



## Annex E

# Farming Recovery Fund Agreement Terms and Conditions

### Parties

- (1) The Secretary of State for Environment, Food and Rural Affairs of Nobel House, 17 Smith Square, London, SW1P 3JR, acting through the Rural Payments Agency, whose principal address is at North Gate House, 21-23 Valpy Street, Reading, RG1 1AF (the **Authority**).
- (2) The business named in clause 1 of the Agreement Letter (the **Grant Recipient**).

### Background

- A) The Authority is responsible for the Farming Recovery Fund, the scheme under which the Grant is paid under Article 30 of the Agricultural Block Exemption Regulation (“**ABER**”), namely Commission Regulation (EU) No 702/2014, as amended or substituted by any applicable UK legislation.
- B) The Authority has agreed to pay the Grant to the Grant Recipient for the purpose of delivering the Project subject to the Agreement as set out below.
- C) The Agreement comprises the Agreement Letter and Annexes A to F which include these Terms and Conditions. The Grant Recipient must familiarise itself with each of these documents and ensure it complies with all relevant requirements as a condition of receiving the Grant.
- D) In the event of any conflict between these Terms and Conditions and the other documents in the Agreement, the Agreement Letter shall prevail, followed by Annexes in order.
- E) The Authority has delegated responsibility for the management of the Farming Recovery Fund to the Rural Payments Agency acting on its behalf and either body may directly enforce any terms or conditions of the Agreement against the Grant Recipient in accordance with these Terms and Conditions.

# 1. Definitions and Interpretation

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

**Agreement:** the agreement comprising the Agreement Letter and Annexes A to F (including these Terms and Conditions)

**Agreement Letter:** the letter sent by the Authority to the Grant Recipient to which this document is annexed.

**Annexes:** the annexes attached to the Agreement Letter which form part of the Agreement.

**Application:** the application for the Grant submitted by the Grant Recipient containing details of the proposed Project (including any documentation submitted by the Grant Recipient in support of the Application)

**Claim Form:** the claim submitted by the Grant Recipient for payment of the Grant

**Data Protection Legislation:**

- a) the General Data Protection Regulation (EU) 2016/679 (**GDPR**) (or corresponding UK legislation), and any applicable national implementing law as amended from time to time
- b) the Data Protection Act 2018 to the extent that it relates to the processing of Personal Data and privacy
- c) all applicable law about the processing of Personal Data and privacy, including in each case any law which replaces relevant EU law as a consequence of the UK leaving the European Union

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

**Eligible Expenditure:** expenditure on the activities (including works) or, as the case may be, the items (including goods) and services approved by the Authority and specified in Annex B to the Agreement

**End Date:** the date on which the Agreement comes to an end, being 1 year after the date of the final payment

**Farming Recovery Fund or the Scheme:** the Farming Recovery Fund, a scheme which is run by the Rural Payments Agency on behalf of the Authority, implementing measures exempted by Article 30 of the ABER, or any relevant corresponding UK legislation, to make good the damage caused by natural disasters, as set out in that legislation

**FOIA:** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

**Grant:** the sum to be paid to the Grant Recipient under the Agreement for the purpose of delivering the Project

**Guidance:** the “Guide to Managing a Successful Project” at Annex F of the Agreement which sets out further information and mandatory requirements for Grant Recipients, as further described in clause 6.

**Intellectual Property Rights:** all patents, copyright and design rights (whether registered or not) and all applications for any of the foregoing and all rights of protection for confidential information or know-how however arising, for their full term and any renewals and extensions

**Maximum Grant:** the maximum grant payable by the Authority to a Grant Recipient under the Scheme as set out in the Agreement Letter

**“Prohibited Act”:**

- a) directly or indirectly offering, promising or giving any person working for or engaged by the Authority a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- b) directly or indirectly requesting, agreeing to receive or accepting any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Agreement or the Application;
- c) committing any other offence under the Bribery Act 2010 or involving fraudulent acts.

