

Terms and Conditions template for the UK Seafood Fund Infrastructure Scheme (round 3)

Vessel improvements to reduce fuel use and emissions

December 2023

**Do not complete this form. Defra will complete any entry fields on behalf of successful applicants.**

Any empty fields will be filled if an applicant is successful and will be included in the Grant Agreement.

Grant Funding Agreement is made on [insert date]

**Between**:

(1) Secretary of State for Department of Environment, Food & Rural Affairs (Defra),whose principal address is at Seacole Building, 2 Marsham Street, London, SW1P 4DF (the “**Authority**”)**,** acting through its administrator, **Marine Management Organisation** (MMO)(the “**Grant Administrator**”).

(2) [Insert The Full Name of the Grant Recipient], whose [registered/principal business address] is at [Address] (the “**Grant** **Recipient**”).

(each a “Party” and together “Parties”).

**Whereas** the Authority has agreed to provide the Grant Funding to the Grant Recipient for the Approved Project on the terms and conditions set out below:

**Now it is hereby agreed** as follows:

## **Introduction**

* 1. This Agreement sets out the terms and conditions on which the Grant Funding is made by the Authority to the Grant Recipient.
  2. This Agreement may be amended from time to time only by the written agreement of both parties.

## **Definitions and interpretation**

* 1. In this Agreement the following terms shall have the following meanings:

“Agreement” means this written agreement consisting of the Grant Funding Letter, these clauses, schedules and any other document especially incorporated therein.

“Approved Project” means the activities for which the Authority agrees to provide Grant Funding, as set out in Schedule 1.

“Approved Use” means use of an Asset as set out in Schedule 1.

“Asset” means any assets that are to be purchased or developed using the Grant including equipment or any other assets which may be fixed, 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.

“Branding manual”means the [‘Funded by UK Government’ branding manual](https://gcs.civilservice.gov.uk/guidance/marketing/branding-guidelines/).

“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 the legislation.

“Code of Conduct” means [the Code of Conduct for Recipients of Government General Grants published by the Cabinet Office in November 2018](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/754555/2018-11-06_Code_of_Conduct_for_Grant_Recipients.pdf), including any subsequent updates from time to time.

“Commencement Date” means [Insert commencement date] when the project will commence.

“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:

1. any information that ought reasonably to be considered to be confidential (whether or not it is so marked) relating to:
2. the business, affairs, customers, clients, suppliers or plans of the disclosing party; and
3. the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party; and
4. any information developed by the parties in the course of delivering the Funded Activities;
5. the Authority Personal Data;
6. any information derived from any of the above

Confidential Information must not include information which:

1. was public knowledge at the time of disclosure (otherwise than by breach of condition 13 of these Conditions;
2. was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
3. is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
4. Is independently developed without access to the Confidential Information.

“Contracting Authority” means any contracting authority (other than the Authority) as defined in regulation 2 of the Public Contracts Regulations 2015 (as amended).

“Data Protection Legislation” means (i) the GDPR; (ii) the Data Protection Act 2018 to the extent that it relates to the processing of Personal Data and privacy; and (iii) all applicable Law relating to the processing of Personal Data and privacy.

“Disposal” means the disposal, sale, transfer or the grant of any estate or any interest in any Asset, and includes the creation of any charge, legal mortgage, debenture, lien or other encumbrance and any contract for disposal and “Dispose” shall be construed accordingly.

“Duplicate Funding”means funding provided by a third party to the Grant Recipient, which is for the same purpose for which the Grant was made but has not been declared to the Authority.

“EIR” means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“Financial Irregularity” means any fraud or other impropriety, mismanagement or misuse of the Grant Funding.

“Fixed Assets” means any Asset which consists of buildings, plant and equipment (including gear) acquired, developed, enhanced, or 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 and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“GDPR” means the General Data Protection Regulation (EU) 2016/679. “Governing Body” means the governing body of the Grant Recipient including its directors or trustees.

“Grant Funding” means the sum not exceeding £ [Insert Amount] (inclusive of any applicable VAT) to be paid to the Grant Recipient in accordance with this Agreement.

“Grant Period” means the period for which the Grant Funding is awarded starting on the Commencement Date and ending on 31 March 2025.

“Intellectual Property Rights” means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, Know-How, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Know-How” means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods).

“Law”means any law, statute, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of Section 4(1) EU Withdrawal Act 2018 as amended by EU (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Grant Recipient is bound to comply.

“Personal Data” has the meaning given to it by the UK GDPR.

