

This Grant Agreement is made between the following Parties:

- (1) You, the Grant recipient (as identified in the Offer Letter); and
- (2) Forestry Commission England, of 620 Bristol Business Park, Coldharbour Lane, Bristol, BS16 1EJ.

BACKGROUND

- (A) Forestry Commission England is the authority responsible for managing the Scheme.
- (B) Forestry Commission England has agreed to pay you a Grant subject to the Terms and Conditions set out below and in the Offer Letter, in accordance with the Agreement Document(s) and Agreement Map. The legal basis for this grant is the Forestry Act 1979.
- (C) The Grant is paid as a contribution to the cost of planting a sensitive and well-balanced multi-purpose productive woodland (“**the Funded Activities**”). The aim of the grant is to help mitigate climate change through carbon sequestration whilst improving public access and achieving wider environmental outcomes in line with the UK Forestry Standard.
- (D) These Terms and Conditions apply to the Scheme and should be read in conjunction with the details of the Grant set out in the Offer Letter, which are personal to you. These two documents, together with the Agreement Document(s) and Agreement Map(s) form the Agreement between you and Forestry Commission England.

1 DEFINITIONS AND INTERPRETATION

In the Agreement the following terms shall have the following meanings:

Access Map: a map showing the routes where Permissive Access by foot will be permitted and where signage will be installed which confirm the Permissive Access and any date on which the access may be suspended. The Access Map will be submitted with any application for Grant for the Priority Places Rate or Recreational Infrastructure and will be included in the Agreement Map(s) that form part of the Agreement.

Access Period: the period of time over which Permissive Access on foot must be maintained across the woodland. This will run for 30 years from the date of the first Grant payment.

Agreement: the Agreement between you and Forestry Commission England, which consists of these Terms and Conditions, the Agreement Document(s), Agreement Map, and the details of the Grant set out in the Formal Offer Letter.

Agreement Document(s): the final application form, grant calculator and associated documents (such as chosen quotes for discretionary payments) submitted to Forestry Commission England, returned to you with the Agreement Map(s), these Terms and Conditions, and the Formal Offer Letter that gives details of the Grant.

Agreement Map(s): the final application map(s) submitted to Forestry Commission England and sent to you with the Agreement Document(s), these Terms and Conditions, and the Formal Offer Letter that gives details of the Grant. If you submit key information on more

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than one map, then more than one map will be an Agreement Map; in particular, if you are required to produce an Access Map, this will become an Agreement Map.

Capital Item: items required to plant and successfully establish the woodland supported by the Grant. The full list of capital items is set out in the Woodland Carbon Fund grant calculator.

Commencement Date: the date of your written acceptance of the Grant offer, unless Forestry Commission England has specified a later Commencement Date in its Formal Offer Letter to you.

EIA Regulations: The Environmental Impact Assessment (EIA) (Forestry) (England and Wales) Regulations 1999, as amended. For the avoidance of doubt, these apply to afforestation and deforestation proposals as well as forest roads and quarries.

Eligible Expenditure: expenditure in relation to the Funded Activities that complies in all respects with the eligibility rules set out in Annex A of these Terms and Conditions.

Environmental Stewardship Agreement: an agreement for a land management scheme managed by The Rural Payments Agency.

Forest Roads and Tracks: work undertaken to install forest roads and tracks to provide vehicular access across the woodland.

Forestry England: an executive agency, sponsored by the Forestry Commission.

Formal Offer Letter: an offer issued by letter addressed to you from Forestry Commission England accompanying these Terms and Conditions, which gives details of the Grant and forms part of this Agreement. [For the avoidance of doubt, a Formal Offer Letter will not be issued until Forestry Commission England is satisfied that all consents, permissions and licences are in place, that all information has been submitted, that consent is either granted or not required under the EIA Regulations, and that the Review Panel has approved the Agreement.]

Grant: the sum or sums of money that is or are payable to you in accordance with this Agreement (as set out in the Formal Offer Letter).

