



Department for  
Business, Energy  
& Industrial Strategy

# Draft Grant Funding Agreement

Industrial Energy Transformation Fund  
Additional Information

Phase 1: Spring 2021

March 2021



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The Secretary of State for Business, Energy and Industrial Strategy

and

[The Grant Recipient]

Draft Grant Funding Agreement for the Industrial Energy Transformation Fund

#### Important Note

This document is an example of the Grant Funding Agreement. It is provided for information purposes only. The final document that successful applicants will be required to sign may differ from this example.

In this document there are several sections highlighted

**Green:** to indicate IETF project-specific information that will be needed to complete a section highlighted green with the relevant information e.g. a timescale, party information, a relevant date.

**Blue:** to indicate information which is relevant only to deployment projects

**Yellow:** to indicate information which is relevant only to studies projects

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DRAFT

**This Grant Funding Agreement** is made on [insert date of signature]

**Between:**

- (1) THE SECRETARY OF STATE FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY, acting on behalf of the Crown whose principal address is at 1 Victoria Street, London SW1H 0ET (the “**Authority**”)
- (2) [INSERT THE NAME OF THE GRANT RECIPIENT], [RELEVANT DETAILS OF LEGAL STRUCTURE] whose principal address is at [ADDRESS] (the “**Grant Recipient**”).

**In relation to:**

**Project Name: The Industrial Energy Transformation Fund (IETF)**

**Project Number: [x]**

**BACKGROUND**

- (A) The Grant is made pursuant to section 98 of the Natural Environment and Rural Communities Act 2006. If the payment of the Grant is subject to the satisfaction of conditions, those conditions precedent and the date for satisfaction are set out in the Grant Offer Letter;
- (B) The Authority is running a number of competitions for grant applications in respect of the IETF Programme.
- (C) The Grant Recipient was successful in a competition and the Authority awarded it a grant to participate in the IETF Programme.
- (D) The Authority will provide the Grant to the Grant Recipient as provided for in this Grant Funding Agreement; and
- (E) the Grant Recipient will use the Grant for the Funded Activities

**1. Introduction**

- 1.1. This Grant Funding Agreement sets out the conditions which apply to the Grant Recipient receiving the Grant from the Authority up to the Maximum Sum.
- 1.2. The Authority and the Grant Recipient have agreed that the Authority will provide the Grant up to the Maximum Sum as long as the Grant Recipient uses the Grant in accordance with this Grant Funding Agreement.
- 1.3. The Authority makes the Grant to the Grant Recipient on the basis of the Grant Recipient’s grant application (a copy of which is attached at Annex 1) to deploy technologies to improve the energy efficiency of industrial processes or undertake feasibility and engineering studies to develop energy efficiency and deep decarbonisation projects that enable possible subsequent deployment.
- 1.4. 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.

## 2. Definitions and interpretation

2.1. Where they appear in these Conditions:

**Annex** means the annexes attached to these Conditions which form part of the Funding Agreement;

**Asset** means any assets that are to be purchased or developed using the Grant including equipment or any other assets which a Fixed Asset or Major Asset may be as appropriate in the relevant context, and **Assets** will be construed accordingly;

**Asset Owning Period** means the period during which the Assets are recorded as Assets in the Grant Recipient's accounts;

**Authority Personal Data** means any Personal Data supplied for the purposes of, or in connection with, the Grant Funding Agreement by the Authority to the Grant Recipient;

**Bribery Act** means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning this legislation;

**Capital Grants** means the sum or sums of money provided by a grant making body to a grant recipient for items such as buildings, equipment, land or machinery;

**Change of Control** means the sale of all or substantially all the assets of a Party; any merger, consolidation or acquisition of a party with, by or into another corporation, entity or person, or any change in the ownership of more than fifty percent (50%) of the voting capital stock of a party in one or more related transaction.

**Commencement Date** means the date on which the Grant Funding Agreement comes into effect, being the **[Insert commencement date]**;

**Confidential Information** means any information (however conveyed, recorded or preserved) disclosed by a Party or its personnel to another Party (and/or that Party's personnel) whether before or after the date of the Grant Funding Agreement, including but not limited to:

- (a) any information that ought reasonably to be considered to be confidential (whether or not it is so marked) relating to:
  - (i) the business, affairs, customers, clients, suppliers or plans of the disclosing Party; and
  - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party; and
- (b) any information developed by the Parties in the course of delivering the Funded Activities;
- (c) the Authority Personal Data;
- (d) any information derived from any of the above.

Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure (otherwise than by breach of paragraph 11 of these Conditions);
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a Third Party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information."

**Contracting Authority** means any contracting authority (other than the Authority) as defined in regulation 3 of the Public Contracts Regulations 2015 (as amended);

**Controller and Processor** take the meaning given in the GDPR;

**Crown Body** means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

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

**Data Protection Legislation** means (i) the GDPR, and any applicable national implementing Law as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to the processing of Personal Data and privacy (iii) all applicable Law about the processing of Personal Data and privacy;

**DPA 2018** means the Data Protection Act 2018;

**Domestic Law** means an applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation which replaces EU law as a consequence of the UK leaving the European Union;

**Domestic Successor** means:

- (a) a body that takes over the functions of the European Commission in the UK on the date the UK withdraws from the European Union; or
- (b) the relevant courts in England or Wales which take over the functions of the Court of Justice of the European Union in England or Wales on the date the UK withdraws from the European Union

**Duplicate Funding** means funding provided by a Third Party to the Grant Recipient which is for the same purpose as that for which the Grant was made, but has not been declared to the Authority;

**Effective Collaboration** means collaboration between at least two independent parties. The goal must be either to exchange knowledge or technology or to achieve a common objective based on the division of labour where the parties jointly define the scope of the collaborative project, contribute to its implementation and share its risks, as well as its results.

**Eligibility Criteria** mean the Authority's selection criteria used to determine who should be grant recipients including the Grant Recipient;

**Eligible Expenditure** means the payments made by the Grant Recipient during the Funding Period for the purposes of delivering the Funded Activities which comply in all respects with the eligibility rules set out in paragraph 5 of these Conditions;

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

**Event of Default** means an event or circumstance as defined by paragraph 25.3;

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



**Fixed Assets** means any Asset which consists of land, buildings, plant and equipment acquired, developed, enhanced, constructed in connection with the Funded Activities;

**FOIA** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

**Funded Activities** means the activities set out in the Grant Offer Letter and/or Annexes to these Conditions;

**Funding Period** means the period for which the Grant is awarded starting on the Commencement Date and ending on **[INSERT DATE]**;

**General Data Protection Regulation and GDPR** mean the General Data Protection Regulation (EU) 2016/679; EU GDPR laws have been retained under the UK Data Protection Act of 2018 and therefore are still pertinent to UK law.

**Grant** means the sum or sums the Authority will pay to the Grant Recipient in accordance with paragraph 4 of these Conditions and subject to the provisions set out at paragraph 25.

**Grant Claim** means the payment request **claim form** set out in **Appendix [X]** to the **Grant Offer Letter** submitted by the Grant Recipient to the Authority for payment of the Grant;

**Grant Funding Agreement** means these Conditions together with its annexes and schedules including but not limited to the Annex 1 Grant Offer Letter;

**Grant Offer Letter** means the letter the Authority issued to the Grant Recipient dated **[INSERT DATE]**, a copy of which is set out in Annex 1;

**Grant Manager** means the individual who has been nominated by the Authority to be the single point of contact for the Grant Recipient in relation to the Grant;

**HMRC** means Her Majesty's Revenue and Customs.

**HRA** means the Human Rights Act 1998 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

**Ineligible Expenditure** means expenditure incurred by the Grant Recipient which is not Eligible Expenditure and as set out in paragraph 5 of these Conditions;

**Information Acts** means the Data Protection Legislation, FOIA and the EIR, as amended from time to time;

**Intellectual Property Rights or IPRs** means copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and any modifications, amendments, updates and new releases of the same and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**IPR Material** means all material produced by the Grant Recipient or its Representatives in relation to the Funded Activities during the Funding Period and for deployment projects up to 5 years after the Project End Date (including but not limited to, materials expressed in any form of report, database, design, document, technology, information, know how, system or

process);

**Instalment Period** means the intervals set out in the Grant Offer letter and/or the annexes and schedules attached to this agreement. when the Authority will release payment of the Grant to the Grant Recipient during the Funding Period;