“Prohibited Act” means:

1. directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
2. induce that person to perform improperly a relevant function or activity; or
3. reward that person for improper performance of a relevant function or activity;
4. directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
5. committing any offence under the Bribery Act or involving fraudulent acts.

“Sound Operational Principles” means adherence to any statutory, professional and sectoral guidance regarding the operation of an organisation including but not limited to structures for ensuring good governance, accountability and financial management.

“UK GDPR” means the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679), as transposed into UK Law by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.

“Useful Economic Life” means the five year period that the relevant Asset shall be used for the Approved Use as set out in Schedule 1**.**

* 1. The headings are inserted for convenience only and shall not affect the interpretation of the Agreement.
  2. Reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to, or replacement of, them.
  3. References to any person shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, government department, agency or any association or partnership (whether or not having a separate legal personality).
  4. Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.
  5. Any reference in this Grant Funding Agreement which immediately before the date of exit from the EU (or such later date when relevant EU law ceases to have effect pursuant to Section 1A of the European Union (Withdrawal) Act 2018) is a reference to (as it has effect from time to time):
     1. any EU regulation, EU decision, EU tertiary legislation or provision of the European Economic Area (“**EEA**”) agreement (“EU References”) which is to form part of UK domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after the date of exit from the EU as a reference to the EU References as they form part of domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
     2. any EU institution or EU authority or other such EU body shall be read on and after the date of exit from the EU as a reference to the UK institution, authority or body to which its functions were transferred.

## **Purpose of grant funding**

* 1. The Grant Recipient shall use the Grant Funding solely for the delivery of the Approved Project.
  2. The Grant Recipient may not change the Approved Project.
  3. The Authority may at its discretion agree to vary the Grant Funding as a result of changes to the Approved Project or for any other reason with effect on thirty days written notice to the Grant Recipients. Where the Grant Recipient intends to apply to a third party for other funding for the Approved Project, it will notify the Authority in advance of its intention to do so and, where such funding is obtained, it will provide the Authority with details of the amount and purpose of that funding.

## **Duration**

Except where otherwise specified, the terms of this Agreement shall apply from the Commencement Date until the end of the Grant Period or for so long as any Grant Funding remains unspent by the Recipient, whichever is longer.

## **Conditions on and payment of grant funding**

5.1 Subject to clause 12, the Authority shall pay the Grant Funding to the Grant Recipient in accordance with Schedule 3 to this Agreement. The payment of Grant Funding is subject to the conditions specific to this Grant as set out in Schedule 6.

5.2 The amount of the Grant Funding shall not be increased in the event of any overspend by the Grant Recipient in its delivery of the Approved Project.

5.3 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 Funding has been paid in error before the Grant Recipient has complied with all conditions attaching to the Grant Funding.

5.4 Onward payment of the Grant Funding and the use of sub-contractors, (subject to the Authority’s prior written approval in accordance with the provisions of clause 24) shall not relieve the Grant Recipient of any of its obligations under this Agreement, including the obligation to repay the Grant Funding.

5.5 The Grant Funding 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 Funding to meet any VAT liability of the Grant Recipient.

5.6 The Grant Recipient shall submit a valid invoice for payment of Grant Funding, at such periods as are either specified in Schedule 2 or otherwise agreed by the parties in writing. Each and every valid invoice submitted by the Grant Recipient to the Authority shall include all such records and information as the Authority may require including details and evidence of expenses incurred and programme of work undertaken, and such other information as is necessary to enable verification of the information and the amounts referred to in the claim for payment (Schedule 2). The Grant Recipient must include the relevant purchase order number on all invoices.

5.7 Unless otherwise stated in this Agreement, payment will be made on or before the date falling 30 days after the date of receipt of a valid invoice (“Due Payment Date”).

## **Use of grant funding**

* 1. The Grant Recipient shall not use the Grant Funding for expenditure on any of the following activities or those listed in Schedule 7 as specific to this Grant:

