

DRAFT

Dated 20...

SHROPSHIRE COUNCIL (1)

and

XXXXXXXXXXXXXXXXXXXX (2)

GRANT FUNDING AGREEMENT

in relation to

Vibrant Shropshire Funding Programme



HM Government



BETWEEN

- (1) **SHROPSHIRE COUNCIL** of The Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND (the “**Council**”); and
- (2) **XXXXXXXXXXXXX** of/whose registered office is at [XXXXXXXXXXXXXXXXXX] [(with registered number XXXXXXXXXXXXX)] (“**You**”)

each a “**Party**” and together, the “**Parties**”.

INTRODUCTION

- (A) The Council has been awarded grant funding from *the UK Government through the UK Shared Prosperity Fund* for the purposes of the delivery of the project set out in the application.
- (B) You agree to procure the delivery of the Works which will promote the delivery of the Outputs.
- (C) Not used
- (D) As lead authority the Council has entered into an MoU with the Secretary of State for the Department of Levelling Up, Housing and Communities dated [XXXXXXX] setting out the terms and conditions attached to the use of the Grant Funding.
- (E) The Grant Funding is to be allocated to the Council and the members of the Vibrant Shropshire: a Cultural Compact for the purposes of achieving the objectives set out in the MoU. The Council has agreed to act as the Accountable Body with regard to the administration and distribution of the Grant Funding
- (F) As a member of the Consortium, You agree to use your reasonable and commercially sensible endeavours to procure the delivery of the Works which will promote the delivery of the Outputs.
- (G) The Council/**Accountable Body** will make the Grant available to You to help fund the Works during the Funding Period.
- (H) The **Council/Accountable Body** agrees to provide the Grant to You for the purposes of the Project on the terms and conditions set out in this Agreement which for the avoidance of doubt includes the Appendices attached to this Agreement numbered 1 to 7 inclusive.
- (I) Not Used
- (J) **Not used**
- (J) The award of the Grant is considered a Subsidy.

NOT USED[The amount of the Grant is below £315,000 and is able to be awarded further to the Minimal Financial Assistance exemption permitted by the Subsidy Rules. You have, or shall have prior to the Commencement Date and receipt of the Grant, signed a Minimal Financial Assistance Declaration (in the form set out in Appendix 8 to this Agreement)]

- (K) The Grant provided under this Agreement is (at its date) made in compliance with the Subsidy Rules

1 DEFINITIONS

- 1.1 In this Agreement unless the context otherwise requires the following words and expressions have the following meanings:

Accountable Body	means the Council acting in its role as accountable body for the purposes of administering and distributing the UK Shared Prosperity Funding to support a grants programme administer by Vibrant Shropshire a Cultural Compact
Agreement	means this Agreement (including its Appendices);
BEIS	means the Department for Business, Energy and Industrial Strategy;
Bribery Act	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning that Act;
Capital Grant	means the sum of £XXXXXXXX (XXXXXXXXXXXX) to be used for the purposes of the Works
Claim	means a claim for Grant made in accordance with the procedure set out in Clause 5 (<i>Grant Payment</i>) and Appendix 2 (<i>Claim Monitoring and Clause Reporting Requirements</i>);
Claim Form	means the Grant Claim Form [set out in Appendix 7(<i>Claim Form</i>)] issued to You by the Council];
Commencement Date	means XXXXXXXXX
Compensation	means the Grant payable to You as compensation for the delivery of the [describe eligible grant funded works] to [describe the eligible beneficiaries] further to Your delivery of SPEI
Completion Date	means XXXXX or such other later date as is notified to You by the Council in writing in the event that the Funding Period is extended
Confidential Information	means all information and documents pertaining to You and Your customers and suppliers, the Council (including the Accountable Body) and BEIS and their respective customers or suppliers together with all information derived from the above;
Consortium	means: Vibrant Shropshire: a Cultural Compact being the group of cultural and non-cultural board members working together to deliver the Cultural Strategy and working with the Council as lead authority, to deliver the proposals contained in the Bid
Council	means Shropshire Council;
Covid 19 Working Practices	Means working practices complying with all applicable guidance issued by the government from time to time with respect to safeguarding individuals from the spread of the Covid-19 virus
Data Protection Legislation	all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party

Data Sharing Agreement	Means the Data Sharing Agreement between You and the Council annexed to this Agreement as Appendix 6
Eligible Expenditure	means payments made by You during the Funding Period for the purposes of delivering the Project which comply with the Funding Arrangements and which are incurred in relation to: <ul style="list-style-type: none"> a. Revenue Grant payments; b. [insert detail] and c. [insert details]
Employment Checks	means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, disclosure and barring checks
Final Claim	means the final claim to be made for funding under this Agreement;
Final Claim Date	Means the later of XXXXXXXX or such later date as is advised to You by the Council following notification from the Department of Levelling Up, Housing and Communities of an agreement to extend the Funding Period
Financial Year	Means 1 st April to the following 31 st March
Funding Arrangements	Means the MoU dated XXXXXXXX between the Council and Secretary of State for Levelling Up, Housing and Communities
Funding Period	means the period commencing on the Commencement Date and ending on the Funding Period Expiry Date;
Funding Period Expiry Date	Means XXXXXX or such other later date as may be advised to You in writing by the Council/ Accountable Body during the Term following notification from the Department of Levelling Up, Housing and Communities to the Council of an agreement to extend the Funding Period
Geographic Area	means the geographic area of the counties of Shropshire
Grant	means the sum of £XXXXX (XXXXX) being the total amount of Grant Funding allocated to You and available for use during the Funding Period and which will be distributed to You by the Council/Accountable Body under the terms of this Agreement
Grant Funding	Means the sum allocated to the Council further to the Funding Arrangements
Intellectual Property Rights	means, and shall include, without limitation all rights to, and any interests in, any patents, designs, trademarks, copyright, know-how, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) in respect of any technology, concept, idea, data, program or other software (including source and object codes), specification, plan, drawing, schedule, minutes, correspondence, scheme, formula, programme, design, system, process logo, mark, style, or other matter or thing, existing or conceived, used, developed or produced by any person;

