

2015

(1) **LANCASHIRE COUNTY COUNCIL**

and

(2) [ ]

**GRANT AGREEMENT RELATING TO [ ]**

**DWF LLP  
1 Scott Place  
2 Hardman Street  
Manchester  
M3 3AA**

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## **THIS AGREEMENT**

Dated

2015

### **BETWEEN:**

- (1) **LANCASHIRE COUNTY COUNCIL** of PO Box 78, County Hall, Fishergate, Preston, Lancashire PR1 8XJ (the **Council**);
- (2) [ ] of [ ](the **Applicant**).

### **BACKGROUND:**

- (A) The Council, as accountable body for the LEP, is awarding this Grant because the aims and objectives of the Project fall within the LEP's agreed priorities for the award of a grant from the LEP's Lancashire Growth Deal programme. The LEP has received funding by virtue of section 31 of the Local Government Act 2003.
- (B) The Council agrees to make the Grant available in the total sum not exceeding the Maximum Sum for the purpose of financially assisting the Project. This Agreement sets out the terms and conditions on which the Grant is made available to the Applicant. These terms and conditions are intended to ensure that the Grant is used for the purposes for which it is awarded.

## **TERMS AGREED**

### **PART A – GENERAL PROVISIONS**

#### **1. Definitions and Interpretation**

##### **1.1 Definitions**

In this Agreement words and phrases with a first capital letter (or any derivation thereof) shall have the meanings set out in Schedule 1. (**Definitions**).

##### **1.2 Interpretation**

In this Agreement:

- (a) references to:
  - (i) any statute or any section thereof or legislation generally include any statutory extension or modification, amendment or re-enactment of such statutes and include all instruments, orders, bye-laws and regulations for the time being made, issued or given thereunder or deriving validity therefrom, and all other legislation of the European Community that is directly applicable to the United Kingdom;

- (ii) any clause, sub-clause, paragraph, sub-paragraph, or Schedule without further designation shall be construed as a reference to the clause, sub-clause, paragraph, sub-paragraph or Schedule to this Agreement so numbered;
  - (iii) the Site or any part thereof includes any estate or interest therein;
  - (iv) **"this Agreement"** includes any variations to this document made from time to time in accordance with this Agreement;
  - (v) **"including"** shall be construed so as not to limit the generality of any words or expressions in connection with which it is used;
- (b) where the consent, approval or agreement of the Council is required pursuant to any clauses of this Agreement, , it shall not be construed as having been given unless provided in writing by the Council's Contract Manager;
  - (c) words importing one gender shall include both genders and the singular shall include the plural and vice versa;
  - (d) a person being connected with the Applicant shall be construed in accordance with the like provisions as are contained in Section 1122 of the Corporation Tax Act 2010;
  - (e) the Schedules form part of this Agreement and subject to clause 1.2(i) have the same force and effect as if expressly set out in the body of this Agreement;
  - (f) the headings in this Agreement will not affect its interpretation;
  - (g) determined or determination means, unless the contrary is indicated a determination made at the discretion of the person making it;
  - (h) the Council shall be construed as references to the LEP, as applicable; and
  - (i) in the event of any conflict between the following documents then they shall have priority in the order listed below (with the first document having priority over the next and so on):
    - (i) the clauses of this Agreement; and then
    - (ii) the schedules of this Agreement.

## **PART B – COMMENCEMENT AND DURATION**

### **2. Commencement and Duration**

- 2.1 This Agreement and the rights and obligations of the parties shall take effect on the Agreement Date and expire or terminate on the earlier of:

- (a) the Longstop Date; or
- (b) the Termination Date.

2.2 Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive expiry or termination and continue in full force and effect until they have been fulfilled

### 3. **The Applicant's Representations, Warranties and Undertakings**

3.1 The Applicant represents, warrants and undertakes to the Council that:

- (a) the Applicant is validly existing and has full power to enter into and perform this Agreement, the execution of this Agreement by the Applicant has been validly authorised and the obligations expressed as being assumed by the Applicant under this Agreement constitute valid legal and binding obligations of the Applicant enforceable against the Applicant;
- (b) an Insolvency Event has not occurred in relation to it;
- (c) neither the execution of this Agreement by the Applicant, the receipt of any part of the Grant nor the performance or observation of any of its obligations under it will:
  - (i) conflict with or result in any breach of any law or enactment or any deed, agreement or other instrument, obligation or duty to which the Applicant is bound;
  - (ii) cause any limitation on any of the powers whatsoever of the Applicant, or on the right or ability of the directors of the Applicant (as applicable) to exercise such powers; or
  - (iii) lead to the Applicant acting outside its respective powers;
- (d) the Applicant is not in default under any law or enactment or under any deed, agreement or other instrument or obligation by which it is bound so as to affect adversely and materially its ability to perform its obligations under this Agreement;
- (e) it has and will continue to have all consents, licences, rights and approvals required in connection with the execution, delivery, issue, validity or enforceability of this Agreement;
- (f) no civil or criminal litigation or administrative or arbitration proceeding before any court, tribunal, Government authority or arbitrator or regulatory investigation or procedure is presently taking place, pending or (to the knowledge, information and belief of the Applicant) threatened against, or against any of the assets of, the Applicant which might have

a material adverse effect on its business, assets, condition or operations or might affect adversely its ability to perform its respective obligations under this Agreement;

- (g) all information, documents and accounts of the Applicant supplied to the Council for its appraisal of the Project for the purposes of this Agreement including the Business Case are true, complete and accurate and no change has occurred since the date on which the same was supplied which renders the same untrue or misleading in any respect and that there has been no adverse change in the business, assets, finances operations affairs or prospects of the Applicant since such information, documents and accounts were provided and all other information supplied from the Applicant is true and accurate;
- (h) neither it nor any member of its Group is subject to an outstanding recovery order following a Commission Decision declaring an aid illegal and incompatible with the Common Market;
- (i) the Applicant has disclosed in writing to the Council all information which would or might reasonably be thought to influence the Council in awarding and/or paying any funding to the Applicant or the amount thereof;
- (j) no person having any charge, lien, encumbrance or other form of security over the Site or any other assets of the Applicant has enforced or given notice of its intention to enforce such security nor has the Applicant done or omitted to do anything which would or might reasonably be expected to cause any person to enforce or exercise its rights to enforce such security;
- (k) the Applicant is not aware, after due diligence and careful enquiry, of anything which materially threatens the success or successful Completion and in the event that it becomes aware of anything which will materially and adversely affect successful Completion it shall promptly notify the Authority in writing of the same;
- (l) no Event of Default has occurred; and
- (m) it has not committed , nor shall it commit , any Prohibited Act;
- (n) it has complied with all Applicable Laws including for the avoidance of doubt the law relating to State Aid in connection with its application for the Grant.

3.2 Where any of the warranties, undertakings and representations in clause 3.1 are given in respect of a state of affairs they shall be deemed given at the date of this Agreement and will be deemed to be repeated by the Applicant when each claim for an instalment of funding is submitted pursuant to clause

12 (Payment of Funding) as if made with reference to the facts and circumstances existing at such date.

- 3.3 No disclaimer or other statement that precludes the right of any person to rely upon the Business Case or any other document that forms part of the Business Case, or has a similar effect, shall apply with respect to the Council or affect the Council's right to enforce any provision of the Agreement.
- 3.4 The Council reserves the right to conduct a verification exercise to determine the veracity (or otherwise) of the representations or statements made by the Applicant either in relation to this Agreement, in the Business Case or at any stage during the development of the Business Case.
- 3.5 The Council reserves the right to conduct a verification exercise on the Applicant itself to determine its financial standing and viability to deliver the Project.

## **PART C – THE PROJECT**

### **4. Project Delivery**

- 4.1 The Applicant shall at all times deliver the Project in accordance with this Agreement.

### **5. Changes and no underwriting from the Council**

- 5.1 The Applicant shall not in any circumstances vary or make any Material Alteration to the Project without the prior written consent of the Council.
- 5.2 The Applicant shall apply for consent under clause 5.1 by completing a Change Request Form in the form set out in Schedule 6.
- 5.3 The Council will use reasonable endeavours to respond to a Change Request Form within 10 Working Days of receipt. Failure to respond within this time shall not deem consent to have been given to the proposed Material Alteration.
- 5.4 A Material Alteration is any alteration which:
  - (a) changes the overall cost of the Project from that detailed in the Expenditure Profile; or
  - (b) results in a change of more than 10% from time to time in any periodic scheduled profile spend as set out in the Expenditure Profile but does not change the overall cost of the Project; or
  - (c) results in an overall change of more than 10% of the aggregate profile spend relating to any head of Qualifying Expenditure as set out in the Expenditure Profile but does not change the overall cost of the Project; or



(d) results in any change of forecast Project Outputs, Project Milestones or Project Outcomes detailed in the Business Case or as specified in Schedule 2 or otherwise by the Council.

5.5 In the event that the Applicant is, or is likely to be perceived to have been by the Council, uncertain of whether a variation is a Material Alteration or not, it shall contact the Council for clarification.

5.6 By making payments of the Grant to the Applicant, neither the Council nor the LEP is underwriting the Project or providing any representation, commitment or guarantee as to the provision of funding.

