

DATED

2022



**BETWEEN**

**THE CORNWALL COUNCIL**

and

**[INSERT NAME]**

---

**GRANT FUNDING AGREEMENT**

relating to

**Cornwall and Isles of Scilly Good Growth Shared Prosperity Fund**

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Legal Services  
Cornwall Council  
New County Hall  
Treyew Road  
Truro  
TR1 3AY  
Ref: 062083



<b>Agreement</b>	means this agreement and any Schedules or Appendices attached hereto;
<b>Application</b>	means the Recipient's Shared Prosperity Fund Funding application and supporting information attached as Schedule 1;
<b>Asset</b>	means any assets that are to be purchased or developed using the Funding, and Assets will be construed accordingly;
<b>Asset Owning Period</b>	means a three year period from Financial Completion Date;
<b>Background Intellectual Property Rights</b>	means any Intellectual Property controlled or owned by either party prior to the date of commencement of this Agreement or any Intellectual Property generated by either of the Parties independently of this Agreement and controlled or owned by that Party or any Intellectual Property to which the Party has the necessary rights for the purpose of this Agreement;
<b>Claim Form</b>	means the document the Recipient must complete to apply for an instalment of the Funding from the Council;
<b>Commencement Date</b>	means [Insert];
<b>Confidential Information</b>	<p>means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data and Special Category Data within the meaning of the Data Protection Legislation. Confidential Information shall not include information which:</p> <p>(i) was public knowledge at the time of disclosure (otherwise than by breach of Clause 14 (Confidential Information; Disclosure of Information and Freedom of Information));</p> <p>(ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;</p>

(iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or

(iv) is independently developed without access to the Confidential Information;

<b>Consent Notice</b>	means the consent of an individual to the sharing of their Personal Data for the purposes of the Project;
<b>Data Controller</b>	has the meaning given to it in the Data Protection Legislation;
<b>Data Guidance</b>	means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy or compliance with Data Protection Legislation (whether specifically mentioned in this Agreement or not) to the extent published and publicly available or their existence or contents have been notified to the Recipient by the Council and/or any relevant Regulatory Body;
<b>Data Processor</b>	has the meaning given to it in the Data Protection Legislation;
<b>Data Protection Legislation</b>	means the General Data Protection Regulation ((EU) 2016/679) ("GDPR") until it is no longer directly applicable in the UK, and the Data Protection Act 2018 (together referred to as the Data Protection Legislation) and any other applicable national implementing Laws, regulations and secondary legislation, as amended or updated from time to time, in the UK;
<b>Data Subject</b>	has the meaning given to it in the Data Protection Legislation;
<b>Department for Levelling Up Housing and Communities ('DLUHC')</b>	means the government source of the Funding;
<b>Disposal</b>	means the disposal, sale, transfer of an Asset or any interest in any Asset and includes any contract for disposal and Dispose and Disposed shall be construed accordingly;
<b>EIR</b>	means the Environmental Information Regulations 2004;

<b>Eligible Expenditure</b>	means eligible expenditure as set out in Schedule 1;
<b>Event of Default</b>	means an event or circumstance as defined in Clause 12;
<b>Financial Completion Date</b>	means [Insert] being the date by which all of the Eligible Expenditure will have been defrayed;
<b>Good Growth Principles</b>	as set out on <a href="https://ciosgoodgrowth.com/">https://ciosgoodgrowth.com/</a>
<b>FOIA</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Authority or relevant government department in relation to such legislation and the Environmental Information Regulations 2004;
<b>Funding</b>	means [to be inserted] or [x%] of total project cost, whichever is the lesser figure, payable by the Council to the Recipient for the purposes of the Project the terms and conditions of receipt of which are set out in this Agreement;
<b>Funding Bodies</b>	means the Council, the Council of the Isles of Scilly, the DLUHC, the Recipient and any others providing funding for the Project (if any);
<b>Indirect Losses</b>	means loss of profits, loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis;
<b>Intellectual Property</b>	means patents, utility models, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), semiconductor topography rights, image rights, rights in personality and similar rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim

priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

<b>Key Milestones</b>	means the key milestone dates set out in Schedule 1;
<b>Real Living Wage</b>	means the UK Real Living Wage as determined and amended from time to time by the Living Wage Foundation;
<b>Losses</b>	means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, excluding Indirect Losses;
<b>Material Breach</b>	means a breach of this Agreement which is not minimal or trivial in its consequences as further set out in Clause 12;
<b>Outcomes and Outputs</b>	means the outcomes and outputs set out in Schedule 1;
<b>Payment Schedule</b>	means the estimated schedule of payments as set out in Schedule 2;
<b>Personal Data</b>	as defined in the Data Protection Legislation;
<b>Personal Data Breach</b>	has the meaning given to it in the Data Protection Legislation;
<b>Project</b>	means [to be inserted] for which the Funding has been awarded to the Recipient as more particularly described in the Application at Schedule 1;
<b>Project Completion Date</b>	means [Insert Date] which is the date by which the Outcomes and Outputs shall be achieved, final payment claim made and final reporting approved;
<b>Right of Access, Rectification Or Erasure Request</b>	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to Data Protection Legislation to access, rectify or erase their Personal Data;