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;
Match Funding	means the amount of contributory funding that You should provide in addition to the Grant/[both the <i>Capital Grant and the Revenue Grant</i>] towards the cost of the Project The co-funding contribution required from You includes: 1. 10% of total Eligible Expenditure expended with respect to [insert detail] set out in Appendix 5 to this Agreement; and 2.
Material Change	means any changes to the Project which in the reasonable opinion of the Council is deemed to be material (including for the avoidance of doubt the receipt by You of any funding towards the Project or of which the Council becomes aware which has not previously been disclosed by You in accordance with the terms of this Agreement);
Report	Shall be the report required to be submitted by You to the Council further to clause 9 and Appendix 2 <i>Claim Monitoring and Reporting Requirements</i>)
Outputs	means the outputs intended to be achieved under this Agreement in accordance with Appendix 1 (<i>Project Specifics</i>);
Personal Data	shall have the same meaning as set out in the Data Protection Legislation;
Prevent Duty	Is the duty conferred upon the Council in the exercise of its functions to have due regard to the need to prevent people from being drawn into terrorism further to the Counter-Terrorism and Security Act 2015
Procurement Regulations	means all applicable UK regulations and guidance relating to public procurement in force and applicable in the UK from time to time
Prohibited Act	means: a) offering, giving or agreeing to give to any servant of the Council/ Accountable Body any gift or consideration of any kind as an inducement or reward for: i. doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Council/ Accountable Body ; or ii. showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Council/ Accountable Body ; b) entering into this Agreement or any other contract with the Council/ Accountable Body where a commission has been paid or has been agreed to be paid by You or on Your behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council/ Accountable Body ; c) committing any offence: i. under the Bribery Act; ii. under Laws creating offences in respect of fraudulent acts; or

- iii. at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Council/**Accountable Body**; or
- d) defrauding or attempting to defraud or conspiring to defraud the Council/**Accountable Body**;

Project Board	Means the board led by the Council for oversight of the use of the Grant Funding
Project	means the project described in Part A, Appendix 1 (<i>Project Specifics</i>) and any subsequent amendments agreed to it by the Council the Department of Levelling Up, Housing and Communities in writing intended to support the objectives of the Grant Funding set out in recitals (A), (X), and (X) (Background) to this Agreement;
Project Period	means the period commencing on the Commencement Date and ending on the Completion Date;
Project Related Know-how	means information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale arising out of the Project;
Public Sector Funding	means all funding provided in relation to any Revenue Project in money or money's worth received or receivable by You from public sector bodies including for this purpose funding from the European Commission, government bodies (whether national or local) or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Acts 1993 and 1998
Quarterly Report	Shall be the quarterly report required to be submitted by You to the Council further to clause 9 and Appendix 2 <i>Claim Monitoring and Reporting Requirements</i>
Registered Provider	Not used
Regulated Activity	in relation to children, as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012), and in relation to vulnerable adults, as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
Regulated Activity Provider	as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006(as amended by the Protection of Freedoms Act 2012)
Regulator	Not used
Revenue Grant	means £xxxxxxx(xxxxxxxxxxxxxxx) and which is to be used for the purposes of [insert details]
Revenue Grant Payments	means payments made by You using the Revenue Grant in respect of [insert detail]
Service of Public Economic Interest (SPEI)	Not Used
SPEI Allowable Costs	Not used
SPEI Information	Not used
SPEI Necessary Subsidy	Not used

SPEI Overpayment

Not used

Sub-Contractors

Not used

Sub-Contract

Not used

Subsidy

means any direct or indirect financial assistance which:
(a) arises from the resources of the United Kingdom Government, devolved government, other public authority in the United Kingdom or an emanation of any of these, including:
i a direct or contingent transfer of funds such as direct grants, loans or loan guarantees;

ii the forgoing of revenue that is otherwise due;

iii the provision of goods or services, or the purchase of goods or services; or

iv a measure analogous to these,

(b) confers an economic advantage on one or more economic actors;
(c) is specific insofar as it benefits, as a matter of law or fact, certain economic actors over others in relation to the production of certain goods or services; and

(d) has, or could have, an effect on trade or investment between the United Kingdom and any part of the European Economic Area and/or any other country or countries which the United Kingdom has entered into a trade agreement with which has provisions in respect of Public Sector Funding arrangements

Subsidy Rules

means any legislation which (including the incorporation of international treaties by virtue of statutory provisions) regulations and guidance issued by a Secretary of State and/or approved by Parliament which is in force and/or applies in England and Wales which regulates Subsidy

Term

Means the period commencing on the Commencement Date and ending on the Completion Date

Termination Event

has the meaning given to that term in Clause 7 (*Termination*);

Unlawful Subsidy

means Subsidy which has been granted, or from time to time is, in contravention of the Subsidy Rules.

Value Added Tax or VAT

means value added tax as provided for in the Value Added Tax Act 1994 or such similar tax which may be imposed in place from time to time;

Works

means the works or services to be undertaken with respect to the delivery of the Project that You are expected to deliver and which You must ensure are undertaken in compliance with the requirements of the Project as set out in Appendix 1 (*Project Specifics*), Covid-19 Working Practices and this Agreement in order to meet the Outputs

Working Day

means any day other than a Saturday, Sunday or public holiday in England and Wales.

2. INTERPRETATION

In this Agreement, unless the context otherwise requires:

2.1.1 words importing any gender include every gender;

2.1.2 words importing the singular number include the plural number and vice versa;

- 2.1.3 a person includes an individual, firm, company, corporation, unincorporated body of persons, or any state or any agency of any person;
- 2.1.4 a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- 2.1.5 references to numbered Clauses and Appendices are references to the relevant Clause in or Appendix to this Agreement;
- 2.1.6 reference to numbered paragraphs in any Appendix to this Agreement relate to the numbered paragraphs of that Appendix;
- 2.1.7 any reference to the Council in its role as the Accountable Body in this Agreement shall be construed as the Accountable Body acting in its capacity as the Accountable Body only and not as a consequence of its own decision-making powers in its capacity as a local authority;
- 2.1.8 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- 2.1.9 the headings to the Clauses, Appendices and paragraphs of this Agreement are not to affect the interpretation;
- 2.1.10 a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it; and
- 2.1.11 the words 'includes' or 'including' are to be construed without limitation.

3. PROJECT SPECIFIC CONDITIONS

- 3.1 The Project will commence on or after the Commencement Date.
- 3.2 The Project will be delivered within the Geographic Area to the residents of and visitors to Shropshire
- 3.3 You will use your best endeavours to secure the delivery of the Project activity and achievement of the Outputs by the Completion Date.
- 3.4 You must notify the Council as soon as reasonably practicable of any circumstances actually arising that are likely to result in:
 - 3.4.1 the Project Outputs not being delivered by the Completion Date;
 - 3.4.2 the Project being materially varied as specified in Appendix 1 (*Project Specifics*);
 - 3.4.3 changes to the Project which would give rise to a Termination Event as detailed in Clause 7 (*Termination*); or
 - 3.4.4 an underspend of the allocated Grant within the Funding Period.
- 3.5 Save as expressly permitted to the contrary elsewhere in this Agreement, any changes to the Project or this Agreement requested by You will need to be formally requested in writing and approval will be given at the discretion of the Council following consultation with the Department of Levelling Up, Housing and Communities where such consultation is required, further to the Funding Arrangements.
- 3.6 Payment of a Claim for the Grant shall be in accordance with clause 5 (Grant Payment) with respect to Eligible Expenditure actually incurred by You
- 3.7 Payment of the Grant is also subject to You providing evidence of You having secured Match Funding in the sum of £XXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXX) pursuant to Clauses 4.10.2 and 4.10.3(*Obligations*).
- 3.8 You may at any time seek confirmation from the Council that an intended expenditure (or actual expenditure) is or is not an Eligible Expenditure and the Council shall within 10 Working Days of any such request provide a written response confirming whether such expenditure is or would be Eligible Expenditure and if not shall provide reasons.