**Project:** the activities (including works) or as the case may be items (including goods) and services as set out in the Agreement Letter and Annex B and having regard to the Application

**Project Completion Date:** the date on or before which the Project must be completed and have submitted a final claim to the RPA (as set out in the Agreement Letter)

**Start Date:** the date on which the Agreement commences (as set out in the Agreement Letter)

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

- 1.2 References to clauses are to the **clauses** of these Terms and Conditions, unless otherwise stated. Clause headings shall not affect the interpretation of these Terms and Conditions.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 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.

- 1.5 A reference to a statute or statutory provision (including an EU act) 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.
- 1.6 A reference to a public organisation includes a reference to any successor of that public organisation.
- 1.7 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. Payment of Grant**

- 2.1 Subject to clause 15, the Authority shall pay the Grant to the Grant Recipient on condition that the Grant Recipient complies with these terms and conditions and, for the avoidance of doubt, only in respect of Eligible Expenditure as specified in Annex B to the Agreement, or any approved Variation.
- 2.2 The Grant will be paid directly to the Grant Recipient's nominated business bank account situated in the UK via BACS transfer by the Authority, in pounds sterling, subject to the necessary funds being available when the payment falls due. The Grant Recipient agrees and accepts that payment of the Grant can only be made to the extent that the funds are available.
- 2.3 The Authority will not pay any Grant until it is satisfied that the Project has been duly delivered and the Eligible Expenditure defrayed in accordance with the Agreement.
- 2.4 The amount of the Grant shall only be increased through the variation process and through written approval by the Authority and may not exceed the Maximum Grant.
- 2.5 The Grant Recipient shall promptly notify and repay to the Authority any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Grant has been paid in error before the Grant Recipient has complied with all conditions attaching to the Project.
- 2.6 Onward payment of the Grant and the use of sub-contractors is prohibited (except with the Authority's prior written approval in accordance with the provisions of clause 18) and shall not relieve the Grant Recipient of any of its obligations under this Agreement, including the obligation to repay the Grant.
- 2.7 The Grant offer has been made on the basis that the costs presented to the Authority take account of all VAT liabilities. Where the project costs increase after the date the parties have entered into this Agreement because an error has been made as to the amount of VAT payable and not recoverable by the Grant Recipient, the Authority shall be under no obligation to increase the Grant to meet any VAT liability of the Grant Recipient.

- 2.8 The Grant Recipient shall submit a valid claim for payment of Grant, at such periods as are either specified in Annex B or otherwise agreed by the parties in writing. Each and every valid claim submitted by the Grant Recipient to the Authority shall include all such records and information as the Authority may require including photographic evidence of the work completed, invoices and business bank statements where appropriate and permits and/or consents that may be required, and such other information as is necessary to enable verification of the information and the amounts referred to in the claim for payment.
- 2.9 Unless otherwise stated in this Agreement, payment will be made on or before the date falling 30 working days after the date of receipt of a valid claim.

### **3. Grant Recipient's Declarations**

- 3.1 The Grant Recipient confirms that:
- a) the declarations made in its Application remain true and accurate to the best of its knowledge and belief;
  - b) it has full capacity and authority to enter into the Agreement;
  - c) it is not aware of any circumstances which would prevent it from fulfilling its obligations under the Agreement;
  - d) if there are any changes to the Grant Recipient's circumstances which could affect its eligibility or suitability for the Grant or its ability to fulfil its obligations under the Agreement, it will notify the Authority in writing without delay;
  - e) it has read and understood and will comply with the terms and conditions of the Agreement, as set out in the Agreement Letter and Annexes A-F;
  - f) it has read the Project Specific Conditions in Annex C and identified any that are relevant to the Project and/or its business;
  - g) it has not received and will not receive any duplicate funding or allowances from other public sources in respect of the same obligations it is required to undertake under the Agreement;
  - h) its obligations under the Agreement do not duplicate and will not duplicate any other legal obligations it would otherwise be required to undertake;
  - i) its obligations under the Agreement do not and will not conflict in whole or in part with any other legal or contractual obligations on the Grant Recipient; and
  - j) it will at all times comply with all relevant applicable EU and domestic legislation, including the conditions for the application of Article 30 of the ABER (as amended or substituted by UK legislation), in the performance of its obligations under the Agreement.
- 3.2 Subject to any provision to the contrary in the Agreement Letter and Annexes, the Grant Recipient understands that it must not receive any other public funding for the Project. If the Grant Recipient receives any other public funding which is not explicitly permitted in the Agreement Letter and Annexes, the Authority reserves the right to recover the Grant in accordance with clause 15 and/or terminate the Agreement in accordance with clause 25.

