



**European Regional Development Fund
(ERDF)
Delivery Partner Funding
Agreement**

between

West Yorkshire Combined Authority

and

Leeds City Council

Project Name: Leeds City Region Growth Service

Project Number: 20R18P02404

THIS AGREEMENT is dated

8th November

2019

PARTIES

1. **WEST YORKSHIRE COMBINED AUTHORITY** whose office is at Wellington House, 40-50 Wellington Street, Leeds, LS1 2DE ("**Combined Authority**"); and
2. **LEEDS CITY COUNCIL** whose office is at Merrion House, Woodhouse Lane, Leeds, LS2 8LX ("**Grant Recipient**").

BACKGROUND

- A The Combined Authority with the support of the Grant Recipient made an application to the Commission of the European Union ('European Commission') for a Leeds City Region Growth Service to enable smart, sustainable and inclusive growth and the achievement of economic, social and territorial cohesion.
- B The Combined Authority's application was successful and it now wishes to offer a grant to the Grant Recipient.
- C The Grant Recipient agrees to accept the grant under the terms and conditions of this Agreement.

IT IS AGREED THAT:

1 DEFINITIONS

In this Funding Agreement the following words and phrases shall have the following meanings:

"Agreed Activity End Date" means the date specified as such in the Project Specific Conditions and being the date that all of the Project Activities shall be finished and complete.

"Agreed Financial Completion Date" means the date specified as such in the Project Specific Conditions and being the date that all of the expenditure eligible for grant will have been defrayed.

"Agreed Project Practical Completion Date" means the date specified as such in the Project Specific Conditions and being the date by which the Targets shall be achieved.

"Application" means the Combined Authority's application, which is annexed in Schedule 2, to the European Commission asking for funding for the Project.

"Audit" means an audit/monitoring verification carried out pursuant to Articles 125 and 127 of Regulation 1303 by the Combined Authority in its role as 'managing authority' or the Government Internal Audit Agency in its role as 'audit authority', or any audit by the European Commission, European Court of Auditors or, where relevant, the National Audit Office.

"Committed" means, in relation to any Match Funding, either:

- (a) funding (which shall constitute all or any part of the Match Funding requirement contained in this Funding Agreement) which has been committed to the Grant Recipient in writing pursuant to which a third party makes available an amount to the Grant Recipient and which shall not be subject to any conditions precedent or conditions subsequent which are (in the opinion of the Combined Authority acting reasonably) unacceptable; or
- (b) funding which shall constitute all or any part of the Match Funding requirement contained in this Funding Agreement which shall be provided from the Grant Recipient's own resources the availability of which shall be evidenced to the Combined Authority.

“Completion” means completion of the Project Activities to the satisfaction of the Combined Authority.

“Conditions” means the terms and conditions upon which the Grant is payable as contained in this Funding Agreement and its Schedules.

“Completed Project” means a Project that has been physically completed or fully implemented and in respect of which all related payments have been made by the Grant Recipient and the corresponding public contribution has been paid to the Grant Recipient.

“Confidential Information” means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the owner of the Confidential Information, including all intellectual property rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential.

“Contracting Authority” means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 or Regulation 2 of the Public Contracts Regulations 2015 (as amended) other than the Combined Authority.

“Correction” means an amount to be repaid by the Grant Recipient to the Combined Authority or withheld by the Combined Authority from the Grant payable as determined following the finding of an Irregularity against the Combined Authority by the European Regional Development Fund.

“Crown Body” means any office or agency of the Crown.

“Data” means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Grant Recipient by or on behalf of the Combined Authority; or (ii) which the Grant Recipient is required to generate, process, store or transmit pursuant to this Funding Agreement ; or
- (b) any Personal Data for which the Combined Authority, Combined Authority or the Grant Recipient is the Data Controller.

“Data Controller” shall have the same meaning as set out in the Data Protection Legislation

“Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

“Data Protection Legislation” means: (i) the General Data Protection Regulation (Regulation (EU) 2016/679), the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy including where applicable the guidance and codes of practice issued by the Information Commissioner as may be in force from time to time.

“Data Protection Impact Assessment” means: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

“Data Subject” shall have the same meaning as set out in the Data Protection Legislation

“Data Subject Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

“Eligibility Rules” means the rules governing eligibility of expenditure for payment of European Regional Development Fund contained in:

- (a) Regulation 1301;
- (b) Regulation 1303; and
- (c) The National European Regional Development Fund Eligibility Rules.

“Eligible Expenditure” means the reimbursement in arrears to the Grant Recipient for payment of salaries and/or employee expenses incurred in relation to the Project that complies in all respects with the Eligibility Rules.

“Environmental Information Regulations” means the Environmental Information Regulations 2004 (SI No 2004/3391) together with any guidance and/or codes of practice issued by the ‘Information Commissioner’ (as referred to therein) or relevant Government Department in relation to these regulations.

“Event of Default” means an event or circumstance as defined by clause 12.1.

“Expenditure” means the revenue Expenditure (as appropriate in the context).

“Expenditure Profile” means the information provided by the Grant Recipient detailing the spend forecast for the carrying out of the Project Activities and defrayal of expenditure including the Start Date and the Agreed Financial Completion Date and which is contained in Schedule 1.

“Financial Year” means the calendar year.

“Final Payment Date” means the date of the final payment of Grant to the Grant Recipient.

“Funding Agreement” means this agreement including the Schedules.

“Grant” means the grant amount payable by the Combined Authority to the Recipient for Eligible Expenditure pursuant to this Funding Agreement up to the Maximum Sum and as set out in the Project Specific Conditions.

“Grant Claim” means the Grant Recipient’s claim for Grant made on a monthly or quarterly basis or as agreed with the Combined Authority.

“Grant Recipient Personnel” means all employees, agents, consultants and contractors of the Grant Recipient and/or of any sub-contractor.

“Grant Recipient Software” means software which is owned by or licensed to the Grant Recipient, including software which is or will be used by the Grant Recipient for the purposes of complying with its obligations pursuant to this Funding Agreement.

“Information” has the meaning given in the Freedom of Information Act 2000.

“Information Commissioner” has the meaning given in the Freedom of Information Act 2000.

“Instalment Period” means the period referred to in the Project Specific Conditions.

“Intellectual Property Right” 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.

“Irregularity” means any breach of European Commission law, or of national law relating to the Application resulting from an act or omission by the Combined Authority, Grant Recipient (and/or its agents and subcontractors), which has, or would have, the effect of prejudicing the budget of the European Commission by charging an unjustified item of expenditure to the budget of the European Commission.

“Key Milestone Dates” means those milestones to achieve the Project which are contained in the Project Specific Conditions.

“Law” means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body.

“Losses” means all costs, charges, fees, expenses, fines and losses (including, loss of profit, loss of reputation) and all interest penalties and legal and other professional costs and expenses.

“Match Funding” means the Grant Recipient’s contribution to the Project to meet the balance of Eligible Expenditure not supported by Grant and the Match Funding details are contained in the Project Specific Conditions.

“Match Funding Longstop Date” means the last date by which the Grant Recipient is to provide evidence to the Combined Authority that any Match Funding listed as indicative is fully Committed.

“Material Breach” means a breach of this Funding Agreement (including an anticipatory breach) which is not minimal or trivial in its consequences as further set out in clause 12.

“Maximum Sum” means the maximum amount of Grant to be provided by the Combined Authority to the Grant Recipient for its’ the support of the Project and the amount is set out in the Project Specific Conditions.

“National European Regional Development Fund Eligibility Rules” means the National Eligibility Rules published from time to time by the European Regional Development Fund Authority and contained on the Website, the version subsisting at the date of this Funding Agreement being ESIF-GN-1-012 National ERDF Eligibility Rules v1 (published 20 March 2015).

“Parties” means the Combined Authority and the Grant Recipient.