**Law** means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation;

**Losses** means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and **Loss** will be interpreted accordingly;

**Major Asset** means an Asset being used for the Funded Activities which is not a Fixed Asset but has a value as at the date of this funding Agreement of at least £10,000;

**Match Funding** means any contribution to the Funded Activities from a Third Party to the Grant Recipient to meet the balance of the Eligible Expenditure not supported by the Grant;

**Maximum Sum** means the maximum amount of the Grant the Authority will provide to the Grant Recipient for the Funded Activities subject to paragraph 25;

**Monitoring Completion Date** means the date five years after the end of the Funding Period when active monitoring of the benefits is completed. **[For deployment projects only]**

**Party** means the Authority or Grant Recipient and **Parties** shall be each Party together;

**Personal Data** has the meaning given to it in the Data Protection Legislation as amended from time to time;

**Procurement Regulations** means the Public Contracts Regulations 2015, Concession Contracts Regulations 2016, Defence Security Public Contracts Regulations 2011 and the Utilities and Contracts Regulations 2016 together with their amendments, updates and replacements from time to time;

**Prohibited Act** means:

- (a) directly or indirectly offering, giving or agreeing to give to any servant of the Authority 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 the Funding Agreement; or
  - (ii) showing or not showing favour or disfavour to any person in relation to the Funding Agreement;
- (b) committing any offence:
  - (iii) under the Bribery Act;
  - (iv) under legislation creating offences in respect of fraudulent acts; or
  - (v) at common law in respect of fraudulent acts in relation to the Funding Agreement; or
- (c) defrauding or attempting to defraud or conspiring to defraud the Authority or the Crown;

**Publication** means any announcement, comment or publication of any publicity material by the Grant Recipient concerning the Funded Activities or the Authority;

**Remedial Action Plan** means the plan of action submitted by the Grant Recipient to the Authority following an Event of Default pursuant to the Remedial Plan process set out in

paragraphs 25.6 to 25.11;

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

**Special Payments** means ex gratia expenditure by the Grant Recipient to a Third Party where no legal obligations exists for the payment and/or other extra-contractual expenditure. Special Payments may include, but is not limited to, out-of-court settlements, compensation or additional severance payments to the Grant Recipient's employees;

**Subsidy Control** means the law embodied in the EU-UK Trade and Cooperation Agreement and any Domestic Law which replaces such State Aid Law following the UK's exit from the European Union. State Aid Law means the law embodied in Article 107- 109 of section 2, Title VII of the Common Rules on Competition, Taxation and Approximation of Laws.

**Third Party** means any person or organisation other than the Grant Recipient or the Authority;

**Unspent Monies** means any monies paid to the Grant Recipient in advance of its Eligible Expenditure, which remains unspent and uncommitted at the end of the Financial Year, the Funding Period or because of termination or breach of these Conditions;

**VAT** means value added tax chargeable in the UK;

**Working Day** means any day from Monday to Friday (inclusive) which is not specified or proclaimed as a bank holiday in England and Wales pursuant to section 1 of the Banking and Financial Dealings Act 1971 including Christmas Day and Good Friday;

2.2. In these Conditions, unless the context otherwise requires:

- (i) the singular includes the plural and vice versa;
- (ii) reference to a gender includes the other gender and the neuter;
- (iii) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
- (iv) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (v) the words "including", "other", "in particular", "for example" and similar words will not limit the generality of the preceding words and will be construed as if they were immediately followed by the words "without limitation";
- (vi) references to "writing" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing will be construed accordingly;
- (vii) references to "representations" will be construed as references to present facts, to "warranties" as references to present and future facts and to "undertakings" as references to obligations under the Grant Funding Agreement;
- (viii) references to "paragraphs" and "Annexes" are, unless otherwise provided, references to the paragraphs and annexes of these Conditions and references in any Annex to parts, paragraphs and tables are, unless otherwise provided, references to the parts, paragraphs and tables of the Annex in which these references appear; and

(ix) the headings in these Conditions are for ease of reference only and will not affect the interpretation or construction of these Conditions.

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

- 2.3.1. the Conditions set out within this Grant Funding Agreement;
- 2.3.2. Schedule 1 – The Authority’s Grant Offer Letter;

## Conditions

### 3. Duration and purpose of the grant

- 3.1. The Funding Period starts on [xx Month 20xx] (the **Commencement Date**) and ends on [xx Month 20xx] unless terminated earlier in accordance with this Grant Funding Agreement.
- 3.2. The Grant Recipient will ensure that the Funded Activities start on the date confirmed in the acceptance of the grant funding letter and agreed by the Authority but where this has not been possible, that they start no later than either 3 months after the agreed start date, or 1<sup>st</sup> January 2023/ 1<sup>st</sup> July 2022, whichever is sooner.
- 3.3. The Grant Recipient shall use the Grant solely for the delivery of the Funded Activities. The Grant Recipient may not make any changes to the Funded Activities.
- 3.4. If the Authority wants to make a change to the Funded Activities (including for example reducing the Grant or removing some of the Funded Activities from the Grant) it may do so on written notice to the Grant Recipient.

### 4. Payment of grant

- 4.1. Subject to the remainder of this paragraph 4 the Authority shall pay the Grant Recipient an amount not exceeding [insert the total Grant amount in words and pound sterling]. The Authority shall pay the Grant in pound sterling (GBP) and into a bank located in the UK.
- 4.2. When requested to do so by the Authority, the Grant Recipient must complete and sign the Confirmation of Bank Details and Signatories form as part of their acceptance of the Grant. No payment can be made in advance of receipt of a correctly completed and signed form.
- 4.3. The signatory must be the Chief Financial Officer or someone with proper delegated authority. Any change of bank details must be notified immediately on the same form, signed by an approved signatory. Any change of signatory must be notified to the Authority for approval, as soon as known.
- 4.4. The Grant represents the Maximum Sum the Authority will pay to the Grant Recipient under the Grant Funding Agreement. The Maximum Sum will not be increased in the event of any overspend by the Grant Recipient in its delivery of the Funded Activities.
- 4.5. The Authority will only pay the Grant to the Grant Recipient in respect of Eligible Expenditure incurred by the Grant Recipient to deliver the Funded Activities. The Authority will not pay the Grant until it is satisfied that the Grant Recipient has paid for the Funded Activities in full and the Funded Activities have been delivered during the Funding Period.
- 4.6. The Grant Recipient will provide the Authority with evidence of the costs/payments, which are

classified as Eligible Expenditure in paragraph 5.2, which may include (but will not be limited to) receipts and invoices or any other documentary evidence specified by the Authority.

- 4.7. The Grant Recipient shall declare to the Authority any Match Funding which has been approved or received before the Commencement Date. If the Grant Recipient intends to apply for, is offered or receives any further Match Funding during the Funding Period, the Grant Recipient shall notify the Authority before accepting or using any such Match Funding. On notifying the Authority of the Match Funding the Grant Recipient shall confirm the amount, purpose and source of the Match Funding and the Authority shall confirm whether it is agreeable to the Grant Recipient accepting the Match Funding. If the Authority does not agree to the use of Match Funding the Authority shall be entitled to terminate the Grant Funding Agreement in accordance with paragraph 25 and where applicable, require all or part of the Grant to be repaid.
- 4.8. Where the use of Match Funding is permitted the Grant Recipient shall set out any Match Funding it receives to the Authority. This is so the Authority knows the total funding the Grant Recipient has received for the Funded Activities.
- 4.9. The Grant Recipient agrees that:
- 4.9.1. it will not apply for or obtain Duplicate Funding in respect of any part of the Funded Activities which have been paid for in full using the Grant;
- 4.9.2. the Authority may refer it to the police should it dishonestly and intentionally obtain Duplicate Funding for the Funded Activities;
- 4.9.3. The Authority will not make the first payment of the Grant and/or any subsequent payments of the Grant unless or until, the Authority is satisfied that:
- (i) The Grant Recipient will use the Grant payment for Eligible Expenditure only; and
  - (ii) if applicable, any previous Grant payments have been used for the Funded Activities or, where there are Unspent Monies, have been repaid to the Authority.
- 4.10. The Grant Recipient shall submit by the **X Working Day** of the month following the end of the relevant Instalment Period the Grant Claim together with any other documentation as prescribed by the Authority, from time to time.
- 4.11. Unless otherwise stated in these Conditions, payment of the Grant will be made within 30 days of the Authority approving the Grant Recipient's Grant Claim.
- 4.12. The Authority will have no liability to the Grant Recipient for any Losses caused by a delay in the payment of a Grant Claim howsoever arising.
- 4.13. The Authority reserves the right not to pay any Grant Claims not submitted within the period set out in paragraph 4.10 or Grant Claims which are incomplete, incorrect or submitted without the full supporting documentation.
- 4.14. The Grant Recipient shall promptly notify and repay immediately 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 the Grant Recipient is paid in error before it has complied with its obligations under the Grant Funding Agreement. Any sum, which falls due under this paragraph 4.14, shall fall due immediately. If the Grant Recipient fails to repay the due sum immediately or within any a timeframe specified by the Authority the sum will be recoverable summarily as a civil debt.
- 4.15. Where the Grant Recipient enters into a contract with a Third Party in connection with the Funded Activities, the Grant Recipient will remain responsible for paying that Third Party. The

Authority has no responsibility for paying Third Party invoices.