In Principle Offer Letter: an offer made "in principle" and issued by letter addressed to you from Forestry Commission England in circumstances where you do not yet have clearance to plant under the EIA Regulations, or if the proposal is still on the Public Register for Consultation, or if any key information (such as an Access Map or quotes), consent, permission or licence has not yet been submitted or finalised.

Ineligible Expenditure: expenditure which is not Eligible Expenditure as set out in Annex A of these Terms and Conditions.

Land: all units of land which are proposed for tree planting and in relation to which claims will be made under this Agreement.

Integral Open Space: land within the application area which is left unplanted, is managed for environmental objectives, and is integral to the new planting. For any given block of

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woodland, integral open space is no more than 20 metres wide, no more than 0.5 hectares in extent, and completely surrounded by woodland.

Maintenance Period: the period of time over which successful Tree Establishment required under this Agreement must be maintained. The Maintenance Period begins when the final payment is made under the Grant and lasts for five years.

Permissive Access: access on foot along the routes set out on the Access Map throughout the Access Period. This will be supported by clear information showing the routes of Permissive Access for which signage must be provided using signs approved by Forestry Commission England. The signs will be maintained and replaced as necessary. Permissive Access may be closed one day a year and the signage will confirm the closure date. The routes of Permissive Access and the location of the signs will be shown on the Access Map. Routes must ensure access across the entire woodland and be managed where necessary to enable public access on foot.

Priority Places Rate: the contribution Forestry Commission England will pay towards the Capital Item(s) in the Grant where: (i) at least 30% of the proposed woodland is classified as a Priority Place for England; and (ii) Permissive Access will be provided. This can be confirmed by checking the application area against the Priority Places for England spatial layer Land here: <http://www.forestry.gov.uk/england-lis>.

Prohibited Act:

- (a) offering, giving or agreeing to give to any servant of the Forestry Commission England or the Crown any gift or consideration of any kind as an inducement or reward for:
 - (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement; or
 - (ii) showing or not showing favour or disfavour to any person in relation to this Agreement;
- (b) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement; or
- (c) defrauding or attempting to defraud or conspiring to defraud the Forestry Commission England or the Crown.

Recreational Infrastructure: work undertaken to install access points and footpaths to support Permissive Access across the woodland on foot.

Scheme: the Woodland Carbon Fund, which is managed by Forestry Commission England.

Second Stage Payment: a capital payment made at year 5 as a contribution towards the costs of successful establishment of the woodland supported by the Grant, following an inspection at year 4 that confirms successful Tree Establishment.

Short Rotation Coppice: A crop, typically grown as an energy crop, which usually consists of densely planted, high-yielding varieties of poplar or willow.

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Stage 1 Checklist: a checklist which must be approved by Forestry Commission England in accordance with an associated Woodland Creation Planning Grant Agreement. This supports a desk-based review into the key features and constraints affecting the woodland's design and presentation of key features in a map(s).

Standard Rate: the contribution Forestry Commission England will pay towards the cost of the Capital Item(s) required to plant the woodland supported by the Grant. The Standard Rate will apply wherever the Priority Places Rate is not applicable.

Tree Establishment: Forestry Commission England will determine this through an inspection where we will be looking for evidence that the minimum stocking of at least 2,000 (two thousand) trees per hectare are alive and that the trees are growing freely, out-competing other plant species and not subject to restraint by other environmental factors, including browsing by deer or livestock.

Woodland Creation Design Plan: a UK Forestry Standard compliant plan that shows how the woodland's design and management takes account of the opportunities and constraints of the site. The UK Forestry Standard is available at www.gov.uk/government/publications/the-uk-forestry-standard and may be amended from time to time.

Working Day: any day other than a Saturday, a Sunday or a public holiday in England.

Woodland Creation Planning Grant: a separate Grant funded under the Forestry Innovation Fund that supports the production of a UK Forestry Standard compliant Woodland Creation Design Plan.