“Personal Data” shall have the same meaning as set out in the Data Protection Legislation.

“Process” has the meaning given to it under the Data Protection Legislation

“Project” means the project fully described in the Application.

“Project Activities” means all the activities to be carried out and implemented in the Project and described in the Application and this Funding Agreement and anything incidental thereto.

“Project Specific Conditions” means those conditions which are specific to the Grant Recipient in relation to the Project and which are contained in Schedule 1.

“Regulation 480” means Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation 1303.

“Regulation 821” means Commission Implementing Regulation (EU) No 821/2014 of 28 July 2014 supplementing Regulation 1303.

“Regulation 1301” means Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013, on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal, as amended.

“Regulation 1303” means Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 which sets out common provisions on the Structural and Investment Funds, as amended.

“Regulatory Bodies” means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Funding Agreement or any other affairs of the Combined Authority and "Regulatory Body" shall be construed accordingly.

“Revenue Contribution Rate” means the percentage rate in respect of Eligible Expenditure as is specified the Project Specific Conditions at Schedule 1.

“Small to Medium Sized Enterprise” or “SME” means a small to medium sized enterprise as set out in the ‘General Block Exemption Regulation’ (Commission Regulation (EU) No 651/2014).

“Start Date” is the date specified as such in the Project Specific Conditions being the earliest date that the expenditure incurred by the Grant Recipient in relation to the Project can be Eligible Expenditure.

“State Aid Law” 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 European Union and the Treaty on the Functioning of the European Union.

“Structural and Investment Funds” means together the European Regional Development Fund (ERDF) and the European Social Fund (ESF).

“Sub-processor” means any third Party appointed to process Personal Data related to this Agreement on behalf of the Grant Recipient

“Structural and Investment Funds Regulations” means Regulation 1301, Regulation 1303 and any delegated acts or implementing acts adopted under those Regulations.

“Targets” means the outputs and results identified and detailed in the milestone table contained in the Project Specific Conditions.

“Website” means the national website for European Regional Development Fund Programme in England: <https://www.gov.uk/european-growth-funding>.

“Working Day” means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday in England.

2 INTERPRETATION

In this Funding Agreement:

- 2.1 reference to any statute or legislation shall 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 Commission that is directly applicable to the United Kingdom;

- 2.2 reference to any clause, sub-clause, or schedule without further designation shall be construed as a reference to the clause, sub-clause or schedule to this Funding Agreement so numbered;
- 2.3 reference to 'this Funding Agreement' includes any variations made from time to time pursuant to these terms;
- 2.4 reference to "including" shall be construed so as not to limit the generality of any words or expressions in connection with which it is used;
- 2.5 reference to "determined" or "determine" means, unless the contrary is indicated a determination made at the discretion of the person making it;
- 2.6 where the consent approval or agreement of the Combined Authority is required pursuant to the terms of this Funding Agreement, it shall not be construed as having been given unless provided in writing;
- 2.7 words importing one gender shall include both genders and the singular shall include the plural and vice versa;
- 2.8 the headings in this Funding Agreement shall not affect its interpretation;
- 2.9 In the event of a conflict between the following elements comprising this Funding Agreement the priority shall prevail in the following descending order;
 - (a) The conditions set out at Schedule 1 ("Project Specific Conditions");
 - (b) The conditions set out in the main body of this Funding Agreement;
 - (c) The Application.

3 GRANT

- 3.1 In consideration of the Parties' respective obligations contained in this Funding Agreement the Combined Authority offers the Grant and the Grant Recipient accepts the Grant up to the Maximum Sum on the terms and conditions of this Funding Agreement.
- 3.2 The Grant will only be paid in respect of Eligible Expenditure. Eligible Expenditure excludes payments that are the subject of an Irregularity or a suspected Irregularity.
- 3.3 Subject to entering into this Funding Agreement Eligible Expenditure that has been defrayed on or after the Start Date may be claimed pursuant to this Funding Agreement. For the avoidance of doubt the reference to Grant and the provisions of this Funding Agreement shall apply to all claims and Expenditure beginning on the Start Date. If the Funding Agreement is not entered into for any reason there shall be no expectation of Grant and any expenditure incurred in that case shall be entirely for the account and at the risk of the applicant.

4 THE APPLICATION AND ACCEPTANCE OF GRANT TERMS

- 4.1 The Grant Recipient warrants to the Combined Authority that the information it provided to the Combined Authority and contained in the Application is accurate in all respects, having made proper and full enquiry in relation to the same. The Combined Authority has based its decision to offer and pay the Grant (and has relied) upon the representations made by the Grant Recipient in support of the Application and in all documents and information the Grant Recipient provided to the Combined Authority as part of the European Commission's Application appraisal process.
- 4.2 The Grant Recipient accepts and agrees to all of the terms having made full and proper enquiry before giving the warranties contained in this Funding Agreement.
- 4.3 The Grant Recipient acknowledges that the Grant has been offered to it to carry out the Project Activities specified within the Application and achieve the Targets within the time limits set out in this Funding Agreement and the Key Milestone Dates set out in the table contained in the Project Specific Conditions.
- 4.4 In carrying out the Project Activities the Grant Recipient shall at all times comply with its own equality and diversity policies.

5 GRANT CLAIMS

5.1 Amount of Grant payable

- (a) The total amount of Grant payable in respect of Eligible Expenditure will be either the Maximum Sum, or an amount calculated by applying the Revenue Contribution Rate to the actual Eligible Expenditure, whichever is the lower.
- (b) The total amount of Grant paid to the Grant Recipient shall not exceed the Maximum Sum.

5.2 Match Funding Arrangements

- (a) The payment of Grant is conditional upon the receipt by the Grant Recipient of the Match Funding or the Match Funding being committed.
- (b) The Match Funding shall be compliant with the provisions of the Eligibility Rules.
- (c) The Grant Recipient shall notify the Combined Authority in writing immediately of any failure by the Grant Recipient or a third party to make a contribution due under the Match Funding, or any circumstance that affects or might affect the payment or availability of Match Funding.

5.3 Conditions Precedent to the payment of Grant

The Combined Authority will not make the first payment of Grant and/or any subsequent payments of Grant unless all of the following preconditions have been complied with:

- (a) the relevant Grant Claim is emailed to the Combined Authority's Project Manager in accordance with clause 5.4;
- (b) the expenditure is Eligible Expenditure;
- (c) the Grant Recipient has satisfied the Combined Authority that the Grant Recipient has sufficient Match Funding Committed at the Start Date to achieve Completion of the Project by the Agreed Activity End Date;
- (d) the Grant Recipient has satisfied the Combined Authority that the Grant Recipient has all funding needed to pay for expenditure in relation to the Project;
- (e) that Eligible Expenditure has been defrayed (that is that Eligible Expenditure has been incurred and that payment has been made by the Grant Recipient or its delivery partner) in respect of any Eligible Expenditure to which a Grant Claim relates;
- (f) Any security measures required as set out in the Project Specific Conditions is in place to the extent stated; and
- (g) the Conditions have been fully complied with provided that the Combined Authority may waive in whole or in part any Condition/s without prejudicing the Combined Authority's right to require subsequent fulfilment of such Condition/s;

provided always that the payment of a Grant Claim shall not operate as a waiver of any of the obligations in this clause 5.3 or exclude the right for the Combined Authority to exercise any of its rights under this Funding Agreement.

5.4 Grant Claims Procedure

- (a) The Grant Recipient shall make all Grant Claims in arrears, for each Instalment Period.
- (b) Except for the final Grant Claim, each Grant Claim is to be submitted by the fifth Working Day of the month following the end of the Instalment Period for which the Grant Claim is made.
- (c) The first Grant Claim made at the end of the first Instalment Period shall relate to all Eligible Expenditure incurred and paid by the Grant Recipient from the Start Date. Subsequent Grant Claims shall relate to all Eligible Expenditure incurred and paid by the Grant Recipient in an Instalment Period and (subject to clause 5.4(a)) may relate to Eligible Expenditure incurred and paid by the Grant Recipient in a previous Instalment Period which has not previously been claimed.