- 3.3 The Grant Recipient confirms that it has obtained and will maintain and comply with any permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of its obligations under the Agreement.
- 3.4 The Grant Recipient understands that the giving of any approval, consent or acknowledgement, or the review of any document or course of action by or on behalf of the Authority does not relieve the Grant Recipient of any of its obligations under the Agreement unless expressly permitted in writing by the Authority.
- 3.5 The Grant Recipient shall be deemed to be in breach of the conditions of the Agreement if it dishonestly, knowingly or recklessly provides false or misleading information or intentionally obstructs or fails to assist the Authority or any person carrying out public functions or exercising any rights or powers in connection with the Agreement and hereby recognises that such conduct may constitute a criminal offence and attract criminal penalties.
- 3.6 The Grant Recipient shall make its own enquiries as to the accuracy and adequacy of any information on which it relies in connection with the Agreement.

## **4. Grant Recipient's Obligations**

- 4.1 As a condition of applying for and receiving the Grant, the Grant Recipient agrees to comply with each of these terms and conditions.
- 4.2 The Grant Recipient shall use the Grant solely to deliver the Project in a timely manner and in any event by the Project Completion Date.
- 4.3 The Grant Recipient undertakes that any items funded by the Grant in connection with the Project will remain in the Grant Recipient's ownership and be maintained for the purpose and in the manner for which they were intended until the End Date. The Grant Recipient shall not make any change to the ownership or use of any such item before the End Date without the Authority's prior written consent.

## **5. Term**

- 5.1 The Agreement shall commence on the Start Date and, subject to any earlier termination in accordance with clause 25, it shall continue in force until the End Date, unless otherwise expressly provided.
- 5.2 For the avoidance of doubt Grant payments may relate to activities or items carried out or delivered prior to the Start Date where provided in the Agreement Letter and Annex B and permitted by law.

## **6. The Guidance**

- 6.1 The Grant Recipient shall comply with the mandatory elements of the Guidance as a condition of receiving the Grant.
- 6.2 The Authority reserves the right to update or amend the Guidance from time to time. In such circumstances the Grant Recipient will be notified in writing of any changes.

## **7. Variations**

- 7.1 No variations of the Project shall be permitted unless expressly agreed in writing by the Authority.
- 7.2 Further details of the circumstances in which variations may be permitted and the process to be followed are set out in the Guidance.

## **8. Claim Forms**

- 8.1 The Grant Recipient shall submit Claim Forms and supporting documents to the Authority in accordance with the instructions provided in the Guidance and on the Claim Form itself. Any failure by the Grant Recipient to submit a Claim Form in accordance with the instructions and by the specified deadline (including the provision of any supporting documents necessary to enable the claim to be processed) may result in payment of the Grant being delayed, reduced or withheld.
- 8.2 All Claim Forms will be checked and verified before any sum is paid. If there is any discrepancy between the amount claimed by the Grant Recipient and the amount the Grant Recipient is entitled to claim, the Grant may be reduced or withheld. In the most severe cases, the Claim Form may be rejected in its entirety and the Agreement terminated.
- 8.3 The amount of the Grant shall not be increased in the event of any overspend by the Grant Recipient in the delivery of the Project, unless where agreed through the variation process and up to the Maximum Grant available.
- 8.4 Unless otherwise explicitly permitted in writing by the Authority, the Grant may not be used to reimburse any expenditure incurred or any financial commitments entered into by the Grant Recipient prior to the Start Date.