- Shared Prosperity Fund** means the Cornwall and Isles of Scilly Good Growth Shared Prosperity Fund allocation from the Department for Levelling Up Housing and Communities;
- Total Project Cost** means the total cost to the Recipient of delivering the Project;
- UK Subsidy Control Rules** means the subsidy control regime that is governed by the Trade and Co-operation Agreement by way of S29 of the European Union (Future Relationship) Act 2020 and replaces the EU's state aid regime which was removed by Statutory Instrument 2020/1470; and
- Working Day** means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday in England.
- 1.2 This Agreement includes any variations hereto made from time to time and any agreement expressed to be supplemental hereto.
- 1.3 Unless otherwise specified a reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under it and all orders, notices, codes of practice and guidance made under it.
- 1.4 A reference to laws in general is to all local, national and directly applicable supra-national laws in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them.
- 1.5 A "person" includes a corporate or unincorporated body.
- 1.6 The singular includes the plural and neuter and vice versa and any gender includes any other gender.
- 1.7 Clause, Schedule and Paragraph headings do not affect the interpretation of this Agreement.
- 1.8 Reference to any statute, enactment, regulation, code, official guidance or other similar instruments shall be construed as reference to the statute, enactment, regulation, code, official guidance or other instrument as amended or replaced from time to time by any subsequent enactment, modification, order, regulation, code, official guidance or instrument.

## 2 TERM OF AGREEMENT

2.1 This Agreement shall take effect from the Commencement Date and will continue in force until the sooner of:

2.1.1 the Project Completion Date; or

2.1.2 the termination of this Agreement by either Party in accordance with the terms of this Agreement.

## 3. CONDITIONS PRECEDENT TO PAYMENT OF THE FUNDING

3.1 The Council will not pay the Funding to the Recipient unless all of the following pre-conditions have been complied with:

3.1.1 [ Conditions precedent to be inserted ]

## 4. PAYMENT OF THE FUNDING

4.1 Subject to the provisions of this Agreement the maximum amount of Funding which will be provided by the Council will be [insert] thousand pounds (£[ ] GBP).

4.2 For the avoidance of doubt, the Funding will be used to specifically support the delivery of the Project and the achievement of Outcomes and Outputs of the Project as set out in Schedule 1.

4.3 The availability of the Funding is at all times subject to the Recipient's compliance with the terms of this Agreement.

4.4 The amount of Funding shall not be increased in the event of any overspend by the Recipient in its completion and delivery of the Project.

4.5 Any part payment of the Funding under this Agreement is without prejudice to the Council's rights to refuse to pay any further part of the Funding 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 Recipient.

4.6 Subject to the provisions of this Agreement the Council shall pay the instalments of Funding into the Account in accordance with the Payment Schedule.

4.7 The Recipient shall promptly repay to the Council any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes situations where either an incorrect sum of money has been paid or where the Funding has been paid in error before all conditions attached to the Funding have been complied with by the Recipient.

4.8 The obligations of the Council to pay the Funding do not extend to payment to the Recipient of any amounts in respect of VAT in addition to the Funding other than where VAT is irrecoverable



and deemed to be Eligible Expenditure whereupon the Funding payments are made inclusive of VAT.

4.9 Time shall not be of the essence in respect of the payment of the Funding.

## **5. PURPOSE OF THE FUNDING**

5.1 The Recipient shall use the Funding only for the delivery of the Project and in accordance with the terms and conditions set out in this Agreement. The Funding shall not be used for any other purpose without the prior written consent of the Council.

5.2 The Recipient shall not make any changes to the Project without the Council's prior written agreement.

5.3 Where the Recipient has obtained funding from a third party for its delivery of part of the Project, the Recipient shall include the amount of such funding in its reports together with details of what that funding has been used for. The Recipient acknowledges that the Council accepts no liability whatsoever for any consequences whether indirect or direct that may come about from the receipt by the Recipient of any additional funding.

5.4 Where the Recipient intends to apply to a third party for other funding for the Project, it will notify the Council in advance of its intention to do so and, where such funding is obtained, it will provide the Council with details of the amount and purpose of that funding. The Recipient agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Project or any related administration costs that the Council is funding in full under this Agreement.

5.3 No Funding shall be paid unless and until the Council is satisfied that such Funding is Eligible Expenditure, in the delivery of the Project.

## **6. AVAILABILITY OF THE FUNDING**

6.1 Subject to Clause 3, the Funding will be made available to the Recipient once the Council is in receipt of a completed Claim Form and satisfactory evidence of Eligible Expenditure and defrayal. The Recipient shall promptly provide any other documentation reasonably requested by the Council from time to time in a form and content reasonably satisfactory to it.