4 OBLIGATIONS/PROHIBITIONS/WARRANTIES

4.1 The Grant must only be used for Eligible Expenditure relating to the Project and not for any other purposes and, in particular, must be used to achieve the agreed Outputs and deliverables set out in Appendix 1 (*Project Specifics*).

4.2 Changes to The Outputs

4.2.1 You must obtain prior written consent from the Council before implementing any intended or actual Material Changes to the Project.

4.2.2 the Council shall not unreasonably withhold or delay its consent to any request for a Material Change and shall use its reasonable endeavours to give or withhold its consent (with detailed reasons for withholding consent) Subject to any obligation to refer such a request to the Department of Levelling Up, Housing and Communities within 10 Working Days of each such request.

4.3 Obligation to Do Works / Economic Viability

4.3.1 Subject to prior consultation and agreement with the Council, You may, but shall not be obliged to, implement the Project and/or following consultation and agreement with the Council You may implement the Project in whole or in part Provided always that the Grant may only be used for the purposes of the Project or relevant part thereof in accordance with this Agreement.

4.3.2 Without prejudice to clause 4.3.3 should You be subject to financial or other difficulties which are capable of having a material impact on the economic and effective delivery of the Project or compliance with this Agreement, You will notify the Council as soon as possible. The Parties will then each use their reasonable and commercially sensible endeavours for such period as both Parties shall consider prudent to reach an agreed resolution to the issue.

4.3.3 Without prejudice to Clause 4.3.1 You may at any time on giving written notice to the Council cease to carry out or implement any Works or further Works in respect of the Project where in all the circumstances then prevailing it is agreed between the Parties that the implementation and or continuation of the Project is no longer economically viable.

4.3.4 Unless You have consulted with and/or notified the Council further to clauses 4.3.1-4.3.3 above that You do not intend to implement the Project either in whole or in part and have obtained the Council's written agreement to Your proposals You must procure and diligently pursue the completion of the Works so that the Outputs are delivered by the Completion Date, in accordance with Appendix 1 (*Project Specifics*). At all times it shall be considered by You that time is of the essence in delivering the Project (whether in whole or in part as may apply further to clauses 4.3.1-4.3.3).

4.4 Compliance with Statute

4.4.1 As an organisation with an annual turnover of less than £36 million the Council recognises that You are not obliged to comply with the annual reporting requirements contained in the Modern Slavery Act 2015. In line with central government recommendations, the Council requires that all businesses should have policies and procedures in place to identify, prevent, and mitigate the risks of modern slavery in their operations and supply chains regardless of turnover. You will have in place and shall maintain policies and procedures to ensure compliance with the spirit of the Modern Slavery Act 2015 and shall include in Your contracts with Your Sub-contractors (and shall procure that Your Sub-contractors shall include within any of its Sub-contracts) anti-slavery and human trafficking provisions. If You become aware of any concerns to the effect that any part of the supply chain may have breached the Modern Slavery Act 2015 then this must be reported to the Council without delay in order that this may be reported to with the Department of Levelling Up, Housing and Communities risk management teams immediately.

4.4.2 You shall comply with all relevant legislation and regulatory requirements, orders, bylaws, codes of practice and British, European, International standards, Procurement Regulations and Subsidy Rules issued by relevant regulatory authorities.

- 4.4.3 You must comply with and use your reasonable endeavours to require that Your sub-contractors comply with the Health and Safety at Work Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety which may apply to employees and other persons working on the Project;
- 4.4.4 You must comply with and use your reasonable endeavours to require that Your sub-contractors comply with the Equality Act 2010 and will not discriminate directly against any person on such grounds as their race, colour, nationality or ethnic origin, gender, disability, sexual orientation, religion or belief or age in relation to decisions to recruit, train, promote, discipline or dismiss employees and shall take all such reasonable and commercially prudent steps to secure the observance of this by all servants, employees or agents, suppliers or sub-contractors engaged on the Project and to adopt and maintain all anti-discriminatory practices and operate an equal opportunities policy in the supply and provision of the Project;
- 4.4.5 You must comply with and use your reasonable endeavours to require that Your sub-contractors comply with the Human Rights Act 1998 and shall at all times comply with the provisions of that Act in the performance of this Agreement and the Project
- 4.4.6 You must comply with and use your reasonable endeavours to require that Your sub-contractors comply with the Data Protection Legislation **[and the provisions of Clause 10 (Data Protection) below]**
- 4.4.7 You shall at all times comply with the general duty imposed on local authorities by the Prevent Duty and observe the requirements of the statutory guidance issued by the government from time to time further to the Counter-Terrorism and Security Act 2015
- 4.4.8 You must before engaging or employing any person in the provision of the Works, or in any activity related to, or connected with the Project or provision of the Works without limitation:**
 - 4.4.8.1** complete the Employment Checks and any other checks required by the Disclosure and Barring Service; and
 - 4.4.8.2** ensure that all individuals engaged in the provision of the Works or Project activity, and prior to commencing the provision of the Works or Project activity, are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate where such individuals will have contact with children up to the age of eighteen years old or where the performance of the Works may involve contact with vulnerable adults (as defined in the Safeguarding Vulnerable Groups Act 2006(as amended by the Protection of Freedoms Act 2012)). You shall procure in respect of all staff or potential staff or other persons intended to perform any part of the Works:
 - 4.4.8.2.i)** that each person being considered for engagement be questioned as to whether he/she has any convictions;and
 - 4.4.8.2ii)** that the results of a Disclosure and Barring Service (DBS) check of the most extensive available kind is obtained in accordance with Part V of the Police Act 1997 (as amended) and are notified to the Council upon request
 - 4.4.8.3** monitor the level and validity of the checks under this clause 4.4.8 for each individual engaged or employed by You to deliver the Works or take part in the Project;
 - 4.4.8.4** shall refer information about any person carrying out the Works or the Project activity to the Disclosure and Barring Service where You have removed permission for such person to carry out the Works or Project activity (or would have, if such person had not otherwise ceased to carry out the Works or the Project activity) because, in its opinion, such person has harmed or poses a risk of harm to service users, children or vulnerable adults
 - 4.4.8.5** not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