## **9. Site Visits**

- 9.1 The Grant Recipient shall allow the Authority or any UK or (if applicable) EU public authority (or their authorised representatives or auditors) to access its land and/or premises in connection with the Agreement. Reasonable notice will be given for such access. The Grant Recipient agrees to assist and cooperate with any person authorised to carry out any site visits (including controls and spot-checks) and shall provide immediate free access to any land, premises, plant, equipment or documents which may be required.
- 9.2 In addition to any consequences arising as a result of a breach by the Grant Recipient of these Terms and Conditions, any intentional obstruction of or failure to assist or provide information to any person exercising rights under this clause and performing other tasks in connection with the Agreement shall constitute a breach of the conditions of the Agreement and may be a criminal offence.

## **10. Maintenance of Accounts and Records**

- 10.1 The Grant Recipient shall keep accurate and up-to-date accounts and records of the receipt and expenditure of the Eligible Expenditure and Grant monies received by it and evidence of its compliance with its obligations under the Agreement which shall comply with any applicable standards and requirements set out in the Agreement Letter and Annexes, and in any separate instructions issued to the Grant Recipient.
- 10.2 The Grant Recipient shall keep all invoices, receipts, and accounts and any other relevant documents relating to the Eligible Expenditure and Grant monies from the Start date and for a period of at least ten years from termination or expiry of the Agreement, during which the Authority shall have the right to review the Grant Recipient's accounts and records relating to the Grant and to take copies of such accounts and records.
- 10.3 The Grant Recipient shall comply with and facilitate the Authority's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Authority.
- 10.4 In addition to its obligations to provide information to the Authority, the Grant Recipient shall provide any of the information referred to in this clause to the Authority or any other UK or (if applicable) EU public authority (or their authorised representatives or auditors) upon request.

## **11. Evaluation**

- 11.1 The Grant Recipient acknowledges that as a condition of receiving the Grant it may be required to participate in an evaluation procedure, which may take place either during the Agreement or after its expiry or termination.
- 11.2 The Grant Recipient recognises and agrees that its contact details may be disclosed to third parties for evaluation purposes and agrees to assist and cooperate with any person authorised by any UK or (if applicable) EU public authority to carry out such an evaluation (without prejudice to its obligation under clause 21).

## **12. Access to Documents and Information**

- 12.1 The Grant Recipient agrees that the Authority is entitled to audit the delivery and performance of the Project and is entitled to full free access to the Grant Recipient's records on an open-book basis for the purpose of verifying the Grant Recipient's compliance with the conditions of the Agreement for as long as the Authority may require.
- 12.2 The Grant Recipient shall, upon request, supply any documents, information, data, reports or written or verbal explanations which may be required by the Authority or any UK or (where applicable) EU public authority (or their authorised representatives or auditors) in connection with the Agreement or the Project.



### **13. Conflict of Interest**

- 13.1 The Grant Recipient shall put adequate procedures in place to ensure that there is no actual or perceived risk of bias or other conflict of interest that might call into question the Grant Recipient's eligibility to receive the Grant.

### **14. Changes to Ownership of Business or Project**

- 14.1 The Grant Recipient must notify the Authority in writing in advance of any proposed changes affecting any part of its business on or before the End date including (without limitation):
- a) the sale or transfer of all or part of its business to a new owner;
  - b) the acquisition by the Grant Recipient of any material new business interests which may affect the Grant Recipient's eligibility for the Grant;
  - c) the sale or transfer of any land which is capable of having an impact on the Project;
  - d) the granting, termination or expiry of any lease or tenancy which is capable of having an impact on the Project; or
  - e) any material change to the Grant Recipient's financial circumstances which could affect its ability to carry out the Project.
- 14.2 For the duration of the Agreement the Grant Recipient may not create a legal charge over any asset funded in whole or in part by the Grant.
- 14.3 The Grant Recipient acknowledges and accepts that any significant change affecting its business may have consequences for the Agreement. In some circumstances the Authority may be required to and will have the right to recover all or part of the Grant, with interest, as required by law.