6.2 Claims for Funding should be submitted by the Recipient to the Council on a quarterly basis unless agreed otherwise by the Council. Claims shall include receipted invoices and any supporting accounting documents which clearly demonstrates claim against Eligible Expenditure.

6.3 The Recipient agrees to take all reasonable steps to assist the Council in complying with the requirements of the UK Subsidy Control Rules and shall ensure that all matters relating to public procurement law have been met and where necessary have been implemented.

- 6.4 The Funding will be paid on a quarterly basis and will be paid in respect of Eligible Expenditure in arrears only, in accordance with the agreed payment schedule, set out in in Schedule 2 to this Agreement. Prior to submitting claims to the Council, the Recipient is to ensure that all claims are accompanied by copies of receipted invoices or accounting documents of equivalent verifiable value.
- 6.5 Interim claims may be made if a compelling case is made to support project cash flow, but will need to be communicated at least ten (10) Working Days in advance of any interim claim being submitted. The Council has the right to refuse interim claims.
- 6.6 The Funding will be paid direct to the Account (usually via BACS), subject to the terms of this Agreement being met and the necessary funds being available when payment falls due. The Council will endeavour to pay the Funding within thirty (30) Working Days of receiving the accurately completed Claim Form.
- 6.7 The Council may delay payment of the Funding, following receipt of the Claim Form if it is incomplete or inaccurate. In these circumstances, the Council will contact the Recipient within ten (10) Working Days setting out what further information it requires and the time period within which that information must be provided.
- 6.8 If spend on the Project is more than planned, the Funding will not be increased.
- 6.9 A progress report and supporting documentation (if appropriate) in respect of the Project must be submitted as part of the Claim Form, and at such other times as the Council may notify to the Recipient.
- 6.10 The progress report shall include all information relevant to the Project and its progress against the information presented in the Application approved by the Council and include inter alia the following:
- i. whether the Project is ahead or behind programme;
  - ii. the measures to be taken if the Project is behind programme;
  - iii. the actual cash flow of the Project measured against the forecast;
  - iv. whether there is any future event of which the Recipient may be aware that may influence the completion of the Project as forecast and the risk management actions being applied to rectify the situation;
  - v. track progress on achieving the Outcomes and Outputs and milestones,
  - vi. information regarding publicity relevant to the project
  - vii. the identification and management of project risks

- viii. if relevant, provide details of any Assets either acquired or improved using the Funding.
- 6.11 The availability of the Funding is at all times subject to the Recipient's compliance with the terms of this Agreement and all or any reasonable rules and regulations of the Council and the Funding Body in place from time to time and with all and any rules, regulations or restrictions from time to time in force which have been subsequently communicated to the Recipient which are applicable to the Project.
- 6.12 The Recipient shall use the Funding only in respect of Eligible Expenditure incurred in delivering the Project and in accordance with the terms and conditions set out in this Agreement. The Funding shall not be used for any other purpose without the prior written agreement of the Council.
- 6.13 The Recipient shall not make any significant changes to the Project without the Council's prior written agreement.
- 6.14 The Council may terminate this Agreement by giving not less than three (3) months' notice in writing to the Recipient in the event that for whatever reason the provision of the Funding ceases or there is a material adverse change in the amount or nature of the Funding.
- 6.15 The Funding can only be claimed against spend defrayed no later than the Financial Completion Date.

## **7 THE RECIPIENT'S OBLIGATIONS**

- 7.1 In consideration of the payment of the Funding the Recipient shall:
- 7.1.1 deliver the Project in accordance with the terms of this Agreement and the Application (Schedule 1);
  - 7.1.2 deliver the Project in accordance with the Key Milestones;
  - 7.1.3 deliver the Project in accordance with the Outcomes and Outputs;
  - 7.1.4 ensure efficient delivery of the Project and not do anything which may cause the Council to be in breach of any third-party Funding Bodies terms and conditions;
  - 7.1.5 ensure that all legal and regulatory requirements are complied with in the delivery of the Project;
  - 7.1.6 ensure all necessary approvals and consents required by law to deliver the Project are obtained and current;