## 6. The Applicant's Obligations

### 6.1 Warranties

(a) The Applicant warrants and undertakes to the Council that:

- (i) the obligations of the Applicant under this Agreement shall be performed by appropriately qualified and trained personnel with reasonable skill, care and diligence and to such high standards of quality as it is reasonable for the Council to expect in all the circumstances;
- (ii) it shall comply with all Applicable Laws, rules, regulations, codes of practice and guidelines in connection with all activities in respect of the Project including, for the avoidance of doubt, laws relating to State Aid;
- (iii) it has and shall keep in place adequate procedures for dealing with any conflicts of interest when delivering the Project;
- (iv) it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- (v) it shall deliver the Project in accordance with the Business Case and the Project Assessment Criteria;
- (vi) all financial and other information concerning the Applicant which has been disclosed to the Council is to the best of its knowledge and belief, true and accurate;
- (vii) since the date of its last accounts there has been no material change in its financial position or prospects;
- (viii) it shall deliver all Project Outputs, Project Milestones and Project Outcomes, within the milestones or dates set out in Schedule 2, the Business Case or as specified by the Council;
- (ix) it shall deliver the Project and any material part thereof in a good and workmanlike manner, to professional standards and good

**Comment [A1]:** The inclusion of both Project Outcomes and Project Outputs in this Warranty means that any breach will be an event of default and can trigger clawback. This may not be the desired position on every Project. In some cases the intention may be to distinguish between hard outputs (which do link to events of default) and softer outcomes (which do not link to events of default but are simply monitored). The business cases need to be clear as to the intention so that the correct drafting is used in the GFA.

industry practice, with the Consents or otherwise in compliance with all conditions attaching to the Grant, Applicable Laws, including Part II Supply of Goods and Services Act 1982;

- (x) any goods or works supplied or procured by the Applicant forming a part of the Project will be of good and suitable quality and that all services will be provided with due skill and care; and
  - (xi) act at all times reasonably ,in good faith, in accordance with good business ethics and in a manner that reflects and does not harm or damage, whether by way of any act, omission or statement ,the good name, goodwill and reputation of the Council and /or the LEP and/or the Project; and
  - (xii) it has secured funding separate to the Grant to contribute towards the total cost of delivery of the Project as set out in the Business Case within agreed timescales.
- (b) The Applicant acknowledges that the Council will be relying upon the Applicant's skill, expertise and experience in the performance of the Project and also upon the accuracy of all representations or statements made and the advice given by the Applicant in connection with the performance of the Project and the accuracy of any documents conceived, originated, made or developed by the Applicant as part of this Agreement.

## 6.2 Consents

The Applicant shall:

- (a) not carry out any work upon the Site without having obtained all necessary Consents for that work and in particular (but without prejudice to the generality of the foregoing) shall not carry out any work constituting development for which planning permission is required without having obtained detailed planning consent for that work, and shall if requested by the Council produce to it such documents or copy documents as the Council may require to demonstrate satisfaction of its obligations under this paragraph;
- (b) at all times throughout the Project comply with all Consents; and
- (c) ensure that the planning and operation of the Project reflect the principles of Sustainable Development with the aim of ensuring sustainability within the Lancashire region.

## 6.3 Public Procurement

- (a) The Applicant shall:

- (i) adopt EU Procurement Requirements (as required) in connection with the procurement of any of the Works, any Assets or any services in each case in respect of which funding is to be provided by the Council;
- (ii) promptly provide to the Council any information which the Council may request in order to satisfy itself that the Applicant has done so; and
- (iii) ensure that all procurement of any of the Works, any Assets or any services shall deliver value for money by carrying out a quotation exercise involving a minimum of three written quotes.

#### 6.4 **Applicant's Contractors and Employees**

The Applicant shall:

- (a) include in its contracts with suppliers or contractors engaged for the purposes of the Project a written condition undertaking to make payment for the supply of their goods and/or services within thirty (30) days of receipt of the supplier's or contractor's valid and undisputed invoice (provided that such goods and/or services have been supplied in accordance with the terms and conditions of the relevant contract);
- (b) use all reasonable endeavours to ensure that its employees are not claiming any government benefit, where payment of such benefit is precluded due to earnings;
- (c) ensure that its employees who are not EC nationals are legally entitled to be resident in the United Kingdom and, where applicable, have a work permit;
- (d) ensure that it has proper employment policies and procedures in place at all times. The Applicant will pay attention to equalities in the recruitment and selection process and the need to ensure an appropriate balance of staff in the Applicant's organisation;
- (e) maintain all financial records including personnel and payroll records for any staff funded by the Council for at least six years after the Grant has ended. The Applicant will complete all statutory returns for employees and make all relevant payments to cover their pensions and salary deductions, such as income tax and National Insurance contributions;
- (f) undertake in all cases where support is provided on the Grant for the employment of staff issue a contract of employment to such staff that is in compliance with relevant laws and regulations;
- (g) ensure that its employees, suppliers and contractors (and their employees) are suitably skilled and appropriately experienced, trained

qualified and competent in all respects to perform necessary work or tasks in relation to the Project; and

- (h) immediately notify the Council of any claim brought against the Applicant arising out of the Project including any claim made against any supplier or contractor of which the Applicant receives notification.

#### 6.5 **Legislation**

The Applicant shall (and shall procure that its employees, agents suppliers and contractors shall), comply in all respects with all Applicable Laws in relation to the carrying out of the Project, and without prejudice to the generality of the foregoing shall:

- (a) at all times comply with the Equality Act 2010;
- (b) shall provide such evidence to the Council on request of a policy covering equal opportunities including policies to prevent any discrimination on the grounds of colour, race, creed, nationality or any other unjustifiable basis directly or indirectly in relation to the implementation of the Project;
- (c) comply with all relevant requirements contained in or having effect under any legislation relating to health, safety and welfare at work; and
- (d) in the event of any conflict between the Business Case and any Applicable Law, comply with the Applicable Law;
- (e) ensure the Project is completed in accordance with laws relating to State Aid and to maintain appropriate records of compliance with laws relating to State Aid and to take all reasonable steps to assist the Council to respond to any investigation in relation to the Project

#### 6.6 **Insurance**

The Applicant shall at all times during the carrying out of the Project:

- (a) maintain or procure that there are maintained full and proper insurance policies including (but without prejudice to the generality of the foregoing) policies in respect of damage, loss or destruction of all buildings upon the Site and all works undertaken in carrying out the Works and all unfixed goods and materials in connection with such Works and the Assets for in every case the full reinstatement or replacement costs thereof from time to time together with employer's liability insurance and public liability insurance to a minimum cover of such amount as is required by law from time to time (or such greater cover as may be required by the Council from time to time);
- (b) if requested, supply evidence of such insurance policies to the satisfaction of the Council before entering into any arrangement in

respect of any of the Assets or commencing the Works and at any time until Completion ;

- (c) if any building upon the Site or any works forming part of the Works or the Project or any materials or goods required to undertake such Works or any of the Assets are destroyed or damaged (other than as necessary as part of the carrying out of the Works), procure the rebuilding, reinstatement or replacement of such building, work, goods or materials or Assets in accordance with the provisions of this Agreement as soon as reasonably practicable and if the insurance proceeds shall be insufficient the Applicant shall make up any deficiency out of its own monies; and
- (d) not do or omit to do or permit anything to be done or omitted to be done which may render any policy or policies of insurance void or voidable.

#### 6.7 **Notification by the Applicant**

Notwithstanding the provisions of clause 5, the Applicant shall notify, and provide evidence (as requested), to the Council in writing as soon as it is aware:

- (a) in the event of any material change in the information on costs (whether actual or estimated) of carrying out the Project provided for the appraisal of funding or if any event arises which materially affects the continued accuracy of such information;
- (b) of any fact, matter or circumstance of which it becomes aware which would render any information, documents or accounts provided to the Council in relation to the Project to be false or misleading;
- (c) other than that already mentioned in the Business Case and/or Independent Assessment Report in the event of the receipt by it of any other Public Sector Financial Assistance in respect of the Project (or the offer of same) and/or any Revenue;
- (d) of any event, problem or issue which might adversely affect the carrying out and Completion or any part thereof;
- (e) if there are any delays to the Project or it is unable to submit a claim in accordance with the Expenditure Profile set out in this Agreement;
- (f) in the event that the Applicant:
  - (i) becomes a subsidiary (within the meaning of section 1159 of the Companies Act 2006) of another company; or
  - (ii) a person acquires either:
    - (1) 25 % or more of the voting rights in the Applicant, or

- (2) the right to appoint or remove not less than 25% of the board of directors of the Applicant;
- (iii) immediately on the occurrence of an Event of Default;
- (iv) does not intend to claim funding up to the Maximum Sum.

#### 6.8 **Completion**

The Applicant shall:

- (a) procure that Completion shall be achieved and shall give fourteen (14) Working Days prior written notice to the Council of the date when it anticipates that Completion will occur;
- (b) as soon as possible, and not later than five (5) Working Days after Completion, provide to the Council such evidence as the Council may require that Completion has been achieved including where relevant a copy of any certificate of practical completion of the Works (as certified by the Project Manager and the Monitoring Officer of the Applicant) or the Development (as certified by the Employer's Agent) and/or confirmation from the supplier of the Assets and/or any services that the same have been delivered, installed, commissioned, accepted and are operational (as applicable).

#### 6.9 **Further Assurance**

At any time upon the written request of the Council it shall promptly execute and deliver or procure the execution and delivery of any and all such further instruments and documents as may be necessary for the purpose of obtaining for the Council the full benefit of this Agreement and of the rights and powers herein granted and hereby irrevocably appoints the Council its attorney for that purpose. Such instruments and documents may include security documents to secure any repayment obligation of the Applicant relating to the Grant funding under this Agreement.

#### 6.10 **Co-operation**

- (a) The Applicant and the Council shall at all times act with the utmost good faith towards and co-operate with each other;
- (b) The Applicant shall comply with all the Council's reasonable instructions and requirements in relation to the Project from time to time.

#### 6.11 **Funding separate to the Grant**

- (a) Pursuant to clause 6.1(a)(vii), the Applicant shall provide, on the reasonable request of the Council, evidence that it has secured funding separate to the Grant to facilitate the successful Completion.

- (b) The separate funding referred to in clause 6.1(a)(vii) shall constitute at least 10% towards the total cost of the Project.
- (c) The Applicant's Chief Financial Officer (or person within the Applicant's organisation who exercises equivalent functions) shall certify to the Council that the Applicant has the ability to fund Project costs not covered by the Grant, as necessary.

