXX	XXXX			0
PRIVATE Funders)	(List	[Indicative] [Committed]						
XXXX		[Indicative] [Committed]	XXXX	XXX	XXX			XXX
ESF		[Indicative] [Committed]	XXXX	XXX	XXX			XXX
Total Public Sector Match		[Indicative] [Committed]	XXXX	XXX	XXX			XXX
Total Private Sector Match		[Indicative] [Committed]	XXXX	XXX	XXX			XXX
TOTAL		[Indicative] [Committed]	XXXX	XXX	XXX			XXX

5.2 The Grant Recipient shall provide evidence to confirm the indicative Match Funding is fully committed [prior to the first Grant Claim] [by the Match Funding Longstop Date included in the Key Milestones at clause 4 of these Project Specific Conditions].

5.3 The Grant Recipient acknowledges and accepts that if it fails to provide evidence to the satisfaction of the Secretary of State in accordance with clause 5.2 of these Project Specific Conditions above, such failure shall be treated as an Event of Default pursuant to clause 11.1 of the conditions set out in the main body of this Funding Agreement. [Or IF SME CONTRIBUTIONS MAKING UP THE REMAINING MATCH: The Grant Recipient acknowledges and accepts that if it does not secure the amount of Match Funding stated in clause 5.1 above from the SMEs, it shall be required to provide Match Funding from its own resources and failure to secure adequate Match Funding shall be treated as an Event of Default pursuant to clause 11.1 of the conditions set out in the main body of this Funding Agreement].

6. Delivery Partners

EITHER

Not applicable. There are no Delivery Partners associated with this Project.

OR

- 6.1 The Grant Recipient is acting as the lead beneficiary for a consortium where the Grant Recipient and the following delivery partners will be making use of the Grant:

[NAME]

[REGISTERED ADDRESS]

[COMPANY NUMBER]

“the Delivery Partner[s]”

- 6.2 The Grant Recipient shall, [within 30 days of the date of executing this Funding Agreement], enter into a legally binding agreement with [the][each] Delivery Partner[s] upon materially similar terms to this Funding Agreement comprising provisions guaranteeing the sound financial management of the Grant including (without limitation):

6.2.1 clauses enabling the Grant Recipient to verify that expenditure presented by the Delivery Partner has been incurred and corresponds to that portion of the Project Activities actually being delivered by the Delivery Partner;

6.2.2 clauses imposing liability upon the Delivery Partner in the event of any irregularity in the expenditure declared by such Delivery Partner; and

6.2.3 clauses enabling the Grant Recipient to recover any amounts unduly paid.

- 6.3 Without prejudice to clause 6.2 of these Project Specific Conditions above, the Grant Recipient shall be solely responsible for ensuring the successful implementation of the Project and the achievement of the Targets.

7. Methodology for determining Eligible Expenditure

[MA NOTE: For local Co-Financing Organisations, Clause 7.2 should be deleted in this section. Only Clause 7.1 is applicable. The same is true for ESF Direct Bid projects who may have opted not to include FRIC costs in their project funding]

- 7.1 For the avoidance of doubt, the methodology for determining the Eligible Expenditure of the Project is set out in the Eligibility Rules and Grant Claims shall be submitted in line with this methodology.
- 7.2 [Where the implementation of the Project gives rise to indirect costs, they are to be calculated at a flat rate of 15% of eligible direct staff costs in accordance with the Programme Guidance].

OR

- 7.2 [A flat rate of 40% of the eligible direct staff costs for the Project shall be used in order to cover the remaining Eligible Expenditure of the Project, in accordance with the Programme Guidance].

8. State Aid

[[NO AID]

- 8.1 The Grant Recipient has undertaken an evaluation of the Project and concluded that the Grant for the Project Activities will not constitute State Aid (within the meaning set out in Article 107(1) of the TFEU and the relevant case law). The Grant Recipient has provided reasoning for this position within the Application [and in further detail in their legal advice letter at Annex X].
- 8.2 The Grant Recipient shall use all reasonable endeavours to maintain the 'no aid' structure and shall promptly inform the Secretary of State where it has reason to believe that the Project is no longer operating under a 'no aid' structure.

[Or

B. PUBLIC SECTOR NO AID]

- 8.1 The Grant Recipient has undertaken an evaluation of the Project and concluded that the Grant for the Project Activities will not constitute State Aid (within the meaning set out in Article 107(1) of the TFEU and the relevant case law).
- 8.2 The Grant Recipient confirms that as all the Project Activities are directly within the public remit of the organisation (as a public body) and the Grant Recipient, is not operating within a market and is therefore not an 'undertaking' per Article 107(1) of the TFEU.
- 8.3 The Grant Recipient shall use all reasonable endeavours to maintain the 'no aid' structure and shall promptly inform the Secretary of State where it has reason to believe that the Project is no longer operating under a 'no aid' structure.]