1. expenditure for activities of a party political or exclusively religious nature;
2. payment that supports lobbying or activities intended to influence or attempt to influence Parliament, Government or political parties, or attempting to influence the awarding or renewal of contracts and grants, or attempting to influence legislative or regulatory action;
3. using grant funding to petition for additional funding;
4. goods or services that the Grant Recipient has a statutory duty to provide;
5. activities funded from other sources including any costs that have been fully or partially funded through an alternative grant;
6. activities not set out in the Approved Project;
7. overheads allocated or apportioned at rates materially in excess of those used for any similar activity work carried out by the Grant Recipient;
8. activities that result in commercial gain or profit;
9. any costs incurred or expenditure commitments entered into by the Grant Recipient before the Commencement Date including pre-existing debts, i.e. provisions, contingent liabilities or contingencies;
10. running a small grant scheme;
11. loans, including the repayment of loans for any items purchased with loaned funds;
12. dividends declared;
13. interest charges, on any debt for example;
14. service charges arising on finance leases, hire purchase and credit arrangements;
15. costs resulting from the deferral of payments to creditors;
16. other finance charges or operating costs;
17. depreciation and amortisation of assets to the extent that the costs of the assets have been funded by the Grant Funding;
18. costs involved in winding up a company;
19. redundancy payments, unless in consequence of termination of the Grant Funding in respect of which the provisions of clause 6.3 shall apply;
20. payments into private pension schemes or for unfunded pensions;
21. motoring fines, statutory fines and penalties, and any other fines;
22. compensation for loss of office, bad debts arising from loans to proprietors, partners, employees, directors, shareholders, guarantors, or a person connected with any of these;
23. gifts and entertaining;
24. travel and subsistence that would give rise to a taxable benefit were the cost to be incurred by, but not borne by, an individual;
25. reclaimable VAT and any other tax (except PAYE);
26. late payment charges for credit or charge cards (unless incurred as a result of late reimbursement by the Authority);
27. any liability arising out of negligence on the part of the Grant Recipient or its representatives, sub-contractors and agents;
28. payments arising from a contractual commitment by single tender action with a current or former director of the Grant Recipient or current or former member of its staff without written approval from the Authority;
29. any profit element. For the avoidance of doubt, no profit, dividends, bonuses and/or any similar or equivalent benefit will be paid to the owners, members and directors of the Grant Recipient or any other organisation or persons;
30. purchase of land or the purchase and/or construction of buildings;
31. payments reimbursed or to be reimbursed by other public or private sector grants;
32. penalties/civil damages arising from civil/criminal legal proceedings taken against the Grant Recipient or civil proceedings started by the Grant Recipient, whether or not the Grant Recipient is successful or acquitted, even if the proceedings were in pursuance of, or in consequence of the project being grant aided;
33. preventative or scheduled maintenance costs;
34. any costs recoverable in part or in total by making a claim on an insurance policy or by seeking compensation or damages
    1. Should any part of the Grant Funding remain unspent or uncommitted at the end of the Grant Period, the Grant Recipient shall ensure that any unspent or uncommitted monies are returned to the Authority, unless otherwise agreed in writing by the Authority.
    2. Any liabilities arising at the end of the Approved Project including any redundancy liabilities relating to staff employed by the Grant Recipient specifically to deliver the Approved Project must be managed and paid for by the Grant Recipient using the Grant Funding or other resources of the Grant Recipient. There will be no additional funding available from the Authority for this purpose.

## **Monitoring and reporting**

* 1. The Grant Recipient shall closely monitor the delivery and success of the Approved Project throughout the Grant Period to ensure that the aims and objectives of the Approved Project are being met and that the Agreement is being adhered to.
  2. The Grant Recipient shall provide the Authority with a financial report and an operational report on its use of the Grant Funding and progress against delivery of the Approved Project every [quarter (three (3) months or insert an alternative appropriate timescale if the grant agreement is short] and in such formats as the Authority may require. The Grant Recipient shall provide the Authority with each report within 28 calendar days of the last working day of the quarter to which it relates.
  3. At or around [three (3) Months or insert an alternative appropriate timescale if the agreement is short] from the Commencement Date and [each subsequent three (3) month intervals or insert an alternative timescale if the agreement is short] for the term of the Grant Agreement the Authority shall meet formally with the Grant Recipient to carry out a review of the performance of the Grant Recipient in respect of this Approved Project.
  4. The Grant Recipient shall record data monthly in relation to the Approved Project and will submit this to the Authority via quarterly online surveys; the "UK Seafood Fund: Fleet Modernisation Survey. If requested, the Grant Recipient will undertake an interview with the scheme’s independent evaluator, the Risk and Policy Analysts, to provide feedback regarding the Approved Project.
  5. Where the Grant Recipient has obtained funding from a third party for its delivery of part of the Approved Project, the Grant Recipient shall include the amount of such funding in its financial reports together with details of what that funding has been used for.
  6. The Grant Recipient shall on request provide the Authority with such further information, explanations and documents as the Authority may require in order for it to establish that the Grant Funding has been used properly in accordance with the Agreement.
  7. The Grant Recipient shall permit any person authorised by the Authority access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Grant Recipient's fulfilment of the conditions of this Agreement and shall, if so required, provide appropriate oral or written explanations from them as required during the Grant Period and for so long as any Grant Funding remains unspent.
  8. On reasonable notice, the Grant Recipient shall permit and facilitate any person authorised by the Authority for that purpose to visit the Grant Recipient to monitor the delivery of the Approved Project.
  9. The Grant Recipient shall agree to participate in relevant economic and scientific surveys, including but not limited to the annual Seafish [Fishing Fleet Survey](https://www.seafish.org/insight-and-research/fishing-data-and-insight/uk-fishing-fleet-survey/), and consent to the sharing of vessel level identifiable information with the Authority, the Grant Administrator, the Risk and Policy Analysts and the Seafish Industry Authority.
  10. The Grant Recipient shall provide the Authority with a written statement within 28 calendar days following the end of Grant Period which shall confirm whether the Approved Project has been successfully and properly completed. The Authority may at its discretion provide the Grant Recipient with feedback on the adequacy of the statement and may also require the Grant Recipient to re-submit the written statement, having taken into account any issues raised in the Authority’s feedback.