#### **6.12 Duty of care warranty from the Applicant's Employer's Agent**

- (a) The Applicant shall, at its own expense (and not via the Grant), ensure that the Employer's Agent provides a duty of care warranty and Employer's Agent Initial Report to the Council, in a form approved by the Council, in relation to the Development.
- (b) The Applicant shall, at its own expense (and not via the Grant) ensure that the Employer's Agent provides an Employer's Agent Certificate, in the form set out at Schedule 4, Part C, with each claim for Grant which the Applicant makes to the Council.

#### **6.13 Project Manager**

- (a) The Applicant shall appoint a Project Manager, who shall have sufficient decision-making authority to act, or make decisions, on behalf of the Applicant.
- (b) The Project Manager shall be the Council's principal point of contact for all matters related to the Project and the Grant.

#### **6.14 Engagement of the Applicant**

- (a) The Applicant shall procure the delivery of the Project Outputs, Project Milestones and Project Outcomes as set out in this Agreement within the timescales herein set out or otherwise in a timely fashion.
- (b) The Applicant shall adhere to monitoring and evaluation activities as detailed in the Business Case and shall engage with the LEP's wider Assurance Framework as required by the Council or the LEP (as appropriate). The Applicant shall appoint a Monitoring Officer who will ensure compliance with Project Outputs, Project Milestones and Project Outcomes, monitoring and evaluation requirements including the collection, recording and reporting of agreed monitoring and evaluation information data, maintaining and updating any monitoring templates required by the Council or the LEP (as appropriate) and attending and participating in the implementation and delivery of the Growth Deal Evaluation Framework.
- (c) As required, the Applicant shall engage with the longer term evaluation of impacts on project activities and the Project Outputs, Project Milestones and Project Outcomes, co-operate with and support any

Growth Deal Monitoring & Evaluation activities throughout the six year period of the LEP's Growth Deal programme and, additionally, up to three years following conclusion on the LEP's Growth Deal programme.

- (d) If at any time it appears that any of the Project Outputs, Project Milestones and Project Outcomes have not, or will not, be achieved, the Applicant shall present a remedial plan (in the form specified by the Council or the LEP), within seven (7) Working Days, to the LEP for approval.

## **PART D - OBLIGATIONS AND REGULATIONS**

### **7. Intellectual Property Rights**

- 7.1 The Intellectual Property Rights created by the Applicant under the Project (**Project Intellectual Property Rights**) remain the property of the Applicant, but subject always to the following provisions of this clause 7 (Intellectual Property Rights).
- 7.2 The Applicant warrants to the Council that the Project Intellectual Property Rights will not infringe, in whole or in part, any Intellectual Property Right of any other person and agrees to indemnify the Council and hold the Council harmless against any and all claims, demands and proceedings arising against the Council in relation thereto.

### **8. Confidentiality**

- 8.1 This Agreement and all documents and information provided by the Council to the Applicant under or in connection with the performance of this Agreement, or during its negotiation, shall be treated as confidential (**the Confidential Information**). The Confidential Information shall not be used by the Applicant except for the purposes for which they were made available and the Confidential Information shall not be disclosed by the Applicant to any other person without the prior written consent of Council. The Applicant shall ensure that its employees, agents, professional and other advisors, managers and sub-contractors engaged in relation to this Project are under a similar obligation of confidentiality in respect of the Confidential Information. The above restriction shall not apply to the Confidential Information which:
  - (a) the Applicant can demonstrate to the Council's satisfaction it is already in the public domain other than as a result of a breach of this clause 8 (Confidentiality); or
  - (b) is disclosed to the Applicant without any obligation of confidence by a third party who has not derived it directly or indirectly from Council; or
  - (c) is trivial or cannot reasonably be considered to be confidential.



- (d) the obligations of confidentiality contained in this clause 8 (Confidentiality) shall continue after expiry or termination of this Agreement howsoever occasioned.

**9. Freedom of Information**

9.1 Nothing in this Agreement shall prevent the Council from disclosing any Information whether or not relating to the Project which the Council in its absolute discretion considers it is required to disclose in order to comply with the FOIA and/or the Environmental Information Regulations and any other statutory requirements whether or not existing at the date of this Agreement, and the Council reserves the right to make such disclosure without reference to the Applicant.

9.2 If the Council shall at any time notify the Applicant that it has received a Request for Information in respect of which the Council requires the Applicant's assistance then:

- (a) the Applicant shall at its own cost provide and procure that its sub-contractors provide all necessary assistance required by the Council in order to allow the Council to comply with the Request for Information within the period or periods when it is obliged to respond to the Request for Information;
- (b) without limitation to the foregoing the Applicant shall at its own cost within five (5) Working Days of request supply and procure that its sub-contractors supply to the Council such Information and documents requested by the Council in such form as reasonably prescribed by the Council; and
- (c) the Applicant shall ensure that all Information produced in the course of the Project in relation to the Project and/or this Agreement is retained for disclosure and shall permit the Council to inspect such records as required from time to time.

9.3 In the event that the Applicant or its professional advisors shall at any time receive any Request for Information relating to the Project or this Agreement or any activities or business of the Council then:

- (a) the Applicant shall supply the Request for Information to the Council within two (2) Working Days of receipt;
- (b) the Council shall be responsible for determining in its absolute discretion as to whether such Information is obliged to be disclosed; and
- (c) the Applicant shall not respond to the Request for Information or disclose any such Information without the prior written consent of the Council (such consent not to be unreasonably withheld).

## 10. **Data Protection**

- 10.1 In this clause 10 (Data Protection) references to "personal data", " data subjects" and "data processor" are to be interpreted as defined in the Data Protection Act 1998 (**the Act**). The Applicant shall comply with all relevant provisions of the Act and do nothing which causes, or may cause, the Council to be in breach of its obligations under the Act. In particular, to the extent that the Applicant acts as a data processor in respect of any personal data pursuant to this Agreement, the Applicant shall only process such personal data as is necessary to enable it to fulfil its obligations under this Agreement
- 10.2 The Applicant warrants that it has appropriate technical and organisational measures in place to protect any personal data it is processing on the Council's behalf against any unauthorised or unlawful processing and against any accidental loss, destruction or damage and undertakes to maintain such measures during the course of this Agreement. The Applicant shall also take all reasonable steps to ensure the reliability of its staff having access to any such personal data.
- 10.3 The Applicant further warrants that it will monitor and maintain the integrity of its personal data and in full accordance with the Data Protection Principles.
- 10.4 Upon reasonable notice the Applicant shall allow the Council access to any relevant premises owned or controlled by it to enable the Council to inspect its procedures described at clause 10.2 above and will upon the Council's request from time to time prepare a report for it on the technical and organisational measures it has in place to protect the personal data it is processing on the Council's behalf.
- 10.5 The Applicant shall at its own cost, at the Council's request, assist the Council to comply with any requests for access to personal data under section 7 of the Act and in particular shall respond to any such request promptly to enable the Council to comply with its obligations under the Act. When requested by the Council, the Applicant shall at its own cost promptly provide it with any personal data relating to this Agreement.
- 10.6 The Applicant shall indemnify the Council against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against the Council by any person in respect of the Act or equivalent applicable legislation in any other country which claims would not have arisen but for some act, omission, misrepresentation or negligence on the part of the Applicant or its sub-contractors and hold it harmless against all costs, losses and liability whatsoever incurred by it arising out of any action or inaction on its part in relation to any of its obligations as set out in this Agreement which results in the Council being in breach of its obligations under the Act or equivalent applicable legislation in any other country.

- 10.7 The Applicant warrants that it has submitted, pursuant to section 18(1) of the Act, a notification to the Information Commissioner (as defined in the FOIA) and shall keep that notification up to date.
- 10.8 The Applicant shall not transfer any personal data outside the European Economic Area unless authorised in writing to do so by the Council.
- 10.9 Upon the termination of this Agreement for whatever reason the Applicant shall, unless notified otherwise by the Council or required by law, immediately cease any processing of the personal data on the Council's behalf and as requested by the Council destroy or provide the Council with a copy on suitable media.
- 10.10 The Applicant shall promptly carry out any request from the Council requiring it to amend, transfer or delete the personal data or any part of the personal data.
- 10.11 Where the Applicant is required to collect any personal data on behalf of the Council, it shall ensure that it provides the data subjects from whom the personal data are collected with a data protection notice in a form to be agreed with the Council.

## **PART E – PAYMENT, MONITORING AND AUDIT**

### **11. Grant Claims**

11.1 The Applicant shall:

- (a) ensure that all claims for Grant submitted to the Council contain the information set out in Schedule 4 (Claim Form); and
- (b) not make any claim for Grant from the Council unless the Applicant is satisfied that all the conditions specified in clause 11.6 have been met in full.