- 4.16. Onward payment of the Grant and the use of sub-contractors shall not relieve the Grant Recipient of any of its obligations under the Grant Funding Agreement, including any obligation to repay the Grant.
- 4.17. The Grant Recipient may not retain any Unspent Monies without the Authority's prior written permission.
- 4.18. If at the end of the relevant Financial Year there are Unspent Monies, the Grant Recipient shall repay such Unspent Monies to the Authority no later than 30 days of the Authority's request for repayment.

## **5. Eligible and ineligible expenditure**

- 5.1. The Authority will only pay the Grant in respect of Eligible Expenditure incurred by the Grant Recipient to deliver the Funded Activities and the Grant Recipient will use the Grant solely for delivery of the Funded Activities as set out in the Grant Offer letter and/or the annexes and schedules attached to this agreement.
- 5.2. The following costs/payments will be classified as Eligible Expenditure if incurred and defrayed for the purposes of the Funded Activities if specified in writing by the Authority:
  - 5.2.1. giving evidence to Parliamentary Select Committees;
  - 5.2.2. attending meetings with government ministers or civil servants to discuss the progress of a taxpayer funded grant scheme;
  - 5.2.3. responding to public consultations, where the topic is relevant to the objectives of the Funded Activities. To avoid doubt, Eligible Expenditure does not include the Grant Recipient spending the Grant on lobbying other people to respond to any such consultation (unless explicitly permitted in the Grant Funding Agreement);
  - 5.2.4. providing independent, evidence-based policy recommendations to local government, departments or government ministers, where that is the objective of a taxpayer funded grant scheme, for example, 'What Works Centres'; and
  - 5.2.5. providing independent evidence-based advice to local or national government as part of the general policy debate, where that is in line with the objectives of the Grant.
- 5.3. The Grant Recipient may not in any circumstance claim the following non-exhaustive list as Eligible Expenditure: The list below does not override activities which are deemed eligible in these Conditions:
  - 5.3.1. Paid for lobbying, which means using the Grant to fund lobbying (via an external firm or in-house staff) in order to undertake activities intended to influence or attempt to influence Parliament, government or political activity; or attempting to influence legislative or regulatory action;
  - 5.3.2. using the Grant to directly enable one part of government to challenge another on topics unrelated to the agreed purpose of the grant;
  - 5.3.3. using the Grant to petition for additional funding;
  - 5.3.4. expenses such as for entertaining, specifically aimed at exerting undue influence to change government policy;

- 5.3.5. input VAT reclaimable by the grant recipient from HMRC;
- 5.3.6. payments for activities of a political or exclusively religious nature;
- 5.4. Other examples of expenditure, which are prohibited, include the following:
  - 5.4.1. contributions in kind;
  - 5.4.2. interest payments or service charge payments for finance leases;
  - 5.4.3. gifts;
  - 5.4.4. statutory fines, criminal fines or penalties civil penalties, damages or any associated legal costs;
  - 5.4.5. payments for works or activities which the grant recipient, or any member of their Partnership has a statutory duty to undertake, or that are fully funded by other sources;
  - 5.4.6. bad debts to related parties;
  - 5.4.7. payments for unfair dismissal or other compensation;
  - 5.4.8. depreciation, amortisation or impairment of assets owned by the Grant Recipient;
  - 5.4.9. the acquisition or improvement of Assets by the Grant Recipient (unless the Grant is explicitly for capital use – this will be stipulated in the Grant Offer Letter); and
  - 5.4.10. liabilities incurred before the commencement of the Grant Funding Agreement unless agreed in writing by the Authority.

## **6. Review**

- 6.1. The Authority will review the Grant at quarterly intervals. It will take into account the Grant Recipient's delivery of the Funded Activities against the agreed outputs set out in the Grant Offer Letter and/or the annexes and schedules attached to this agreement. As part of the quarterly review the Authority will review the reports produced by the Grant Recipient in accordance with paragraph 7.2 of these Conditions.
- 6.2. Each quarterly review may result in the Authority deciding that (for example a non-exclusive list includes):
  - 6.2.1. the Funded Activities and the Grant Funding Agreement should continue in line with existing plans;
  - 6.2.2. there should be an increase or decrease in the Grant for the subsequent Financial Year;
  - 6.2.3. the outputs should be re-defined and agreed;
  - 6.2.4. the Grant Recipient should provide the Authority with a draft Remedial Action Plan setting out the steps the Grant Recipient will take to improve delivery of the Funded Activities;
  - 6.2.5. the Authority should recover any Unspent Monies;

6.2.6. the Grant be terminated in accordance with paragraph 25.18 of these Conditions.

6.3. If the Grant Recipient is required to submit a draft Remedial Action Plan in accordance with paragraph 6.2.4 the Remedial Action Plan process set out in paragraph 25.6 to 25.11 shall apply.

6.4. The Grant Recipient may make representations to the Authority regarding the Authority's decision made in accordance with paragraph 6.2. The Authority is not however obliged to take such representations into account when making its decision as any such decision will be final and at the Authority's absolute discretion.

## **7. Monitoring & reporting and Monitoring & verification**

### **Monitoring & Reporting**

7.1. The Grant Recipient shall closely monitor the delivery and success of the Funded Activities throughout the Funding Period to ensure that the aims and objectives of the Funded Activities are achieved.

7.2. The Grant Recipient shall provide the Authority with all reasonable assistance and co-operation in relation to any ad-hoc information, explanations and documents as the Authority may require, from time to time, so the Authority may establish if the Grant Recipient has used the Grant in accordance with the Grant Funding Agreement. As well, the Grant Recipient shall also provide the Authority with a quarterly report on:

7.2.1. the progress made towards achieving the agreed outputs and the defined longer-term outcomes set out in the Grant Offer letter and/or the annexes and schedules attached to this agreement. Where possible, the report will quantify what has been achieved by reference to the Funded Activities' targets; and

7.2.2. if relevant, provide details of any Assets either acquired or improved using the Grant.

7.3. The Grant Recipient will permit any person authorised by the Authority reasonable access, with or without notice, to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Grant Recipient's fulfilment of its obligations under the Grant Funding Agreement and will, if so required, provide appropriate oral or written explanations to such authorised persons as required during the Funding Period.

7.4. The Grant Recipient will record in its financial reports the amount of Match Funding it receives together with details of what it has used that Match Funding for.

7.5. The Grant Recipient will notify the Authority as soon as reasonably practicable of:

7.5.1. any actual or potential failure to comply with any of its obligations under the Grant Funding Agreement, which includes those caused by any administrative, financial or managerial difficulties; and

7.5.2. actual or potential variations to the Eligible Expenditure set out in the Grant Offer Letter and/or the annexes and schedules attached to this agreement and/or any event which materially affects the continued accuracy of such information.

7.6. The Grant Recipient represents and undertakes (and shall repeat such representations on delivery of its quarterly report):

7.6.1. that the reports and information it gives pursuant to this paragraph 7 are accurate;



- 7.6.2. that it has diligently made full and proper enquiry of the matter pertaining to the reports and information given; and
- 7.6.3. that any data it provided pursuant to an application for the Grant may be shared within the powers conferred by legislation with other organisations for the purpose of preventing or detecting crime.