### **15. Clawback, Events of Default, Rights Reserved for Breach and Termination**

- 15.1 Without prejudice to the Authority's other rights and remedies, the Authority may at its discretion reduce, suspend or terminate payment of the Grant (in whole or in part) and/or require repayment of all or part of the Grant if one or more of the following events occurs:
- a) the Grant Recipient uses the Grant for a purpose other than the Project;
  - b) the delivery of the Project does not start within three (3) months of the start date and the Grant Recipient has failed to provide the Authority with satisfactory explanation for the delay, or failed to agree a new start date with the Authority;
  - c) the Authority considers that the Grant Recipient has not made satisfactory progress with the delivery of the Project;
  - d) the Grant Recipient fails to comply with any term or condition of the Agreement and fails to remedy such failure within thirty (30) days of receiving written notice from the Authority detailing the non-compliance;
  - e) the Grant Recipient is, in the opinion of the Authority, delivering the Project in a negligent manner;

- f) the Grant Recipient obtains duplicate funding from a third party for the Project;
- g) the Grant Recipient obtains funding from a third party which, in the opinion of the Authority, undertakes activities that are likely to bring the reputation of the Project and/or the Authority into disrepute;
- h) the Grant Recipient provides the Authority with any misleading or inaccurate information;
- i) the Grant Recipient obstructs or fails to assist the Authority or any other person in the exercise of their rights under the Agreement;
- j) the Authority has incorrectly paid money to the Grant Recipient as a result of administrative error or other reasons;
- k) the Grant Recipient commits or has committed a Prohibited Act;
- l) the Grant Recipient incurs expenditure on activities that breach European state aid or public procurement rules;
- m) any member of the Authority, employee or volunteer of the Grant Recipient has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project or (b) taken any actions which, in the opinion of the Authority, bring or are likely to bring the Authority's name or reputation into disrepute;
- n) a charge is taken on an asset financed wholly or partly from the Grant;
- o) the Grant Recipient becomes insolvent, or is declared bankrupt, or is placed into receivership, administration or liquidation (other than for the purpose of a bona fide internal reorganisation or amalgamation);
- p) a petition has been presented for the winding-up of the Grant Recipient or it enters into any amalgamation or composition for the benefit of its creditors, or it is unable to pay its debts as and when they fall due for reasons other than the Authority's failure to comply with this Agreement;
- q) the Grant Recipient is struck off the register at Companies' House or is otherwise prohibited from continuing its activities under any legislation in force and/or by an order of a court of competent jurisdiction;
- r) there is a change in circumstances affecting the Grant Recipient's eligibility to receive the Grant.

15.2 If the Grant Recipient receives any overpayment or any payment to which it is not entitled (including in the event of an administrative error), the undue amount must be repaid. It is the Grant Recipient's responsibility to check all payments it receives from the Authority and notify the Authority immediately if it has any reason to believe that an error has occurred.

15.3 If any sum becomes repayable under the Agreement, it shall be treated as a debt owing by the Grant Recipient to the Authority until such time as the outstanding amount is repaid.

15.4 Where any sum is repayable under the Agreement, the Authority reserves the right to:

- a) issue a recovery order to the Grant Recipient requiring repayment of the outstanding amount; and/or

- b) withhold any future payments and/or deduct the outstanding amount from any future payments which are due to the Grant Recipient under this Agreement or any other sum due under the Common Agricultural Policy or any corresponding UK schemes to the fullest extent permitted by law.

15.5 Any recovery order issued to the Grant Recipient shall specify the amount to be repaid and the date by which repayment must be made. If the Grant Recipient fails to make a repayment within 60 days of the date of the relevant recovery order, the Authority reserves the right to charge interest on the outstanding debt at a daily rate equivalent to the Bank of England base rate plus 1% or such other rate as may be prescribed by law.

## **16. Acknowledgement and publicity**

16.1 The Grant Recipient shall comply with all instructions and guidance from the Authority in relation to acknowledgement and publicity of the Grant, including using any materials or templates which are provided to it for this purpose and to removing them. Such acknowledgement and publicity may include, where appropriate, a statement on any website operated by the Grant Recipient for business purposes, and/or a poster, plaque or billboard displayed on the Grant Recipient's land or premises.

16.2 Where the Grant Recipient uses the name and logo of any other organisation in its publicity, it shall comply with all reasonable branding guidelines or instructions it is given in relation to the use of such name or logo.

16.3 The Grant Recipient agrees to participate in and co-operate with promotional activities relating to the Scheme if required to do so by the Authority.