11.2 Upon receipt of a claim for an instalment of Grant by the Applicant:

- (a) the Council shall review the Transaction List provided as part of the claim (pursuant to clause 11.6(a)(ii)) and shall request such evidence of defrayal, including, but not limited to, certified and dated copies of invoices, BACS report, receipts or proof of payment related to a number of entries detailed on the Transaction List (such number to be determined at the Council's absolute discretion); and
- (b) once the Council has received the evidence requested pursuant to clause 11.2(a), it shall review the evidence and verify the accuracy of the evidence; and

- (c) the Council shall make a payment to the Applicant in respect of the claim within thirty (30) days of the Grant Claim Date provided it is satisfied as to this verification exercise.
- 11.3 Notwithstanding clause 11.2, the Applicant shall provide to the Council such invoices and evidence of defrayal as requested by the Council at its absolute discretion.
- 11.4 Subject to clause 11.5, the Council shall not pay any funding to the Applicant unless it is satisfied that the conditions specified in clause 11.6 have been met in full. The payment of any of the Grant shall not operate as a waiver of any of the conditions set out in clause 11.6, nor exclude or waive the Council's the exercise any of its rights or remedies under this Agreement.
- 11.5 The Council may, in its absolute discretion, and on such terms as it may specify, agree to pay funding to the Applicant before the conditions in clause 11.6 have been met in full, but if the Council does so, this will not prejudice its rights to refuse to pay any further funding until those conditions are met or to exercise its rights to require repayment in accordance with the provisions of this Agreement of the whole or any part of the funding previously paid to the Applicant
- 11.6 The conditions mentioned in clause 11.1 are as follows:
- (a) the claim for an instalment of Grant by the Applicant is for the payment of certified invoices (showing monies incurred and paid by the Applicant) relating to Qualifying Expenditure in accordance with Schedule 3 (Expenditure Profile) and this claim:
    - (i) relates solely to Qualifying Expenditure in relation to which the Applicant has not submitted any other claim to the Council;
    - (ii) includes the Transaction List;
    - (iii) is made quarterly in arrears (unless otherwise agreed by the Council);
    - (iv) is the only claim made in relation to Qualifying Expenditure covering a specific Quarter and is submitted before the 15<sup>th</sup> day of the month immediately following the end of the Quarter to which the claim relates (or where such day is not a Working Day then by the Working Day which is prior to the 15<sup>th</sup> day) (the "**Grant Claim Date**")
  - (b) the Council is satisfied that the Applicant has (and will continue to have) sufficient funding (whether from its own resources or otherwise and including the Grant) to complete the Project by the Longstop Date;
  - (c) the Applicant has satisfied the Council in respect of its cover under policies of insurance applicable to the Project;

- (d) the expenditure to which the claim relates is in accordance with the Expenditure Profile and Business Case and is approved by the Council;
- (e) no Event of Default has occurred or is continuing;
- (f) the representations and warranties made in clauses 3 (The Applicant's Representations, Warranties and Undertakings) and 6 remain true, complete and accurate;
- (g) the claim by the Applicant for an instalment of funding is not in relation to expenditure to make good damage to the Works occasioned by insurable risks or to make good any defects in the Works;
- (h) the Council is satisfied that the relevant part of the Project in relation to which funding is being claimed has been undertaken in accordance with the Agreement;
- (i) the Applicant has complied with all Applicable Laws;
- (j) the Council is satisfied that the relevant part of the Project in relation to which funding is being claimed constitutes value for money; and
- (k) the claim is accompanied by such financial and other information, representations and evidence related to the Project, its milestones and outcomes as requested by the Council.

11.7 To ensure that there is not a significant delay in the commencement of the Project, if the conditions mentioned in clause 11.6 have not been fully complied with and the Applicant's first claim has not been made by the date three (3) months from the date of this Agreement or such later date as the Council may in its absolute discretion agree in writing (whether or not any previous date fixed hereunder has passed), the Council may by notice in writing terminate this Agreement and any sums already paid to the Applicant shall be repaid to the Council forthwith.

## 12. **Payment of Funding**

### 12.1 **Payment details**

- (a) Subject to the provisions of this Agreement the Council shall pay funding (not exceeding in total the Maximum Sum or the Individual Maximum Sums for the relevant heads of the Qualifying Expenditure (identified in Schedule 3)) into the Applicant's bank account at:

(i) [Applicant]

Bank:

Sort Code:

Account:

Account Number:

**No obligation**

- (b) The Council shall be under no obligation to pay the Applicant for any claim:
  - (i) to pay more than the Maximum Sum or the Individual Maximum Sums to the Applicant under this agreement; or
  - (ii) which has been incurred but not yet been paid for by the Applicant.
- (c) Pursuant to clause 12.1(b)(i), in the event that the actual total cost of the Project exceeds, or is likely to exceed, the predicted total cost of the Project specified in the Business Case, the difference in the predicted and actual total Project cost shall be borne entirely by the Applicant.
- (d) The Applicant accepts that the LEP, and the Council as accountable body, is receiving grant funding from the Government's Local Growth Fund by virtue of a discretionary grant provided on an annual basis under section 31 of the Local Government Act 2003 and consequently, the Applicant's receipt of the Grant is likewise conditional on the LEP, and the Council as accountable body, receiving such grant funding from the Government.
- (e) Neither the Council nor the LEP shall be liable for any Grant which cannot be paid to the Applicant due to the cancellation or non-payment of the discretionary grant by the Government to the LEP, or Council as accountable body, at any point during delivery of the Project.
- (f) Claims for Grant shall only be made by the Applicant once grant funding has been provided to the Council, as accountable body for the LEP, from the Government.
- (g) The payment of the Grant by the Council under this Agreement is believed to be outside the scope of Value Added Tax but if any Value Added Tax shall become chargeable all payments comprising the Grant shall be deemed to be inclusive of all Value Added Tax and the Council shall not be obliged to pay any Value Added Tax over and above the Grant. Irrecoverable Value Added Tax shall be an eligible cost of this Project to the extent it is included as such under Schedule 3, (Expenditure Profile)
- (h) The Grant shall be allocated for a particular Financial Year. Any instalment of Grant allocated to a particular Financial Year must:

- (i) be claimed by the Applicant in the Financial Year to which the instalment of the Grant relates, subject to the relevant Qualifying Expenditure being verified; or
- (ii) if claimed in the subsequent Financial Year relate to Qualifying Expenditure identified in the Business Case and in the Expenditure Profile as being forecast to be incurred in the Financial Year to which the instalment of Grant relates, and the reason for the delay in making the claim must be accepted by the Council.

## 12.2 Repayment

- (a) If the Council shall determine that any expenditure previously defrayed to the Applicant and the subject of a prior instalment is not Qualifying Expenditure or if at any time the Council has paid more than it is liable to pay under any provision of this Agreement (each an **Overpayment**), the Applicant shall forthwith on receipt of a demand in writing from the Council setting out the details of the Overpayment, pay to the Council the Overpayment.
- (b) The Council may vary or withhold any or all of the payments of funding under this Agreement and/or require repayment of any or all funding already paid to the extent that repayment is required under or by virtue of any Applicable Laws.
- (c) In the event that the Council (or LEP) is required to repay any of the Grant to the Government either during or after delivery of the Project, the LEP shall reserve the right, at its absolute discretion, to vary, suspend, withhold or require repayment of the Grant paid or payable to the Applicant.
- (d) Any funding required to be repaid by the Applicant to the Council in accordance with this Agreement shall bear Interest and any payments due to the Council shall be made without any deduction whether by way of set off, counterclaim, discount, abatement or otherwise.
- (e) Within twenty-eight (28) Working Days after the final claim for funding following Completion (or (if earlier) twelve (12) months after Completion), the Applicant shall make such payment to the Council as shall be necessary to ensure that the Council has not provided funding in excess of the Maximum Sum.
- (f) Where the Council requires the Applicant to repay any amount of the Grant, the Applicant shall repay the amount concerned within twenty (20) Working Days of receiving the demand for repayment. The liability to meet such a demand shall be enforceable as a contractual debt.

- (g) Where the Council makes a determination to recover any amount of Grant, it may recover the amount concerned by withholding or unilaterally deducting the amount from any sum due from the Council to the Applicant under this Agreement for the support of any other project or activities by the Council, or under a different agreement with the Council.

### 12.3 Variations

- (a) The Council reserves the right to vary the Maximum Sum, any Individual Maximum Sum or to reduce the relevant percentage of the Grant in comparison with the total Project costs in any of the circumstances mentioned below:
  - (i) the issue of a consent by the Council under clause 5.1; or
  - (ii) the receipt by the Applicant of any other Public Sector Financial Assistance (other than that already named in the Business Case and/or the Independent Assessment Report) or Revenue and in such circumstances the amount of variation shall not exceed the amount of any additional funding.
- (b) In the event that the actual total cost of the Project is, or is projected to be, lower than the predicted total cost of the Project as specified in the Business Case, the Maximum Sum shall be reduced in proportion to the reduction in the total Project cost.

## 13. Project Monitoring

### 13.1 Provision of information by the Applicant

The Applicant shall:

- (a) notify the Council in writing no later than six (6) months prior to the Longstop Date that it shall, or shall not, draw down the Grant prior to the Longstop Date;
- (b) procure that the Project Manager and/or any other officers of the Applicant as may reasonably be requested by the Council shall attend such meetings as the Council may reasonably request with the Council and any third parties invited by the Council to review progress in relation to the Project;
- (c) provide (and keep updated) the Council with such information and evidence, either in the form set out at Schedule 4 Part B or otherwise, as the Council may request in connection with the Project and/or this Agreement, on a basis determined by the Council, from the date hereof to three (6) years after the Longstop Date;



- (d) provide monthly progress and risk management reports (to include an insurance review if required) to the Council in the form specified by the Council; and
- (e) from the date of this Agreement until three (3) years after the End Date provide the Council with such information as is available as to the number of persons employed or to be employed on the Site (whether part or full time) after Completion and with such other information as may be requested by the Council as to the benefits derived from the provision of Grants for the Project.

### 13.2 **Post Completion**

The Applicant shall provide to the Council the Exit Report within one month of Completion.