## **Accounts and records**

* 1. The Grant Recipient agrees that the Authority shall be entitled to audit the delivery and performance of the Approved Project and/or request access to or a report from the Grant Recipient’s auditors on its audited accounts. The Authority shall also be entitled to full access to the Grant Recipient’s records on an open-book basis during the Grant Period or for such other period as the Authority may require.
  2. The Grant Recipient shall, and shall ensure that all its sub-contractors shall, retain each record, item of data and document relating to the Approved Project for a period of at least 5 years from the date of creation of each such record, data or document.
  3. The Grant Recipient shall permit duly authorised agents of the Authority and/or the National Audit Office to examine the Grant Recipient’s records and documents relating to the Approved Project and to provide such copies and oral or written explanations as may be required. This obligation does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Grant Recipient under section 6(3) and 6(5) of the National Audit Act 1983.
  4. The Grant Recipient shall maintain a written record for a period of at least 5 years from the date of creation of each such record, data or document of the following in relation to the Approved Project:
     1. all invoices, receipts, accounting records and any other documentation relating to the expenditure of the Grant Funding;
     2. internal financial controls and procedures and provide the Authority with a copy if requested.
  5. Once the project is complete, the Grant Recipient agrees to record information about fuel use, estimated time and distances travelled in the vessel and landings information for each 4 week period in the "UK Seafood Fund: Fleet Modernisation Survey”. Information will be submitted on a quarterly basis for a minimum of 12 months.
  6. Any such other data in relation to the Approved Project as shall reasonably be requested by the Authority in writing.

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

* 1. The Grant Recipients acknowledges that by accepting 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](https://www.gov.uk/government/publications/supplier-code-of-conduct).
  2. The Grant Recipient will immediately notify the Authority if it becomes aware of any actual or suspected breaches of the principles outlined in the Code of Conduct.
  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 12.1.
  4. The Grant Recipient shall at all times during and following the end of the Grant Period:
     1. comply with requirements of the branding manual in relation to the Funded Activities; and
     2. cease use of the ‘Funded by UK Government’ logo on demand if directed to do so by the Authority.

## **Financial irregularity**

* 1. The Grant Recipient shall conduct its business in accordance with Sound Operational Principles and shall take any and all steps to ensure that any persons to whom it pays the Grant Funding also operate on such terms.
  2. The Grant Recipient shall ensure that it has such procedures in place as are required by law to identify any Financial Irregularity or other impropriety in connection with the administration of the Grant Funding.
  3. The Grant Recipient shall notify the Authority immediately of any actual or suspected Financial Irregularity (or any circumstances which are likely in the Grant Recipient’s opinion to result in Financial Irregularity) and indicate the steps that are being taken to address that irregularity.
  4. The Authority shall have the right, at its absolute discretion, to insist on additional steps to be taken by the Grant Recipient to address any actual or suspected Financial Irregularity.

## **Conflict of interest**

* 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:
     1. the Grant Recipient’s eligibility to receive the Grant Funding, or
     2. where the Grant Recipient is responsible for further distribution of the Grant Funding to third parties, its impartiality when administering the Grant Funding.