4.5 Your General Obligations with respect to the Grant

- 4.5.1 You shall not commit a Prohibited Act or have favoured or discriminated against any person in relation to this Agreement or any other agreement or contract with the Council/**Accountable Body** or committed an offence in relation to any agreement with the Council/**Accountable Body** under the Bribery Act;
- 4.5.2 You shall have and maintain, and shall ensure that Your Sub-Contractors have and maintain a comprehensive policy of Public Liability Insurance and Employer's Liability insurance cover to provide for a minimum indemnity limit of **£2,000,000 (two million pounds)** for each and every event and if requested. **This amount may be higher depending on the nature of the event you are running.** You shall, and shall use Your reasonable endeavours to ensure that Your Sub-contractors will, provide the Council with certified copies of the relevant policy documents (including any warranties or exclusions) prior to the commencement of this Agreement and prior to the commencement of any Sub-Contracts that You enter into with sub-contractors with respect to the Works to be undertaken further to this Agreement;
- 4.5.3 You shall obtain the Council's prior written consent before engaging a sub-contractor to discharge all or part of Your obligations under the terms of this Agreement
- 4.5.4 Subject to Clause 13 (Freedom of Information) and in compliance with Clause 14 (Confidentiality), You shall keep confidential all Confidential Information You become aware of by reason of the operation of this Agreement and shall not disclose the same in whole or in part to any third party without the consent in writing of the Council and then only to the extent necessary to enable You to perform Your obligations under this Agreement;
- 4.5.5 **You shall give due consideration to the use of Small & Medium Enterprises (SMEs) within the supply chain and ensure contracting and sub-contracting opportunities are advertised as such to encourage participation of SME and local supply chains unless otherwise agreed in writing with the Council that this requirement cannot be complied with as it will have a material impact upon the economic and effective delivery of the Project. Where You fail to encourage SMEs and local supply chains to participate in the Project without express written agreement from the Council, the Council, acting upon instructions from the Department of Levelling Up Housing and Communities may require that the Grant is returned in accordance with Clause 6 (Clawback);**
- 4.5.6 You shall not sub-contract, assign, transfer or in any other way make over to any third party the performance of Your obligations under this Agreement or the benefit and/or burden of this Agreement other than the engagement of sub-contractors appointed with the prior consent of the Council further to clause 4.5.3 above;
- 4.5.7 You shall comply with the terms of Appendix 4 (Publicity Requirements) as regards the Council/**Accountable Body** and **the Department of Levelling Up Housing and Communities** publicity requirements and shall ensure that any publicity communications about the Project are not misleading as to the extent which they are funded by **the Department of Levelling Up Housing and Communities**
- 4.5.8 You shall have and shall keep in place systems to deal with prevention of fraud and/or administrative malfunction;
- 4.5.9 You shall not be subject to any contractual or other restriction which may prevent or materially impede You from meeting Your obligations in connection with this Agreement and the Project;
- 4.5.10 You shall have all the necessary resources and expertise to deliver the Project (assuming due receipt of the Grant);
- 4.5.11 You shall have full capacity and authority to deliver the Project and to enter into this Agreement;
- 4.5.12 You shall use reasonable and commercially sensitive endeavours to obtain and have in place all necessary consents to undertake the Project;
- 4.5.13 You will use your best endeavours to ensure that Your employees, contractors, agents, partners and other organisations You work with in delivering the Project comply with the commitments and principles set out in this Agreement and that You will be responsible for and shall indemnify the Council for, any failure by them to meet those commitments and principles;
- 4.5.14 The Grant (or that part of the Grant as shall be considered **[SPE] Allowable Costs and**) necessary to fund the extent of the Project agreed between You and the Council

further to clause 4.3) be drawn down by You in its entirety before the expiry of the Funding Period.

- 4.5.15 Neither You nor Your sub-contractors shall do anything to bring the Council/**Accountable Body** or **the Department of Levelling Up Housing and Communities**'s reputation and standing into disrepute or attract adverse publicity for the same
- 4.5.16 You shall not, without the Council's prior written consent, make any variation in the use of the Grant. Prior to providing consent to a proposed variation under this clause 4.5.16, You accept that the Council must, where in its reasonable opinion it is necessary, have the opportunity to refer any requests for variation in the use of the Grant to **the Department of Levelling Up Housing and Communities** (who shall be permitted a period of 5-30 Working Days (depending on the nature of the request) to notify the Council in writing of its decision in response to the request). Where the Council is permitted to grant consent to a variation request, it shall not unreasonably withhold or delay providing its consent to such variation request
- 4.5.17 You shall not, without the prior written consent of the Council, depart in any material respect from:
 - 4.5.17.1 the Outputs to be delivered under the Project or
 - 4.5.17.2 the timescales for delivery of the Project.
- 4.5.18 You must comply with the monitoring and reporting requirements specified in Clause 9 (*Monitoring and Reporting*) and Appendix 2 (*Claim Monitoring and Reporting Requirements*). It is Your responsibility to ensure that any required report or document reaches the specified point of contact at the Council/**Accountable Body** by the due date.

4.6 Prohibitions upon Grant Use:

You must not use the Grant for the following purposes:

- 4.6.1 For the provision of measures which are not considered Eligible Expenditure
- 4.6.2 To fund the provision of any lending to third parties.
- 4.6.3 To replace funding for an existing project, including any staff costs for an existing project and any projects to deliver statutory obligations, although the Grant may be used to extend the geographical coverage, scope or scale of an existing project (and for additional staff costs attributable to the extension of the project).
- 4.6.4 Use for activities of a political or religious nature.
- 4.6.5 Use in respect of costs reimbursed or to be reimbursed by funding from public authorities or from the private sector.
- 4.6.6 Use in connection with the receipt of contributions in kind (a contribution in goods or services as opposed to money).
- 4.6.7 Use to cover interest payments (including service charge payments for finance leases).
- 4.6.8 Use for entertaining (entertaining for this purpose means anything that would be a taxable benefit to the person being entertained, according to current UK tax regulations).
- 4.6.9 Use to pay statutory fines, criminal fines or penalties.
- 4.6.10 Use to pay for Eligible Expenditure incurred before the date of this Agreement
- 4.6.11 Use the Grant or any asset financed wholly or partly by it, to generate revenue or make a capital gain, **[except to the extent agreed as part of the Bid]**. If You do so, You must notify the Council immediately so that it may inform **the Department of Levelling Up Housing and Communities** without delay. You agree that the Grant may be reduced by the amount of that revenue or gain (as the case may be)

4.7 Warranties

You warrant that:

4.7.1 any information given by You in respect of the requirements contained in Appendix 1 (*Project Specifics*) is true and accurate in all material respects.

4.7.2 As at the Commencement Date You have secured and/or hold sufficient funds for the purposes of meeting the Match Funding required to enable You to receive payment of the Grant under the terms of this Agreement as set out in Appendix 5 (Match Funding Profile).