## 14. **Inspection and Audit**

### 14.1 **The Applicant shall:**

- (a) until 6 years after the Longstop Date or, if relevant, for such longer period as may be required by law retain documentary evidence of all capital and revenue purchases to support all amounts claimed from the Council. These records shall include an invoice register of suppliers' and contractors' invoices and all other documents relating to the purchase of Assets, and/or the carrying on of Works and/or services funded by the Council or any amounts claimed under this Agreement;
- (b) allow access to its business premises on two (2) Working Days' notice during 9.00 am – 5.00 pm to the Council's internal auditors or its other duly authorised staff or agents, European Commission, the National Audit Office, the Secretary of State for Business, Innovation and Skills and/or any other regulatory body or governmental or quasi-governmental organisation which has a legitimate interest in this Agreement to inspect such documents and take copies thereof as the Council, considers necessary in connection with this Agreement.
- (c) The Council shall be entitled to interview employees of the Applicant in order to obtain oral and/or written explanations of documents and the Applicant shall provide access to the relevant employees at such times as may be reasonably required to enable the Council to do so. The Council reserves the right to have such staff or agents carry out examinations into the probity, economy, efficiency and effectiveness with which the Applicant has used the Grant in relation to the Project and the performance of this Agreement;
- (d) permit the Council, or persons authorised by it, to inspect, audit and take copies of all reports, books, accounting records and vouchers relating to

the Project which the Council considers relevant and at any date up and until Completion allow the Council to inspect the Site for such purposes;

- (e) permit the Council, or persons authorised by it, to attend meetings at the Site with the Applicant's Project Manager, Employer's Agent or other representatives;
- (f) maintain full and accurate accounts for the Project in accordance with all Applicable Laws and accounting standards and (to the extent that no accounting standard is applicable) use generally accepted accounting principles and practices of the United Kingdom then in force. For the purposes of this clause 14.1(f) "accounting standards" means the statements of standard accounting practice referred to in section 464 of the Companies Act 2006 issued by the Financial Reporting Council (or any successor body);
- (g) until the End Date, annually submit final accounts to the Council within the legal timescale required for filing financial statements. If the final accounts, have not been received within the above timescale, any payment of funding may be suspended until receipt of the relevant documentation and/or previous payments of funding shall, if required by the Council, be repaid to the Council forthwith on demand by the Council; and in addition shall provide such annual final accounts for a further period of up to three years after the End Date if requested by the Council; and
- (h) keep a register of Assets and their locations and provide copies of this to the Council on request.

#### 14.2 **Conflicts of interest and financial irregularities**

- (a) The Applicant and all officers, employees and other persons engaged or consulted by the Applicant in connection with the Project shall not be in a position where there is a conflict of interest and the Applicant shall keep in place formal procedures obliging all such persons to declare any actual or potential personal or financial interest in any matter concerning the Project, and to be excluded from any discussion or decision-making relating to the matter concerned.
- (b) If the Applicant has any grounds for suspecting any financial impropriety in the use of any amount paid under the Agreement, it must notify the Council immediately, explain what steps are being taken to investigate the suspicion, and keep the Council informed about the progress of the investigation. For these purposes "financial impropriety" includes fraud or other impropriety; mismanagement and/or use of Grant for improper purposes.

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

## **PART F – TERMINATION, SUSPENSION, WITHDRAWAL, AND REPAYMENT OF GRANT**

### **15. Events of Default, Remedies and Termination**

#### **15.1 An Event of Default occurs where:**

- (a) Completion has not been achieved by the Longstop Date (time being of the essence) or the Council determines that proper progress in carrying out the Project or any part thereof is not being maintained so as to enable Completion to occur;
- (b) the Council is not satisfied that the Works or any material part thereof have been carried out in a good and workmanlike manner or in accordance with the Consents or otherwise in compliance with all relevant legislation, including Part II Supply of Goods and Services Act 1982;
- (c) the Council is not satisfied that title to the Assets has passed to the Applicant, or that the Assets are of satisfactory quality and fit for their purpose;
- (d) the Council is not satisfied that any other services which have been provided to the Applicant as part of the Project have been provided with reasonable skill and care;
- (e) the Applicant fails to perform or observe or is in breach of any material obligation, Applicable Laws or restriction on its part contained in or implied by this Agreement, or as communicated to the Applicant by the Council;
- (f) any Consent is withdrawn or revoked or expires or is modified or made subject to any condition which in the Council's opinion may materially or adversely affect the Applicant's ability to perform and observe its obligations under this Agreement;
- (g) any representation or warranty made or repeated by the Applicant pursuant to this Agreement, in the Business Case or at any stage during development of the Business Case, or in any statement delivered or made pursuant to it, is misleading, untrue, incomplete or inaccurate, either when made or repeated; or the Applicant has withheld relevant information from the Council;
- (h) there are issues of cost increases or delays to Completion ;

- (i) the Council is of the opinion that, taking into account the funding to be provided under this (and other) Agreements, the Applicant no longer has the necessary resources and funding to complete the Project and there is a real and substantial risk of a shortfall in the financing of the Project;
- (j) the Applicant undergoes an Insolvency Event;
- (k) the Applicant sells or dispose of all or a substantial part of its business or assets;
- (l) the Applicant is convicted (or any officers or representatives of the Applicant are convicted) of a criminal offence related to the business or professional conduct of the Applicant;
- (m) the Applicant commits (or any officers or representatives of the Applicant commit) an act of which in the opinion of the Council constitutes bad faith or is at risk of placing the Council or the Project into disrepute.
- (n) the Applicant is in the opinion of the Council in material default under any other agreement with the Council and such default has not been remedied to the satisfaction of the Council;
- (o) any fraud, or mismanagement of the Grant, has been committed by the Applicant and/or its employees in connection with the Project;
- (p) the activities carried out by the Applicant are distinct or different from the description set out in the Business Case having regard also to the intended function of the Project and the end beneficiaries of the Project;
- (q) the Applicant is deemed by the Council not to be delivering, or capable of delivering, the Project in accordance with the Business Case and/or the Expenditure Profile;
- (r) the Applicant uses the Grant for purposes other than those for which it has been awarded; or
- (s) the Applicant obtains duplicate funding from a third party for any expenditure funded under this Agreement.
- (t) the Applicant commits or has committed Prohibited Act.

15.2 Subject to clauses 15.3 to 15.8(inclusive), where an Event of Default has occurred the Council may by notice in writing to the Applicant:

- (a) suspend the payment of funding under this Agreement for such period as the Council shall determine; and/or
- (b) vary the Maximum Sum and/or any Individual Maximum Sum in which case (subject to the provisions of clause 12.3 (Variation) and provided

no other Event of Default has occurred and is continuing) the payment of funding shall thereafter be made in accordance with the variation notified to the Applicant; and/or

- (c) terminate this Agreement whereupon the Council shall cease to be under any obligation to provide any further funding to the Applicant under this Agreement; and/or
  - (d) require the Applicant to repay the whole or any part of the funding previously paid to the Applicant plus Interest and the Applicant agrees that upon receipt of notice requiring repayment pursuant to this clause 15.2(d) it shall repay the sums required as a debt within twenty (20) Working Days of receipt of such notice.
- 15.3 If the Council suspends the payment of funding pursuant to sub-clause 15.2(a) by reason only of the occurrence of an Event of Default specified in sub-clause 15.1(e) which is, in the opinion of the Council, capable of remedy and the Applicant, after notice in writing from the Council, remedies the relevant breach to the satisfaction of the Council within such period as the Council shall set out in the notice the Council shall not (subject to the other provisions of this Agreement) continue such suspension after the Applicant shall have remedied the relevant breach within such period.
- 15.4 Subject to clause 15.5 the Council shall not by reason only of the occurrence of an Event of Default specified in sub-clause 15.1(e) which is, in the opinion of the Council, capable of remedy, exercise its rights under sub-clauses 15.2(b) to 15.2(d) (inclusive) unless the Council first gives notice in writing to the Applicant requiring the relevant breach to be remedied within such period as the Council shall set out in the notice and the Applicant shall have failed to remedy the said breach to the satisfaction of the Council within such period.
- 15.5 The provisions of clause 15.3 or 15.4 above shall not apply where the Council has prior to the occurrence of an Event of Default had occasion to give notice on the occurrence of a previous Event of Default to the Applicant under either clause 15.3 or 15.4 above.
- 15.6 The exercise by the Council of its rights under sub-clause 15.2 in respect of an Event of Default shall not preclude the exercise thereafter by the Council of any other rights which it may have under sub-clause 15.2 in respect of the same Event of Default.
- 15.7 The exercise by the Council of its rights under sub-clause 15.2 shall be without prejudice to any other right of action or remedy of the Council in respect of any breach by the Applicant of the provisions of this Agreement.
- 15.8 Without prejudice to the Council's rights under sub-clause 15.2, on the occurrence of an Event of Default specified in sub-clause 15.1(h), the Council

shall determine whether to continue to support the Project by considering the following matters:

- (a) whether cost increases or delays were unforeseeable and/or unavoidable;
- (b) if the Applicant can fund any cost increase resources other than the Grant;
- (c) whether additional funding has been sought from sources other than the Council;
- (d) if the scale of the Project can be reduced to fit the available budget;
- (e) the impact of any cost increase on the Project's value for money assessment;
- (f) whether any delay can be accommodated within the programme for delivery of the Project; and
- (g) any other relevant factors.

## **PART G – GENERAL PROVISIONS**

### **16. Exclusion of Liability**

- 16.1 The Council shall not be liable to the other party (so far as permitted by law) for direct or indirect special or consequential loss or damage in connection with this Agreement or for any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities, in each case whether direct or indirect.
- 16.2 With respect to other claims so far as permitted by law the Council shall under no circumstances whatever be liable to the Applicant whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any losses arising under or in connection with this Agreement.
- 16.3 Nothing in this Agreement shall exclude or limit either party's liability for death or personal injury caused by its negligence or any other liability which cannot be limited or excluded by law.
- 16.4 The Applicant shall be solely responsible for the successful Completion and any failure to complete the Project shall be borne entirely by the Applicant and shall not be the responsibility of the Council or the LEP.

### **17. Publicity**

#### **17.1 Marketing Material**

The Applicant shall:

- (a) comply fully at all times with the Communications Protocol as set out in the LEP Assurance Framework;
- (b) comply with the requirement that all signage and other marketing material shall feature the LEP Logo alongside that of the Applicant and, where appropriate, any other funder's logo (as required);and
- (c) comply with requirements relating to media handling as set out in the Communications Protocol.

#### 17.2 **Council Logo**

- (a) The Council grants the Applicant during the term of this Agreement a non-exclusive licence to use the Council Logo only for the purposes set out in sub-clause 17.1 (Marketing Material). The Applicant shall not assign or grant sub-licences of this licence or any part of it and shall not use the Council Logo for any other purpose.
- (b) The Applicant acknowledges that the Council Logo is owned by and shall remain the property of the Council. The Applicant shall not acquire any further or other rights in respect of the Council Logo by reason of the exercise of the rights granted by this Agreement.
- (c) As necessary, the Council may require the Applicant to enter into a parallel arrangement with the LEP regarding use of the LEP Logo.