- (d) The Grant Recipient shall submit each Grant Claim via email ERDFGrowthService@westyorks-ca.gov.uk to the Combined Authority's project manager. Each Grant Claim shall include accounting documents of verifiable value (which shall include the Salary Transaction Claim Form) in such format and detail as may be acceptable to the Combined Authority relating to the amount claimed in such Grant Claim.
- (e) The Combined Authority will normally meet a Grant Claim within 30 working days of receipt, but this is subject to:
 - (i) the Grant Claim being submitted by the deadline referred to in clause 5.4(b); and
 - (ii) the Grant Recipient satisfactorily meeting any request for further evidence and/or particulars about the Eligible Expenditure specified in the Grant Claim or any other details provided for in the Grant Claim.
- (f) The time for payment of the Grant Claim shall not be of the essence. The Combined Authority shall have no liability to the Grant Recipient for any Losses caused by a delay in the payment of a Grant Claim howsoever arising.
- (g) The Grant Recipient must notify the Combined Authority promptly if at any time it becomes aware that it is unable to make a Grant Claim in accordance with the Expenditure Profile.
- (h) If the Grant Recipient intends to submit a Grant Claim in accordance with clause 5.4(b) above which is not in accordance with the Expenditure Profile, it must notify the Combined Authority of the changes it wishes to make to the Expenditure Profile.
- (i) For the avoidance of doubt, no changes may be made to the Expenditure Profile unless approved by the Combined Authority in accordance with clause 8 and the Combined Authority shall be under no obligation to pay a Grant Claim for expenditure which is not in line with the Expenditure Profile.
- (j) A progress report in respect of the Project must be submitted with each Grant Claim, and at such other times as the Combined Authority may notify to the Grant Recipient.
- (k) By submitting a Grant Claim the Grant Recipient warrants to the Combined Authority that there is no Event of Default or Material Breach subsisting by reference to the facts and circumstances existing on each such date.

5.5 Retention of Grant

Without prejudice to any other provision of this Funding Agreement the Combined Authority will retain 10% of the Grant which shall not be released unless and until the following events have occurred:

- (a) completion of the Project Activities;
- (b) the Combined Authority has received, and is satisfied with, the final monitoring report following the final monitoring visit;
- (c) all outstanding audit issues are resolved; and
- (d) that the release of the retention shall not operate as an acknowledgement or waiver and shall not preclude the Combined Authority from exercising any of its rights under this Funding Agreement.

6 THE EXPENDITURE PROFILE

- 6.1 If in any Financial Year (the "**relevant year**") there is a shortfall in the amount of Eligible Expenditure by reference to the amount planned in the Expenditure Profile, the Combined Authority will be under no obligation to pay the Grant for any additional Eligible Expenditure in the following year or any later Financial Year.
- 6.2 If in any Financial Year (the "**relevant year**") there is an overspend in the amount of Eligible Expenditure by reference to the amount planned in the Expenditure Profile, the Combined Authority will be under no obligation to pay Grant in the following year or any later Financial Year which was overspent in any relevant year.

7 DECOMMITMENT OF EUROPEAN SOCIAL FUND RESOURCES

- 7.1 The Grant Recipient acknowledges that the financial consequences that flow from a departure from the Expenditure Profile in any Financial Year could include the loss of resources allocated to the Combined Authority by the European Commission for the Project.
- 7.2 If during any Financial Year of the Project the Combined Authority is reasonably satisfied that there will be a shortfall in Eligible Expenditure and that the Grant Recipient will be unable to make up that shortfall, the Combined Authority may reduce the Grant allocated for the Project. The amount to be re-allocated under these circumstances is determinable by the Combined Authority, but may not exceed the amount of the anticipated shortfall in Eligible Expenditure.
- 7.3 Where the right reserved in clause 7.2 arises under circumstances that also entitle the Combined Authority to exercise the rights reserved in clause 11, the right reserved to the Combined Authority in clause 7.2 is exercisable in addition and without prejudice to the exercise of the rights reserved to the Combined Authority in clause 12.

8 NOT USED

9 LEGISLATION, PROCUREMENT, TENDERING AND STATE AID LAW

9.1 General

The Grant Recipient must comply and secure compliance with the Structural and Investment Funds Regulations and the Grant Recipient hereby warrants that it shall not act or omit to act in any way that may cause the Grant Recipient or the Combined Authority to breach the Structural and Investment Funds Regulations.

9.2 State Aid Law

- (a) The Grant Recipient has undertaken its own independent assessment of the compatibility of the Project with State Aid Law and confirms to the Combined Authority that the Project is structured so it is compliant with State Aid Law. Where the Combined Authority has provided its views on any aspect of State Aid Law, the Grant Recipient confirms that it has considered this information alongside all other sources of State Aid Law available at the time of entering into this Funding Agreement (including regulations and decisions published on the Website) in undertaking its own assessment of the Project's compliance. The Combined Authority has taken into account the Grant Recipient's representations on State Aid Law compliance in deciding to offer the Grant.
- (b) The Grant Recipient shall procure and maintain the necessary expertise and resources to deliver the Project in accordance with the State Aid Law for the full term of the Project. The Grant Recipient agrees to maintain appropriate records of compliance with the State Aid Law and agrees to take all reasonable steps to assist the Combined Authority to comply with State Aid Law requirements and respond to any investigation(s) instigated by the European Commission into the Project or by the European Court of Auditors.
- (c) A finding of State Aid non-compliance in respect of the Project by the European Commission or a Court of competent jurisdiction may lead to Grant Recipient being ordered to repay the Grant with interest in accordance with the European Commission's reference rates.

10 PUBLICITY

10.1 The Grant Recipient shall at all times comply with:-

- (a) Articles 115 and Annex XII of Regulation 1303; and
- (b) Chapter II and Annex II of Regulation 821.

10.3 The obligations in this clause shall continue after this Funding Agreement is terminated.

10.4 The Grant Recipient hereby gives consent to the Combined Authority to publicise in the press or any other medium the Grant and the details of the

Project using any information gathered from the Application or the monitoring of the Project Activities.

- 10.5 The Grant Recipient shall acknowledge the Grant in its annual report and accounts, including an acknowledgement of the Combined Authority and the European Commission as the source of the Grant in the supporting notes.
- 10.6 The Grant Recipient shall not publish any material referring to the Project or the Combined Authority without the prior written agreement of the Combined Authority (which shall not be unreasonably withheld). The Grant Recipient shall acknowledge the support of the Combined Authority in any materials that refer to the Project and in any written or spoken public presentations about the Project.
- 10.7 In using the Combined Authority's name and logo, the Grant Recipient shall comply with the Combined Authority's guidelines.
- 10.8 The Grant Recipient shall comply with all reasonable requests from the Combined Authority to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Combined Authority in its promotional activities relating to the Project.