4.7.3 In securing Match Funding, You undertake and warrant that You shall exercise, or have exercised, all due diligence in verifying the source of the Match Funding and have taken all necessary steps to ensure that no part of the Match Funding received is derived from money laundering activities or terrorist linked financing and that in exercising such due diligence You have followed the guidance issued on such matters issued by HMRC.

4.7.4 the information submitted to the Council as part of [the Bid] [Your application for the Grant] remains true and accurate and that (save as may have been disclosed to the Council since the submission of [the Bid,] [Your application for the Grant] prior to the Commencement Date and prior to Your commencement of the Project) there have been no Material Changes to that information [since the Council submitted the Bid on behalf of the Consortium] and that You do not know of the existence of any circumstances which might materially and adversely impact Your ability to undertake the Project or observe the provisions and principles of this Agreement.

4.7.5 You will as soon as reasonably practicable provide to the Council any information which the Council may, acting reasonably, request to satisfy itself that the representations and warranties are correct and that You have complied with Your obligations in this Clause 4.

4.7.6 Each time You make a Claim for drawdown of the Grant, the representations and warranties given in this Clause 4 will be deemed repeated by You as if made with reference to the facts and circumstances then existing at the date of the Claim.

4.8 Duplicate Funding:

4.8.1 Where You intend to apply to a third party for other funding and/or Public Sector Funding for the Project, You must notify the Council/**Accountable Body** in advance of Your intention to do so.

4.8.2 You agree and accept that You shall not apply for duplicate funding in respect of any part of the Project or any related administration costs that the Council/**Accountable Body** is funding in full under this Agreement.

4.8.3 **You agree and accept that funding received from other government schemes must not be used to meet Your Match Funding obligations**

4.9 Procurement and Subsidy Control

4.9.1 You shall ensure that all procurement of works, equipment, goods and services relating to the Project shall be in accordance with the Procurement Regulations, and be based on value for money and suitable skills and experience and conducted:

4.9.1.1 using a fair and transparent documented decision making process taking account of public sector accountability and probity;

4.9.1.2 in accordance with the requirements of Appendix 3 (*Tendering Requirement and Procurement Procedures*)

- 4.9.2 You confirm that You have undertaken an assessment and obtained Your own legal advice to ensure that the provision of and use of the Grant for the delivery of the Works under this Agreement complies with all applicable Subsidy Rules and does not put the Council in breach of the UK's international obligation in respect of such subsidies. You will maintain appropriate records of compliance with the relevant subsidy control regime and will take all reasonable steps to assist the Council to comply with the same and respond to any proceedings or investigation(s) into the funded activities by any relevant court or tribunal of relevant jurisdiction or regulatory body. You acknowledge that the Council/**Accountable Body** may be obliged under this Agreement and/or any Subsidy Rules to require all or part of any Grant to be repaid if any information given or representation made in respect of the Subsidy Rules information provided by You to the Council is found to be materially incorrect.
- 4.9.3 This Agreement is drafted with the intention that it is lawful and complies with the requirements of the Subsidy Rules
- 4.9.4 Not Used
- 4.9.5 You shall promptly give written notice to the Council of any Public Sector Funding You receive from a third party in relation to the Project.
- 4.9.6 If following the date of this Agreement, the law requires the Council to amend this Agreement to comply with the Subsidy Rules then the Council may, acting reasonably, provide written notice to You to vary this Agreement to the extent necessary to comply with such change in law.
- 4.9.7 The Council shall monitor and review Your compliance with the requirements of this clause 4.12 (where applicable) and for the avoidance of doubt any failure to comply with such requirements (where applicable) shall be deemed a breach of a material term or condition of this Agreement
- 4.9.8 Not Used
- 4.9.9 Notwithstanding anything in this Agreement, the Council shall only provide the Grant to the extent that such Grant does not give rise to Unlawful Subsidy

5 GRANT PAYMENT AND GRANT PAYMENT PROCESS

- 5.1 Not used
- 5.2 Subject to clause 5.10, the Grant shall be payable on receipt of evidence of actual Eligible Expenditure incurred in relation to the activities detailed in Appendix 1 (Project Specifics), as required by Appendix 2 (Claim Monitoring and Reporting Requirements)
- 5.3 Payment of a Claim for the Grant shall not be payable by the Council/Accountable Body until:
- 5.3.1 Not used
- 5.3.2 Not Used
- 5.3.3 Your Claim is made in the form of a duly completed Claim Form as annexed to this Agreement Appendix 7 (Claim Form) and is submitted by email with relevant PDF or other suitably formatted attachments containing:
- i) copies of receipts, invoices and lists generated by Your finance management system of invoices relating to Eligible Expenditure for the Works

- ii) evidence that the payment has been made (by any method other than cash payments) such as a copy bank statement or similar that shows the transaction in question (other entries should be 'blanked out' for privacy purposes)
 - iii) evidence of Match Funding expenditure (certified receipts, invoices and lists generated by Your finance management system of invoices) relating to the payment of by You of Match Funding
 - iv) such other documents as the Council may acting reasonably require to satisfy itself acting reasonably that the Eligible Expenditure identified in the Grant Claim has actually been paid to the relevant supplier of goods or services engaged in the Works **for ancillary works payable further to the Revenue Grant**
- 5.4 Where a Claim is not compliant with clause 5.3 above, the Council/**Accountable Body** shall notify You in writing within 5 Working Days of receiving the Claim to advise You of the information required by it to satisfy the requirements of clause 5.3 and to enable the payment of the Claim to proceed.
- 5.5 A Final Claim is to be submitted no later than 5:00pm on the last day of the Funding Period. For the avoidance of doubt, a Final Claim submitted on or before 5pm on the Funding Period Expiry Date shall be eligible for payment whether or not the due date for payment falls on or after the Final Claim Date.
- 5.6 All Claims must be made by You in respect of Eligible Expenditure actually paid by You on or before the Funding Period Expiry Date
- 5.7 The Council/**Accountable Body** is under no obligation to make any further payment to You in respect of invoices paid by You after the Funding Period Expiry Date and Claims received by the Council/**Accountable Body** after the Final Claim Date shall be ineligible for payment. Any liabilities arising at the end of the Project, including any redundancy liabilities for any staff employed by You to deliver the Project must be managed and paid for by You using the Grant or Your other resources. There will be no additional funding available from the Council/**Accountable Body** for this purpose.
- 5.8 Upon receipt by the Council/**Accountable Body** from You of a properly documented and certified Claim, and Subject to the Council/**Accountable Body** having received the Grant Funding from the Government, the Council/**Accountable Body** will endeavour to pay Your Claim within fifteen (15) Working Days. If Your Claim is incomplete, the Council/**Accountable Body** will endeavour to let You know what further information is required within five (5) Working Days of receiving the Claim.
- 5.9 The Grant is paid in respect of net costs and is exclusive of recoverable VAT. Irrecoverable VAT may be included as Eligible Expenditure. It is Your responsibility to demonstrate that any VAT contained within a Claim is a cost and cannot be recovered by You.
- 5.9 The Grant is paid in respect of gross costs and is inclusive of recoverable VAT. Irrecoverable VAT may be included as Eligible Expenditure. It is Your responsibility to demonstrate that any VAT contained within a Claim is a cost and cannot be recovered by You.**
- 5.10 The payment of the Grant is contingent upon the Council/**Accountable Body** receiving the Grant Funding from the Government and the Council/**Accountable Body** in no way warrants, represents, or guarantees the continuation of Grant funding in the event that the Government withdraws or withholds the Grant Funding, or any subsequent changes are made by the Government to the UK Shared Prosperity funding programme.
- 5.11 Payment of the Grant is conditional upon:
- 5.11.1 Your compliance with the terms in this Agreement and, specifically, the conditions set out in Clause 3 (*Project Specific Conditions*), Clause 4 (*Obligations*), Clause 5