#### 18. **Reputation of the Council**

The Applicant shall not, and shall procure that its suppliers and contractors shall not, knowingly do or omit to do, anything in relation to this Agreement, the Project or in the course of their other activities, which may bring the standing of the Council into disrepute or attract adverse publicity for the Council.

#### 19. **Assignment and Subcontracting**

- 19.1 This Agreement is personal to the Applicant who shall not, without the prior written consent of the Council (in its absolute discretion), assign, transfer, charge or deal in any other manner with this Agreement or its rights under it or part of it, or purport to do any of the same, or sub-contract any or all of its obligations under this Agreement. Any such consent if given may be made subject to any conditions which the Council considers necessary.
- 19.2 The Council may withdraw its consent to any sub-contracting where it has reasonable grounds to no longer approve the sub-contract or the sub-contracting arrangement and where these grounds have been presented in writing to the Applicant.

19.3 The Applicant shall be liable for the acts, omissions and negligence of its sub-contractors and shall ensure that terms equivalent to those contained in this Agreement are passed on to sub-contractors.

19.4 To the extent that it is compatible with EU Procurement Requirements, the Applicant (and its sub-contractors) shall ensure that the Social Value Act 2012 is observed in any procurement processes.

## 20. **Status of Applicant**

20.1 In carrying out its obligations under this Agreement the Applicant agrees that it will be acting for its own account as principal and not as the agent or partner of the Council.

20.2 The Applicant shall not say or do anything which may pledge the credit of or otherwise bind Council or that may lead any other person to believe that the Applicant is acting as the agent of Council.

20.3 None of the Applicant's employees, secondees or sub-contractors shall at any time be regarded as employees of the Council.

## 21. **Notices**

21.1 Subject to clause 1.2 (b), any notice required to be served under this Agreement shall be in writing, served, in the case of notice served upon the Council, by personal delivery or by sending it by recorded postal delivery to PO Box 78, County Hall, Fishergate, Preston, Lancashire PR1 8XJ marked for the attention of Director of Development and Corporate Services or such other address as shall from time to time be notified in writing by the Council to the Applicant, and in the case of notice to be served upon the Applicant by delivering or sending it to the address specified in this Agreement or such other address as shall from time to time be notified in writing by the Applicant to the Council in the same manner.

21.2 Any such written notice shall (where sent by post) be deemed to have been served and received on the second business day following the day of posting and where delivered personally be deemed to have been given at the time of delivery.

21.3 If the Applicant shall comprise more than one person the service of any notice demand request or other communication on any one of such persons shall constitute good service on all of them.

## 22. **Prevention of Bribery**

22.1 The Applicant:

- (a) shall not, and shall procure that any of its staff shall not, in connection with this Agreement commit a Prohibited Act;



- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council or the LEP, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.

22.2 The Applicant shall:

- (a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;
- (b) if so requested within fourteen (14) Working Days of the Agreement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Applicant) compliance with this clause 22 by the Applicant; The Applicant shall provide such supporting evidence of compliance as the Authority may reasonably request.

22.3 The Applicant shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent the Applicant or its staff from committing a Prohibited Act and shall enforce it where appropriate.

22.4 If any breach of clause 22.1 is suspected or known, the Applicant must notify the Council immediately.

22.5 If the Applicant notifies the Council that it suspects or knows that there may be a breach of clause 22.1, the Applicant must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for 7 years following the expiry or termination of this Agreement.

22.6 The Council may terminate this Agreement by written notice with immediate effect if the Applicant or its personnel (in all cases whether or not acting with the Applicant's knowledge) breaches clause 22.1. In determining whether to exercise the right of termination under this clause 22.6, the Council shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by a senior officer of the Applicant or by an employee of the Applicant not acting independently of the Applicant. The expression "not acting independently of" (when used in relation to the Applicant) means and shall be construed as acting:

- (a) with the authority; or,
- (b) with the actual knowledge of any one or more of the directors of the Applicant (as the case may be); or

- (c) in circumstances where any one or more of the directors of the Applicant ought reasonably to have had knowledge.
- 22.7 Any notice of termination under clause 22.6 must specify:
- (a) the nature of the Prohibited Act;
  - (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
  - (c) the date on which this Agreement will terminate.
- 22.8 Notwithstanding the provisions of clause 26 (Dispute Resolution), any dispute relating to:
- (a) the interpretation of clause 22; or
  - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.
- 22.9 Any termination under clause 22.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.
23. **Jurisdiction**
- This Agreement shall be governed by and construed in accordance with the Law of England and the parties submit to the exclusive jurisdiction of the English Courts.
24. **Survival of this Agreement**
- 24.1 Insofar as any of the rights and powers of the Council provided for in this Agreement shall or may be exercised or exercisable after the termination or expiry of this Agreement, the provisions of this Agreement conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry.
- 24.2 Insofar as any of the obligations of the Applicant provided for in this Agreement remain to be discharged after the termination or expiry of this Agreement, the provisions of this Agreement shall survive and remain in full force and effect notwithstanding such termination or expiry.
- 24.3 Any provisions of this Agreement as are necessary to give effect to this Clause 24 are expressly agreed by the parties to survive the termination or expiry of this Agreement.
25. **[Provisions Relating to State Aid**
- 25.1 Provision of State funds to the Applicant is made in accordance with

- (a) the Commission Regulation (EU) No 651/2014 of 17 June 2014 (General Block Exemption Regulation (GBER)) declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty; and
  - (b) the European Guidelines on regional State aid for 2014-2020; and
  - (c) any other relevant and applicable law relating to State Aid
- 25.2 In compliance with the requirement of the Commission for providers of aid under GBER to notify the Commission via the State aid Interactive System (SANI), the [Council] has registered the [ Growth Deal 3 Programme]', case reference SA.[ ] with the European Commission. Projects in receipt of State aid under GBER will be recorded under this scheme. Details can be found on the LEP website [[http://nelep.co.uk/funding/north-east-growth-deal/.](http://nelep.co.uk/funding/north-east-growth-deal/)]
- [Or
- 25.3 Provision of State Funds to the Applicant is made in a non-aid basis based on the statement provided within the approved Business Case that XX.
- [OR
- 25.4 [Other State aid compliant route as advised following State aid assessment]
- 25.5 To secure transparency that the Funding will be exclusively for the Works as set out within the approved Business Case, the Funding shall be ringfenced within the Applicants accounts.
- 25.6 The Applicant shall comply with all applicable European Union Regulations and Guidance in relation to State aid and shall ensure that all requirements for the application of GBER are met including those relating to monitoring, aid intensities and maximum aid thresholds.
- 25.7 No payments shall be made to the Applicant if it becomes subject to a recovery order following a previous EU Commission decision declaring any aid illegal and incompatible with the internal market.
- 25.8 The Applicant confirms that it is not a company in difficulty as defined in Article 2 (18) of GBER and commits to informing the Council as soon as reasonably practicable of any change in this status. The Council reserves the right to terminate this Agreement if the Applicant's status changes.
- 25.9 The Council confirms that, prior to the start of the Project, an application was submitted by the Applicant which confirmed the Applicant's name and size; description of the Project, including its start and end dates; location of the Project; list of Project costs; type of aid and amount of public funding required.

- 25.10 The Applicant has informed the Council of any other public funding applied for or awarded against the Eligible Expenditure covered by this Agreement. The Council has ensured that the total public funding for the Project is within the amounts permitted by GBER.
- 25.11 In accordance with Clause 25.2 above the NECA is responsible for informing the EU Commission of aid awards to the Applicant, including summary notification of the aid to the Commission via the electronic notification system and publication of details of the aid as required from 1st July 2016.
- 25.12 [for award in excess of €500,000: The Applicant consents to the publication of the following information: Name of the Applicant, Applicant's identifier, type of enterprise (SME/large) at the time of granting, region in which the Applicant 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. For schemes under Articles 16 and 21, name of the entrusted entity, and the names of the selected financial intermediaries.]
- 25.13 The Council and the Applicant are jointly and individually responsible for maintaining detailed records with the information and supporting documentation necessary to establish that all the conditions set out in this Agreement and the GBER are fulfilled. Such records shall be maintained for 10 (ten) years following the granting of the aid and shall be made available to the EU Commission within a period of 20 working days if requested.
- 25.14 The Council may monitor the Applicant's compliance with the requirements of clause 25.9 and for the avoidance of doubt any failure to comply with such requirements (where applicable) shall be deemed an Event of Default for the purposes of clause 15.1(g) as informed by clause 6.1 (a) (ii).
- 25.15 Further to clause 15.2, the Council may vary or withhold any or all of the Funding and/or require repayment of the Funding already paid, together with Interest from the date of payment of the Funding, if the Council is required to do so as a result of a decision by the EU Commission in relation to a breach of State Aid law.

## 26. **Dispute Resolution**

- 26.1 All disputes and differences arising out of or in connection with this Agreement (a "**Dispute**") shall be resolved pursuant to the terms of this Clause 26 (Dispute Resolution).
- 26.2 In the event that a party to this Agreement considers that a Dispute exists in relation to this Agreement, such party shall serve a notice upon the other party (a "**Notice of Dispute**") giving brief details of the Dispute and in the first instance the parties shall use their reasonable endeavours to resolve such

Dispute amicably and in good faith and in accordance with this Clause 26 (Dispute Resolution).