## **Withholding, suspending or repayment of grant funding**

* 1. Withholding, suspending or repayment of grant funding
     1. Without prejudice to the Authority’s other rights and remedies, the Authority may at its discretion reduce, withhold or suspend payment of the Grant Funding and/or require repayment of all or part of the Grant Funding if one or more of the following events occur:

1. the Grant Recipient uses the Grant Funding for a purpose other than the Approved Project;
2. the delivery of the Approved Project does not start within three (3) months of the Commencement Date and the Grant Recipient has failed to provide the Authority with satisfactory explanation for the delay, or failed to agree a new Commencement Date with the Authority;
3. the Authority considers that the Grant Recipient has not made satisfactory progress with the delivery of the Approved Project;
4. the Grant Recipient fails to comply with any term or condition of the Agreement, including those listed in Schedule 6 and if applicable, fails to remedy such failure within thirty (30) days of receiving written notice from the Authority detailing the non-compliance;
5. the Grant Recipient is, in the opinion of the Authority, delivering the Approved Project in a negligent manner;
6. the Grant Recipient obtains duplicate funding from a third party for the Approved Project;
7. 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 Approved Project and/or the Authority into disrepute;
8. the Grant Recipient provides the Authority with any misleading or inaccurate information;
9. the Authority has incorrectly paid money to the Grant Recipient as a result of administrative error or other reasons;
10. the Grant Recipient commits or has committed a Prohibited Act;
11. the Grant Recipient incurs expenditure on activities that breach international or UK subsidy control obligations or laws or public procurement rules;
12. any member of the Governing Body, 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 Approved 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;
13. a charge is taken on an asset financed wholly or partly from the Grant Funding;
14. 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)
15. 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;
16. the Grant Recipient is struck from 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;
17. an independent assessor or audit report on the Grant Recipient’s accounts refers to a fundamental uncertainty or contains an adverse opinion or a disclaimer of opinion which would materially and adversely affect the Grant Recipient’s ability to deliver its programmes or objectives;
18. a management or other letter from independent assessors or external auditors reveals that the systems operated by the Grant Recipient to ensure compliance with this Agreement are materially unsatisfactory and materially and adversely affect the Grant Recipient’s ability to deliver its programmes or objectives; or
19. The Grant Recipient breaches the Code of Conduct for Grant Recipients 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 9.1; or
20. a court, tribunal or independent body or authority of competent jurisdiction requires any Grant Funding to be recovered by reason of breach of the UK’s obligations under UK subsidy control legislation.
    * 1. Wherever under this Agreement any sum of money is recoverable from or payable by the Grant Recipient (including any sum that the Grant Recipient is liable to pay to the Authority in respect of any breach of this Agreement), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Grant Recipient under this Agreement or under any other agreement or contract with the Authority.
      2. The Grant Recipient shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
      3. Should the Grant Recipient be subject to financial or other difficulties which are capable of having an impact on its effective delivery of the Approved Project or compliance with this Agreement, it will notify the Authority immediately so that, if possible, and without creating any legal obligation, the Authority will have an opportunity (at its absolute discretion) to provide assistance in resolving the problem or to take action to protect the Authority and the Grant Funding.
    1. Withholding, Suspending or Repayment of Grant Funding for Prohibited Subsidies
       1. Without prejudice to the Authority’s other rights and remedies, the Authority may at its discretion reduce, withhold or suspend payment of the Grant Funding and/or require repayment of all or part of the Grant Funding if one or more of the following events occur:

1. The Grant Recipient is convicted of fraud under any other fisheries scheme;
2. The Grant Recipient is found to have committed a serious violation of conservation or management measures in the 12 months before applying;
3. The Grant Recipient or a vessel that they operate has a final finding or a final listing for engaging in Illegal Unreported Unregulated (IUU) fishing made against them or any vessel that they operate by any UK fisheries administration, the flag State of the vessel, for activities by vessels flying its flag; a coastal Member of the World Trade Organization (WTO) Agreement on Fishing Subsidies for activities in areas under its jurisdiction; or the Food and Agriculture Organization (FAO) or a relevant Regional Fisheries Management Organization or Arrangement (RFMO/A) in accordance with the rules and procedures of the relevant UK fisheries administration, flag State, coastal Member, RFMO/A, and relevant international law;
4. The Grant Recipient is convicted of an offence that the MMO considers to be a ‘serious infringement ’ or fraud, in the 12 months before applying; or
5. The Grant Recipient incurs expenditure on any of the activities set out in the applicant guidance on funding for fleet modernisation, for which funding will not be granted.