- 7.1.7 comply with all statutory registration requirements and exercise proper skill and diligence in the setting up and delivery of the Project;
- 7.1.8 use the Funding only in respect of Eligible Expenditure incurred in connection with the Project in accordance with the terms of this Agreement and for no other purpose;
- 7.1.9 ensure that any surplus of Funding arising upon cessation of the Project or of this Agreement is promptly returned to the Council;
- 7.1.10 use reasonable endeavours to deliver on the Good Growth Principles and to ensure this is required of any sub-contractors working on the Project;
- 7.1.11 at all times during the period of this Agreement and for a minimum period of seven (7) years thereafter:
- (i) keep secure and give to the Council or make available for inspection at any reasonable hour by the Funding Body, the internal auditors of the Cornwall Council, the Commissioner for Local Administration (Ombudsman), the Council's External Auditor, or any of their representatives:
    - a. all original and copy records, documents, information, statements and papers which may be acquired or produced by the Recipient or by any sub-contractor in the performance of the Project;
    - b. such information and documentation as the Council may reasonably require in connection with the Project;
  - (ii) ensure the maintenance of a clear and unambiguous audit trail at all times in accordance with good practice and the Good Growth Audit and Compliance Policy;
  - (iii) meet any request by the Council for particulars about the Eligible Expenditure.
- 7.1.12 ensure that it appoints a nominated representative whose details will be notified in writing to the Council within fourteen (14) days of completion of the Agreement who will act as its representative and who will be responsible for ensuring the proper control and management of the Project and the supervision and submission of all information required by the Recipient. If the representative changes from time to time the Recipient shall notify the Council in writing within fourteen (14) days of such replacement;
- 7.1.13 ensure that the representative of the Recipient will liaise with or meet with the Council on a regular basis at such times as the Council shall specify (acting reasonably);
- 7.1.14 invite a representative of the Council to any meetings of the Project's board (or equivalent) and to be included in the distribution list of the documentation for the Project's board (or equivalent);

7.1.15 ensure that in entering into any legally enforceable agreement with any contractors or other party carrying out the Project or part of the Project that the aforementioned organisations are obliged to permit the Council representatives to examine the economy, efficiency and effectiveness of expenditure of the Funding;

7.1.16 comply with any current or known National or European procurement law as required in connection with the Project; and

7.2 In connection with the Project the Recipient shall provide (at reasonable times and on reasonable notice) the Council (and such third parties as are notified by the Council) with access to the Project.

7.3 Any liabilities arising at the end of the Project including redundancy liabilities for staff employed by the Recipient to deliver the Project must be managed and paid for by the Recipient. There will be no additional Funding from the Council for this purpose.

7.4 The Recipient shall not transfer any part of the Funding to bank accounts which are not ordinary business accounts within the clearing bank system, without the prior written consent of the Council.

7.5 Recipient delivers its monitoring and evaluation plan as set out in the Recipient's Application (Schedule 1). This will be monitored through attendance at project meetings and through active monitoring of claims submitted. The Council will also, through the claim submission, collate and report on Project level events, Outputs and Outcomes.

## **8. OBLIGATIONS OF THE COUNCIL**

8.1 In consideration of the Project to be delivered by the Recipient under this Agreement and the terms and conditions of this Agreement being complied with by the Recipient, the Council agrees to make available the Funding in accordance with Clause 6 subject to the terms and conditions set out in this Agreement.

8.2 The Council shall appoint a nominated representative whose details will be notified to the Recipient within ten (10) Working Days of completion of the Agreement. If the representative changes from time to time the Council shall notify the Recipient in writing within ten (10) Working Days of such replacement.

## **9. ASSIGNMENT AND VARIATION**

9.1 The Recipient shall not assign its rights under this Agreement or charge the benefit of this Agreement or novate the rights and liabilities of this Agreement to a third party without the prior written consent of the Council.

- 9.2 Where the Recipient is permitted to sub-contract out any of its obligations under this Agreement in accordance with clause 9.1 above, including but not limited to the appointment of contractors, the Recipient shall:
- i) remain primarily liable for all acts of the sub-contractor;
  - ii) ensure that the terms and conditions of this Agreement are reflected in any contract or sub-contract as much as reasonably possible;
  - iii) ensure that the sub-contractor cannot assign or further sub-contract out its obligations under that contract or subcontract without the prior written consent of the Council;
  - iv) ensure that in entering into any legally enforceable agreement with any sub-contractors carrying out the Project or part of the Project that the aforementioned are obliged to permit Council representatives to examine the economy, efficiency and effectiveness of expenditure of the Funding.
- 9.3 If the Recipient wishes to assign, charge or novate its rights and liabilities under this Agreement, it will give as much notice as possible of its proposals to the Council and will provide a full account of relevant circumstances and such further particulars as the Council shall request concerning the party to which this Agreement is proposed to be assigned, novated or charged.
- 9.4 The Council shall determine in its absolute discretion as to whether or not to give consent to an assignment or novation or charging of this Agreement or as to any conditions to be imposed.
- 9.5 If the Council consents to an assignment, charge or novation, then the Council may notify the Recipient that the documentation giving effect to the assignment, charge or novation is to be approved by the Council and copies of all completed documents supplied to the Council upon completion of the same.
- 9.6 Any variation of this Agreement shall be binding only if it is recorded in a document signed by or on behalf of the Parties to this Agreement or by exchange of correspondence between the said Parties.