- 26.3 Representatives of the parties shall meet within five (5) Working Days (or such other longer period not exceeding twenty (20) Working Days as those parties may agree) of receipt of a Notice of Dispute.
- 26.4 Where no representatives of the parties are available to meet within the period set out in clause 26.3, or the representatives fail to agree a unanimous resolution of the Dispute at such meeting, the Dispute shall be referred to the chief executives (or nominated deputies) of the Parties (the “**Senior Executives**”).
- 26.5 The Senior Executives shall meet within ten (10) Business Days (or such other longer period not exceeding twenty (20) Business Days as the disputing parties may agree) of such referral to attempt to resolve the Dispute. Any unanimous resolution of the Senior Executives shall be recorded in writing and signed by them and shall be final and binding unless those parties agree otherwise.
- 26.6 Where the Senior Executives are unable to meet within the period set out in clause 26.5, or the Senior Executives fail to agree a unanimous resolution of the Dispute at such meeting, the Dispute shall be finally resolved in the English Courts, which the parties agree shall have exclusive jurisdiction to settle the Dispute in accordance with English law as specified in clause 23.

## 27. **Miscellaneous**

- 27.1 Nothing in this Agreement shall constitute a partnership or joint venture or agency between the parties hereto for any purpose whatsoever and the Applicant must not represent itself to others as an agent of the Council.
- 27.2 A certificate by the Council as to any sum payable hereunder by the Applicant shall be conclusive save in the case of manifest error.
- 27.3 Without prejudice to clause 12.3 (Variations) this Agreement may only be amended by a written document signed by the Council and the Applicant.
- 27.4 If at any time any of the provisions of this Agreement become illegal, invalid or unenforceable in any respect under any law or regulation of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement shall be in any way affected or impaired as a result.
- 27.5 Nothing in this Agreement nor any other document shall impose any obligation or liability on the Council with respect to any actions of or obligations or liabilities assumed or incurred by the Applicant or its agents, contractors or employees whether under contract, statute or otherwise.

- 27.6 Any approval by the Council or any person on behalf of the Council pursuant to this Agreement of any matter submitted by the Applicant for approval shall not be deemed to be an Acknowledgment by the Council of the correctness or suitability of the contents of the subject of the approval or consent.
- 27.7 The fact that the Council or its representatives have supplied or received any documents or Information or attended any meeting shall not in itself imply approval of any matters raised in any such document, information or meeting or relieve the Applicant of any obligation or liability in respect of the Project or otherwise.
- 27.8 Nothing in this Agreement shall affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication to come into force or continue in force upon termination or expiry of this Agreement.
- 27.9 No failure or delay on the part of the Council in exercising any right or power or remedy and no course of dealing between the parties hereto shall operate as a waiver nor shall any single or partial exercise of any right or power or remedy of the Council prevent or restrict any other or further exercise thereof or the exercise of any other right or power or remedy of the Council. The rights powers and remedies of the Council are cumulative and not exclusive of any rights powers or remedies which the Council would otherwise have.
- 27.10 Nothing contained in or done under this Agreement and no consents given by the Council shall prejudice any of the Council's rights, powers remedies or duties and/or obligations in the exercise of its functions or under any statutes, bye-laws, instruments orders or regulations.
- 27.11 The Council shall not be liable to the Applicant for any advice given by a representative of the Council. In addition, the Council gives no assurance as to the suitability or viability of the Project and no endorsement of the same.
- 27.12 Nothing in this Agreement shall confer any rights or obligations on any person who has not executed this Agreement nor shall the consent of any person who has not so executed this Agreement be needed to make any modification, amendment, variation or release of the terms hereof. The parties to this Agreement expressly agree for the purposes of the Contracts (Rights of Third Parties) Act 1999 that they do not intend any person other than a party to this Agreement to be able to enforce any term of this Agreement.
- 27.13 Any consent, agreement or approval of the Council shall be in the Council's absolute discretion and may be given subject to such restrictions, terms or conditions as the Council may impose.
- 27.14 This Agreement and the documents referred to in it, constitute the entire agreement between the parties and supersede and replace any previous

agreement, understanding, representation or arrangement of any nature between the parties relating to the subject matter of this Agreement.

**IN WITNESS** of which this Agreement has been executed by the parties as a Deed and is intended to be and is delivered on the date first above written

## SCHEDULE 1

### Definitions

<b>Agreement Date</b>	means the date of this Agreement
<b>Applicable Laws</b>	means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives, conditions, rules or requirements of any regulatory body or relevant authority, delegated or subordinate legislation or notice of any regulatory body, including State Aid law, European Union law and EU Procurement Requirements, where applicable
<b>Assets</b>	means all assets, materials, items, objects, equipment, software, furniture which are to be purchased, installed, commissioned or tested as part of the Project
<b>Building Contract</b>	means the [ ] relating to the Development made between the Applicant and [ ], or any other permitted replacement, design and/or build agreement entered into as a deed in a form and substance acceptable to the Council
<b>Business Case</b>	means the Applicant's business case (both outline or detailed), business plan submitted to, and independently appraised and approved by, the LEP and the Council for funding as set out in Part B to Schedule 2 (the Project) and all additional and subsequent information, clarification, representations made in any meetings with the LEP or the Council or documents which have been provided by the Applicant in support of such application for funding
<b>Change Request Form</b>	means the Form by which the Applicant notifies the Council of a Material Alteration pursuant to Clause 5
<b>Completion</b>	means completion of the Project (which includes any Works, the purchase, installation, testing, commissioning, and acceptance of any Assets and/or the completion of any services or training] in each case to the satisfaction of the Council
<b>Consents</b>	includes any approval, authorisation, consent, exemption, licence, permit, permission or registration



by of or from any governmental or other authority or any person including but not limited to consents required from the Applicant's landlord (if any), any adjoining owner or any mortgagee of the Site or from the local planning authority in relation to the Project or any part thereof or otherwise required to enable the same to be lawfully carried out and maintained

**Contract Manager** means the Growth Deal Programme Manager of PO Box 78, County Hall, Fishergate, Preston, Lancashire PR1 8XJ (email: growthdeal@lancashire.gov.uk) or such other person as the Council may notify to the Applicant in writing

**Cost Overrun** means expenditure incurred or to be incurred in relation to the Project, which is above that which has been agreed in the Expenditure Profile

**Council Logo** the Council's logo in such form as may be provided to the Applicant by Council upon request.

**Development** means the element or proportion of the Works which the Employer's Agent alone is responsible for monitoring;

**Employer's Agent** means the relevant professional approved by the Council, and appointed by the Applicant, who is instructed to act independently of the Applicant to monitor the progress of the Development. The discretion of such professional shall not be fettered by the Applicant, and/or anyone acting on behalf of the Applicant, whilst undertaking its services under this appointment including but not limited to:

- (a) monitoring progress of the Development;
- (b) preparing the Employer's Agent Initial Report; and
- (c) issuing the Employer's Agent Certificates.

**Employer's Agent Certificate** means a document prepared by the Employer's Agent and addressed to the Council, in a form and substance satisfactory in all respects to the Council, confirming, in relation the Development:

- (a) the value of the work in progress;
- (b) the expenditure incurred (for which payment is

requested) is in accordance with the Expenditure Profile;

(c) the Development is progressing in accordance with the Expenditure Profile;

(d) there is no outstanding Cost Overrun;

(e) the undrawn proportion of the Grant (which relates to the Development), together with the undrawn proportion of any other funding streams detailed in the Expenditure Profile, is sufficient to meet the remaining costs for completing the Development

**Employer's Agent Initial Report**

means a report addressed to the Council from the Employer's Agent confirming that any conditions to be fulfilled or agreed, or any of the Consents required prior to commencement of the Development, have been fulfilled and/or obtained and timescales and costs set out in the the Expenditure Profile are realistic, the Employer's Requirements and Contractor's Proposals are reasonable and are representative of the requirements and proposals which a competent surveyor would ordinarily expect for a development of the scale and nature of the Development

**Employer's Requirements and Contractor's Proposals**

means those requirements and proposals set out in the Building Contract

**End Date**

means the Completion of the Project, as notified by the Applicant and the Employer's Agent to the Council in accordance with clause 6.8

**Environmental Information Regulations**

means the Environmental Information Regulations 2004

**EU Procurement Requirements**

means all requirements based on EU Directive 2014/24/EU OJL 94/65 of 28.03.2014 and principles of equal treatment, non-discrimination, transparency and fairness inherent in the Treaty for the Functioning of the European Union and including the

## Public Contract Regulations 2015

<b>Event of Default</b>	means any of the events or circumstances described in clause 15.1
<b>Exit Report</b>	means the exit report in the form annexed as Schedule 5 (Exit Report)
<b>Expenditure Profile</b>	means the profile detailing how Qualifying Expenditure will be incurred as comprised in Schedule 3 (Qualifying Expenditure) and as amended from time to time with the prior written consent of the Council
<b>Financial Year</b>	1 April – 31 March
<b>FOIA</b>	means the Freedom of Information Act 2000, as amended or replaced from time to time, and any subordinate legislation made thereunder from time to time together with any guidance and/or codes of practice issued pursuant to or in relation to such legislation
<b>Grant</b>	means the funding up to the Maximum Sum payable pursuant to this Agreement as set out in Schedule 3 (Qualifying Expenditure)
<b>Grant Claim Date</b>	means the date on which a claim for Grant instalment is to be submitted in respect of each Quarter pursuant to clause 11.6(a)(iv)
<b>Group</b>	means any subsidiary or holding company of the Applicant or any subsidiary of such holding company (where subsidiary and holding company have the meanings given to such terms in section 1159 Companies Act 2006)
<b>Independent Assessment Report</b>	The Report dated [ ] as set out in Part C of Schedule 2 (the Project)]
<b>Individual Initial Estimated Qualifying Expenditure</b>	means the individual initial estimated qualifying expenditures indicated against the heads of Qualifying Expenditure in Schedule 3 (Qualifying Expenditure) which in aggregate comprise the Initial Estimated Qualifying Expenditure
<b>Individual Maximum Sums</b>	means the individual maximum sums indicated against the heads of Qualifying Expenditure in Schedule 3 (Expenditure Profile) (within the tolerance referred to in clause 5.4 (c) or as adjusted under

clause 12.3) which in aggregate comprises the Maximum Sum

**Initial Estimated Qualifying Expenditure**

means the initial estimated qualifying expenditure set out in Schedule 3 (Qualifying Expenditure)

**Information**

has the meaning given under section 84 of the FOIA

**Insolvency Event**

in relation to a party, any of the following events:

- (a) it is or admits that it is unable to pay its debts as defined in section 123 Insolvency Act 1986;
- (b) it takes any step with a view to renegotiating or compromising in satisfaction of its debts (including by way of a scheme of arrangement or creditors voluntary arrangement), except for the purposes of a bona fide solvent reconstruction or amalgamation;
- (c) any step is taken (whether a notice, petition, resolution, order or otherwise) in relation to its winding up, and (where capable of being set aside) is not set aside within seven (7) Working Days;
- (d) any person becomes entitled to appoint an administrator, administrative receiver or receiver, enforce any security interest it has or take any other valid steps to enforce a debt, in each case in relation to that party or any of its assets;
- (e) any step is taken (including by way of an application, petition or notice of intention) to appoint a liquidator, administrator, receiver or administrative receiver, or any such officer is appointed, in each case over that party or any of its assets;
- (f) any other valid step is taken to enforce any security interest or otherwise enforce any debt in relation to that party or any of its assets;
- (g) it ceases or suspends or threatens to cease or suspend all or any material part of its business or payment of any of its debts (other than due to a bona fide dispute); or

- (h) any step is taken in any jurisdiction that is the same or similar in effect to any of those set out above.