11 EVENTS OF DEFAULT, MATERIAL BREACH AND RIGHTS RESERVED FOR BREACH OF THE FUNDING AGREEMENT

11.1 Events of Default

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

- (a) the Grant Recipient fails to comply with the Conditions;
- ~~(b) the expenditure is not claimed in line with the Expenditure Profile;~~ JW Jo
- (c) Completion of the Project Activities has not been achieved by the Agreed Activity End Date;
- (d) the European Commission or a European Court requires any Grant paid to be recovered by reason of a breach of State Aid Law;
- (e) the Grant Recipient fails to comply with the provisions of the exemption or scheme (referred to in the Project Specific Conditions) under State Aid Law that applies to the Project and the Grant;
- (f) any report or certificate made by the Grant Recipient's auditor or reporting accountant is unsatisfactory (where, for example, the report or certificate refers to a fundamental uncertainty or disagreement, or contains a material qualification, or states that the auditor or accountant is unable to form an opinion about any item, or reports that any amount is not correctly stated in the accounts or records examined);

- (g) the Grant Recipient owes any sum to the Combined Authority under an agreement for the financial support of any other Project or activities;
- (h) if the Grant Recipient is a Small to Medium Sized Enterprise, but it ceases to be a Small to Medium Sized Enterprise, and it is a requirement arising out of State Aid Law that the Grant Recipient remains as a Small to Medium Sized Enterprise;
- (i) an encumbrancer takes possession or a receiver or administrative receiver or manager or sequestrator is appointed of the whole or any part of the undertaking assets rights or revenues of the Grant Recipient or a distress or other process is levied or enforced upon any of the assets rights or revenues of the Grant Recipient and any such action is not lifted or discharged within 10 Working Days;
- (j) a petition is presented (other than a petition which, in the opinion of the Combined Authority, is frivolous or vexatious and which is withdrawn or stayed within 10 Working Days) to, or any order is made by, any competent court for the appointment of an administrator in relation to the Grant Recipient;
- (k) the Grant Recipient is, or is adjudicated or found to be, insolvent or stops or suspends payment of its debts or is (or is deemed to be) unable to or admits inability to pay its debts as they fall due or proposes or enters into any composition or other arrangement for the benefit of its creditors generally or proceedings are commenced in relation to the Grant Recipient under any law regulation or procedure relating to reconstruction or adjustment of debts;
- (l) any petition is presented by any person (other than a petition which, in the opinion of the Combined Authority, is frivolous or vexatious and which is withdrawn or stayed within 10 Working Days) or any order is made by any competent court or any resolution is passed by the Grant Recipient for its winding-up or dissolution or for the appointment of a liquidator of the Grant Recipient.
- (m) any petition is presented by any person (other than a petition which, in the opinion of the Combined Authority, is frivolous or vexatious and which is withdrawn or stayed within 10 Working Days) or any order is made by any competent court or any resolution is passed by the Grant Recipient for its winding-up or dissolution or for the appointment of a liquidator of the Grant Recipient.
- (n) the European Commission or any other regulatory body otherwise requires the Combined Authority to recover any amount paid under this Funding Agreement.

11.2 Material Breach

A Material Breach is a breach of this Funding Agreement as defined in clause 11.1 above including but not limited to the occurrence of any of the following:-

- (a) any information given or representation made in the Application or in any correspondence, report or other document submitted to the Combined Authority relating to this Project or under this Funding Agreement is found to be incorrect or incomplete to an extent which the Combined Authority considers to be material;
- (b) any fraud has been committed by the Grant Recipient and/or its employees in connection with the Project;
- (c) a breach of the warranties by the Grant Recipient contained in and given pursuant to this Funding Agreement ;
- (d) the Grant Recipient fails to materially comply with the Conditions;
- (e) the activities carried out by the Grant Recipient are distinct or different from the description set out in the Application having regard also to the intended function of the Project Activities and the end beneficiaries of the Project.

11.3 Rights reserved for the Combined Authority in relation to an Event of Default

Where the Combined Authority determines that an Event of Default or a Material Breach has or may have occurred, the Combined Authority may by written notice to the Grant Recipient take any one or more of the following actions:

- (a) suspend the payment of Grant for such period as the Combined Authority shall determine; and/or
- (b) reduce the Maximum Sum in which case the payment of Grant shall thereafter be made in accordance with the reduction and notified to the Grant Recipient; and/or
- (c) cease to make payments of Grant to the Grant Recipient under this Funding Agreement and (in addition) require the Grant Recipient to repay to the Combined Authority the whole or any part of the amount of Grant previously paid to the Grant Recipient; and/or
- (d) terminate this Funding Agreement.

11.4 Opportunity for the Grant Recipient to remedy an Event of Default

- (a) If the Combined Authority gives written notice to the Grant Recipient pursuant to clause 11.3 to suspend payment of Grant, such notice shall specify the relevant Event of Default and give the Grant Recipient an opportunity to rectify the relevant Event of Default within such period as the Combined Authority shall determine to be reasonable and as shall

be set out in such written notice (or such extended period as the Combined Authority shall thereafter determine).

- (b) The written notice referred to in clause 11.4(a) above may include a requirement for the Grant Recipient to provide specified information to the Combined Authority to assist it to determine whether the default has been rectified to his satisfaction.
- (c) The Combined Authority shall not by reason of the occurrence of an Event of Default which is, in the opinion of the Combined Authority, capable of remedy, exercise its rights under either clause 11.3(c) or clause 11.3(d) unless the Grant Recipient has failed to rectify the default pursuant to clause 11.4(a) within such period referred to in clause 11.4(a) to the satisfaction of the Combined Authority.

11.5 Continued rights of actions or remedies of the Combined Authority

The exercise by the Combined Authority of its rights under clause 11.3 shall be without prejudice to any other right of action or remedy of the Combined Authority in respect of any breach by the Grant Recipient of the provisions of this Funding Agreement.

11.6 Cessation of entitlement to Grant

If the Combined Authority exercises its right under clause 11.3(c) the Combined Authority shall give written notice to the Grant Recipient that the Combined Authority is ceasing to make payment of Grant and from the date of such notice the Combined Authority shall cease to be under any obligation to pay any amount of Grant to the Grant Recipient under the Funding Agreement.

11.7 Liability to meet demand for repayment of Grant and Covenant to Pay

- (a) Where the Combined Authority requires the Grant Recipient to repay any amount of Grant, the Grant Recipient shall repay the amount concerned within ten (10) Working Days of receiving the demand for repayment. The liability to meet such a demand shall be enforceable as a contractual debt.
- (b) Where the Combined Authority makes a determination to recover any amount of Grant, it may recover the amount concerned by withholding or deducting the amount from any sum due from the Combined Authority to the Grant Recipient under this Funding Agreement

The Combined Authority may require interest to be paid on any amount repayable by the Grant Recipient in accordance with the rates published in the Official Journal of the European Union from time to time.

11.8 Corrections

- (a) Notwithstanding any other provision in this Funding Agreement the Combined Authority may impose a Correction. If a Correction is imposed a notice will be sent to the Grant Recipient setting out the Irregularity that the Combined Authority considers has occurred together with the level of Correction imposed having regard to any applicable guidelines and/or the value of the Grant Claim to the extent that the Irregularity applies to it.
- (b) If a Correction is imposed the Grant Recipient shall either pay the amount or agree to the Correction being offset from a future Grant Claim as the case may be. The Combined Authority shall be at liberty to offset an amount of Grant in anticipation of a Correction pending the final outcome of any discussions or representations made by the Combined Authority and/or the Grant Recipient in respect of the Correction.
- (c) The Grant Recipient shall be at liberty to make representations in writing to the Combined Authority setting out the reasons it considers that the Correction should be adjusted together with evidence in sufficient detail to enable the Combined Authority to reconsider the requirement for the Correction provided always that the Combined Authority's decision shall be final and binding.

11.9 Exclusion of liability

- (a) Neither party shall be liable to the other party (so far as permitted by law) for indirect special or consequential loss or damage in connection with this Funding Agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- (b) Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Funding Agreement.
- (c) With respect to other claims so far as permitted by law the Combined Authority shall under no circumstances whatever be liable to the Grant Recipient whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any Losses arising under or in connection with this Funding Agreement that would exceed the amount of the Maximum Sum less any amount of Grant Paid.
- (d) Any clause limiting the Grant Recipient's liability does not apply in relation to a Correction that is applied in accordance with the terms of this Funding Agreement.