- 1.1 References to **clauses** are to the clauses of these Terms and Conditions. Clause headings shall not affect the interpretation of these Terms and Conditions.
- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.
- 1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.5 A reference to a public organisation includes a reference to any successor of that public organisation.
- 1.6 Any words following the terms **including, include, in particular** or **for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

2 DECLARATIONS

- 2.1 You confirm that:

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- (a) the declarations made in your application for the Grant remain true and accurate to the best of your knowledge and belief;
- (b) you have full capacity and authority to enter into the Agreement (if you are a tenant you will need to provide us with confirmation of the landlord's consent and if you are not the sole owner of land within the application you will need to provide us with confirmation of all other landowners' consent);
- (c) you are not aware of any circumstances which would prevent you from fulfilling your obligations under the Agreement;
- (d) if there are any changes to your circumstances which could affect your eligibility or suitability for the Grant or your ability to fulfil your obligations under the Agreement, you will notify Forestry Commission England in writing without delay;
- (e) you have not received and will not receive any duplicate funding or allowances from other public sources in respect of the same obligations you are required to undertake under the Agreement;
- (f) your obligations under the Agreement do not duplicate and will not duplicate any other legal obligations you would otherwise be required to undertake;
- (g) you will at all times comply with all relevant domestic and EU legislation in the performance of your obligations under the Agreement;
- (h) you agree that the woodland planted with support under this Grant will be maintained throughout the Maintenance Period to ensure successful establishment of the trees across the net planted area to secure a stocking density of at least 2,000 trees per hectare;
- (i) you understand that if the trees are not established successfully by the end of the Maintenance Period the Grant support will be reclaimed pursuant to clause 7. You understand that conversion to another land use after planting may be subject to the Environment Impact Assessment Regulations (Forestry) (England and Wales) Regulations 1999, as amended, as deforestation and that the current policy in England is that conversion of forest to other land uses shall not occur except in exceptional circumstances;
- (j) if you are claiming the Priority Places Rate or discretionary Grant for Recreational Infrastructure you will provide Permissive Access on foot along the routes set out on the Access Map throughout the Access Period. Clear information showing the routes of Permissive Access must be provided using signs approved by Forestry Commission England. The signs will be maintained and replaced as necessary. The access may be closed one day a year and the signage will confirm the closure date. The routes of permissive access and the location of the signs will be shown on the Access Map. Routes must ensure access across the entire woodland and be managed where necessary to enable public access on foot;
- (k) you agree that if Permissive Access and the associated signage is not maintained within this 30 year period the associated Grant support may be reclaimed; and

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- (l) where an offer of Grant is made 'in principle' via an In Principle Offer Letter you understand that you must
 - a. obtain a Formal Offer Letter from Forestry Commission England; and
 - b. secure the criterion in 2.2 (k)(iii),
before you can commence work under this Agreement; and
- (m) you understand that no work undertaken before the Commencement Date of your Agreement will be funded.

2.2 You confirm that the following eligibility criteria are met:

- (a) the total gross area of woodland creation entered into the Agreement is within England, even if the wider woodland creation proposal crosses a national boundary. Any part of the wider woodland creation proposal that is not within England is ineligible for support under the Grant;
- (b) the total gross area of proposed woodland creation is at least 10 hectares. Your proposals must include either a single continuous block of at least 10 hectares in gross area, or at least 10 hectares of new planting in stands that are no more than 50 metres from either one another or else from existing woodland, where the objective of the proposal clearly remains to establish productive woodland. Forestry Commission England may, at its sole and absolute discretion, consider applications that include stands slightly more than 50 metres from existing woodland or other stands contained in the application, where it is confident that the application as a whole covers a single management area of woodland. Forestry Commission may also, at its sole and absolute discretion, also consider additional blocks of woodland creation in landscape-scale projects to be eligible, as long as the additional blocks are each at least 5 hectares in area;
- (c) at least 70% of the tree species are productive species (defined as having a general yield class of at least 12 for conifers (10 for pine) and yield class 6 for broadleaves as assessed using the Ecological Site Classification decision support system, which is available at www.forestresearch.gov.uk/tools-and-resources/forest-planning-and-management-services/ecological-site-classification-decision-support-system-esc-dss/ or from Forestry Commission England upon request), unless the Forestry Commission has at its sole and absolute discretion agreed a lower proportion of productive species in your application due to site conditions;
- (d) the overall suitability score for the chosen species is 'very suitable' or 'suitable' as assessed by the Ecological Site Classification decision support system, or from Forestry Commission England upon request;
- (e) for your proposal to qualify for this Grant you must plant at least an average of 2,000 trees per hectare over the net planted area;
- (f) the planting will not be managed as Short Rotation Coppice or for growing Christmas trees and fast growing species such as Eucalypts grown for energy production are not eligible for funding;