**Interest** means 100 per cent basis points above the Reference Rate on the date of payment as calculated in accordance with European Commission Communication on the calculation of reference and discount rates 2008/C 14/02

**Intellectual Property Rights** means all patents, know-how, registered trade marks, registered designs, utility models, applications and rights to apply for any of the foregoing unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention discovery or process in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions

**LEP** means the Lancashire Enterprise Partnership Limited (CRN: 07388600) of County Hall, Preston, Lancashire PR1 8XJ

**LEP Logo** the LEP's logo in such form as may be provided to the Applicant by the Council upon request.

**Longstop Date** means [ ]

**Material Alteration** means an alteration as detailed in clause 5

**Maximum Sum** means £[ ] (as may be adjusted under sub-clause 12.3)

**Monitoring Officer** means the Finance Director of the Applicant, being the monitoring officer appointed by the Applicant for the Project pursuant to clause 6.14(b) or his replacement from time to time notified to and approved by the Council in writing

**Prohibited Act** means:

(a) offering, giving or agreeing to give to any servant of the Council any gift or consideration of any kind as an inducement or reward for:

- (i) doing or not doing (or for having done or not having done) any act in relation to the

obtaining or performance of this Agreement or any other agreement contract with the Council; or

(ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement contract with the Council ;

(b) entering into this Agreement or any other agreementcontract with the Council where a commission has been paid or has been agreed to be paid by the Applicant or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Council;

(c) committing any offence:

(i) under the Bribery Act 2010;

(ii) under legislation creating offences in respect of fraudulent acts; or

(iii) at common law in respect of fraudulent acts in relation to this Agreement or any other agreementcontract with the Council ; or

(iv) defrauding or attempting to defraud or conspiring to defraud the Council.

<b>Project</b>	means the project and the activities more particularly described in Schedule 2 (The Project)
<b>Project Assessment Criteria</b>	means the Lancashire Growth Deal project assessment criteria of strategic relevance, economic impact, employment creation, housing growth, private leverage, deliverability and scalability as applicable or as communicated to the Applicant by the Council
<b>Project Manager</b>	means [ ] of Applicant, being the project manager appointed by the Applicant for the Project or his replacement from time to time notified to and approved by the Council in writing
<b>Project Manager and Monitoring</b>	means a certificate prepared by the Project Manager and the Monitoring Officer and addressed to the Council, in a form and substance satisfactory in all

<b>Officer Certificate</b>	<p>respects to the Council, confirming that:</p> <ul style="list-style-type: none"> <li>a) Qualifying Expenditure has been incurred;</li> <li>b) the Project will be delivered and outcomes/milestones achieved within budget/delivery timescale of the Project;</li> <li>c) the terms of this Agreement have been satisfied;</li> <li>d) only declared public funds have been used in relation to the Project;</li> <li>e) there is no outstanding Cost Overrun other than one which falls below the threshold of a Material Alteration or one which has been notified to the Council via a Change Request Form and has been approved by the Council;</li> </ul>
<b>Project Milestones</b>	means the project milestones detailed in Schedule 2 (including the Business Plan at Part B of Schedule 2)
<b>Project Outcomes</b>	means the project outcomes detailed in Schedule 2 (including the Business Plan at Part B of Schedule 2)
<b>Project Outputs</b>	means the project outputs detailed in Schedule 2 (including the Business Plan at Part B of Schedule 2)
<b>Public Sector Financial Assistance</b>	means any funding received or receivable by the Applicant from public sector bodies including for this purpose funding from the European Commission, government bodies (whether national or local) or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Acts 1993 and 1998
<b>Qualifying Expenditure</b>	means costs (estimated to be in total the Initial Estimated Qualifying Expenditure) which the Council is satisfied have been reasonably and properly incurred and paid by the Applicant in completing the Project, in accordance with the Business Case and/or as directed by the Council, which fall under the Expenditure Profile listed in Schedule 3 ( <b>Expenditure Profile</b> )
<b>Quarter</b>	means, in each Financial Year, 30 June, 30

September, 31 December and 31 March

<b>Request for Information</b>	has the meaning in the FOIA or any apparent request for information under the FOIA, the Environmental Information Regulations or the Code of Practice on Access to Government Information (2nd Edition)
<b>Revenue</b>	means any income or revenue received by the Applicant from any source as a result of or in connection with the Project which has not been taken into account by the Council in appraising the Project
<b>Site</b>	means the new premises of the Applicant at [ ]
<b>Sustainable Development</b>	means social progress which recognises the needs of everyone, effective protection of the environment, prudent use of natural resources and economic development that is inclusive, efficient and stable
<b>Termination Date</b>	means any date of early termination of this Agreement in accordance with clause 15 (Events of Default, Remedies, and Termination)
<b>Transaction List</b>	means an itemised list of individual transactions of expenditure relating to a particular claim for an instalment of Grant which details, in respect of each individual transaction,: <ul style="list-style-type: none"><li>a) the nature of the payment;</li><li>b) the name of the contractor/ supplier;</li><li>c) the unique reference number;</li><li>d) the transaction date;</li><li>e) the invoice amount together with VAT (shown separately);</li><li>f) the date of payment of the invoice; and</li><li>g) any other information related to the transaction which the Council reasonably requests</li></ul>
<b>State Aid</b>	means the law embodied in Articles 107-109 of Section 2, Title VII of the Common Rules on Competition, Taxation and Approximation of Laws – Consolidated versions of the Treaty on the European Union and the Treaty on the Functioning of the European Union (2008/C 115/01)
<b>the Works</b>	means the engineering or construction works and/or any activities in relation to any Assets, or at the Site, described in Schedule 2 (The Project) as varied



pursuant to any consent given by the Council under clause 5 (Changes to the Project)

**Working Day**

means any day other than a Saturday, a Sunday, a day which is a bank holiday in England or any day between 23rd December and 2nd January inclusive in each year and "**Working Days**" shall be construed accordingly

## **SCHEDULE 2**

### **The Project**

## **SCHEDULE 2**

### **The Project**

#### **Part A – The Project**

**The Project to be delivered by the Applicant involves:**

[DN: A brief summary of the Project should be included here.]

#### **Project Outputs**

[DN:Insert from Business Case]

#### **Project Milestones**

[DN:Insert from Business Case]

#### **Project Outcomes**

[ DN:Insert from Business Case ]

#### **Part B – The Business Case**

[ DN: Insert Link to a full copy of the Business Case]

#### **Part C – The Independent Assessment Report by Skills Funding Agency and LEP of Detailed Business Case**

#### **PART D – LEP Approval**



**SCHEDULE 3**  
**Expenditure Profile**



Sch 3 Expenditure  
Profile .xlsx



## SCHEDULE 4

### The Claim Form



Part A Financial  
Info Sept 2016.xlsx



Part B Progress  
Report Sept 2016.doc



Part C Employers  
Agent Certificate.doc



Part D Project  
Manager and Monit

## **SCHEDULE 5**

### **Exit Report**

The Applicant shall provide evidence to the Council that:

1. Completion has occurred in accordance with this Agreement (as varied where applicable).
2. The Project is completed in accordance with this Agreement (as varied where applicable).
3. Where enforcement action or requirements have been imposed by the Council in accordance with this Agreement that these have been implemented and complied with.
4. Financial completion has occurred and a record and reconciliation of actual expenditure to approved expenditure is attached.
5. No funds have been recovered by the Council. Details of any funds recovered or recoverable by the Council is attached.
6. The Applicant has submitted a final claim to the Council.
7. All of the deliverables and outcomes of the Project have been achieved in accordance with this Agreement, or where this is not the case, the actual delivery of outcomes of the Project.
8. The Applicant undertakes to use the Site for the purposes of the Project and arrange for a definite programme of future reviews of the Site by the Council.

The Applicant shall provide the following attachments to the Exit Report:

1. Reconciliation of actual Project expenditure to original (or amended) forecast.
2. Reconciliation of actual outputs to original or amended and agreed forecast.
3. Evidence of Completion of the Project.
4. Final Claim.
5. Any other attachment required by Council (for example where the Agreement has been varied or where any default enforcement action has been taken – details of compliance with the same).

**SCHEDULE 6**  
**Change Request Form**



Scheduel 6 Change  
Request Form.docx



EXECUTED (but not delivered until the )  
date hereof)

AS A DEED by affixing )

THE COMMON SEAL of )

LANCASHIRE COUNTY COUNCIL )

In the presence of: )

Authorised Signatory

EXECUTED (but not delivered until the )  
date hereof)

AS A DEED by [APPLICANT] )

by: )