### **Monitoring & Verification (Post Operation):**

#### **7.7. For Deployment:**

- (a) You will provide BEIS, or their contractors or consultants, with a developed and detailed Monitoring and Verification (M&V) plan. This plan shall be agreed by BEIS, or their contractors or consultants, in writing.
- (b) The M&V plan must be finalised either as part of the project inception meeting or within one month of the Project Start Date. The M&V plan must be based on your outline submission from the application process, including but not limited to regular reporting of actual energy, carbon and bill savings, supported by evidence and signed off by an agreed company representative. This should be comparable with the baseline information provided in your application. These reports should also include confirmation that you are continuing to comply with the conditions in paragraph 25.
- (c) BEIS or their contractors or consultants will actively monitor all projects for a period of up to five years from the Project End Date (the Monitoring Completion Date) and reserve the right to verify and audit the information provided. BEIS also reserve the right to contact you after this period for the purposes of monitoring and evaluation.
- (d) You shall provide BEIS or their contractors or consultants with all reasonable assistance and co-operation in relation to any ad-hoc information, explanations and documents as it may require to establish if you have used the Grant in accordance with this Agreement.
- (e) You will permit any person authorised by BEIS or their contractors or consultants reasonable access, with or without notice, to your employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating your fulfilment of your obligations under this Agreement and will, if so required, provide appropriate oral or written explanations to such authorised persons as required up to five years from the Project End Date (the Monitoring Completion Date)..
- (f) You must consent to producing a publishable case study, including photographs, images or quotations. Guidance will be provided and BEIS reserves the right to review the case study. It will be made publicly available so you must ensure it does not include any commercially sensitive information.
- (g) The data provided through the application process and the monitoring (pre- and post-project completion), verification and evaluation activities will contribute to overall evaluation of the Industrial Energy Transformation Fund (IETF). BEIS or their contractors or consultants may also use this information to create and maintain a public register of grant recipients and publishable project case studies and to publish aggregated statistics relating to the project.
- (h) You acknowledge and agree that BEIS or their contractors or consultants may use your data for purposes including the following:
- i. to create and maintain a register of grant recipients;
  - ii. to produce publishable project case studies (not containing any commercially sensitive or personal data);
  - iii. publishing aggregated, anonymised statistics;

- iv. inputting into government databases; and
- v. sharing with contractors, consultants, other government departments and Devolved Administrations

#### 7.8. For studies:

- (a) You shall provide BEIS or their contractors or consultants with all reasonable assistance and co-operation in relation to any ad-hoc information, explanations and documents as it may require to establish if you have used the Grant in accordance with this Agreement.
- (b) You will permit any person authorised by BEIS or their contractors or consultants reasonable access, with or without notice, to your employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating your fulfilment of your obligations under this Agreement and will, if so required, provide appropriate oral or written explanations to such authorised persons as required until the Project End Date.
- (c) BEIS reserves the right to contact you after the Project End Date for the purposes of monitoring and evaluation.
- (d) You must consent to producing a publishable case study, including photographs, images or quotations. Guidance will be provided and BEIS reserves the right to review the case study. It will be made publicly available so you must ensure it does not include any commercially sensitive information.
- (e) You will be expected to disseminate information on the results of the project, building on the information provided in your application. You should provide a short Knowledge Sharing Plan upon being awarded funding. This should detail your plan for how you will encourage the project to be replicated outside your organisation, including the necessary resource you will designate and the intended timeline for these activities.
- (f) The data provided through the application process and the monitoring and evaluation activities will contribute to overall evaluation of the Industrial Energy Transformation Fund (IETF). BEIS or appointed contractors or consultants may also use this information to create and maintain a public register of grant recipients and publishable project case studies and to publish aggregated statistics relating to the project.
- (g) You acknowledge and agree that BEIS or their contractors or consultants may use your data for purposes including the following:
  - i. to create and maintain a register of grant recipients;
  - ii. to produce publishable project case studies (not containing any commercially sensitive or personal data);
  - iii. publishing aggregated, anonymised statistics;
  - iv. inputting into government databases; and
  - v. sharing with contractors, consultants, other government departments and DAs.

## 8. Auditing and assurance

- 8.1. At intervals specified in the Grant Offer Letter the Grant Recipient will provide the Authority with independent assurance in the form of an accountant's report that the Grant has been used for delivery of the Funded Activities and Eligible Expenditure. A template relevant to Grant Recipient's grant award will be made available by the Authority. To satisfy this requirement the Grant Recipient will provide this accountant's report certified by an independent and

appropriately qualified auditor, which should be accompanied by the Grant Recipient's annual audited accounts and most recent management accounts.

- 8.2. The Authority may, at any time during and up to 10 years after the end of the Grant Funding Agreement, conduct additional audits or ascertain additional information where the Authority considers it necessary. The Grant Recipient agrees to grant the Authority or its Representatives access, as required, to all Funded Activity sites and relevant records. The Grant Recipient will ensure that necessary information and access rights are explicitly included within all arrangements with sub-contractors.
- 8.3. If the Authority requires further information, explanations and documents, in order for the Authority to establish that the Grant has been used properly in accordance with the Grant Funding Agreement, the Grant Recipient will, within 5 Working Days of a request by the Authority, provide the Authority, free of charge, with the requested information.
- 8.4. The Grant Recipient shall:
  - 8.4.1. if applicable nominate an independent auditor to verify the final statement of expenditure and income submitted to the Authority;
  - 8.4.2. identify separately the value and purpose of the Grant Funding in its audited accounts and its annual report; and
  - 8.4.3. maintain a record of internal financial controls and procedures and provide the Authority with a copy if requested.

#### **Retention of documents**

- 8.5. Subject to the provisions of Annex 6 which require a long retention period, the Grant Recipient shall retain all invoices, receipts, accounting records and any other documentation (including but not limited to correspondence) relating to the Eligible Expenditure and income generated by the Funded Activities during the Funding Period, and retain all accounting records relating to that expenditure for a period of 10 years from the date on which the Funding Period ends.
- 8.6. The Grant Recipient shall retain all invoices, receipts, accounting records and any other documentation relating to the Eligible Expenditure for a period of 10 years from the date on which the Funding Period ends.
- 8.7. The Grant Recipient will promptly provide revised forecasts of income and expenditure:
  - 8.7.1. when these forecasts increase or decrease by more than 5 % of the original expenditure forecasts; and/or
  - 8.7.2. at the request of the Authority.
- 8.8. Where the Grant Recipient is a company registered at Companies House, the Grant Recipient must file their annual return and accounts by the dates specified by Companies House.
- 8.9. Where the Grant Recipient is a registered charity, the Grant Recipient must file their charity annual return by the date specified by the Charity Commissioner.
- 8.10. The Grant Recipient shall provide the Authority with copies of their annual return, accounts and charity annual return (as applicable) within five days of filing them at Companies House and/or the Charity Commissioner. If a Grant Recipient fails to comply with clause 8.8 or 8.9 the Authority may suspend funding or terminate the Grant Funding Agreement in accordance with clause 25.

#### **9. Financial management and prevention of bribery, corruption, fraud and other irregularity**

- 9.1. The Grant Recipient will at all times comply with all applicable laws, statutes and regulations

relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act.

- 9.2. The Grant Recipient must have a sound administration and audit process, including internal financial controls to safeguard against fraud, theft, money laundering, counter terrorist financing or any other impropriety, or mismanagement in connection with the administration of the Grant. The Grant Recipient shall require that the internal/external auditors report on the adequacy or otherwise of that system.
- 9.3. All cases of fraud or theft (whether proven or suspected) relating to the Funded Activities must be notified to the Authority as soon as they are identified and the Grant Recipient must explain to the Authority what steps are being taken to investigate the irregularity and keep the Authority informed about the progress of such investigation. The Authority may request that the matter is referred (which the Grant Recipient is obliged to carry out) to external auditors or other third parties as required.
- 9.4. The Authority will have the right, at its absolute discretion, to insist that the Grant Recipient take additional steps to address any actual or suspected fraud, theft or other financial irregularity and/or to suspend future payment of the Grant to the Grant Recipient. Any grounds for suspecting financial irregularity includes what the Grant Recipient, acting with due care, should have suspected as well as what it actually proven.
- 9.5. The Grant Recipient agrees and accepts that it may become ineligible for grant support and be required to repay all or part of the Grant if it engages in tax evasion or aggressive tax avoidance in the opinion of HMRC.
- 9.6. For the purposes of paragraph 9.4 "financial irregularity" includes (but is not limited to) potential fraud or other impropriety, mismanagement, and the use of the Grant for any purpose other than those stipulated in the Grant Funding Agreement. The Grant Recipient may be required to provide statements and evidence to the Authority or the appropriate organisation as part of pursuing sanctions, criminal or civil proceedings.