## **10. ACKNOWLEDGMENT AND PUBLICITY**

- 10.1 The Recipient shall acknowledge the Funding in its annual report and accounts, including an acknowledgement of the Funding Bodies.
- 10.2 The Recipient shall acknowledge the support of the Government's Shared Prosperity Fund through the Council in any materials that refer to the Project and in any written or spoken public presentations about the Project. Such acknowledgements (where appropriate or as requested by the Council) shall include the name and logos of Her Majesty's Government (HMG) and the Council (or any future name or logo adopted by the Council and notified to the Recipient) using the templates provided by the Council from time to time and to adhere to the Good Growth Shared Prosperity Fund Branding and Publicity Policy.

- 10.3 The Recipient shall provide the Council with at least 2 weeks advanced notice of any proposed announcements and milestone events to allow quotes to be arranged from the Council and DLUHC for any media releases.
- 10.4 In using the name and logo of the Council and HMG, the Recipient shall comply with all reasonable branding guidelines issued by the Council or DLUHC from time to time and notified to the Recipient.
- 10.5 The Recipient agrees to participate in and co-operate with reasonable promotional activities relating to the Project that may be instigated and/or organised by the Council and/or Funding Body.
- 10.6 The Recipient shall comply with all reasonable requests from the Council to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Council in their promotional activities relating to the Project.
- 10.7 The Recipient is to liaise with the Council's representative when preparing any press or media announcements relating to the Project.
- 10.8 When entering into any contracts regarding the Project, the Recipient shall ensure that the terms of this clause 10 are passed down to all sub-contractors and others involved in the Project.
- 10.9 The Council may acknowledge the Recipient's involvement in the Project as appropriate without prior notice. The Council shall acknowledge the support of the Recipient in any materials that refer to the Project and in any written or spoken public presentations about the Project. Such acknowledgements (where appropriate or as requested by the Recipient) shall include the Recipient's name and logo (or any future name or logo adopted by the Recipient) using the templates provided by the Recipient.

## **11. INTELLECTUAL PROPERTY RIGHTS**

- 11.1 The Council and the Recipient agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either the Council or the Recipient before the Commencement Date or developed by either party during the term of the Agreement, shall remain the property of that Party.
- 11.2 Where the Council has provided the Recipient with any of its Intellectual Property Rights developed and paid for from Project funds in connection with the Project (including without limitation its name and logo), the Recipient shall, on termination of this Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by the Council.

- 11.3 Where the Recipient has provided the Council with any of its Intellectual Property Rights for use in connection with the Project, the Recipient consents to the Council continuing to use the Intellectual Property Rights in the event of termination or expiry of the Agreement, to include the Project name and logo, for the purposes of advertising and promoting the Project.
- 11.4 Nothing contained in this Agreement shall affect the absolute and unfettered rights of each Party in all inventions, discoveries and intellectual property contained in its Background Intellectual Property Rights.

## **12. EVENT OF DEFAULT**

12.1 An Event of Default is the occurrence of any of the following:

12.1.1 if any of the information provided in any Claim Form or subsequent correspondence is found to be materially incorrect or incomplete;

12.1.2 the Recipient uses the Funding for purposes other than those for which it has been provided;

12.1.3 if the Recipient is in Material Breach of its obligations under this Agreement, provided that the Recipient shall have been given reasonable written notice of such breach and shall have been given the opportunity to remedy such breach if capable of remedy within a reasonable period of time (being not less than one month but no more than three months from the date of the written notice) but shall have failed to do so;

12.1.4 if, following a review of the Outcomes and Outputs, in the reasonable opinion of the Council (which shall be final) the Project is failing to progress and/or meet the Outcomes and Outputs;

12.1.5 the Recipient is, in the reasonable opinion of the Council, delivering the Project in a negligent manner;

12.1.6 any employee or volunteer of the Recipient has:

(a) acted dishonestly or negligently in relation to the Project at any time and directly or indirectly to the detriment of the Project; or

(b) taken any actions which, in the reasonable opinion of the Council, bring or are likely to bring the name or reputation of the Council into disrepute;

12.1.7 the Recipient ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);



12.1.8 the Recipient becomes insolvent, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due;

12.1.9 if the Recipient shall have offered or given or agreed to give to any person (whether an employee of the Council or otherwise) any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Agreement or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Recipient) or if in relation to any contract with the Council or Cornwall Council or any person employed by it or acting on its behalf shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972;

### **13. RIGHTS RESERVED BY THE COUNCIL IN THE EVENT OF DEFAULT OR MATERIAL BREACH**

13.1 Where the Council determines that an Event of Default or a Material Breach has occurred, the Council may, by written notice to the Recipient take one or more of the following actions:

13.1.1 withhold or suspend payment of the Funding for such period as the Council shall determine;

13.1.2 require the Recipient to repay to the Council the whole or any part of the Funding previously paid to the Recipient, in which case the liability to meet such a demand shall be enforceable as a contractual debt;

13.1.3 terminate this Agreement.

13.2 Any termination of this Agreement shall be without prejudice to any right of action or remedy of either Party hereto which may have accrued prior to the said termination.