## **Confidentiality**

* 1. Except to the extent set out in this clause or where disclosure or publication is expressly permitted elsewhere in this Agreement, 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 and to such extent as may be necessary for the performance of the Grant Recipient’s obligations under the Agreement.
  2. The Grant Recipient hereby gives its consent for the Authority to publish this Agreement in its entirety (but with any information which is Confidential Information belonging to the Authority redacted), including from time-to-time agreed changes to the Agreement, to the general public.
  3. The Grant Recipient may only disclose the Authority's Confidential Information to its personnel who are directly involved in the provision of the Approved Project and who need to know the information and shall ensure that such personnel are aware of and shall comply with Grant Recipient’s obligations as to confidentiality.
  4. The Grant Recipient shall not, and shall procure that its staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Agreement.
  5. At the written request of the Authority, the Grant Recipient shall procure that those members of the Grant Recipient’s personnel identified by the Authority sign a confidentiality undertaking prior to commencing any work in accordance with this Agreement.
  6. Clauses 13.1 shall not apply to the extent that:
     1. such disclosure is a requirement of law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
     2. such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
     3. such information was obtained from a third party without obligation of confidentiality;
     4. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
     5. such information is independently developed without access to the other party's Confidential Information.
  7. Nothing in clause 13.1 shall prevent the Authority disclosing any Confidential Information obtained from the Grant Recipient:
     1. for the purpose of the examination and certification of the Authority’s accounts;
     2. for the purpose of any examination 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;
     3. to any government department or any other Contracting Authority and the Grant Recipient hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or
     4. to any consultant, contractor or other person engaged by the Authority,

provided that in disclosing information under clauses 13.7.1 and 13.7.2 above the Authority discloses only 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.

* 1. Nothing in clauses 13.1 to 13.4 shall prevent either party from using any techniques, ideas or Know-How gained during the performance of its obligations under this 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.
  2. In the event that the Grant Recipient fails to comply with clauses 13.1 to 13.4, the Authority reserves the right to terminate the Agreement with immediate effect by notice in writing.
  3. In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the delivery of the Approved Project under the Agreement, the Grant Recipient undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
  4. The Grant Recipient will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the delivery of the Approved Project under the Agreement and will keep a record of such breaches. The Grant Recipient will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Grant Recipient’s obligations under clauses 13.1 to 13.5. The Grant Recipient will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

## **Freedom of information**

* 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.
  2. The Grant Recipient shall, in particular, provide the Authority with:

1. a copy of any information in its possession 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
2. 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.
   1. 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, notwithstanding clause 13 of the Agreement (Confidentiality), the Authority may disclose information:
3. without consulting with the Grant Recipient; or
4. 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 14.3(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 advanced notice, or failing that, to draw the disclosure to the Grant Recipient's attention after any such disclosure.

## **Data protection**

* 1. The Grant Recipient and the Authority will comply at all times with their respective obligations under Data Protection Legislation.
  2. The Grant Recipient agrees that it is the Controller of any Personal Data processed by it pursuant to the Funded Activities and must comply with the provisions set out in this condition 15 and Schedule 5.
  3. To the extent that the Grant Recipient and the Authority share any Personal Data for the purposes of this Grant Funding Agreement, the Parties accept that they are each a separate independent Controller in respect of such Personal Data. Each Party:

1. must comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data;
2. must be individually and separately responsible for its own compliance;
3. are entitled at their own cost to enter into such specific agreements as may be reasonably required to enable each other to comply with their respective duties under the Data Protection Legislation as a result of the arrangements contemplated by this Grant Funding Agreement and give each other all reasonable assistance (including legal assistance) in so complying.
   1. The Parties acknowledge and agree that this Grant Funding 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).
   2. In the event that the Parties believe that there is a Joint Controller relationship, the Parties must seek to agree and enter into a Data Sharing Joint Controller Agreement, all Parties acting reasonably. With respect to compliance with the Data Protection Legislation only and in the event of a conflict between the conditions of this agreement and any Data Sharing Joint Controller Agreement, the terms of the Data Sharing Joint Controller Agreement must take precedence.
   3. Each Party must, 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, and the measures must, at a minimum, comply with the requirements of the Data Protection Legislation.