## **10. Conflicts of interest**

- 10.1. Neither the Grant Recipient nor its Representatives shall engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to the Grant Funding Agreement.
- 10.2. The Grant Recipient must have and will keep in place adequate procedures to manage and monitor any actual or perceived bias or conflicts of interest.

## **11. Confidentiality**

- 11.1. Except to the extent set out in this paragraph 11 or where disclosure is expressly permitted, the Grant Recipient shall treat all Confidential Information belonging to the Authority as confidential and shall not disclose any Confidential Information belonging to the Authority to any other person without the prior written consent of the Authority, except to such persons who are directly involved in the provision of the Funded Activities and who need to know the information.
- 11.2. The Grant Recipient gives its consent for the Authority to publish the Grant Funding Agreement in any medium in its entirety (but with any information which is Confidential Information belonging to the Authority or the Grant Recipient redacted), including from time to time agreed changes to the Grant Funding Agreement.
- 11.3. Nothing in this paragraph 11 shall prevent the Authority disclosing any Confidential Information obtained from the Grant Recipient:

- 11.3.1. for the purpose of the examination and certification of the Authority's accounts; or pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
- 11.3.2. to any government department, consultant, contractor or other person engaged by the Authority, provided that in disclosing information under the Authority only discloses the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate;
- 11.3.3. where disclosure is required by Law, including under the Information Acts.

11.4. Nothing in this paragraph 11 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under the Grant Funding Agreement in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.

## **12. Transparency**

12.1. The Authority and the Grant Recipient acknowledge that, except for any information, which is exempt from disclosure in accordance with the provisions of the Information Acts, the content of the Grant Funding Agreement is not confidential.

## **13. Statutory duties**

- 13.1. The Grant Recipient agrees to adhere to its obligations under the Law, including but not limited to the Information Acts and the HRA.
- 13.2. The Grant Recipient hereby acknowledges that the Authority is subject to requirements under the Information Acts. Where requested by the Authority, the Grant Recipient will provide reasonable assistance and cooperation to the Authority to assist the Authority's compliance with its information disclosure obligations.
- 13.3. 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.
- 13.4. The Grant Recipient acknowledges that the Authority, acting in accordance with the codes of practice issued and revised from time to time under the Information Acts, may disclose information concerning the Grant Recipient and the Grant Funding Agreement without consulting the Grant Recipient.
- 13.5. The Authority will take reasonable steps to notify the Grant Recipient of a request for information to the extent that it is permissible and reasonably practical for it to do so. Notwithstanding any other provision in the Grant Funding Agreement, the Authority will be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Acts.

## **14. Data protection, public procurement and subsidy control**

### **Data protection**

- 14.1. The Grant Recipient and the Authority will comply at all times with their respective obligations under Data Protection Legislation.
- 14.2. The Parties agree that for the purposes of the Data Protection Legislation the Grant Recipient is a Controller and the Authority is a Controller unless otherwise specified in Annex 7 of these Conditions.
- 14.3. Each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.

#### **Public procurement**

- 14.4. The Grant Recipient will ensure that any of its Representatives involved in the Funded Activities will, adopt such policies and procedures that are required in order to ensure that value for money has been obtained in the procurement of goods or services funded by the Grant.
- 14.5. Where the Grant Recipient is a Contracting Authority within the meaning of the Procurement Regulations the Grant Recipient will comply, as necessary, with the Procurement Regulations when procuring goods and services in connection with the Grant Funding Agreement and the Authority shall not be liable for the Grant Recipient's failure to comply with its obligations under the Procurement Regulations.

#### **Subsidy control**

- 14.6. The Grant Recipient will make sure the Funded Activities are structured so they are compatible with any relevant law or regulation enacted after 31 December 2020 as a result of the UK exiting the European Union.
- 14.7. The Grant Recipient will maintain appropriate records of compliance with any relevant law or regulation enacted after 31 December 2020 as a result of the UK exiting the European Union and will take all reasonable steps to assist the Authority to respond to any investigation(s) into the Funded Activities instigated by the UK's domestic successor to the European Commission, or in the case of Northern Ireland, the European Commission itself.
- 14.8. The Grant is awarded in line with the terms of the EU-UK Trade and Cooperation Agreement.

### **15. Intellectual property rights**

- 15.1. Intellectual Property in all IPR Material will be the property of the Grant Recipient. Other than as expressly set out in these Conditions, neither Party will have any right to use any of the other Party's names, logos or trademarks on any of its products or services without the other Party's prior written consent.
- 15.2. The Grant Recipient grants to the Authority a non-exclusive irrevocable and royalty-free, sub-licensable, worldwide licence to use all the IPR Material for the purpose of supporting other projects.
- 15.3. Ownership of Third-Party software or other IPR necessary to deliver Funded Activities will remain with the relevant Third Party.
- 15.4. The Grant Recipient must ensure that they have obtained the relevant agreement from the Third-

Party proprietor before any additions or variations are made to the standard 'off-the-shelf' versions of any Third-Party software and other IPR. The Grant Recipient will be responsible for obtaining and maintaining all appropriate licences to use the Third-Party software.

## **16. Environmental requirements**

- 16.1. The Grant Recipient shall perform the Funded Activities in accordance with the 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.
- 16.2. The Grant Recipient shall pay due regard to the use of recycled products, so long as they are not detrimental to the provision of the Funded Activities or the environment, to include the use of all packaging, which should be capable of recovery for re-use or recycling.
- 16.3. The Grant Recipient shall take all possible precautions to ensure that any equipment and materials used in the provision of the Funded Activities do not contain chlorofluorocarbons, halons or any other damaging substances, unless unavoidable, in which case the Authority shall be notified in advance of their use. The Grant Recipient shall endeavour to reduce fuel use and emissions wherever possible.

## **17. Assets**

### **Inventory of the assets**

- 17.1. The Grant Recipient must keep a register of all Fixed Assets and/or Major Assets acquired or improved wholly or partly using the Grant provided under the Grant Funding Agreement.
- 17.2. Assets purchased with Grant funding must only be used for delivery of the Funded Activities.
- 17.3. For each entry in the register the following particulars must be shown where appropriate:
  - 17.3.1. date of acquisition or improvement;
  - 17.3.2. description of the Asset;
  - 17.3.3. cost, net of recoverable VAT;
  - 17.3.4. location of the Asset;
  - 17.3.5. serial or identification numbers;
  - 17.3.6. location of the title deeds;
  - 17.3.7. date of any Disposal;
  - 17.3.8. depreciation/amortisation policy applied;
  - 17.3.9. proceeds of any Disposal net of VAT; and
  - 17.3.10. the identity of any person to whom the Asset has been transferred or sold.
- 17.4. The Authority reserves the right to require the Grant Recipient to maintain the above particulars as set out in 17.3.1-17.3.10 for any additional items which the Authority considers material to the overall Grant.

## **Disposal of asset**

- 17.5. Where the Grant Recipient uses any of the Grant to develop, improve or purchase any Assets, the Grant Recipient must ensure that the Assets are maintained in good condition over the Asset Owning Period.
- 17.6. The Grant Recipient must not dispose of any Assets that have been totally or partly bought, restored, conserved (maintained or protected from damage) or improved with the Grant without the prior written consent of the Authority. If the Authority grants consent to the Disposal, such consent may be subject to satisfaction of certain conditions, to be determined by the Authority.
- 17.7. If the Grant Recipient disposes of any Asset without the prior written consent of the Authority, the Grant Recipient must use all reasonable endeavours to achieve the market price for the Assets and must pay to the Authority a proportion of the proceeds of such sale, equivalent to the proportion of the purchase or development costs of the Assets that was funded by the Grant, provided that the Authority may at its discretion allow the Grant Recipient to keep all or a part of the relevant proceeds where:
- 17.7.1. the sale of the Assets takes place after the end of the Asset Owning Period;
  - 17.7.2. the proceeds of sale are to be applied directly to the purchase by the Grant Recipient of assets that are equivalent to or replacements for the Assets; or
  - 17.7.3. the Authority is otherwise satisfied that the Recipient will apply those proceeds for purposes related to the Funded Activities.
- 17.8. The Grant Recipient shall hold the proceeds from the Disposal of any Asset on trust for the Authority.