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- (g) where the land is subject to an existing Grant Agreement the Woodland Creation Design Plan must account for the impact of tree planting on the Grant Agreement.
- (h) The land in your application will not be subject to a live Environmental Stewardship Agreement on your Agreement commencement date;
- (i) your proposal to plant trees is not a requirement to mitigate the impacts of development under a planning consent;
- (j) the land in respect of which the Grant is to be paid is eligible land and that there are no legal or other restrictions affecting the eligible land which prevent the completion of the approved activities; and
- (k) you have one of the following:
 - i. A completed [Woodland Creation Planning Grant](#) (WCPG) Stage 1 Checklist – approved by Forestry Commission England – and supporting documents including at least one map showing the constraints that apply to creation of woodland at the site;
 - ii. A draft or completed Woodland Creation Design Plan that complies with the current UK Forestry Standard; or
 - iii. Under the EIA Regulations, Forestry Commission England has given either a screening decision that the proposal does not require an EIA, or consent in the event an EIA was needed.

3 TERM

- 3.1 The Agreement shall commence on the Commencement Date and, subject to any earlier termination in accordance with clause 14, it shall continue in force for five years after the date the Grant is paid, i.e. to the end of the Maintenance Period.
- 3.2 Where the Grant is paid in instalments, e.g., to support phased planting, or where the Grant includes a Second Stage Payment, the Agreement shall continue in force for five years after the date the last Grant payment is paid, i.e. to the end of the Maintenance Period.
- 3.3 The parties may agree to delay the planting by amending the planting season stated in the Agreement Document(s) in one year increments, but will not be extended beyond 31 March 2022. The party requesting the extension must make their request in writing, no less than one month before the expiry of the Agreement. Neither party shall be under any obligation to agree to an extension requested by the other party. The extension shall take effect once it has been confirmed in writing by Forestry Commission England.

4 TRANSFERS OR ACQUISITIONS OF LAND

- 4.1 You must notify Forestry Commission England without delay if there is a change in management control affecting any part of the Land, including (without limitation) sale or transfer to a new owner, changes to any lease or tenancy, permanent boundary changes or acquisition of any new land.

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- 4.2 You acknowledge and accept that any change in management control affecting the Land may have consequences for the Agreement. Upon notification of a change in management or control Forestry Commission England will review entitlement to the grant and this could result in the suspension, reduction, withdrawal or reclaim of all or part of the Grant.