[Or

C. RESEARCH ORGANISATION, NO AID]

- 8.1 The Grant Recipient has undertaken an evaluation of the Project and concluded that transfer of State Resources to itself will not constitute State Aid (within the meaning set out in Article 107(1) of the TFEU and the relevant case law) because it is a 'research and knowledge dissemination organisation'

or 'research organisation' as defined at 1.3 paragraph 13 (ee) of the Framework for Research, Development and Innovation (2014/C 198/01)

8.2 The Grant Recipient confirms that its primary goal is to independently conduct fundamental research, industrial research or experimental development or to widely disseminate the results of such activities by way of teaching, publication or knowledge transfer. Where such entity also pursues economic activities, the financing, the costs and the revenues of those economic activities must be accounted for separately. Undertakings that can exert a decisive influence upon such an entity, for example in the quality of shareholders or members, may not enjoy a preferential access to the results generated by it.

8.3 The Grant Recipient shall use all reasonable endeavours to maintain the 'no aid' structure and shall promptly inform the Secretary of State where it has reason to believe that the Project is no longer operating under a 'no aid' structure.]

[Or

D. MARKET RATE, NO AID]

8.1 The Grant Recipient warrants that there shall be no State Aid to the [] beneficiaries within the Project because they shall pay a market rate for the []. The Grant Recipient shall regularly review the rates offered within the market for similar services and agrees to maintain documentation to demonstrate compliance.

8.2 The Grant Recipient shall use all reasonable endeavours to maintain the 'no aid' structure and shall promptly inform the Secretary of State where it has reason to believe that the Project is no longer operating under a 'no aid' structure.]

OR

[E De Minimis Aid

8.1 The Grant Recipient has undertaken an evaluation of the Project and concluded that the Grant for the Project will not constitute State Aid within the meaning set out in Article 107(1) of the TFEU and is exempted from the notification of Article 108(3) of the TFEU as it meets the definition of de minimis aid within Article 2 of Regulation 1407/2013. [The Grant Recipient declares that it has not received any other de minimis aid to which Regulation 1407/2013 applies or any other de minimis regulations applicable during the previous two financial years and the current financial year./ The Grant Recipient declares that it has received the following de minimis aid to which Regulation 1407/2013 applies and/or received aid to which other de minimis regulations applicable during the previous two financial years and the current financial year.]

- 8.2 The Grant Recipient has reviewed the terms of Regulation 1407/2013 and confirms that as a single undertaking (which includes all entities which are controlled by the same entity in law or on a de facto basis) it has not received state aid in excess of the limit set out in Article 3(2) of Regulation 1407/2013 (200,000 euros) during this financial year and during the two previous financial years. The Grant Recipient confirms that the funding set out in this Funding Agreement will not exceed the funding limit for de minimis aid.
- 8.3 The limit of the de minimis aid shall apply irrespective of the form of the de minimis aid or the objective pursued and regardless of whether the aid granted is financed entirely or partly by resources of European Union origin. The period of three financial years shall be determined by reference to the financial years used by the Grant Recipient in the United Kingdom.
- 8.4 All figures used for determining the amount of the de minimis aid shall be gross. Where aid is granted in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid as determined under Article 4 of Regulation 1407/2013.]
- 8.5 The Grant Recipient shall maintain detailed records with the information and supporting documentation necessary to establish that all the conditions laid down in Regulation 1407/2013 have been complied with until 2033. .

OR

[De Minimis (via delivery partner)]

- 8.1 The Grant Recipient warrants that any economic advantage will be provided to the Project beneficiaries by either the Grant Recipient or the Delivery Partner within the framework of the 'De Minimis Regulations' (EC Reg 1407/2013 OJ L 352 of 24.12.2013) and agrees that it will meet, and will ensure that the Delivery Partner meets, the conditions set out below
- 8.2 The Grant Recipient confirms that all staff [and Delivery Partners] who deliver such aid shall first read the De Minimis Regulations 1407/2013 to ensure that they understand the administrative requirements. Compliance with the De Minimis Regulations shall include:
- a. valuing the 'gross grant equivalent' of the aid provided to each SME;
 - b. establishing how much aid the SME has received in the current and two previous financial years to ensure that the award of the aid shall not exceed the €200,000 threshold for the SME in that period;
 - c. obtaining a prior declaration from the SME (signed by a person authorised to bind them) that the aid received shall not result in the SME exceeding its allowable €200,000 threshold as above; and
 - d. providing a follow-up letter to each SME recording the gross grant equivalent value of aid provided under the De Minimis Regulations.