(Grant Payment and Grant Payment Process and Appendix 1 (*Project Specifics*); and

- 5.11.2 You making satisfactory progress of the Project, in the Council's reasonable opinion, against the objectives, Outputs and deliverables set out in Appendix 1 (*Project Specifics*).
- 5.12 Notwithstanding any other term of this Agreement, the Council shall be entitled [to instruct the Accountable Body] to withhold any Grant payment to You where:
- 5.12.1 You are unable to make the representations and give the warranties referred to in Clause 4 (*Obligations*);
- 5.12.2 a Termination Event has occurred; or
- 5.12.3 You have made a notification to the Council of a change in circumstances under Clause 3.4 (*Project Specific Conditions*).

6 CLAWBACK

- 6.1 You shall promptly, and in any event within twenty (20) Working Days of receiving a written notice from the Council/Accountable Body requiring repayment, repay to the Council/Accountable Body the Grant (or as may be applicable the relevant proportion thereof) and any accrued interest where:
- 6.1.1 the Council or the Department of Levelling Up Housing and Communities has reasonable grounds to consider that the payment of the Grant or Your use of it, contravenes any requirement of law, in particular (but without limitation) the Subsidy Rules; and
- 6.1.2 repayment or recovery is required by virtue of any Subsidy Rules, or if the Council/Accountable Body is otherwise required to repay or recover the Grant in whole or in part as a consequence of an Unlawful Subsidy or any breach by You of applicable Subsidy Rules; or
- 6.1.3 a Termination Event has occurred; or
- 6.1.4 You have breached Clause 4.3.4 (*Obligations*); or
- 6.1.5 You have breached Clause 4.5.5 (*Obligations*); or
- 6.1.6 this Agreement has been terminated pursuant to Clause 7 (*Termination*); or
- 6.1.7 You have received an overpayment of the Grant from the Council/Accountable Body in relation to the Project; or
- 6.1.8 the Council or the Department of Levelling Up Housing and Communities is required to cease grant funding or to recover all, or any proportion, of the Grant or any other amount by virtue of a decision of a court or other competent authority.
- 6.2 Any Grant payment(s) either in whole or part required to be repaid by You to the Council/Accountable Body shall bear interest as follows:
- 6.2.1 Interest shall be calculated from the date of the Grant payment in accordance with:
- 6.2.1.1 the retail prices index over the relevant period (that index being taken as 0% for any period during which the index is negative); or
- 6.2.1.2 any other rate required by law in the circumstances,

6.2.1.3 in accordance with Clause 6.1.2 shall bear interest as required under applicable Subsidy Rules

6.2.1.4 if applicable, the statutory rate of interest under Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 or any other rate required by law in the circumstances, if it is higher).

6.3 The Parties agree that the liability to meet a demand for repayment under this Clause 6 shall be enforceable as a contractual debt.

6.4 Notwithstanding anything to the contrary contained or referred to in this Agreement, no part of the Grant paid to You shall be repayable to the Council due to a breach or default on the part of the Council of its obligations pursuant to the Funding Arrangements and/or pursuant to its obligations under the Subsidy Rules

7 TERMINATION

7.1 Each of the following circumstances shall constitute a Termination Event:

7.1.1 if You use the Grant for purposes other than those for which it has been awarded and/or the Council has reasonable grounds to consider that the Grant was irregularly obtained or used in a way which is not compliant with Your obligations set out in clause 4 of this Agreement ;

7.1.2 if You breach any of the terms of this Agreement and You have failed to remedy or failed to commence and diligently pursue remediation of such breach(es) within thirty (30) days of receiving written notice from the Council detailing the breach;

7.1.3 Not Used

7.1.4 if the Council determines (acting reasonably) that insufficient progress is being made by You in delivering the Project and that the Outputs will not be delivered by the Completion Date;

7.1.5 if the Council determines (acting reasonably) You are delivering the Project in a negligent manner;

7.1.6 if You have obtained duplicate funding for the Project from a third party;

7.1.7 if You have obtained funding from a third party which, in the reasonable opinion of the Council, undertakes activities that are likely to bring the reputation of the Project or the Council or **the Department of Levelling Up Housing and Communities** into disrepute;

7.1.8 if information provided to the Council in connection with or pursuant to Your obligations under this Agreement is materially deficient, misleading or inaccurate;

7.1.9 if You have committed a Prohibited Act;

7.1.10 if You or any of Your employees or volunteers has acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project, or taken any actions which, in the reasonable opinion of the Council brings or is likely to bring either the Council, **[or by extension the Accountable Body]** or **the Department of Levelling Up Housing and Communities** name into disrepute;

7.1.11 if You have undertaken a Material Change to the Project without obtaining the Council's prior written consent (save where such consent is not required as stated elsewhere in this Agreement);

- 7.1.12 if You no longer have the financial resources to carry out and complete the Project;
or
- 7.1.13 where, through other government schemes the Council and/or the Department of Levelling Up Housing and Communities is satisfied in its reasonable opinion that the Grant offered for the Project is no longer required.
- 7.2 You must notify the Council as soon as reasonably practicable in writing (which for the purposes of this clause 7.2, notification by email shall suffice) upon the occurrence of a Termination Event; You should not wait until the next report is due.
- 7.3 The Council shall be entitled forthwith and without any liability to You to terminate this Agreement if:
- 7.3.1 a Termination Event occurs, or
- 7.3.2 the Government withdraws the UK Shared Prosperity Grant Funding (which for the avoidance of doubt does not include withdrawal of Grant Funding as a consequence of the Council's breach of the Funding Arrangements and/or the Council's breach of Subsidy Rules).
- 7.4 You shall be entitled to terminate this Agreement upon giving written notice to the Council and without liability to the Council if in all the circumstances then prevailing it is agreed between the Parties that the implementation and/or continuation of the Project is no longer economically viable. Termination of this Agreement further to this clause 7.4 shall be without prejudice to any obligations of either Party which relate to a Claim or Claims submitted prior to the date of termination and which remain to be observed and performed as at the date of termination