## **Prevention of bribery**

* 1. The Grant Recipient:
     1. shall not, and shall procure that any of its staff, agents, consultants and sub-contractors shall not, in connection with this Agreement, commit a Prohibited Act;
     2. shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct has been carried out in the UK;
     3. shall comply with the Authority’s anti-bribery policies as updated from time to time;
     4. shall have and shall maintain throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with clauses 16.1.2, 16.1.3 and 16.1.4;
     5. shall promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the Grant Recipient in connection with the Approved Project;
     6. shall immediately notify the Authority in writing if a foreign public official becomes an officer or employee of the Grant Recipient or acquires a direct or indirect interest in the Grant Recipient, and the Grant Recipient warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement;
     7. shall, if requested, provide the Authority with any reasonable assistance, at the Authority’s reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
     8. within one (1) month of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Grant Recipient) compliance with this clause 16 by the Grant Recipient and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Grant Recipient shall provide such supporting evidence of compliance as the Authority may reasonably request.
  2. For the purpose of this clause 16, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purpose of this clause 16, a person associated with the Grant Recipient includes any agent, delegate or subcontractor of the Agent.

## **Intellectual property rights**

* 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.
  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.
  3. Ownership of Third-Party software or other IPR necessary to deliver Funded Activities will remain with the relevant third party.
  4. The Grant Recipient must ensure that it has obtained the relevant agreement of 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.

## **Warranties**

The Grant Recipient warrants, undertakes, and agrees that:

1. it has all necessary resources and expertise to deliver the Approved Project successfully (assuming due receipt of the Grant Funding);
2. it has not committed, nor shall it commit, any Prohibited Act;
3. it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Authority immediately of any significant departure from such legislation, codes or recommendations;
4. it shall comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations, and codes of practice relating to health and safety, which may apply to employees and other persons working on the Approved Project;
5. it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
6. it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
7. all financial and other information concerning the Grant Recipient which has been disclosed to the Authority is to the best of its knowledge and belief, true and accurate;
8. it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Grant Funding;
9. it is not aware of anything in its own affairs, which it has not disclosed to the Authority or any of the Authority’s advisers, which might have influenced the decision of the Authority to make the Grant Funding on the terms contained in this Agreement; and
10. since the date of its last accounts there has been no material change in its financial position or prospects.

## **Insurance and indemnity**

* 1. The Grant Recipient shall, with effect from the Commencement Date, 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 activities or risks associated with the activities for which the Authority provides the Grant Funding. The Grant Recipient shall make its insurance cover available to the Authority on request.
  2. The Authority accepts no liability for any consequences, whether direct or indirect, that may come about from the Grant Recipient running the Approved Project, the use of the Grant Funding or from withdrawal of the Grant Funding. 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 Approved Project, the non-fulfilment of obligations of the Grant Recipient under this Agreement or its obligations to third parties.
  3. Subject to clause 19.2, the Authority’s liability under this Agreement is limited to the amount of the Grant Funding.

## **Public procurement and subsidy control**

* 1. Where the Grant Recipient seeks to procure the supply of any goods, works or services from a third party it shall ensure that contracts or further distribution of the Grant Funding are procured on a basis that secures best value and complies in all material aspects with all relevant UK Legislation on public procurement, including without limitation the Public Contracts Regulations 2015 (SI 2015/102) as applicable.
  2. Where the Grant Recipient reasonably considers that there is an objective justification for not complying with clause 20.1 and seeks to rely on such a justification it shall record this in writing and make this available to the Authority on request.
  3. The Grant Recipient shall not use any of the Grant Funding to carry out any activities that could be constituted as in violation of international or UK subsidy control obligations or laws nor shall it pay or grant any unlawful subsidy to any organisation or individual.

## **Publicity**

* 1. The Grant Recipient shall not publish any material referring to the Approved Project or the Authority without the prior written agreement of the Authority. The Grant Recipient shall acknowledge the support of the Authority in any materials that refer to the Approved Project and in any written or spoken public presentations about the Approved Project. Such acknowledgements (where appropriate or as requested by the Authority) shall 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.
  2. In using the Authority’s name and logo, the Grant Recipient shall comply with all branding guidelines issued by the Authority from time to time.
  3. The Grant Recipient agrees to participate in and co-operate with promotional activities relating to the Approved Project that may be instigated and/or organised by the Authority.
  4. The Authority may acknowledge the Grant Recipient's involvement in the Approved Project as appropriate without prior notice.
  5. The Grant Recipient shall comply with all 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 Approved Project.

## **Environmental requirements**

* 1. The Grant Recipient shall perform the Approved 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.
  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 Approved Project or the environment, to include the use of all packaging, which should be capable of recovery for re-use or recycling.
  3. The Grant Recipient shall take all possible precautions to ensure that any equipment and materials used in the provision of the Approved 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.