11.10 Reduction in grant for underperformance

- (a) This clause applies where the Combined Authority determines that the Grant Recipient has underperformed against the Targets to such a degree that a reduction in Grant may be made.
- (b) Where this clause applies, the Combined Authority shall give written notice to the Grant Recipient specifying the Targets it has underperformed against and giving the Grant Recipient an opportunity to rectify that underperformance within such period as the Combined Authority shall determine to be reasonable and as shall be set out in such written notice (or such extended period as the Combined Authority shall thereafter determine).
- (c) The written notice referred to in clause 11.10(b) above may include a requirement for the Grant Recipient to provide specified information to the Combined Authority to assist him to determine whether that underperformance has been rectified to his satisfaction.
- (d) Where the Grant Recipient fails to rectify the underperformance to the Combined Authority's reasonable satisfaction within the specified time period, the Combined Authority may by written notice to the Grant Recipient, reduce the amount of Grant allocated to the Project.
- (e) Where the amount of Grant is reduced under this clause, the Combined Authority shall either require the Grant Recipient to repay to the Combined Authority the whole or any part of the amount of Grant previously paid to the Grant Recipient and/or shall offset it from a future Grant Claim, as appropriate.

12 ASSIGNMENT OR CHARGING OF THE FUNDING AGREEMENT

- 12.1 The Grant Recipient may not, without the prior written consent of the Combined Authority, assign its rights under the Funding Agreement or charge the benefit of the Funding Agreement or novate the rights and liabilities of the Funding Agreement to a third party.
- 12.2 If the Grant Recipient wishes to assign, charge or novate its rights and liabilities under the Funding Agreement, it will give as much notice as possible of its proposals to the Combined Authority and will provide a full account of relevant circumstances and such further particulars as the Combined Authority shall request concerning the party to which the Funding Agreement is proposed to be assigned, novated or charged.
- 12.3 The Combined Authority shall determine as to whether or not to give consent to an assignment or novation or charging of the Funding Agreement or as to any conditions to be imposed. If the Combined Authority consents to an assignment, charge or novation, then the Combined Authority may notify the Grant Recipient that the documentation giving effect to the assignment, charge or novation is to be approved by the Combined Authority and copies of all completed documents supplied to the Combined Authority upon completion of the same.

13 MONITORING PROGRESS, REPORTING AND NOTIFICATIONS

13.1 Submission of progress reports

- (a) The Grant Recipient shall send to the Combined Authority on a quarterly basis within five (5) Working Days of month end (or at such intervals as the Combined Authority shall notify in writing to the Grant Recipient) a report on progress made towards the achievement of the Targets, in a form required by the Combined Authority as provided by the Combined Authority. Without prejudice to any provision of any of this Funding Agreement conferring a remedy for failure to achieve any of the Targets, this obligation shall subsist until the Targets have been achieved.
- (b) The Grant Recipient must provide such additional information in such format as the Combined Authority may at any time require. This includes information about the progress of the Project Activities, the achievement of the Targets and any other information required to enable the Combined Authority to meet its reporting obligations and other obligations under State Aid Law and the Structural and Investment Funds Regulations.
- (c) The Grant Recipient warrants the accuracy of the reports and information it gives pursuant to this clause 13 and further warrants that it has diligently made full and proper enquiry of the subject matter pertaining to the reports and information given.

13.2 Notification by the Grant Recipient

The Grant Recipient shall notify the Combined Authority in writing:-

- (a) as soon as practicable thereafter firstly in the event of any change in the information on costs (whether actual or estimated) of carrying out the Project Activities contained in the Application and secondly of any event which materially affects the continued accuracy of such information;
- (b) as soon as practicable thereafter, in the event of the receipt of any other public sector financial assistance or guarantees of other public sector financial assistance or other funding obtained by the Grant Recipient in relation to the Project, or an offer of the same, in respect of any aspect of the Project or the Project Activities (or any part of it or them);
- (c) as soon as practicable thereafter, of any event which might adversely affect the carrying out and/or Completion of the Project Activities or any part of them;

- (d) as soon as practicable thereafter, of any event which might adversely affect the delivery of the Project by the Agreed Activity End Date;
- (e) forthwith, on the occurrence of an Event of Default.

13.3 **Records**

- (a) The Grant Recipient shall provide the Combined Authority with such information and documentation as the Combined Authority may require in connection with the Project from the date of the Funding Agreement to the date on which the Grant Recipient has fulfilled all its obligations under this Funding Agreement.
- (b) The Grant Recipient shall comply with and assist the Combined Authority to comply with the requirements for an audit trail under the Structural and Investment Funds Regulations including (but not limited to) the detailed minimum requirements under Article 25 of Regulation 480.
- (c) The Grant Recipient must keep a record of all Eligible Expenditure.
- (d) The Grant Recipient will provide to the Combined Authority such information as is available as to the number of persons employed in connection with the Project and such other information as may be requested by the Combined Authority as to the benefits derived from the provision of funding for the Project.
- (e) The Grant Recipient must comply with the requirements of the Combined Authority regarding the keeping of records available on the Website.

13.4 **Retention of documents**

- (a) Without prejudice to any other provision of this Agreement and the Grant Recipient's obligations pursuant to State Aid Law, the Grant Recipient will ensure that all documents relating to the Project and its implementation and financing are retained for a two year period from 31 December following the submission of the accounts in which the final expenditure of the Completed Project is included, in order that these may be made available to the European Commission and European Court of Auditors upon request in accordance with Article 140 of Regulation 1303.
- (b) The Combined Authority shall notify the Grant Recipient of the start date of the two year period referred to in clause 13.4(a).
- (c) In addition to the obligation under clause 13.4(a), the Grant Recipient shall ensure that all documents relating to the Project and its implementation and financing are retained as necessary in order to

demonstrate compliance with any applicable State Aid law, the Structural and Investment Funds Regulations and the obligations under this Funding Agreement.

- (d) The Grant Recipient will make available the documents relating to the Project and its implementation and financing if and when required to do so by the Combined Authority, the Combined Authority, the European Court of Auditors, the European Commission auditors, the National Audit Office (and also their respective auditors).
- (e) The documents referred to in this clause shall be kept and made available either in the form of the originals or certified true copies of the originals or on commonly accepted data carriers including electronic versions of original documents or documents existing in electronic version only.
- (f) Where documents exist in electronic form only, the computer systems used shall meet accepted security standards which ensure the documents held meet with national legal requirements and can be relied upon for audit purposes.

13.5 **Conflicts of interest and financial irregularities**

- (a) The Combined Authority, the Grant Recipient and all officers, employees and other persons engaged or consulted by the Grant Recipient in connection with the Project shall not be in a position where there is a conflict of interest. The Grant Recipient is required to have 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. Any such conflicts must be reported to the Combined Authority in writing.
- (b) If the Grant Recipient has any grounds for suspecting any financial impropriety in the use of any amount paid under the Funding Agreement, it must notify the Combined Authority immediately, explain what steps are being taken to investigate the suspicion, and keep the Combined Authority informed about the progress of the investigation.

For these purposes “financial impropriety” includes fraud or other impropriety; mismanagement; use of Grant for improper purposes; and failure to comply with requirements in the Structural and Investment Funds Regulations relating to the control and propriety of Project expenditure.

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

14 ACCOUNTING RECORDS, SUPPORTING EVIDENCE AND AUDIT

- 14.1 The Grant Recipient shall maintain full and accurate accounts and documentary evidence for the Project on an open book basis and the Grant Recipient will permit the Combined Authority and The Combined Authority and persons authorised by the Combined Authority and The Combined Authority to inspect audit and take copies of all reports books accounting records and vouchers which the Combined Authority and/or The Combined Authority properly considers relevant to the Project.
- 14.2 The Grant Recipient shall maintain either a separate accounting system or an adequate accounting code for all transactions relating to the operation without prejudice to national accounting rules.
- 14.3 The Grant Recipient shall comply with the Combined Authority's audit monitoring and reporting requirements for grant recipients.
- 14.4 The Grant Recipient shall provide the Combined Authority with such other information as the Combined Authority may require in connection with the Project and the Project Activities.
- 14.5 The Grant Recipient shall cooperate fully and promptly with an Audit.
- 14.6 Without prejudice to any other provision of this Funding Agreement, where the Grant Recipient has been notified that the Project has been selected for Audit and
- (a) the Grant Recipient has previously failed to comply fully and promptly with an Audit; or
 - (b) an Irregularity has previously been found in relation to the Project,
- the Combined Authority may, at its discretion, withhold payment of Grant until a subsequent Audit has been completed to the Combined Authority's satisfaction.