13.3 Wherever under the Agreement any sum of money is recoverable from or payable by the Recipient (including any sum that the Recipient is liable to pay to the Council in respect of any breach of the Agreement), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Recipient under the Agreement or under any other agreement or contract with the Council.

13.4 The Recipient shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

13.5 Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Project or compliance with this Agreement it will notify the Council as soon as possible so that, if possible, and without creating any legal obligation, the Council will have an opportunity to provide assistance in resolving the problem or to take action to protect the Council and the Funding.

#### **14. CONFIDENTIALITY; DATA PROTECTION AND FREEDOM OF INFORMATION**

##### **14.1 CONFIDENTIALITY**

14.1.1 Except where otherwise provided for in this Agreement, Confidential Information is owned by the Party that discloses it (the 'Disclosing Party') and the Party that receives it (the 'Receiving Party') has no right to use it.

14.1.2 Subject to Clauses 14.1.3 and 14.1.4, the Receiving Party agrees:

- (a) to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Agreement;
- (b) not to disclose the Disclosing Party's Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
- (c) to maintain the confidentiality of the Disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.

14.1.3 The Receiving Party may disclose the Disclosing Party's Confidential Information:

- (a) in connection with any dispute resolution under Clause 19 (Dispute Resolution);
- (b) in connection with any litigation between the Parties;
- (c) to comply with the law;
- (d) to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in clause 14.1.2;
- (e) to comply with a regulatory bodies request.

14.1.4 The obligations in clause 14.1.1 and clause 14.1.2 will not apply to any Confidential Information which:

- (a) is in or comes into the public domain other than by breach of this Agreement;
- (b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or

(c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.

14.1.5 The obligations in clause 14.1 and clause 14.2 shall not apply where the Confidential Information is related to an item of business at a meeting of the Council or of any committee, sub-committee or joint committee of the Council or is related to an executive decision of the Council and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Council shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Recipient and where reasonably practicable shall consider any representations made by the Recipient.

## 14.2 DATA PROTECTION

14.2.1 The Parties must comply with Data Protection Legislation, Data Guidance, the FOIA and the EIR, and must assist each other as necessary to enable each other to comply with these obligations.

14.2.2 Without prejudice to the generality of clause 14.2.1, the Recipient must ensure that all Personal Data processed by or on behalf of the Recipient in the course of delivering the Project is processed in accordance with the relevant Parties' obligations under Data Protection Legislation and Data Guidance. The Recipient shall:

- (a) process Personal Data only on the written instructions of the Council, unless the Recipient is required by the laws of any member of the European Union or by the laws of the European Union ("Applicable Laws") applicable to the Recipient to otherwise process the Personal Data. Where the Recipient is so required, it shall promptly notify the Council before processing the Personal Data, unless prohibited by the Applicable Laws;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and

encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
  - (i) the Council or the Recipient has provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject has enforceable rights and effective remedies;
  - (iii) the Recipient complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Recipient complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (d) notify the Council as soon as reasonably practicable if it receives:
  - (i) a request from a Data Subject to have access to that individual's Personal Data;
  - (ii) a Right of Access, Rectification or Erasure Request;
  - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (e) at the Recipient's expense, assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) at the written direction of the Council, delete or return Personal Data and copies thereof to the individual on termination or expiry of this Agreement unless required by the Applicable Laws to store the Personal Data;

- (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 14.2 and allow for audits by the Council or the Council's designated auditor.

14.2.3 Where the Council requires information for the purposes of quality management, the Recipient must consider whether the Council's request can be met by providing anonymised or aggregated data which does not contain Personal Data. Where Personal Data must be shared in order to meet the requirements of the Council, the Recipient must:

- (a) provide such information in pseudonymised form where possible; and in any event
- (b) ensure that there is a legal basis for the sharing of Personal Data.

14.2.4 If the Recipient is to engage any sub-contractor or sub-consultant to deliver any part of the Project (other than as a Data Processor) and the sub-contractor or sub-consultant is to access personal or confidential information or interact with individuals, the Recipient must impose on it obligations that are no less onerous than the obligations imposed on the Recipient by this clause 14.2.

14.2.5 The Recipient shall indemnify the Council against any Losses incurred by the Council arising from, or in connection with, any breach of the Recipient's obligations under this clause 14.2.

14.2.6 Notwithstanding any other provision of this Agreement, where the Recipient commits a Personal Data Breach which under Data Protection Legislation must be notified to the Information Commissioner and/or to an individual the Council may terminate this Agreement with immediate effect.