8.3 The Grant Recipient agrees not to provide, and to ensure that any Delivery Partner does not provide, aid to any person or sector excluded under the De Minimis Regulations and to retain all declarations until 2033 in order to establish that all the conditions laid down in Regulation 1407/2013 have been complied with.]

[GENERAL STATE AID CLAUSE FOR ALL FUNDING AGREEMENTS USING GBER– to be attached along with specific GBER article cover]

8.1 The Grant Recipient has undertaken an evaluation of the Project and concluded that the Grant for the Project Activities will constitute State Aid (within the meaning set out in Article 107(1) TFEU and the relevant case law), but will be compatible with State Aid Law where it is provided within the terms of an approved scheme notified under the General Block Exemption Regulation 651/2014 (“GBER”).

8.2 The Grant Recipient confirms that it shall deliver the Project under the following State Aid Law cover:

1 ACTIVITY	2 Scheme Name	3 Number	4 Total Aid Amount	5 Aid Intensity
6 Article XX 7 XX	8 XXX	9	10	11

and the definitions within Article 2 GBER apply.

8.3 The Grant Recipient has reviewed the terms of the relevant Scheme and confirms to the Secretary of State that it shall comply with these for the full term of the Project and that it will ensure all staff [and Delivery Partners] employed in delivering the Project shall first read the relevant Scheme to ensure that they understand the administrative requirements.

8.4 The Grant Recipient confirms that it is not an undertaking in difficulty within the meaning of Article 2(18) of GBER.

8.5 The Grant Recipient confirms that it has fulfilled the relevant requirements to ensure that the Grant will have incentive effect as required by Article 6(2)-(4) GBER.

8.6 The Grant Recipient confirms that the total state aid received for the Project does not breach the cumulation requirements of Article 8 GBER.

8.7 If the relevant Scheme requires the Grant Recipient to be a small or medium sized enterprise within the meaning of Annex 1 GBER, the Grant Recipient will notify the Department if it ceases to fall within the definition at Annex 1

GBER as soon as possible after the end of the accounting period during which it ceases to be a small or medium sized enterprise.¹

8.8 The Grant Recipient shall maintain detailed records with the information and supporting documentation necessary to establish that all conditions laid down in GBER are fulfilled until 2033.

[NO AID AT TOP LEVEL; GBER/DE MINIMIS AID AT THE LEVEL OF THE END BENEFICIARIES]

8.1 The Grant Recipient has undertaken its own assessment of the compliance of the Project, as structured, and warrants to the Secretary of State that it is State Aid Law compliant because it will not receive any advantage from the Grant as this will flow through to the Project beneficiaries.

8.2 In delivering the Project Activities the Grant Recipient confirms that it will not receive any economic advantage and that the Grant Recipient will operate the Project on a not for profit basis. At the end of delivering the Project, the Grant Recipient will be required to account for any residual advantage it has obtained through the Grant.

8.3 The Grant Recipient agrees that it shall collect appropriate information to demonstrate that it has no economic advantage (which shall be supplied to the Secretary of State upon request). To ensure the transparency, the Grant Recipient agrees to oversee that it shall:

8.3.1 ring-fence the Project's income and costs on a separate not-for-profit coding on its accounts from its other commercial activities in order to prevent cross-subsidy to any of its economic activities;

8.3.2 benchmark its salary costs against market prices and demonstrate the staff it employs, and the number of staff are appropriate for the Project;

8.3.3 ensure that it does not over-compensate the businesses that it is supporting and ensure that costs claimed are not above that incurred by an efficient operator providing the service.

8.4 The Grant Recipient may conclude that any economic advantage will be provided to the Project beneficiaries by the Grant Recipient within the framework of the "GBER" (Commission Regulation (EU) No 651/2014) and agrees that it will meet the conditions set out below.

8.5 The Grant Recipient confirms that all staff who deliver such aid shall first read the GBER to ensure that they understand the administrative requirements. Compliance with the GBER shall include:

¹ Article 4 of Annex 1 provides that enterprises which grow beyond the Annex 1 requirements will not lose their SME status unless they remain outside of the relevant definitions for two successive accounting periods. Therefore the Secretary of State will monitor Grant Recipients from the first accounting period that they cease to meet the Annex 1 requirements for being a small or medium sized enterprise.