15 CONFIDENTIALITY

- 15.1 Except to the extent set out in this clause 15 or where disclosure is expressly permitted elsewhere in this Funding Agreement , each party shall:-
- (a) treat the other party's Confidential Information as confidential and safeguard it accordingly; and
 - (b) not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 15.2 Clause 15.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000, 'Code of Practice on Access to Government Information' or the Environmental Information Regulations;
- (b) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Funding Agreement ; or
- (e) it is independently developed without access to the other party's Confidential Information.

15.3 The Grant Recipient may only disclose the Combined Authority's Confidential Information to the Grant Recipient Personnel who are directly involved in the Project and who need to know the information, and shall ensure that such Grant Recipient Personnel are aware of and shall comply with these obligations as to confidentiality.

15.4 The Grant Recipient shall not, and shall procure that the Grant Recipient Personnel do not, use any of the Combined Authority's Confidential Information received otherwise than for the purposes of this Funding Agreement.

15.5 Nothing in this Funding Agreement shall prevent the Combined Authority from disclosing the Grant Recipient's Confidential Information:

- (a) to any Crown body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Contracting Authority;
- (b) to any consultant, contractor or other person engaged by the Combined Authority and/or The Combined Authority;
- (c) (where such Confidential Information is contained in the Application, any Grant Claim or progress report submitted in respect of the Project), to any member of a Local Enterprise Partnership European Structural and Investment Funds Sub-Committee for the purpose of monitoring and evaluating the Project, subject to clause 15.7;

- (d) to a person receiving technical assistance in accordance with Regulation 1303 for the purpose of monitoring and evaluating the Project.
- (e) to enable the Combined Authority to meet its reporting obligations and other obligations under State Aid Law and the Structural and Investment Funds Regulations for the purpose of clause 13.1(b) of this Funding Agreement ;
- (f) for the purpose of any audit pursuant to clause 14 of this Funding Agreement ;
- (g) for the purpose of the examination and certification of the Combined Authority's accounts; or
- (h) for any examination pursuant to Section 6(1) or Section 7ZA of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Combined Authority and or/ The Combined Authority has used its resources.

15.6 The Combined Authority shall use all reasonable endeavours to ensure that any Crown Body, government department, Contracting Authority, external auditor, employee, third party or sub-contractor to whom the Grant Recipient's Confidential Information is disclosed pursuant to clause 15.5 is made aware of the Combined Authority's obligations of confidentiality.

15.7 Notwithstanding the foregoing the Grant Recipient hereby consents to the Combined Authority using and disclosing (including to the press) any techniques, ideas or know-how gained during the performance of the Project Activities and/or Funding Agreement. The Grant Recipient warrants to the Combined Authority that neither the Intellectual Property Rights nor any publication by the Combined Authority of the project related know-how will infringe, in whole or in part, any Intellectual Property Right of any other person and agrees to indemnify and hold the Combined Authority harmless against any and all claims, demands and proceedings arising directly or indirectly out of the Combined Authority's publication or use of the Project Related Know-how where this gives rise to or is alleged to give rise to an infringement of third party Intellectual Property Rights.

16 NOT USED

17 DATA PROTECTION

17.1 With respect to the parties' rights and obligations under this Funding Agreement, the parties agree that the Combined Authority is the Data Controller and that the Grant Recipient is the Data Processor.

17.2 The Grant Recipient shall:

- (a) process the Personal Data only in accordance with instructions from the Combined Authority (which may be specific instructions or instructions of a general nature as set out in this Funding Agreement or as otherwise notified by the Combined Authority to the Grant Recipient during the term of this Funding Agreement), unless the Grant Recipient is required to do so otherwise by Law. If it is so required, the Grant Recipient shall promptly notify the Combined Authority before processing the Personal Data unless prohibited by Law;
- (b) process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Project Activities or as is required by Law or any Regulatory Body;
- (c) not transfer Personal Data outside of the EU unless the prior written consent of the Combined Authority has been obtained and the following conditions are fulfilled:
 - (i) the Combined Authority or the Grant Recipient has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Combined Authority;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Grant Recipient complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Combined Authority in meeting its obligations); and
 - (iv) the Grant Recipient complies with any reasonable instructions notified to it in advance by the Combined Authority with respect to the processing of the Personal Data.
- (d) take reasonable steps to ensure the reliability and integrity of any Grant Recipient Personnel who have access to the Personal Data and ensure that they;
 - (i) are aware of and comply with the Grant Recipient's duties under this clause;
 - (ii) are subject to appropriate confidentiality undertakings with the Grant Recipient or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Combined Authority or as otherwise permitted by this Funding Agreement ; and

- (iv) have undergone adequate training in the use, care, protection and handling of Personal Data.
- (e) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- (f) notify the Combined Authority (within five Working Days) if it receives:-
 - (i) a request from a Data Subject to have access to that person's Personal Data; or
 - (ii) a complaint or request relating to the Combined Authority's obligations under the Data Protection Legislation;
- (g) provide all reasonable assistance to the Combined Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Combined Authority, include:
- (h) a systematic description of the envisaged processing operations and the purposes of processing;
 - (ii) an assessment of the necessity and proportionality of the processing operations in relation to the Services; and
 - (iii) an assessment of the risks to the rights and freedoms of Data Subjects.
- (i) taking into account the nature of the processing, provide the Combined Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under this clause 17 (and insofar as possible within the timescales reasonably required by the Combined Authority) including by promptly providing;
 - (i) the Combined Authority with full details and copies of the complaint, communication or request;
 - (ii) such assistance as is reasonably requested by the Combined Authority to enable the Combined Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

- (iii) the Combined Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (iv) assistance as requested by the Combined Authority following a Data Loss Event;
 - (v) assistance as requested by the Combined Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Combined Authority with the Information Commissioner's Office; and
 - (vi) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- (j) Provide a written description of the technical and organisational methods employed by the Grant Recipient for processing Personal Data (within the timescales required by the Combined Authority);
 - (k) At the written direction of the Combined Authority, delete or return Personal Data (and any copies of it) to the Combined Authority on termination of this Funding Agreement unless the Grant Recipient is required by Law to retain the Personal Data.
 - (l) Permit the Combined Authority or a representative of the Combined Authority to inspect and audit (subject to reasonable and appropriate confidentiality undertakings), the Grant Recipient's Data Processing activities (and/or those of its agents, subsidiaries and contractors) and comply with all reasonable requests or directions by the Combined Authority to enable the Combined Authority to verify and/or procure that the Grant Recipient is in full compliance with its Data Processing obligations under this Funding Agreement .

17.3 The Grant Recipient shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Funding Agreement in such a way as to cause the Combined Authority to breach any of its applicable obligations under the Data Protection Legislation.