5 AMOUNT OF GRANT

- 5.1 Forestry Commission England will pay a contribution towards the Funded Activities in accordance with the Agreement. The amount of Grant will be calculated from the total costs of planting set out in Part 5 of the application form. One of two rates of Grant can apply to the planting and establishment costs: where at least 30% of the woodland is within 'Priority Places for England' and you agree to provide Permissive Access, the Priority Places Rate will apply across the entire planting. Otherwise the Standard Rate will apply. The award of the Grant for installing leaky woody dams will be at Forestry Commission England's sole and absolute discretion and will require supporting evidence that the dam is required, for example that the Land is within a priority catchment for flood risk management.
- 5.2 The total payment under these rates is capped at £6,800 per hectare for the Standard Rate and £8,500 per hectare for the Priority Places Rate, excluding leaky woody dams, discretionary payments and Second Stage Payments. For the purposes of applying the appropriate payment cap, the area over which the payment per hectare is calculated will be the gross application area, or the net planting area plus up to 20% of the gross area (whichever is greater) to account for integral open space, In all cases, the payment will remain subject to the appropriate cap.
- 5.3 The Second Stage Payment will be based on the gross area of the woodland established under the Agreement, with payments capped at the net planted area plus up to 20% of the gross area to account for integral open space. In all cases the payment will remain subject to the appropriate cap.
- 5.4 Forestry Commission England may, at its sole and absolute discretion, pay a discretionary sum or sums as part of the Grant towards the costs of installing Recreational Infrastructure. The rate of support for this will be 80% of the actual costs for the work based on the lowest of three quotes which you must provide for the work. The quotes will include specification(s) for the proposed infrastructure, for example the footpath width, construction method and materials. The funding for this part of the Grant will be capped at the lower figure of either 10% of the total value of the Grant application or 5% of total Scheme funds.
- 5.5 Forestry Commission England may, at its sole and absolute discretion, pay a discretionary sum or sums as part of the Grant towards the costs of installing Forest Roads and Tracks. The rate of support for this will be 40% of the actual costs for the work based on the lowest of three quotes which you must provide for the work. The quotes will include specification(s) for the proposed infrastructure, for example the road or track width, construction method and materials. The funding for this part of the Grant will be capped at the lower figure of either 10% of the total value of the Grant application or 5% of total scheme funds.

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- 5.6 Forestry Commission England may, at its sole and absolute discretion, pay a Second Stage Payment at a fixed standard cost of £1,000 per hectare, payable at Year 5 and only following an inspection by Forestry Commission England that confirms successful Tree Establishment. This payment is not available to Forestry England.
- 5.7 The amount payable under the Grant is specified in the Offer Letter that accompanies these Terms and Conditions.
- 5.8 Road and recreational infrastructure payments are based on actual costs, as such Value Added Tax ("VAT") will be payable by you. Where you are not VAT registered and cannot claim VAT back from Her Majesty's Revenue and Customs ("HMRC"), then VAT will be included when calculating and paying the grant. Upon request, you shall produce proof of VAT registration to Forestry Commission England, which can include a certificate from an accountant. Where you are VAT registered, Forestry Commission England will exclude VAT when calculating and paying the Grant. You are advised to seek advice from an accountant or VAT specialist. Forestry Commission England is not responsible for any aspect of VAT.
- 5.9 The Grant must not be used to support activity which influences or attempts to influence Parliament, Government or political parties, to propagate a religion or belief, or to influence the awarding or renewal of contracts or grants, or to influence legislative or regulatory action.
- 5.10 Forestry Commission England makes no commitment to renewing or continuing funding after the term of this Agreement and will not be liable for any additional cost incurred by you either during or after the term.
- 5.11 Where you intend to apply to a third party for other funding for the Funded Activity, you will notify Forestry Commission England in advance of the intention to do so and, where such funding is obtained, you will provide Forestry Commission England with details of the amount and purpose of that funding.
- 5.12 The Grant will be paid only in respect of Eligible Expenditure incurred by the Grant Recipient to deliver the Funded Activities. The Grant shall not be used to fund Ineligible Expenditure.

6 PAYMENT

- 6.1 In order to claim the Payments you must submit a completed claim form. We will accept one claim per financial year and every claim must include at least 10 (gross) hectares of woodland planting. When claiming any Grant for installing Recreational Infrastructure or for Forest Roads and Tracks you must submit a copy of all receipts for the work. If you claimed Basic Payment Scheme (BPS) on the Land your claim must include confirmation you have notified the Rural Payments Agency (RPA) of the tree planting by submitting an RLE1 form (<https://www.gov.uk/government/publications/tell-the-rural-payments-agency-about-land-changes-and-entitlement-transfers>) and will update your next BPS application (for current land use codes see here: <https://www.gov.uk/guidance/bps-2016-land-use-codes>).
- 6.2 Forestry Commission England will endeavour to pay the Grant to you within 30 Working Days of receiving a claim form, provided always that the documents submitted are accepted for payment. Claims may require an inspection before payment. Forestry Commission England

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will have no liability to you for any losses caused by a delay in the payment of a Grant claim howsoever arising.