## **Charging of any asset**

- 17.9. The Grant Recipient shall not create any charge, legal mortgage, debenture or lien over any Asset without the prior written consent of the Authority.

## **18. Insurance**

- 18.1. The Grant Recipient will during the term of the Funding Period and for 10 years after termination or expiry of these Conditions, ensure that it has and maintains, at all times adequate insurance with an insurer of good repute to cover claims under the Grant Funding Agreement or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with the Funded Activities or the Grant Funding Agreement
- 18.2. The Grant Recipient will upon request produce to the Authority its policy or policies of insurance or where this is not possible, a certificate of insurance issued by the Grant Recipient's insurance brokers confirming the insurances are in full force and effect together with confirmation that the relevant premiums have been paid.
- 18.3. Where the Grant Recipient receives more than 50% per cent of the Grant Recipient's total income from public funds, the Grant Recipient will notify the Authority. The Authority will review the nature of the control of Grant Recipient's organisation to determine any resulting requirement for reclassification which may in turn change the insurance requirements under the Grant Funding Agreement.



## **19. Assignment**

- 19.1. The Grant Recipient will not transfer, assign, novate or otherwise dispose of the whole or any part of the Grant Funding Agreement or any rights under it, to another organisation or individual, without the Authority's prior approval.
- 19.2. Any approval given by the Authority will be subject to a condition that the Grant Recipient has first entered into a Grant Funding Agreement, authorised by the Authority, requiring the Grant Recipient to work with another organisation in delivering the Funded Activities.

## **20. Spending controls – marketing, advertising, communications and consultancy**

- 20.1. The Grant Recipient must seek permission from the Authority prior to any proposed expenditure on advertising, communications, consultancy or marketing either in connection with, or using the Grant.
- 20.2. The Grant Recipient should provide evidence that any marketing, advertising, communications and consultancy expenditure carried out in connection with, or using the Grant will deliver measurable outcomes that meet government objective to secure value for money.

## **21. Losses, gifts and special payments**

- 21.1. The Grant Recipient must obtain prior written consent from the Authority before:

- 21.1.1. writing off any debts or liabilities;
- 21.1.2. offering to make any Special Payments; and
- 21.1.3. giving any gifts.

in connection with this Grant Funding Agreement.

- 21.2. The Grant Recipient will keep a record of all gifts, both given and received, in connection with the Grant or any Funded Activities.

## **22. Borrowing**

- 22.1. In accordance with paragraph 17.9 and this 22, the Grant Recipient must obtain prior written consent from the Authority before:

- 22.1.1. borrowing or lending money from any source in connection with the Grant Funding Agreement; and
- 22.1.2. giving any guarantee, indemnities or letters of comfort that relate to the Grant Funding Agreement or have any impact on the Grant Recipient's ability to deliver the Funded Activities set out in the Grant Funding Agreement.

## **23. Publicity**

- 23.1. The Grant Recipient gives consent to the Authority to publicise in the press or any other medium the Grant and details of the Funded Activities using any information gathered from the Grant Recipient's initial Grant Application or any monitoring reports submitted to the Authority in accordance with paragraph 7.2 of these Conditions.
- 23.2. The Grant Recipient will comply with all reasonable requests from the Authority to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Authority in its

promotional and fundraising activities relating to the Funded Activities.

- 23.3. The Grant Recipient must obtain written permission from the Authority before publicising the project. This can be obtained by contacting [ietf@beis.gov.uk](mailto:ietf@beis.gov.uk).
- 23.4. Any publicity material for the Funded Activities must refer to the programme under which the Grant was awarded and must feature the Authority's logo. If a Third Party wishes to use the Authority's logo, the Grant Recipient must first seek permission from the Authority.
- 23.5. The Grant Recipient will acknowledge the support of the Authority in any materials that refer to the Funded Activities and in any written or spoken public presentations about the Funded Activities. Such acknowledgements (where appropriate or as requested by the Authority) will include the Authority's name and logo (or any future name or logo adopted by the Authority) using the templates provided by the Authority from time to time.
- 23.6. In using the Authority's name and logo, the Grant Recipient will comply with all reasonable branding guidelines issued by the Authority from time to time.

## **24. Changes to the Authority's requirements**

- 24.1. The Authority will notify the Grant Recipient of any changes to their activities, which are supported by the Grant.
- 24.2. The Grant Recipient will accommodate any changes to the Authority's needs and requirements under these Conditions.

## **25. Clawback, events of default, termination and rights reserved for breach and termination**

- 25.1. Without prejudice to the Authority's other rights and remedies, if the Grant Recipient fails to comply with any of its obligations in the Grant Funding Agreement, the Authority may in preference to the standard notice period set out in paragraph 25.18 and at its discretion, reduce, suspend, or terminate payments of Grant, or require any part or all of the Grant to be repaid.
- 25.2. Where the Authority requires any part or all of the Grant to be repaid in accordance with paragraph 25.1 above, the Grant Recipient shall repay this amount no later than 30 calendar days of the date it received the demand for repayment. If the Grant Recipient fails to repay the Grant within 30 calendar days of a demand from the Authority for payment, the sum will be recoverable summarily as a civil debt.
- 25.3. The Authority may exercise its rights set out in paragraph 25.1 if, in particular, any of the following events occur:
  - 25.3.1. the Grant Recipient uses the Grant for a purpose other than the Funded Activities or fails to comply with any of the other obligations of the Grant Funding Agreement;
  - 25.3.2. the Grant Recipient uses part or all of the equipment purchased using the Grant ("the project assets") for purposes other than the purposes of the project;
  - 25.3.3. the Grant Recipient ceases to own the project assets or maintain the project assets in line with the manufacturer's instructions
  - 25.3.4. the delivery of the Funded Activities does not start within three months of the Commencement Date and the Grant Recipient has failed to provide the Authority with a satisfactory explanation for the delay, or failed to agree a new Commencement Date with the Authority;
  - 25.3.5. the Grant Recipient uses the Grant for Ineligible Expenditure;
  - 25.3.6. the Grant Recipient fails, in the Authority's opinion, to make satisfactory progress with the Funded Activities and in particular, with meeting the Agreed Outputs set out in the

Grant Offer Letter and/or the annexes and schedules attached to this agreement;  
25.3.7. the Grant Recipient fails to comply with the Monitoring and Verification requirements as set out in Section 7 of these conditions.

25.3.8. the Grant Recipient fails to:

- (i) submit an adequate Remedial Action Plan to the Authority following a request by the Authority pursuant to paragraph 6.2.4; or
- (ii) improve delivery of the Funded Activities in accordance with the Remedial Action Plan approved by the Authority;

25.3.9. the Grant Recipient is, in the opinion of the Authority, delivering the Funded Activities in a negligent manner (in this context negligence includes but is not limited to failing to prevent or report actual or anticipated fraud or corruption);

25.3.10. the Grant Recipient fails to declare Duplicate Funding;

25.3.11. the Grant Recipient obtains Match Funding or funding from a Third Party which, in the opinion of the Authority, undertakes activities that are likely to bring the reputation of the Funded Activities or the Authority into disrepute;

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

25.3.13. the Grant Recipient commits or committed a Prohibited Act or fails to report a Prohibited Act to the Authority, whether committed by the Grant Recipient or a Third Party, as soon as they become aware of it;

25.3.14. the Authority determines (acting reasonably) that any director or employee of the Grant Recipient has:

- (i) acted dishonestly or negligently at any time during the term of the Grant Funding Agreement and to the detriment of the Authority; or
- (ii) taken any actions which unfairly bring or are likely to unfairly bring the Authority's name or reputation and/or the Authority into disrepute. Actions include omissions in this context;
- (iii) transferred, assigns or novates the Grant to any Third Party without the Authority's consent;
- (iv) ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- (v) become Insolvent as defined by section 123 of the Insolvency Act 1986, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due;
- (vi) incurred expenditure on activities that breach the Law;
- (vii) the UK's domestic successor to the European Commission, or in the case of Northern Ireland, the European Commission itself, or the relevant Court of Justice requires any Grant paid to be recovered by reason of a breach of the EU-UK Trade and Cooperation Agreement or the Grant Recipient fails to comply with the provisions of the exemption or scheme under the EU-UK Trade and Cooperation Agreement that applies to the Funded Activities and the Grant;

25.3.15. The Grant Recipient breaches the Code of Conduct for Grant Recipients (the **Code of Conduct**) and/or fails to report an actual or suspected breach of the Code of Conduct by the Grant Recipient or its Representatives in accordance with paragraph 30.2.