18 NOT USED

19 GRANT RECIPIENT WARRANTIES

The Grant Recipient warrants, represents and undertakes for the duration of the term of this Funding Agreement that:

- (a) it has and will continue to hold all necessary (if any) regulatory approvals necessary to perform the Grant Recipient's obligations under this Funding Agreement ;

- (b) it has and will continue to have all necessary rights in and to the Grant Recipient Software or any third party software and/or the Intellectual Property Rights, or any other materials made available by the Grant Recipient and/or the sub-contractors to the Combined Authority necessary to perform the Grant Recipient's obligations under this Funding Agreement ;
- (c) in performing its obligations under this Funding Agreement, all Software used by or on behalf of the Grant Recipient will:
 - (i) be currently supported versions of that Software; and
 - (ii) perform in all material respects in accordance with its specification,
- (d) as at the Start Date all statements and representations in the Grant Recipient's Application are to the best of its knowledge, information and belief, true and accurate and that it will advise the Combined Authority of any fact, matter or circumstance of which it may become aware which would render any such statement, representation to be false or misleading; and
- (e) it shall at all times comply with Law in carrying out its obligations under this Funding Agreement ;
- (f) it has the power and authority to execute, deliver and perform its obligations under this Funding Agreement and no limit on its powers will be exceeded as a result of the acceptance of the Funding or any of the terms pursuant to this Funding Agreement ;
- (g) there has been no adverse change in the Grant Recipient's business, assets or financial condition since the submission of the Application to the Combined Authority and that the Application is true in all respects on the date of this Funding Agreement ;
- (h) no regulatory investigation by any United Kingdom or European Commission authorities has been commenced or is pending in respect of the Project or the Grant Recipient, or if there has been a regulatory investigation, it has been concluded to the satisfaction of the Combined Authority.

NOTICES

- 19.1 Any notice demand or communication to be given or served under this Funding Agreement shall be in writing.

- 19.2 Subject to any other term of this Funding Agreement , any notice demand or communication to be given or served under this Funding Agreement upon the Combined Authority shall be given or served:
- (a) by personal delivery or by sending it by pre-paid recorded postal delivery to the address specified in the Funding Agreement for the attention of the ERDF Programme or to such other address as may from time to time be notified by the Combined Authority;
 - (b) by email to the email address specified in the Project Specific Conditions or such other address as may from time to time be notified by the Combined Authority; or
- 19.3 Any notice, demand or communication to be served upon the Grant Recipient, shall be given or served:
- (a) by personal delivery or by sending it by pre-paid recorded postal delivery to the address specified in this Funding Agreement or such other address as may from time to time be notified by the Grant Recipient to the Combined Authority;
 - (b) by email to the email address specified in the Project Specific Conditions or to such other address as may from time to time be notified by the Combined Authority; or
- 19.4 Any such notice shall (where sent by post) be deemed to have been served and received on the second working day following the day of posting and where delivered personally be deemed to have been given when delivery is made.
- 19.5 If the Grant Recipient 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.

20 VALUE ADDED TAX

- 20.1 The payment of the Grant by the Combined Authority under the Funding Agreement is believed to be outside the scope of Value Added Tax but if any Value Added Tax shall become chargeable all payments shall be deemed to be inclusive of all Value Added Tax and the Combined Authority shall not be obliged to pay any additional amount by way of Value Added Tax.
- 20.2 All sums or other consideration payable to or provided by the Grant Recipient to the Combined Authority at any time shall be deemed to be exclusive of all Value Added Tax payable and where any such sums become payable or due or other consideration is provided the Grant Recipient shall at the same time or as the case may be on demand by the Combined Authority in addition to such sums or other consideration pay to the Combined Authority all the Value Added Tax so payable upon the receipt of a valid Value Added Tax invoice.

21 GOOD FAITH AND COOPERATION

The Grant Recipient covenants with the Combined Authority that:-

- (a) it shall at all times act with the utmost good faith towards the Combined Authority and will at all times co-operate fully with the Combined Authority;
- (b) it will comply with all the Combined Authority's reasonable requirements in relation to the Project from time to time; and
- (c) it will not do anything which will put the Combined Authority in breach of any of its obligations in relation to the Project.

22 INSURANCE

The Grant Recipient covenants with the Combined Authority that it will ensure that it maintains at all times adequate insurance cover with an insurer of good repute to cover all claims and liabilities under this Funding Agreement or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with the Project.

23 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not party to this Funding Agreement shall not have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Funding Agreement.

24 JURISDICTION

This Funding Agreement shall be governed by and construed in accordance with the law of England and each party submits to the exclusive jurisdiction of the English Courts.

25 MISCELLANEOUS

- 25.1 Nothing in this Funding Agreement shall constitute a partnership or joint venture between the parties to this Funding Agreement or constitute the Grant Recipient as the agent of the Combined Authority for any purpose whatsoever.
- 25.2 A certificate by the Combined Authority as to any sum payable under this Funding Agreement to the Grant Recipient shall be (save in the case of manifest error) conclusive evidence of the matter to which it relates and shall contain reasonable details of the basis of determination.
- 25.3 If at any time any of the provisions of this Funding Agreement become illegal, invalid or unenforceable in any respect under any law or regulation of any jurisdiction, neither the legality validity nor enforceability of the remaining provisions of this Funding Agreement shall be in any way affected or impaired as a result.

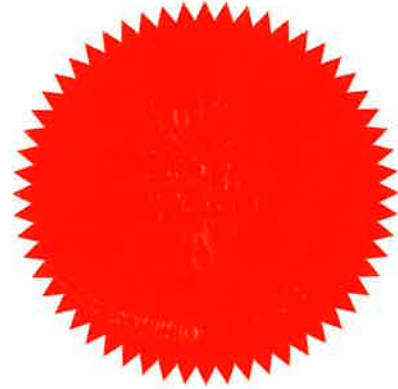
- 25.4 No failure or delay on the part of the Combined Authority in exercising any right or power and no course of dealing between the parties to this Funding Agreement shall operate as a waiver nor shall any single or partial exercise of any right power or remedy of the Combined Authority prevent any other or further or other exercise of it or the exercise of any other right power or remedy of the Combined Authority. The rights and remedies available to the Combined Authority under this Funding Agreement are cumulative and are in addition to and not in substitution for any other rights or remedies which the Combined Authority would otherwise have, however arising.
- 25.5 Nothing contained in or done under this Funding Agreement and no consents given by the Combined Authority shall prejudice the Combined Authority's rights, powers or duties and/or obligations in the exercise of its functions or under any statutes, bye-laws, instruments orders or regulations.
- 25.6 Nothing in this Funding Agreement nor any other document shall impose any obligation or liability on the Combined Authority with respect to any actions of or obligations or liabilities assumed or incurred by the Grant Recipient or its agents, contractors or employees whether under contract, statute or otherwise.
- 25.7 Any approval by the Combined Authority or any person on behalf of the Combined Authority pursuant to this Funding Agreement of any matter submitted by the Grant Recipient for approval shall not be deemed to be an Acknowledgment by the Combined Authority of the correctness or suitability of the contents of the subject of the approval or consent.
- 25.8 The fact that the Combined Authority or their 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 Grant Recipient of any obligation or liability in respect of the Project Activities or otherwise.
- 25.9 Nothing in this Funding Agreement shall affect the coming into force or the continuance in force of any provision of this Funding Agreement which is expressly or by implication to come into force or continue in force upon termination or expiry of this Funding Agreement.
- 25.10 This Funding Agreement contains all the terms which the Combined Authority has agreed in relation to the subject matter of this Funding Agreement and supersedes any prior written or oral agreements representations or understandings between the Combined Authority and the Grant Recipient.
- 25.11 No term of this Funding Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Funding Agreement
- 25.12 Notwithstanding any other provisions of this Funding Agreement, the Combined Authority shall not be entitled to be reimbursed or to recover any monies that it has paid under this Funding Agreement to the extent that it has already been

compensated or reimbursed in respect of that same amount pursuant to this Funding Agreement.

26 TERMINATION CLAUSE

- 26.1 This Agreement may be terminated by the Combined Authority at any time on the provision of three months' written notice to the Grant Recipient. In such circumstances, the Combined Authority shall only be liable to reimburse the Grant Recipient for all Eligible Expenditure incurred up to the point of termination and will not be liable for any other losses which may have incurred as a result of termination.
- 26.2 Exercise of the right of termination shall not prejudice the exercise of any legal rights or remedies the Combined Authority may have against the Grant Recipient in respect of any breach of the terms of this Agreement.