- 8.5.1 confirming the Project beneficiary is not an undertaking in difficulty within the meaning of Article 2(18) of GBER;
- 8.5.2 confirming the Project beneficiary has fulfilled the relevant requirements to ensure that the Grant will have incentive effect as required by Article 6(2)-(4) GBER;
- 8.5.3 confirming the total state aid received by the Project beneficiary does not breach the cumulation requirements of Article 8 GBER; and
- 8.5.4 if the relevant Scheme requires the Project beneficiary to be a small or medium sized enterprise within the meaning of Annex 1 GBER, requiring the Project beneficiary to notify the Secretary of State if it ceases to fall within the definition at Annex 1 GBER as soon as possible after the end of the accounting period during which it ceases to be a small or medium sized enterprise.
- 8.6 The Grant Recipient agrees not to provide aid to any person or sector excluded under the GBER and to retain all declarations until 2033 in order to establish that all the conditions laid down in the GBER have been complied with.
- 8.7 In exceptional cases the Grant Recipient may conclude that any economic advantage will be provided to the Project beneficiaries by the Grant Recipient within the framework of the 'De Minimis Regulations' (EC Reg 1407/2013 OJ L 352 of 24.12.2013) and agrees that it will meet the conditions set out below.
- 8.8 The Grant Recipient confirms that all staff who deliver such aid shall first read the De Minimis Regulations to ensure that they understand the administrative requirements. Compliance with the De Minimis Regulations shall include:
- 8.8.1 valuing the 'gross grant equivalent' of the aid provided to the Project beneficiary;
- 8.8.2 establishing how much aid the Project beneficiary has both applied for and received in the current and two previous financial years to ensure that the award of the aid shall not exceed the €200,000 threshold for the Project beneficiary in that period;
- 8.8.3 obtaining a prior declaration from the Project beneficiary (signed by a person authorised to bind them) that the aid received shall not result in the Project beneficiary exceeding its allowable €200,000 threshold as above; and
- 8.8.4 providing a follow-up letter to the Project beneficiary recording the gross grant equivalent value of aid provided under the De Minimis Regulations.

8.9 The Grant Recipient agrees not to provide aid to any person or sector excluded under the De Minimis Regulations and to retain all declarations until 2033 in order to establish that all the conditions laid down in the De Minimis Regulations have been complied with.]

MA ADVISORY NOTE (to be removed before FA is issued) FOR ALL STATE AID FUNDING AGREEMENTS USING GBER - IN ADDITION TO THE RELEVANT, STANDARD PARAGRAPHS ABOVE, YOU WILL NEED TO INSERT THE RELEVANT, SPECIFIC PARAGRAPHS APPLICABLE TO THE GBER ARTICLE(S) FOR THE PROJECT.

FOR ESF PROJECTS THE GBER ARTICLES AVAILABLE ARE:-

- **Training Aid (Article 31 of the GBER);**
- **Aid for disadvantaged workers and workers with disabilities (Articles 32 to 35 of the GBER)**

ESF PROJECTS USING GBER SHOULD BE ABLE TO DEFINE WHICH ARTICLE(S) THEY ARE PROPOSING TO USE, HOWEVER IF THIS IS NOT THE CASE MORE THAN ONE ARTICLE CAN BE INCLUDED..

THE CORRECT PARAGRAPHS TO USE IN EACH CASE CAN BE FOUND IN THE "ESIF-GN-3-003 STATE AID LAW GRANT FUNDING AGREEMENT CLAUSES" DOCUMENT AVAILABLE VIA THE IBOARD. THE ESF FUNDING AGREEMENT WORK INSTRUCTIONS PROVIDE A WORKED EXAMPLE.

THE PARAGRAPHS PER ARTICLE MUST BE INCLUDED IN FULL IN THE FUNDING AGREEMENT IN ALL CASES.

WHERE APPLICABLE, THE 'AID INTENSITY' INFORMATION CAN BE ACCESSED VIA THE ESF STATE AID GUIDANCE ON [GOV.UK](https://www.gov.uk).

[9. Additional Provisions relating to the Grant]

[SCHEDULE 2 EXPENDITURE PROFILES]

[MA NOTE: IF THE FUNDING AGREEMENT IS CONNECTED WITH AN ONLINE APPLICATION AND A SEPARATE FINANCIAL ANNEX HAS NOT BEEN REQUIRED AS PART OF THE APPLICATION THIS ANNEX SHOULD BE RETAINED AS PART OF THE FUNDING AGREEMENT, BUT BE ANNOTATED AS 'NOT APPLICABLE']

[SCHEDULE 3 TARGETS]

[MA NOTE: IF THE FUNDING AGREEMENT IS CONNECTED WITH AN ONLINE APPLICATION AND A SEPARATE INDICATOR ANNEX HAS NOT BEEN REQUIRED AS PART OF THE APPLICATION THIS ANNEX SHOULD BE RETAINED AS PART OF THE FUNDING AGREEMENT, BUT BE ANNOTATED AS 'NOT APPLICABLE']

SCHEDULE 3A UNDERPERFORMANCE METHODOLOGY

SCHEDULE 4 APPLICATION