7 REPAYMENT

- 7.1 If you breach (by act or omission) the terms and conditions of the Agreement, fail to comply with the terms and conditions, or if there is a change in circumstances affecting your eligibility to receive the Grant, Forestry Commission England reserves the right to suspend, reduce, withhold or reclaim (require repayment of) the Grant, in full or in part.
- 7.2 If any sum becomes repayable under the Agreement, it shall be treated as a debt owing by you to Forestry Commission England until such time as the outstanding amount is repaid. A recovery order will be issued to you specifying the amount to be repaid and the date by which repayment must be made.
- 7.3 If you fail to make a repayment within 60 days of the date of the relevant recovery order, Forestry Commission England reserves the right to charge interest on the outstanding debt at a daily rate equivalent to the Bank of England base rate plus 1%.
- 7.4 Where any sum is repayable under the Agreement and you have failed to repay the outstanding amount within the period specified in the recovery order, Forestry Commission England reserves the right, at its absolute discretion, to deduct the outstanding debt from future payments due to you under this Agreement and other Forestry Commission England Grant schemes, or to terminate the Agreement in accordance with clause 14.

8 ACCESS TO DOCUMENTS AND INFORMATION

You agree that you shall, upon request, supply any documents, information, data, reports or written or verbal explanations which may be required by Forestry Commission England or any other UK public body in connection with this Agreement, including for the purposes of discussing, monitoring or evaluating your fulfilment of the terms and conditions.

9 SITE VISITS

Forestry Commission England (or its authorised representatives) shall be entitled to inspect the Land or premises, at all reasonable times and on reasonable notice, throughout the Maintenance Period and Access Period for the purpose of ensuring that the Terms and Conditions of this Agreement have been complied with.

10 MAINTENANCE OF ACCOUNTS AND RECORDS AND FINANCIAL MANAGEMENT

- 10.1 You shall keep accurate and up-to-date accounts and records of the receipt and expenditure of the Grant and evidence of your compliance with this Agreement.
- 10.2 You shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Grant for a period of at least three years from termination or expiry

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of this Agreement. Forestry Commission England shall have the right to review your accounts and records relating to the Grant and to take copies of such accounts and records.

- 10.3 You will at all times comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010.
- 10.4 You must have a sound administration and audit process, including internal financial controls to safeguard against fraud and theft. All cases of fraud or theft (whether proven or suspected) relating to the Funded Activities must be notified to Forestry Commission England as soon as they are identified. You will comply with (and facilitate the Forestry Commission England's compliance with) all statutory requirements, standards and Forestry Commission England directions as regards accounts, audit, financial reporting, validation, assurance or examination of accounts, annual reports and annual returns applicable to you and the Forestry Commission England.
- 10.5 You must comply with the recommendations of the [Public Accounts Committee](#) and any other expenditure controls specified by government.

11 INTELLECTUAL PROPERTY RIGHTS

All rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, know-how and any other intellectual property rights whatsoever owned by or licensed to either you or Forestry Commission England before the Commencement Date or developed by either party under the Agreement, shall remain the property of that party.

12 DATA AND INFORMATION

- 12.1 The parties shall comply with all relevant UK and EU data protection legislation in delivering their obligations under the Agreement.
- 12.2 You acknowledge that Forestry Commission England is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs).
- 12.3 You agree to provide all necessary assistance and cooperation which is reasonably requested by Forestry Commission England for the purposes of complying with its obligations under the FOIA and EIRs. If you are required to supply information pursuant to a FOIA/EIR request, you shall supply all such information which is within your possession or control within 5 Working Days (or such other period as the Forestry Commission England shall reasonably require).
- 12.4 If you receive a FOIA/EIR request from a member of the public, you shall not respond to the request but shall forward the request to Forestry Commission England within two Working Days of receipt.
- 12.5 Forestry Commission England shall determine in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of FOIA and/or the EIRs.