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

25.4. Where, the Authority determines that an Event of Default has or may have occurred, the Authority may by written notice to the Grant Recipient take any one or more of the following

actions:

- 25.4.1. suspend the payment of Grant for such period as the Authority shall determine; and/or
- 25.4.2. 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
- 25.4.3. cease to make payments of Grant to the Grant Recipient under the Grant Funding Agreement and (in addition) require the Grant Recipient to repay the Authority the whole or any part of the amount of Grant previously paid to the Grant Recipient. Such sums shall be recovered as a civil debt; and/or
- 25.4.4. terminate the Grant Funding Agreement.

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

- 25.5. If the Authority gives written notice to the Grant Recipient pursuant to paragraph 25.4 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 by submitting a Draft Remedial Action Plan for approval by the Authority.
- 25.6. Where the Grant Recipient is required to submit a draft Remedial Action Plan in accordance with paragraph 25.5, the draft Remedial Action Plan shall be submitted to the Authority for approval, within 5 Working Days of the Grant Recipient receiving notice from the Authority.
- 25.7. The draft Remedial Action Plan shall set out:
  - 25.7.1. full details of the Event of Default; and
  - 25.7.2. the steps which the Grant Recipient proposes to take to rectify the Event of Default including timescales for such steps.
- 25.8. On receipt of the draft Remedial Action Plan and as soon as reasonably practicable, the Authority will submit its comments on the draft Remedial Action Plan to the Grant Recipient.
- 25.9. The Authority shall have the right to accept or reject the draft Remedial Action Plan. If the Authority rejects the draft Remedial Action Plan, the Authority shall confirm, in writing, the reasons why they have rejected the draft Remedial Action Plan and will confirm whether the Grant Recipient is required to submit an amended Remedial Action Plan to the Authority.
- 25.10. If the Authority directs the Grant Recipient to submit an amended draft Remedial Action Plan, the Parties shall agree a timescale for the Grant Recipient to amend the draft Remedial Action Plan to take into account the Authority's comments.
- 25.11. If the Authority does not approve the draft Remedial Action Plan the Authority may at its absolute discretion terminate the Grant Funding Agreement.
- 25.12. The Authority shall not by reason of the occurrence of an Event of Default which is, in the opinion of the Authority, capable of remedy, exercise its rights under either paragraph 25.4.3 or 25.4.4 unless the Grant Recipient has failed to rectify the default pursuant to paragraph 25.5 to the satisfaction of the Authority.

### **Change of Control**

- 25.13. The Grant Recipient shall notify the Authority immediately in writing and as soon as the Grant Recipient is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.
- 25.14. The Grant Recipient shall ensure that any notification made pursuant to paragraph 25.13 shall

set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

25.15. If the Authority, acting reasonably, considers that:

- 25.15.1. the Change of Control will be materially detrimental to the Funded Activities and/or;
- 25.15.2. the new body corporate cannot continue to receive the Grant because they do not meet the Eligibility Criteria used to award the Grant to the Grant Recipient;
- 25.15.3. the Authority believes that the Change of Control would raise national security concerns and/or;
- 25.15.4. the new body corporate intends to make fundamental change(s) to the purpose for which the Grant was given;

25.16. the Authority shall be entitled to exercise its rights under paragraph 25.1 of these Conditions to reduce, suspend, or terminate payments of Grant, require any part or all of the Grant to be repaid and/or terminate the Grant Funding Agreement by providing the Grant Recipient with notification of its proposed action in writing within one (1) months of:

- (i) being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or
- (ii) where no notification has been made, the date that the Authority becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

25.17. The Authority shall not be entitled to terminate where an Approval was granted prior to the Change of Control.

### **General Termination rights**

25.18. Notwithstanding the Authority's right to terminate the Grant Funding Agreement pursuant to paragraph 25.4.4 above, either Party may terminate the Grant Funding Agreement at any time by giving at least 3 months written notice to the other Party.

25.19. If applicable, all Unspent Monies (other than those irrevocably committed in good faith before the date of termination, in line with the Grant Funding Agreement and approved by the Authority as being required to finalise the Funded Activities) shall be returned to the Authority within 30 days of the date of receipt of a written notice of termination from the Authority.

25.20. If the Authority terminates the Grant Funding Agreement in accordance with paragraph 25.18 the Authority may choose to pay the Grant Recipient's reasonable costs in respect of the delivery of the Funded Activities performed up to the termination date. Reasonable costs will be identified by the Grant Recipient and will be subject to the Grant Recipient demonstrating that they have taken adequate steps to mitigate their costs. For the avoidance of doubt, the amount of reasonable costs payable will be determined solely by the Authority.

25.21. The Authority will not be liable to pay any of the Grant Recipient's costs or those of any contractor/supplier of the Grant Recipient related to any transfer or termination of employment of any employees engaged in the provision of the Funded Activities.

## **26. Exit plan**

26.1. Where the Authority requires the Grant Recipient to prepare an Exit Plan to allow the cessation or seamless transfer of the Funded Activities, the Grant Recipient shall prepare the Exit Plan within three (3) months of the signing of the Grant Funding Agreement.

## **27. Dispute resolution**

- 27.1. The Parties will use all reasonable endeavours to negotiate in good faith, and settle amicably, any dispute that arises during the continuance of the Grant Funding Agreement.
- 27.2. All disputes and complaints (except for those which relate to the Authority's right to withhold funds or terminate the Grant Funding Agreement) shall be referred in the first instance to the Parties Representatives.
- 27.3. If the dispute cannot be resolved between the Parties Representatives within a maximum of 30 days, then the matter will be escalated to formal meeting between the Grant Manager and the Grant Recipient's chief executive (or equivalent).

## **28. Limitation of liability**

- 28.1. The Authority accepts no liability for any consequences, whether direct or indirect, that may come about from the Grant Recipient delivering the Funded Activities, the use of the Grant or from withdrawal, withholding or suspension of the Grant. The Recipient shall indemnify and hold harmless the Authority, its Representatives with respect to all actions, claims, charges, demands Losses and proceedings arising from or incurred by reason of the actions and/or omissions of the Grant Recipient in relation to the Funded Activities, the non-fulfilment of obligations of the Grant Recipient under this Grant Funding Agreement or its obligations to Third Parties.
- 28.2. Subject to this paragraph 28, the Authority's liability under this Grant Funding Agreement is limited to the amount of Grant outstanding.

## **29. VAT**

- 29.1. If VAT is held to chargeable in respect of the Grant Funding Agreement, all payments shall be deemed to be inclusive of all VAT and the Authority shall not be obliged to pay any additional amount by way of VAT.
- 29.2. All sums or other consideration payable to or provided by the Grant Recipient to the Authority at any time shall be deemed to be exclusive of all VAT payable and where any such sums become payable or due or other consideration is provided the Grant Recipient shall at the same time or as the case may be on demand by HMRC in addition to such sums or other consideration pay to HMRC all the VAT so payable upon the receipt of a valid VAT invoice.

## **30. Code of conduct for grant recipients**

- 30.1. The Grant Recipients acknowledges that by signing the Grant Funding Agreement it agrees to take account of the Code of Conduct for Grant Recipients (the **Code of Conduct**) and that it will ensure that its Representatives undertake their duties in a manner consistent with the principles set out in the Code of Conduct.
- 30.2. The Grant Recipient shall immediately notify the Authority if it becomes aware of any actual or suspected breaches of the principles outlined in the Code of Conduct.
- 30.3. The Grant Recipient acknowledges that a failure to notify the Authority of an actual or suspected breach of the Code of Conduct may result in the Authority immediately suspending the Grant funding, terminating the Grant Funding Agreement and taking action to recover some or all of the funds paid to the Grant Recipient as a civil debt in accordance with paragraph 25.

## **31. Notices**

31.1. All notices and other communications in relation to this Grant Funding Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, e-mailed, or mailed (first class postage prepaid) to the address of the relevant party. All notices and other communications must be marked for the attention of the contact specified in the annexes and schedules attached to this agreement and/or the Grant Offer Letter. If personally delivered or if e- mailed all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any Working Day they shall be deemed received on the next Working Day) and if mailed all such communications shall be deemed to have been given and received on the second Working Day following such mailing.