16.4 The Authority may acknowledge the Grant Recipient's involvement in the Scheme as appropriate without prior notice.

16.5 The Grant Recipient shall comply with all reasonable requests from the Authority to facilitate visits, provide reports, statistics, photographs and case studies that will assist them with any promotional and publicity activities.

## **17. Environmental Requirements**

17.1 The Grant Recipient shall perform the Project in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

17.2 The Grant Recipient shall pay due regard to the use of recycled products, so long as they are not detrimental to the provision of the Project or the environment, to include the use of all packaging, which should be capable of recovery for re-use or recycling.

- 17.3 The Grant Recipient shall take all possible precautions to ensure that any equipment and materials used in the provision of the Project do not contain chlorofluorocarbons, halons or any other damaging substances, unless unavoidable, in which case the Authority shall be notified in advance of their use. The Grant Recipient shall endeavour to reduce fuel emissions wherever possible.

## **18. Assignment**

- 18.1 The Grant Recipient shall not transfer, assign, sub-contract, charge, or otherwise dispose of any part of the Grant, Project or any of its obligations under this Agreement to a third party without the Authority's prior written approval.

## **19. Intellectual Property Rights**

- 19.1 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 the Authority or the Grant Recipient before the Start Date or developed by either party under the Agreement, shall remain the property of that party.
- 19.2 Where the Authority has allowed the Grant Recipient to use any of its Intellectual Property Rights in connection with the Agreement (including without limitation its name and logo), the Grant Recipient shall, on termination of the Agreement, cease to use such Intellectual Property Rights immediately (subject to any ongoing requirement to use Intellectual Property Rights in compliance with the publicity requirements in clause 16).
- 19.3 The Grant Recipient shall comply with any provisions relating to Intellectual Property Rights which are specified in the Agreement Letter and Annexes.
- 19.4 Where any documents or materials are provided to the Authority under this Agreement, the Grant Recipient shall ensure that those bodies are entitled to use such documents or materials for the purpose for which they have been provided. Where the Grant Recipient owns any Intellectual Property Rights in such documents or materials, it hereby grants a non-exclusive, royalty-free, perpetual licence to the receiving party to use such Intellectual Property Rights to the extent necessary to give effect to this clause.

## **20. Freedom of Information**

- 20.1 The Grant Recipient acknowledges that the Authority is subject to the requirements of the FOIA, the EIR and the Data Protection Legislation and shall assist and co-operate with the Authority (at the Grant Recipient's expense) to enable the Authority to comply with its disclosure obligations under these enactments. The Grant Recipient shall immediately notify the Authority if it receives any request for information or other contact from a third party relating to any of the above and will at all times seek the Authority's instructions before taking any action and comply with them.

20.2 The Grant Recipient shall, in particular, provide the Authority with:

- a) a copy of any information in its possession (including any requests from third parties) that the Authority requires for the purposes of complying with its obligations under the FOIA, EIR or Data Protection Legislation within five (5) working days (or such other period as the Authority may specify) of the Authority requesting that information; and
- b) any advice or assistance, including any explanation as to why an exemption from the disclosure requirements in the FOIA, EIR or Data Protection Legislation may apply, requested by the Authority to enable it to respond to a request in compliance with its disclosure obligations.

20.3 The Authority shall where appropriate, consult with the Grant Recipient in advance of disclosing any information provided by the Grant Recipient to the Authority, but the Grant Recipient acknowledges that the Authority may disclose information:

- a) without consulting with the Grant Recipient; or
- b) following consultation with the Grant Recipient and having taken its views into account,

where the Authority is required to do so to comply with its obligations under the FOIA, EIR and Data Protection Legislation. Provided always that where clause 20.3(a) applies the Authority shall, in accordance with any recommendations of the Code of Practice under the FOIA or EIR, take reasonable steps, where appropriate, to give the Grant Recipient advance notice, or failing that, to draw the disclosure to the Grant Recipient's attention after any such disclosure.

## **21. Data Protection**

21.1 Both parties will duly observe all their obligations under the Data Protection Legislation which arise in connection with the Agreement.