13 LIMITATION OF LIABILITY

- 13.1 Neither party excludes or limits its liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation, or any other liability which cannot be limited or excluded by law.
- 13.2 Forestry Commission England accepts no liability for any consequences, whether direct or indirect, arising from the Agreement or your use of the Grant.
- 13.3 Subject to clause 13.1 and 13.2, Forestry Commission England's total aggregate liability in connection with the Agreement shall not exceed the amount of the Grant.
- 13.4 You shall indemnify Forestry Commission England against all claims, demands, actions, costs, expenses (including legal fees), disbursements, interest, payments, losses, damages and all other liabilities arising as a result of your actions or omissions in connection with the Agreement, including in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise.

14 TERMINATION

- 14.1 Forestry Commission England reserves the right to terminate the Agreement on written notice to you in any one or more of the following situations:
- (a) you breach, or there is anticipatory breach of, the terms of the Agreement or there is a change in circumstances affecting your eligibility for the Grant;
 - (b) you intend to use, have used in the past, or use the Grant for purposes other than the Funded Activities;
 - (c) you are, in the reasonable opinion of the Forestry Commission England, delivering the Funded Activities in a negligent manner;
 - (d) you obtain funding from a third party which, in the reasonable opinion of Forestry Commission England, undertakes activities that are likely to bring the reputation of the Funded Activities or Forestry Commission England into disrepute;
 - (e) you provide the Authority with any materially misleading or inaccurate information;
 - (f) you commit or have committed a Prohibited Act;
 - (g) Forestry Commission England determines (acting reasonably) that any of your directors or employees has acted dishonestly or negligently at any time during the term of this Agreement and to the detriment of the Authority, or has taken any actions which unfairly bring or are likely to unfairly bring Forestry Commission England (including its name or reputation) into disrepute;
 - (h) You transfer, assign or novate to any third party, or encumber in any way, the Grant without the consent of Forestry Commission England;
 - (i) You cease to operate for any reason (including through winding up, dissolution, insolvency, bankruptcy, receivership, administration, liquidation) or you are unable to pay your debts as they fall due;

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- (j) the Grant is found to be unlawful State Aid; or
 - (k) you fail to repay within the period specified in a recovery order any sum which has become recoverable.
- 14.2 You may terminate the Agreement at any time prior to receiving the Grant by giving written notice to Forestry Commission England.
- 14.3 In the event of a change in policy direction, this Agreement may be terminated by Forestry Commission England with immediate effect by notice in writing (such notice period as the Authority determines will be reasonable in all the circumstances).
- 14.4 Expiry or termination of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of expiry or termination which existed at or before the date of expiry or termination.
- 14.5 Expiry or termination of the Agreement shall not affect the continuing rights and obligations of the parties under clauses 7 (Repayment), 8 (Access to Documents and Information), 9 (Site Visits), 10 (Maintenance of Accounts and Records and Financial Management), 11 (Intellectual Property Rights), 12 (Data and Information), 13 (Limitation of Liability), 14 (Termination), 16 (Severability), 18 (Waiver), 19 (Notices), 20 (Dispute Resolution), 23 (Third Party Rights), 24 (Governing Law) or any other provision in the Agreement which is expressly stated to survive expiry or termination of the Agreement or which is required to give effect to such termination or expiry or the consequences of such termination or expiry.

15 VARIATION

Forestry Commission England reserves the right to vary these Terms and Conditions. Any variation will be effected in writing and notified to you in advance. Forestry Commission England shall endeavour to give such notice as is reasonable and proportionate, having regard to the nature of the variation and its consequences for you.

16 SEVERABILITY

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

17 FORCE MAJEURE

- 17.1 If you are prevented from complying with your obligations under the Agreement due to force majeure or exceptional circumstances, Forestry Commission England must be notified in writing, within 15 Working Days from the date on which you (or any person authorised to act on your behalf) is in a position to do so.
- 17.2 Force majeure or exceptional circumstances may include:

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- (a) your death or long-term professional incapacity;
- (b) a severe natural disaster gravely affecting the Land;
- (c) the accidental destruction of livestock buildings on the Land;
- (d) an epizootic or a plant disease affecting part or all of your crops, trees or livestock; or
- (e) expropriation of all or a large part of the Land (provided that the expropriation could not have been anticipated at the time the application for funding was made).