8 RECORDS AND ACCESS

- 8.1 You will maintain (and use Your best endeavours to require that contractors and suppliers maintain) and keep separate accurate and full original documentary records relating to the implementation of the Project, its financing, and outputs claimed and evidenced (in a form satisfactory to the Council). These records will be maintained for a period of at least ten (10) years from the Completion Date (as hard copies and/or in electronic format) and shall include as a minimum details of agreements to provide information concerning :
- 8.1.1 The identity of any third party concerned and their business.
- 8.1.2 The amounts any third party has been given.
- 8.1.3 The purpose for which the money was spent.
- 8.1.4 Evidence that contracts have been awarded, in accordance with the Procurement Regulations where they are required to be; and
- 8.1.5 Details of and information relating to any significant sub-contracting by You.
- 8.2 The retention of documents for inspection is a requirement and forms part of the terms and conditions upon which the Grant has been agreed under this Agreement. Failure to produce certified copies of documents or satisfactory agreed substitutes could result in You having to repay the Grant.
- 8.3 You will permit (and/or arrange as applicable) access to the records and accounts at all reasonable times for the Council/Accountable Body or the Department of Levelling Up Housing and Communities their representatives, advisors and such other third parties as the Council/Accountable Body shall specify from time to time. In addition, You will provide the Council/Accountable Body and the Department of Levelling Up Housing and Communities with

any further information required in relation to any audit, evaluation or other inspection of the Project, both during the Project and after its completion.

8.4 If requested by the Council, You shall complete a “statement of Grant expenditure” at the end of the Project, which is to be certified by your responsible financial officer and audited by an external professionally qualified auditor. The audited final accounts, certificate and auditor’s report must be sent to the Council/**Accountable Body** within three (3) calendar months of the Council’s /**Accountable Body’s** request for the same.

8.5 The financial records relating to the Project must be available to be included in any audit by **the Department of Levelling Up Housing and Communities** and/or their auditors and You shall comply and facilitate the Council’s compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to You.

9 MONITORING AND REPORTING

9.1 You shall complete Claims reports setting out progress of the Project against expenditure profile, Outputs, objectives and deliverables, including verification of Outputs achieved, Match Funding, and proof of payment, along with each Claim as specified in Appendix 2 (*Claim Monitoring and Reporting Requirements*).

9.2 The Council will require reports on progress made to be submitted in accordance with Appendix 2 (*Claim Monitoring and Reporting Requirements*), towards achieving the Project objectives specified in Appendix 1 (*Project Specifics*). You must promptly provide these to the Council/**Accountable Body** and any other information that the Council/**Accountable Body** may require to monitor progress of the Project.

9.3 As part of Your reporting obligations to the Council, You agree to identify any risks or issues arising from the activities funded by this Agreement, the status of those risks, the implementation of any mitigation actions and whether any new risks or issues have emerged. Where it appears that a risk might significantly impact upon the progress of the Project You agree to work with the Council to develop recommendations to address each area of concern.

9.4 Where You have obtained funding from a third party towards Your delivery of the Project, You shall include the amount of such third party funding in Your financial reports together with details of what that funding has been used for.

9.5 You shall upon request provide the Council with such information, explanations and documents that it shall reasonably require to enable the Council to establish that the Grant has been used properly in accordance with this Agreement and You shall permit any person authorised by the Council such reasonable access to Your employees, agents, premises, facilities and records for the purpose of discussing, monitoring and evaluating Your fulfilment of the conditions of this Agreement.

9.6 You must:

9.6.1 use all reasonable endeavours to ensure that any person providing the Claims reports and/or any other notifications, confirmations or certificates required under this Agreement is an authorised person and such person has access to the information and knowledge needed to accurately provide the information required; and

9.6.2 **ensure that an authorised representative attends review meetings held by the Project Board, and**

9.6.3 notify the Council/**Accountable Body** if You become aware that:

- (a) the facts or circumstances upon which a Claim was provided (as applicable) have changed so that such document is no longer correct in all material respects; or
- (b) any other notifications, confirmations or certificates required under this Agreement is erroneous in any material respect.

10 DATA PROTECTION

OPTION A

10.1 NOT USED

OPTION B

- 10.1** Both Parties will comply with all applicable requirements of and all their obligations under the Data Protection Legislation which arise in connection with this Agreement [and shall enter into all necessary and appropriate data sharing agreements (“DSA”) as are required for the delivery of the Project within one month of the Commencement Date.] If it becomes apparent that it will be necessary for You to receive and process Personal Data with respect to the Project, You will comply with [the terms of the Data Sharing Agreement and] all instructions issued to You by the Council from time to time as to how that Personal Data should be processed in accordance with the Data Protection Legislation and shall procure that any of Your employees, agents, servants or other persons involved in connection with the activities of the Project, shall also comply with the provisions of the Data Protection Legislation [and the Data Sharing Agreement]. You shall implement appropriate organisational and technical measures to ensure the integrity and security of confidential information and Personal Data obtained and shall at all times observe Your obligations under the Data Protection Legislation which arise in connection with this Agreement (including those stated in this clause 10 (Data Protection)) and the Project;
- OR**

OPTION C

10.1 Not Used

You shall at all times observe Your obligations under the Data Protection Legislation which arise in connection with this Agreement (including those stated in this clause 10 (Data Protection)) and the Project

- 10.2** You shall ensure that, insofar as is possible in accordance with the Data Protection Legislation and the Market Research Society Code (“MRS Code”) relating to the collection of and use of Personal Data for research and statistical purposes and all other law, agree to collect information for evaluation and reporting purposes (referred to below as “Information”) in a way which:
- 10.2.1** allows the Information to be shared with the Council and The Department of Levelling Up, Housing and Communities in accordance with [the terms of the Data Sharing Agreement (contained in Appendix 6)] the monitoring requirements of clause 9, Appendix 2 and this clause 10;
 - 10.2.2** allows the Council and/or The Department of Levelling Up, Housing and Communities to share the Information with any of their research or evaluation service providers;
 - 10.2.3** allows the Council and/or The Department of Levelling Up, Housing and Communities use the Information for research and statistical purposes (this does not include publishing the Information in a way that identifies individual households) provided

always that the Council and/or The Department of Levelling Up, Housing and Communities complies with the provisions of the Data Protection Legislation;

10.2.4 allows the Council and/or The Department of Levelling Up, Housing and Communities to keep Your name, and contact details and the names and contact details of Your delivery partners on file to enable better relationship management

11 INTELLECTUAL PROPERTY

11.1 The Intellectual Property Rights created by You in relation to the Project that was created prior to the Commencement Date, or will be created during the Term or after the termination of this Agreement shall remain Your property, subject to the provisions in this Clause 11.