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

21.3 For the purposes of this clause 21 the terms Personal Data, Processor, Controller, Joint Controllers and Data Subjects have the meaning given to them in the GDPR.

21.4 The parties acknowledge and agree that this Agreement does not require either party to act as a Processor of the other. In the event that there is any change which requires either party to act as a Processor the parties agree, at their own cost, to enter into the standard data protection clauses set out in the Crown Commercial Services Procurement Policy Note 02/18 (as amended or replaced from time to time).

- 21.5 The Grant Recipient may provide Personal Data relating to the Project to the Authority and the Authority will be an independent Controller in its own right of such Personal Data. Prior to providing any Personal Data to the Authority the Grant Recipient will provide the Data Subjects with the fair processing information contained in the privacy notice published by the Authority on Gov.uk. The Department for Environment, Food and Rural Affairs is the data controller for personal data you give to RPA. For information on how we handle personal data go to [www.gov.uk](http://www.gov.uk) and search 'Rural Payments Agency personal information charter'.
- 21.6 The Grant Recipient agrees the Authority and its Representatives may use Personal Data which they provide about their staff and partners involved in the Project to exercise the Authority's rights under this Agreement and or to administer the Grant or associated activities. Furthermore, the Authority agrees that the Grant Recipient and their Representatives may use Personal Data that the Authority provides about its staff involved in the Project to manage its relationship with the Authority.
- 21.7 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may, on not less than 30 working days' notice to the Grant Recipient, amend this Agreement to ensure that it complies with Data Protection Legislation and any guidance issued by the Information Commissioner's Office. Each party will, at its own cost, implement any measures required for it to comply with requirements or recommendations of guidance issued by the Information Commissioner's Office and with the terms of this Agreement.
- 21.8 The provisions of clause 21.1 shall apply for the duration of the Agreement and indefinitely after its expiry.

## **22. Insurance and Indemnity**

- 22.1 The Grant Recipient shall ensure that it holds all appropriate forms of insurance necessary for the normal execution of its activities and any such extension of cover as may be necessary for the Project or risks associated with the Project for which the Authority provides the Grant. The Grant Recipient shall make its insurance cover available to the Authority on request.
- 22.2 The Authority accepts no liability for any consequences, whether direct or indirect, that may come about from the Grant Recipient running the Project, the use of the Grant or from withdrawal of the Grant. The Grant Recipient shall indemnify and hold harmless the Authority, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Grant Recipient in relation to the Project, the non-fulfilment of obligations of the Grant Recipient under this Agreement or its obligations to third parties.
- 22.3 Subject to clause 22.2, the Authority's liability under this Agreement is limited to the amount of the Grant.

## **23. Limitation of Liability**

- 23.1 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.
- 23.2 The Authority accepts no liability for any consequences, whether direct or indirect, or for any loss of profit, arising from the Agreement, the use of the Grant by the Grant Recipient, or from the Authority or the Authority exercising its rights under the Agreement.
- 23.3 Subject to clause 23.1 and 23.2, the Authority's total aggregate liability in connection with the Agreement shall not exceed the amount of the Grant.
- 23.4 The Grant Recipient shall indemnify the Authority and any persons acting on the Authority's behalf against all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising as a result of the actions or omissions of the Grant Recipient in connection with the Agreement.
- 23.5 The Grant Recipient acknowledges and accepts that if it suffers any losses which prevent it from fulfilling its obligations under the Agreement, the Authority may require the Grant to be repaid or the losses to be made good at the Grant Recipient's own expense, regardless of whether the Grant Recipient is insured against such losses.

## **24. Force Majeure**

- 24.1 If the Grant Recipient is prevented from complying with its obligations under the Agreement due to force majeure or exceptional circumstances, the Authority must be notified in writing, within 15 Working Days from the date on which the Grant Recipient (or any person authorised to act on the Grant Recipient's behalf) is in a position to do so.
- 24.2 The Authority will consider the facts on a case-by-case basis in deciding whether or not the Grant Recipient is relieved of all or part of its obligations under the Agreement and whether all or part of the Grant should be suspended or repaid.