17.3 Forestry Commission England will consider the facts on a case-by-case basis in deciding whether or not you are relieved of all or part of its obligations under the Agreement and whether all or part of the Grant should be suspended or repaid.

18 WAIVER

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

19 NOTICES

19.1 All notices in relation to the Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, electronically mailed, or mailed (first class postage prepaid) using the contact details set out in the Offer Letter (or any updated contact details which are subsequently notified by one party to the other). It is your responsibility to notify Forestry Commission England of any change to your contact details.

19.2 If personally delivered or if e-mailed, all such notices shall be deemed to have been given when received (except that if received on a non-Working Day or after 5.00 pm on any Working Day they shall be deemed received on the next Working Day), and if mailed all such notices shall be deemed to have been given and received on the second Working Day following such mailing.

20 DISPUTE RESOLUTION

Any dispute arising between the parties or any complaint or appeal by you concerning Forestry Commission England's actions in connection with the Agreement shall be resolved according to Forestry Commission England's actions complaint procedure which is set out here: <https://www.gov.uk/government/organisations/forestry-commission/about/complaints-procedure>. Information on this process can also be obtained from: The Executive Office, England National Office, 620 Bristol Business Park, Coldharbour Lane, Bristol, BS16 1EJ. Tel: 0300 067 4000 or by email at nationalenquiries@forestrycommission.gov.uk.

21 NO CONTRACT, PARTNERSHIP OR AGENCY

Woodland Carbon Fund

- 21.1 The Parties acknowledge and agree that nothing in this agreement or the provision of Grant monies gives or is intended to give rise to contractual relations.
- 21.2 The Agreement shall not create any partnership or joint venture between Forestry Commission England and you, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

22 STATE AID

- 22.1 Unless 22.2 applies, this Grant will be paid as State Aid, as notified to the European Commission under reference SA48810. State Aid shall have the meaning under Article 107(1) Treaty for the Functioning of the European Union.
- 22.2 The Grant will not be paid as State Aid if it is paid to Crown, public or statutory bodies.

23 THIRD PARTY RIGHTS

This Agreement does not and is not intended to confer any contractual benefit on any person who is not a party to the Agreement.

24 GOVERNING LAW

The Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

ANNEX A - Eligible Expenditure schedule (breakdown of forecast grant expenditure)

Site visits may be carried out by Forestry Commission England pursuant to clause 9 (Site Visits) to confirm eligibility for payment of the Grant.

Item of Expenditure	Budget (in UK Sterling)
Standard rate	The total payment under these rates is capped at £6,800 per hectare for the

Woodland Carbon Fund

Priority Places Rate	Standard Rate and £8,500 per hectare for the Priority Places Rate, excluding leaky woody dams, discretionary payments and Second Stage Payments.
Second Stage Payment	Forestry Commission England may, at its sole and absolute discretion, pay a Second Stage Payment at a fixed standard cost of £1,000 per hectare, payable at Year 5 and only following an inspection by Forestry Commission England that confirms successful Tree Establishment. This payment is not available to Forestry England.

INELIGIBLE EXPENDITURE

The following costs must be excluded from Eligible Expenditure:

- I. Payment that supports for lobbying or activity intended to influence or attempt to influence Parliament, Government or political parties, or attempting to influence the awarding or renewal of contracts and grants, or attempting to influence legislative or regulatory action;
- II. using grant funding to petition for additional funding;
- III. where applicable, input VAT reclaimable by the Grant Recipient from HMRC;
- IV. Goods or services that the Grant Recipient has a statutory duty to provide;
- V. Payments reimbursed or to be reimbursed by other public or private sector grants
- VI. Contributions in kind (i.e. a contribution in goods or services, as opposed to money);
- VII. Interest payments (including service charge payments for finance leases);
- VIII. Statutory fines, criminal fines or penalties; or
- IX. Liabilities incurred before the issue of this funding agreement unless agreed in writing by the Funder.