### 14.3 FREEDOM OF INFORMATION AND TRANSPARENCY

14.3.1 The Parties acknowledge their respective duties under the FOIA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

14.3.2 If the Recipient is not a public authority, the Recipient acknowledges that the Council is subject to the requirements of the FOIA and will assist and co-operate with the Council to enable the Council to comply with its disclosure obligations under the FOIA. Accordingly the Recipient agrees:

- (a) that this Agreement and any other recorded information held by the Recipient on the Council's behalf for the purposes of this Agreement are subject to the obligations and commitments of the Council under the FOIA;

- (b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Council;
- (c) that if the Recipient receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Council) and will promptly (and in any event within 2 working days) transfer the request to the Council;
- (d) that the Council, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Recipient and this Agreement either without consulting with the Recipient, or following consultation with the Recipient and having taken its views into account; and
- (e) to assist the Council in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by an authority within 5 working days of such request and without charge.

14.3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information.

14.3.4 Notwithstanding any other provision of this Agreement, the Recipient hereby consents to the publication of this Agreement in its entirety including from time to time agreed changes to this Agreement subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.

14.3.5 In preparing a copy of this Agreement for publication pursuant to clause 14.1.4 the Council may consult with the Recipient to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Council's absolute discretion.

14.3.6 The Recipient shall comply with any requirements (including compliance with any appropriate information assurance scheme and the Computer Misuse Act 1990) in relation to its security policies, procedures and control of Confidential Information.

14.3.7 The Recipient shall be responsible for any costs associated with compliance with the provisions of this clause 14.

#### 14.4 THE EQUALITY ACT

14.4.1 The Parties acknowledge their respective duties under The Equality Act and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

14.4.2 The Recipient shall not unlawfully discriminate within the meaning and scope of the Equality Act whether in respect of race, gender, religion, disability, sexual orientation, age or otherwise.

14.4.3 The Recipient shall take all reasonable steps to secure the observance of clause 14.4.2 by all servants, employees or agents of the Recipient and all suppliers and sub-contractors engaged on the Project.

14.5 The Recipient shall indemnify the Council and shall keep the Council indemnified against Losses and Indirect Losses suffered or incurred by the Council as a result of any breach of this Clause 14.

14.6 The Parties acknowledge that damages may not be an adequate remedy for any breach of this Clause 14, and in addition to any right to damages the Council shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this Clause 14. This Clause 14 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

## **15. INDEMNITY**

15.1 The Recipient shall indemnify Council in respect of any liability or claim made against Council by any third party which arises in any way from the Recipient undertaking the Project.

15.2 The Recipient shall indemnify and keep Council indemnified from and against all loss, damage, or liabilities suffered by Council arising from the Recipient's breach of this Agreement including:

15.2.1 any act of neglect or default of the Recipient or its employees or agents;

15.2.2 any breach in respect of any matter arising from the delivery of the Project resulting in any successful claim by any third party.

15.3 The Recipient shall indemnify the Council in respect of any liability which arises as a result of any act or omission on the part of the Recipient with respect to any health and safety legislation or any other relevant legislation in respect of the Project, except to the extent that such liability arises through any act or omission of the Council or any of its employees, contractors or agents.

15.4 The Recipient agrees to indemnify the Council in respect of any liability whatsoever which arises as a result of the Recipient's failure to provide evidence of the Outcomes and Outputs.

## 16. LIMITATION OF LIABILITY

- 16.1 The Council accepts no liability for any consequences, whether direct or indirect, that may arise from the delivery of the Project, the use of the Funding or from withdrawal of the Funding. The Recipient shall indemnify and hold harmless the Council, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the Project, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties.
- 16.2 The Council's liability under this Agreement is limited to the payment of the Funding.
- 16.3 The Recipient shall effect and maintain with a reputable insurance company such policy or policies of insurance as may be necessary to cover the Project and the Recipient's obligations and liabilities under this Agreement, including but not limited to:
- 16.3.1 professional indemnity insurance with a limit of liability of not less than two million pounds (£2,000,000); and
  - 16.3.2 public liability insurance with a limit of liability of not less than five million pounds (£5,000,000); and
  - 16.3.3 employers liability insurance with a limit of liability of not less than ten million pounds (£10,000,000),
- for any one occurrence or series of occurrences arising under any one event and the Recipient shall (on request) provide to the Council copies of such insurance policies and evidence that such premiums have been paid.
- 16.4 The Recipient shall hold and maintain the insurances set out in clause 16.3 above for a minimum of six (6) years following the expiration or earlier termination of this Agreement.
- 16.5 The provision of any insurance or the amount or limit of cover will not relieve or limit the Recipient's liabilities under this Agreement.
- 16.6 Nothing in this Agreement will exclude or limit the liability of either Party for:
- 16.6.1 death or personal injury caused by its negligence; or
  - 16.6.2 fraud or fraudulent misrepresentation.
- 16.7 Subject to clause 16.6, neither Party shall be liable to the other Party for any Indirect Losses pursuant to or in connection with this Agreement.