## **25. Termination**

- 25.1 The Authority shall be entitled to terminate the Agreement and any payment of the Grant by written notice to the Grant Recipient with immediate effect and without compensation if:
- a) the Grant Recipient has committed a material breach of the terms and conditions of this Agreement and (if such breach is capable of remedy) shall have failed to remedy such breach within thirty (30) days of being required to do so in writing by the Authority;
  - b) the Grant Recipient ceases or proposes to cease to carry on its business;

- c) the Grant Recipient is guilty of fraud, dishonesty, impropriety, or any conduct calculated or likely in all material aspects to affect prejudicially the interests or reputation of the Authority;
- d) the Grant Recipient has committed a Prohibited Act;
- e) the Grant Recipient or any aspect of its operations which is a partnership or unregistered company goes into compulsory winding up; is dissolved; or an administrator or receiver is appointed over the whole or any part of its assets or it has entered into a composition or voluntary arrangement with its Creditors;

25.2 The Grant Recipient has failed to repay any sum which has become recoverable by the Authority in accordance with clause 15.

25.3 In addition to its right to terminate under clause 15 above, the Authority may terminate the Agreement and any future Grant payments for any reason on giving the Grant Recipient not less than three (3) months written notice. Provided that the Grant Recipient is not in breach of the Agreement, Grant payments already paid will not be recoverable.

25.4 Where the Authority discontinues payment of the Grant and/or reduces the amount of Grant, the Authority accepts no liability for any consequences that may come about from the reduction or withdrawal of the Grant.

25.5 Where the Authority terminates the Agreement, no further payment of the Grant shall be payable by the Authority to the Grant Recipient except for work carried out by the Grant Recipient relating to the Project prior to termination and in accordance with the Agreement but where the payment has yet to be made by the Authority.

25.6 The Grant Recipient may terminate the Agreement at any time by giving written notice to the Authority. The Grant Recipient understands that in such circumstances it may be required to repay all or part of the Grant and that its obligations under the Agreement shall not cease until such repayment has been made.

## **26. Consequences of Expiry or Termination**

26.1 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.

26.2 Expiry or termination of the Agreement shall not affect the continuing rights and obligations of the parties under clauses 9 (Site Visits), 10 (Maintenance of Accounts and Records), 11 (Evaluation), 12 (Access to Documents and Information), 15 (Clawback, Events of Default, and Rights Reserved for Breach and Termination), 16 (Acknowledgement and Publicity), 21 (Data Protection), 23 (Limitation of Liability), 26 (Consequences of Expiry or Termination), 28 (Severability), 29 (Waiver), 30 (Notices), 31 (Dispute Resolution), 33 (Joint and Several Liability), 34 (Third Party Rights), 35 (Governing Law) or any other provision in the Agreement or mandatory requirement in the Guidance 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.



## **27. Variations to these Terms and Conditions**

The Authority reserves the right to vary these Terms and Conditions and/or the terms and conditions set out in the Agreement Letter and Annexes. Any variation will be effected in writing and notified to the Grant Recipient in advance. The Authority shall endeavour to give such notice as is reasonable and proportionate, having regard to the nature of the variation and its consequences for the Grant Recipient.

## **28. 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.

## **29. 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.

## **30. Notices**

30.1 All notices in relation to the Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, e-mailed, or mailed (first class postage prepaid) using the contact details set out in the Agreement Letter (or any updated address which is subsequently notified by one party to the other). It is the Grant Recipient's responsibility to notify the Authority of any change to its contact details.

30.2 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.

## **31. Dispute resolution**

Any dispute arising between the parties or any complaint or appeal by the Grant Recipient in connection with the Agreement shall be resolved according to the procedures set out in the Guidance.

## **32. No partnership or agency**

The Agreement shall not create any partnership or joint venture between the Authority and the Grant Recipient, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

### **33. Joint and several liability**

Where the Grant Recipient is not a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into the Agreement on behalf of the Grant Recipient shall be jointly and severally liable for the Grant Recipient's obligations and liabilities arising under the Agreement.

### **34. Third party rights**

The Agreement does not and is not intended to confer any benefit on any person other than the Grant Recipient.

### **35. 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.