## **32. Governing law**

32.1. These Conditions will be governed by and construed in accordance with the law of England and Wales and the Parties irrevocably submit to the exclusive jurisdiction of the English and Welsh courts.

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SIGNED by:

[.....]

Signature

[insert authorised  
signatory's  
name]

[.....]

Title

for and on behalf of the  
Department for Business,  
Energy and Industrial  
Strategy

[.....]

Date

SIGNED by

[.....]

Signature

[insert authorised  
signatory's  
name]

[.....]

Title

for and on behalf of [insert  
name of Recipient]

[.....]

Date



## Annex 1 – Grant offer letter and grant application

### Part A – Grant Offer Letter

[Include a copy of your signed Grant Offer Letter]

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**Part B – Grant Recipient’s application**

[Include the Grant Recipient’s application here]

DRAFT

## **Annex 2 –The funded activities**

[Summary of the specific proposed activities to be undertaken in the project to be inserted.]

DRAFT

**[DRAFT]**

## **Annex 3 – Payment schedule**

**DRAFT**

**Annex 4 – Grant Recipient’s bank details and contact details**

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**Annex 5 – Eligible expenditure schedule**

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## **Annex 7 – Data Protection Provisions**

The Grant Recipient and the Authority will comply at all times with their respective obligations under Data Protection Legislation.

[A full description of the Data Protection Provisions and Obligations will be inserted here prior to the agreement being finalised.]

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## Annex 8 – Subsidy control

### Section 1

#### Award of aid

##### [FOR PROJECTS FOR FEASIBILITY STUDY]

1. The Grant is awarded as aid for feasibility studies in accordance with the EU-UK Trade Agreement and any Domestic Law which replaces such State Aid Law following the UK's exit from the European Union.
2. The Grant may only be used to contribute to Eligible Expenditure covered by this letter where that expenditure is incurred by You in respect of eligible costs permitted by this scheme, where these are incurred as part of the Funded Activities. The amount of public funding (including the Grant) that You may receive for the Project must not exceed:
  - a. £7m (seven million Pounds) in total; and
  - b. an aid intensity being up to 70% of Your total Eligible Expenditure incurred on the Funded Activities.

For the purpose of paragraph 2, public funding includes any funding from, or attributable to, any public authority or in the case of projects located in Northern Ireland, an EU institution. Please note that the maximum aid intensity has been increased from 50% of Your Eligible Expenditure to 60% if you are classed as a medium enterprise or to 70% if you are classed as a small/micro enterprise.

Please inform the Authority in writing, and as soon as possible, if these circumstances cease to apply or the Grant Recipient has grounds to consider that they are likely to do so. The Grant Recipient must also provide the Authority with any evidence requested to satisfy it that the Grant Recipient has complied with the aid intensity requirements and that it have sufficient Match Funding in place.

##### [FOR PHASE 1 PROJECTS FOR ENGINEERING STUDY]

1. The Grant is awarded as aid for energy efficiency measures in accordance with the EU-UK Trade Agreement and any Domestic Law which replaces such State Aid Law following the UK's exit from the European Union.
2. The Grant may only be used to contribute to Eligible Expenditure covered by this letter where that expenditure is incurred by You in respect of eligible costs permitted by this scheme, where these are incurred as part of the Funded Activities. The amount of public funding (including the Grant) that You may receive for the Project must not exceed:
  - a. £14m (fourteen million Pounds) in total; and
  - b. an aid intensity being up to 60% of Your total Eligible Expenditure incurred on the Funded Activities.
3. For the purpose of paragraph 2, public funding includes any funding from, or attributable to, any public authority or in the case of projects located in Northern Ireland, an EU institution. Please note that the maximum aid intensity has been increased from 25% of Your Eligible Expenditure to 35% if you are classed as a

medium enterprise or to 45% if you are classed as a small/micro enterprise. There is a 15% increase where the results of the project are widely disseminated or where the project qualifies as an 'effective collaboration'.

Please inform the Authority in writing, and as soon as possible, if these circumstances cease to apply or the Grant Recipient has grounds to consider that they are likely to do so. The Grant Recipient must also provide the Authority with any evidence requested to satisfy it that the Grant Recipient has complied with the aid intensity requirements and that it have sufficient Match Funding in place.

#### [FOR PROJECTS FOR ENERGY EFFICIENCY DEPLOYMENT]

1. The Grant is awarded as aid for energy efficiency measures in accordance with the EU-UK Trade Agreement and any Domestic Law which replaces such State Aid Law following the UK's exit from the European Union.
2. The Grant may only be used to contribute to Eligible Expenditure covered by this letter where that expenditure is incurred by You in respect of eligible costs permitted by this scheme, where these are incurred as part of the Funded Activities. The amount of public funding (including the Grant) that You may receive for the Project must not exceed:
  - a. £14m (fourteen million Pounds) in total; and
  - b. an aid intensity being up to 65% of Your total Eligible Expenditure incurred on the Funded Activities.
3. For the purpose of paragraph 2, public funding includes any funding from, or attributable to, any public authority or in the case of projects located in Northern Ireland, an EU institution. Please note that the maximum aid intensity has been increased from 30% of Your Eligible Expenditure to 40% if you are classed as a medium enterprise or to 50% if you are classed as a small/micro enterprise. Please note that aid intensity differs according to the location of the project undertaken, for further information The Grant Recipient should refer to the [UK assisted areas map](#)

Please inform the Authority in writing, and as soon as possible, if these circumstances cease to apply or the Grant Recipient has grounds to consider that they are likely to do so. The Grant Recipient must also provide the Authority with any evidence requested to satisfy it that the Grant Recipient has complied with the aid intensity requirements and that it have sufficient Match Funding in place.

## Section 2

### General conditions

1. The Grant is awarded subject to the following understandings and conditions:
  - a. The Grant Recipient must comply with all law or regulation to ensure that all requirements are met;
  - b. The Grant Recipient is not entitled to the Grant or any payment of it if it is, or becomes, subject to a recovery order for the recovery of aid which has been declared by a court, tribunal or independent body or authority of competent jurisdiction by reason of a breach of the UK's obligations under the Trade and Co-operation Agreement, or the European Commission, to be illegal and incompatible with the Single Market.

- c. The Grant Recipient confirms that it is not a company in difficulty and the Grant Recipient commits to informing the Authority as soon as reasonably practicable of any change in this status; the Authority reserves the right to terminate the Grant Funding Agreement if the Grant Recipient's status changes;
- d. The Grant Recipient confirms that, prior to the commencement of the Project, the Grant Recipient submitted an application which confirmed the undertaking's name and size, description of the Funded Activities (including its start and end dates), location of the Funded Activities, list of costs and type of aid and amount of public funding required;
- e. The Grant Recipient informed the Authority of any other public funding applied for or awarded against the Eligible Expenditure; it is on this basis that the Authority has ensured that the total public funding for the Project is within the amounts permitted by this scheme;
- f. In the case of Northern Ireland and projects located in England and Wales that fall within Article 10 of the Northern Ireland Protocol, the Authority is responsible for informing EU Commission of aid awards, including summary notification of the aid to the Commission via the electronic notification system and publication of details of the aid as required from 1 July 2016;
- g. in the case of an award of aid in excess of £500,000 for projects located in Northern Ireland or in England and Wales that fall within Article 10 of the Northern Ireland Protocol, the Grant Recipient consents to the publication of the following information: name of the beneficiary, beneficiary's identifier, type of enterprise (SME/large) at the time of granting, region in which the beneficiary is located, at NUTS level 2, sector of activity at NACE group level, aid element, expressed as full amount in national currency, aid instrument, date of granting, objective of aid, granting authority, reference of the aid measure, name of the entrusted entity, and the names of the selected financial intermediaries;
- h. The Grant Recipient is responsible individually, and jointly with the Authority, for maintaining detailed records with the information and supporting documentation necessary to establish that all the conditions set out in the Grant Funding Agreement and the subsidy control rules are fulfilled;
- i. such records shall be maintained for 10 years following the granting of the aid and shall be made available to the UK's domestic successor to the European Commission, or in the case of Northern Ireland, the European Commission itself within a period of 20 Working Days if requested;
- j. the Authority may (without qualifying the generality of the Authority's monitoring rights under this Grant Funding Agreement) monitor the Grant Recipient's compliance with the requirements of paragraphs h) and i) and for the avoidance of doubt any failure to comply with those requirements (where applicable) shall be deemed a breach of the terms of this letter.

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