## **General**

The Grant Recipient shall use its best endeavours to ensure that in carrying out the Approved Project it and anyone acting on its behalf complies with the law which applies in England. If the Grant Funding will be distributed outside the United Kingdom, the Grant Recipient shall use its best endeavours to ensure that:

(a) such funding does not contravene the laws of any other country; and

* + 1. such funding is not used to support activities which could bring the Authority’s name into disrepute.

## **Assignment**

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

## **Waiver**

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

## **Notices**

All notices and other communications in relation to this 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, as referred to above or otherwise notified in writing. 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.

## **No partnership or agency**

This 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.

## **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 and sign this Agreement on behalf of the Grant Recipient shall be jointly and severally liable for the Grant Recipient's obligations and liabilities arising under this Agreement.

## **Contracts (rights of third parties) act 1999**

This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

## **Termination**

* 1. The Authority shall be entitled to terminate the Agreement and any payment of the Grant Funding by written notice to the Grant Recipient with immediate effect and without compensation if:

1. 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;
2. there is repeated and unremedied failure by the Grant Recipient to comply with a notice given by the Authority relating to the inadequate performance of its obligations under the Agreement and/or any remedial action specified;
3. the Grant Recipient ceases or proposes to cease to carry on its business;
4. 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;
5. the Grant Recipient has committed a Prohibited Act;
6. 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;
   1. In addition to its right of termination in clause 30.1 above, the Authority shall be entitled to terminate this Agreement for any reason on giving the Grant Recipient not less than thirty (30) days written notice.
   2. The Authority shall be entitled to discontinue payment of the Grant Funding on satisfactory completion of the Approved Project for which the Grant Funding is provided or at the end of the Grant Period, whichever is earlier.
   3. Where the Authority discontinues payment of the Grant Funding and/or reduces the amount of Grant Funding, the Authority accepts no liability for any consequences that may come about from the reduction or withdrawal of the Grant Funding.
   4. Where the Authority terminates the Agreement, no further payment of the Grant Funding shall be payable by the Authority to the Grant Recipient except for work carried out by the Grant Recipient relating to the Approved Project prior to termination and in accordance with the Agreement but where the payment has yet to be made by the Authority.
   5. Save as otherwise expressly provided in the Agreement, termination or expiry of the Agreement shall be without prejudice to any rights, remedies or obligations accrued under the Agreement prior to termination or expiration and nothing in the Agreement shall prejudice the right of either party to recover any amount outstanding at such termination or expiry.

## **Dispute resolution**

* 1. All disputes and complaints (except for those which relate to the Authority’s right to withhold funds or terminate this Agreement) shall, in the first instance be referred to the Grant Recipient [named contact] and the Grant Administrator ([ukfisheriessupport@marinemanagement.org.uk](mailto:ukfisheriessupport@marinemanagement.org.uk)).
  2. Should the dispute or complaint remain unresolved within 14 days of the matter first being referred to the individuals named in clause 31.1, either party may refer the matter to the Grant Recipient (or their representative) and the Authority with an instruction to attempt to resolve the matter by agreement within 28 days, or such other period as may be mutually agreed by the Authority and the Grant Recipient.
  3. In the absence of agreement under clause 31.2, the parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate resolution model as is agreed by both parties. Unless otherwise agreed, the parties shall bear the costs and expenses of the mediation equally.

## **Governing law**

* 1. This 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. This does not limit the Authority’s right to commence legal proceedings in any other court of competent jurisdiction, including concurrent proceedings.

## **Assets**

* 1. During the Useful Economic Life of each Asset, the Grant Recipient shall not cease to use the Asset, or any part of the Asset for the Approved Use without the prior written consent of the Authority. If consent is given, it may be subject to any conditions which the Authority may wish to impose. Such conditions may include repayment by the Grant Recipient to the Authority of all or part of the Grant paid to the Grant Recipient under this Grant Funding Agreement.
  2. In respect of any Disposal, the Grant Recipient must not, during the Useful Economic Life of any Asset, 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.
  3. 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

1. the sale of the Assets takes place after the end of the Asset Owning Period;
   1. The liability under condition 33.3 is separate from the liability to comply with any decision of the Authority under condition 12 to require repayment of the whole or any part of the amount paid of the Grant, to the Grant Recipient.
   2. The Grant Recipient shall notify to the Authority in relation to any Disposals which it either intends to make or has made with the prior written consent of the Authority.