## 17. ASSETS



- 17.1 Any Assets purchased by the Recipient using the Funding must only be used for the delivery of the Project.
- 17.2 Where the Recipient uses any of the Funding to develop, improve or purchase any Asset, the Recipient must ensure that the Assets are maintained in good condition for the duration of the Asset Owning Period.
- 17.3 The Recipient must not Dispose of any Assets during the Asset Owning Period without the prior written consent of the Council.
- 17.4 The Recipient shall ensure that no charge, legal mortgage, debenture or lien is created over any Asset without the prior written consent of the Council.

## **18. FORCE MAJEURE**

Both Parties shall be released from their respective obligations in the event of any national emergency, war, prohibitive government regulations or in the case of cessation of funding to the Council or for any other cause beyond the reasonable control of the Parties or either of them which renders the performance of this Agreement impossible whereupon all monies not used in the provision of the Project and paid in advance by the Council to the Recipient shall be returned to the Council.

## **19. DISPUTE RESOLUTION**

In the event of a dispute between the Council and the Recipient arising in connection with the Agreement the Council and the Recipient shall use all reasonable endeavours to resolve the matter on an amicable basis. If the Council and the Recipient fail to resolve such disputes, the dispute shall be referred to the respective Chief Executives of the Council and the Recipient. In the absence of any agreement the matter should be referred to mediation and the parties shall bear the costs and expenses of the mediation equally unless directed otherwise by the mediator. The submission of either Party to this clause shall not limit their right to commence any proceedings in any court of competent jurisdiction in England.

## **20. SEVERANCE**

If any term or provision in this Agreement shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this Agreement but the validity and enforcement of the remainder of this Agreement shall not be affected.

## **21. AGENCY AND JOINT VENTURE ARE EXCLUDED**

Nothing contained in this Agreement shall be so construed as to constitute either Party to be the agent of the other nor shall this Agreement operate so as to create a legal partnership, company or joint venture of any kind between the Parties.

**22. AUTHORITY**

Each Party warrants and represents to the other that it has the full authority, power and capacity to enter into this Agreement, and that all necessary actions have been taken to enable it lawfully to enter into this Agreement.

**23. UK SUBSIDY CONTROL RULES**

23.1 If any court or person with requisite standing alleges that all or any part of the Funding provided by the Council under this Agreement breaches the UK Subsidy Control Rules, the Parties shall work together to address and mitigate the allegations made and if required establish such alternative means of funding as is lawful.

23.2 If the court or person with requisite standing requires all or any part of the Funding provided by the Council under this Agreement to be recovered by reason of a breach of the UK Subsidy Control Rules and no lawful alternative means of funding can be established, then the Council may claw back any payment already made to the Recipient pursuant to this Agreement to the extent that such payment is unlawful and required at law to be repaid.

**24. ENTIRE AGREEMENT**

Each party acknowledges that this Agreement and any Schedules and/or Appendices contain the whole Agreement between the Parties and supersedes any previous agreement between the Parties whether written or oral.

**25. NOTICE**

25.1 Any demand, notice, or other communication required to be given under this Agreement shall be sufficiently served if served personally on the addressee, or if sent by prepaid first class or recorded delivery post to the registered office or last known address of the Party to be served or if by electronic mail to the address of the Authorised Representative.

25.2 Any notice shall be deemed to have been received:

25.2.1 if served personally, on signature of a delivery receipt or at the time the notice is left at the proper address;

25.2.2 if sent by pre-paid first class post or recorded delivery post, at 9.00am on the second Business Day after posting or at the time recorded by the delivery service; and

25.2.3 in the case of electronic mail, at the time of transmission, or if this time falls outside business hours, at 9.00am on the next Business Day, providing no undelivered or error message is received by the sender.

25.3 This clause does not apply to the service of any proceedings or other documents in any legal action, or where applicable, any arbitration or other method of dispute resolution.

**26. RIGHTS OF THIRD PARTIES**

No person other than a Party may enforce the provisions of this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists or is available apart from the Act.

**27. WAIVER**

Failure by either Party at any time to enforce the provisions of this Agreement or to require performance by the other of any of the provisions of this Agreement shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of this Agreement of any part thereof or the right of the Party in question to enforce any provision in accordance with its terms.

**28. GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by English law and the courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement.

**IN WITNESS** whereof this Agreement has been executed by the Parties hereto as a Deed and is intended to be and is hereby delivered on the day and year first above written.

**EXECUTED** as a Deed by )  
**THE CORNWALL COUNCIL** )  
whose common seal was hereunto )  
affixed in the presence of: )

.....  
Authorised Officer

**EXECUTED** as a Deed by )  
**[INSERT NAME]** )  
acting by )

Sign .....  
Director  
Print name.....

Sign .....

Director/Secretary

Print name.....

SAMPLE

**Schedule 1**  
**The Application and Supporting Documents**

SAMPLE

**Schedule 2  
Payment Schedule**

SAMPLE

**Schedule 3****Recipient's Bank Account Details**

The Funding will be paid to the following bank account:

Bank name:	
Account number:	
Account name:	
Sort Code:	
IBAN:	
BIC/SWIFT:	

SAMPLE