IN WITNESS of which the parties have executed this Deed as a deed and delivered it on the date written at the top of this document.



2019/
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The **COMMON SEAL** of **WEST YORKSHIRE COMBINED AUTHORITY** affixed to this DEED was authenticated by

JADE
(Authorised Signatory)

The **COMMON SEAL** of **LEEDS CITY COUNCIL** affixed to this DEED was authenticated by

JOHN WILKINSON
JOHN WILKINSON

(Authorised Signatory)

LEGAL MANAGER
PACS

Seal No. 99923

SCHEDULE 1

THE PROJECT SPECIFIC CONDITIONS

1. Maximum Sum and the Contribution Rate

- 1.1 The amount of Grant payable the Grant Recipient shall not exceed the Maximum Sum of £ 499,681 and has been determined as being fifty percent (the Revenue Contribution Rate) of the Eligible Expenditure.
- 1.2 The Maximum Sum does not include the Grant Recipient's travel expenses (reasonably incurred), which shall be agreed separately with the Combined Authority.

2. Contact

The principal contact for this Project in the Combined Authority is Jo Wilkinson jo.wilkinson@westyorks-ca.gov.uk. All correspondence, including any notices served pursuant to clause 21.2 in the main body of this Funding Agreement should be sent by email to jo.wilkinson@westyorks-ca.gov.uk. In any correspondence please quote Leeds City Region Growth Service.

3. Instalment Periods

The Instalment Period will be quarterly ending on 31 March, 30 June, 30 September and 31 December. The first Instalment Period will start following the date on which the correctly executed Funding Agreement is received by the principal contact named above.

4. Milestone Table

	Milestone	Date
a)	Start Date	01 April 2019
b)	Agreed Financial Completion Date	31 March 2022
c)	Agreed Activity End Date	31 March 2022
d)	Agreed Project Practical Completion Date	30 June 2022
e)	The date of the submission of the first Grant Claim	26 July 2019
f)	The date of the submission of the final Grant Claim	28 April 2022
g)	Match Funding Longstop Date	30 April 2019

5. Match Funding

- 5.1 Without prejudice to clause 5.2(a) of the conditions in the main body of this Funding Agreement, the Combined Authority accepts that as at the date of this Funding Agreement the Grant Recipient's Match Funding for the Project has been approved as set out in the table below:

Funding Contributions	2019/20	2020/21	2021/22	Total
Leeds City Council	£160,236	£167,597	£171,847	£499,681

5.2 The Grant Recipient shall provide evidence to confirm the indicative Match Funding is fully committed prior to the first Grant Claim by the Match Funding Longstop Date included at clause 4 of these Project Specific Conditions.

5.3 The Grant Recipient acknowledges and accepts that if it fails to provide evidence to the satisfaction of the Combined Authority in accordance with clause 5.2 of these Project Specific Conditions above, such failure shall be treated as an Event of Default pursuant to clause 12.1 of the conditions set out in the main body of this Funding Agreement.

6. Methodology for determining Eligible Expenditure

6.1 For the avoidance of doubt, the methodology for determining the Eligible Expenditure of the Project is set out in the Eligibility Rules and Grant Claims shall be submitted in line with this methodology.

6.2 Where the implementation of the Project gives rise to indirect costs, they are to be calculated at a flat rate of 15% of eligible direct staff costs in accordance with the Eligibility Rules.

7. State Aid to the Grant Recipient

7.1 The Grant Recipient has undertaken its own assessment of the compliance of the Project, as structured, and warrants to the Combined Authority and State Aid Law compliant because they will not receive any advantage from the Grant as this will flow through to the Project beneficiaries.

7.2 In delivering the Project Activities the Grant Recipient confirms that it will not receive any economic advantage and that the Grant Recipient and will operate the Project on a not for profit basis. At the end of delivering the Project, the Grant Recipient will be required to account for any residual advantage they have obtained through the Grant.

7.3 The Grant Recipient agrees that it shall collect appropriate information to demonstrate that it and each of the Delivery Partners has no economic advantage (which shall be supplied to the Combined Authority and The Combined Authority upon request). To ensure the transparency, the Grant Recipient agrees to oversee that it shall:

- (a) benchmark their salary costs against market prices and demonstrate the staff they employ, and the number of staff are appropriate for the Project;
- (b) ensure that it does not overcompensate the businesses that they are supporting and ensure that costs claimed are not above that incurred by an efficient operator providing the service.

Aid to the Beneficiaries

- 7.4 The Grant Recipient warrants that any economic advantage that may be provided to the Project beneficiaries by the Grant Recipient within the framework of the 'De Minimis Regulations' (EC Reg 1407/2013 OJ L 352 of 24.12.2013) will meet the conditions set out in the De Minimis Regulations.
- 7.5 The Grant Recipient confirms that all staff who deliver such aid shall first read the De Minimis Regulations 1407/2013 to ensure that they understand the administrative requirements. Compliance with the De Minimis Regulations shall include:
- (a) valuing the 'gross grant equivalent' of the aid provided to each SME;
 - (b) establishing how much aid the SME has received in the current and two previous financial years to ensure that the award of the aid shall not exceed the €200,000 threshold for the SME in that period;
 - (c) obtaining a prior declaration from the SME (signed by a person authorised to bind them) that the aid received shall not result in the SME exceeding its allowable €200,000 threshold as above; and
 - (d) providing a follow-up letter to each SME recording the gross grant equivalent value of aid provided under the De Minimis Regulations.
- 7.6 The Grant Recipient agrees not to provide aid to any person or sector excluded under the De Minimis Regulations and to retain all declarations until 2033 in order to establish that all the conditions laid down in Regulation 1407/2013 have been complied with.

Aid to Contractors

- 7.7 The Grant Recipient warrants that there shall be no State Aid to the procured contractors within the Project because they shall pay a market rate for the procured services. The Grant Recipient shall regularly review the rates offered within the market for similar services and agrees to maintain documentation to demonstrate compliance.
- 7.8 The Grant Recipient shall use all reasonable endeavours to maintain the 'no aid' structure and shall promptly inform the Combined Authority where it has reason to believe that the Project is no longer operating under a 'no aid' structure.

8. The Grant Recipient's Targets

- 8.1 The Grant Recipient's Targets are as follows:

ER/P/O/13 Number of enterprises receiving information, diagnostic and brokerage support					
	Q1 Profile	Q2 Profile	Q3 Profile	Q4 Profile	TOTAL Profile
2019	0	6	8	9	23

2020	12	20	20	17	69
2021	10	10	11	15	46
2022	10	18	0	0	28
	32	54	39	41	166

ER/C/O/04 Number of enterprises receiving non-financial support

	Q1 Profile	Q2 Profile	Q3 Profile	Q4 Profile	TOTAL Profile
2019	0	0	0	3	3
2020	3	3	10	16	32
2021	7	8	8	10	33
2022	2	3	0	0	5
	12	14	18	29	73

P13's for existing growth managers

	Q1 Profile	Q2 Profile	Q3 Profile	Q4 Profile	TOTAL Profile
2019	0	6	8	6	20
2020	9	14	10	5	38
2021	7	15	8	5	35
2022	0	0	0	0	0
	16	35	26	16	93

ER/C/O/08 Employment increase in supported enterprises

	Q1 Profile	Q2 Profile	Q3 Profile	Q4 Profile	TOTAL Profile
2019	0	0	0	0	0
2020	0	0	0	0	0
2021	3	4	4	4	15
2022	6	6	6	3	21
	9	10	10	7	36

SCHEDULE 2

THE APPLICATION



Growth Hub - Full
Application Form FII