11.2 It is a condition of the Grant that the Council and The Department of Levelling Up, Housing and Communities shall be entitled to make Project Related Know-how publicly available, save for any Confidential Information.

11.3 You agree to provide the Council upon request with complete copies (where relevant) and access to full details any Project Related Know-how and Your Intellectual Property Rights relating to the Project, save for any Confidential Information.

11.4 You warrant to the Council that neither the Intellectual Property Rights relating to this Project nor any publication by the Council of the Project Related Know-how will infringe, in whole or in part, any Intellectual Property Right of any other person and You agree to indemnify and hold the Council and The Department of Levelling Up, Housing and Communities harmless against any and all claims, demands and proceedings arising directly or indirectly out of the Council's or The Department of Levelling Up, Housing and Communities' 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.

11.5 Where the Council or The Department of Levelling Up, Housing and Communities has provided You with any of its Intellectual Property Rights for use in connection with the Project (including without limitation its name and logo or the name), You 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 or The Department of Levelling Up, Housing and Communities

11.6 Unless otherwise specifically agreed in Writing You will allow the Council and/or The Department of Levelling Up, Housing and Communities royalty free use of any intellectual property created whilst delivering the Project.

12 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The Parties to this Agreement do not intend that any of its terms will be enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.

13 FREEDOM OF INFORMATION

The Parties acknowledge their respective duties under the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) and must give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

14 CONFIDENTIALITY

14.1 The Parties agree:

- 14.1.1 to keep confidential all Confidential Information which it has obtained or received as a result of the decisions leading up to or entering into this Agreement or obtained or received in the performance of this Agreement;
 - 14.1.2 not to disclose the other's Party's Confidential Information in whole or in part to any person or other party without the other Party's written consent; and
 - 14.1.3 to use the Confidential Information solely in connection with the performance of this Agreement and not otherwise or for the benefit of any other party.
- 14.2 The provisions of this Clause 14 shall not apply to the whole or any part of the Confidential Information that is:
- 14.2.1 lawfully obtained free of any duty of confidentiality otherwise than directly or indirectly from the Council/**Accountable Body**;
 - 14.2.2 already in the possession of both Parties other than as a result of a breach of this Clause 14;
 - 14.2.3 in the public domain (other than as a result of this Clause 14);
 - 14.2.4 necessarily disclosed pursuant to a statutory, legal, regulatory or parliamentary obligation placed upon the Party making the disclosure; or
 - 14.2.5 disclosed with the prior written consent of the other Party.
- 14.3 The Parties shall ensure that their employees, agents professional and other advisors, managers and sub-contractors engaged in relation to this Project are under a similar obligation of confidentiality in respect of the Confidential Information as is contained in this Clause 14.
- 14.4 The obligations of confidentiality contained in this Clause 14 shall continue for seven (7) years after the date of expiry or termination of this Agreement howsoever occasioned.

15 ACKNOWLEDGMENT AND PUBLICITY

You shall comply with the acknowledgement and publicity requirements of the Council and other funding bodies as set out in Appendix 4 (*Publicity Requirements*) of this Agreement.

16 NOTICES

- 16.1 All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, e-mailed, or mailed (first class postage prepaid) to the address of the relevant Party, as set out at the beginning of this Agreement or otherwise notified in writing.
- 16.2 If a written notice or other communication in relation to this Agreement is personally delivered or e-mailed (where email is permitted pursuant to this Agreement), all such notices and communications shall be deemed to have been given when received (except that if the notice or communication is received on a non-Working Day or after 5.00pm on any Working Day they shall be deemed received on the next Working Day).
- 16.3 If a written notice or other communication in relation to this Agreement is mailed in the post, all such notices and communications shall be deemed to have been given and received on the second Working Day following such mailing.

17 DISPUTE RESOLUTION

- 17.1 In the event of any complaint or dispute the matter should first be referred for resolution to the Council's Assistant Director - Homes and Communities which will be dealt with within ten (10) Working Days, in accordance with the Council's complaints policy.
- 17.2 Should the complaint or dispute fail to be resolved to Your satisfaction under Clause 17.1, You may refer the matter to the Chief Executive with an instruction to attempt to resolve the dispute by agreement within fifteen (15) Working Days, or such other period as may be mutually agreed between You and the Council.
- 17.3 In the absence of agreement under Clause 17.2, the Parties may seek to resolve the matter through mediation under the Centre for Effective Dispute Resolution's Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both Parties). Unless otherwise agreed, the Parties shall bear the costs and expenses of the mediation equally.

18 LIMITATION OF LIABILITY

- 18.1 The Council accepts no liability for any consequences, whether direct or indirect, that may arise as a result of You running the Project, Your use of the Grant or from withdrawal of the Grant (other than withdrawal of the Grant arising directly from the Council's breach of the Funding Arrangements and/or Subsidy Rules).
- 18.2 You shall, subject to a cap of £5,000,000.00 (Five Million Pounds) 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 Your actions and/or omissions in relation to the Project, the non-fulfilment of Your obligations under this Agreement or Your obligations to third parties.
- 18.3 the Council shall indemnify and hold harmless You and Your 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 Council's actions and/or omissions in relation to the Project, the non-fulfilment of its obligations under this Agreement and or the Funding Arrangements and or Subsidy Rules and or its obligations to third parties
- 18.4 Subject to Clause 5.10(*Grant Payment*) and further to Clause 18.3, any liability attributable to the Council under this Agreement shall in no circumstances exceed a sum equal to 100% (one hundred per cent) of the value of the sums paid to You under this Agreement as payment of the Grant.
- 18.5 Nothing in this Agreement shall limit or exclude a Party's liability for:
- 18.3.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;
 - 18.3.2 fraud or fraudulent misrepresentation; or
 - 18.3.3 any other act, omission, or liability which may not be limited or excluded by law.
- 18.6 Subject to Clause 18.5, neither Party shall have any liability to any third parties, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with this Agreement.

19 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

20 COUNTERPARTS

This Agreement may be executed in any number of counterparts and each counterpart will when executed be an original of this Agreement and all counterparts together will constitute one instrument.

21 VARIATIONS

No modification, variation or waiver of any of the terms of this Agreement will be effective unless made by deed and signed by the parties to this Agreement and expressed to be supplementary to this Agreement.

22 ENTIRE AGREEMENT

This Agreement (together with all documents attached to it) constitutes the entire agreement and understanding between the Parties in relation to the Grant and supersedes any previous agreement or understanding between them in relation to such subject matter.

IN WITNESS of this Agreement

SIGNED for and on behalf of
SHROPSHIRE COUNCIL

by

Name: [XXXXXXXX]

Position: [XXXXXXXXXXXXXXXXXX]

Date:

SIGNED for and on behalf of
[Grant Recipient]

By

Name: XXXXXXXXXXX

Position: XXXXXXXXXXXXXXXXXXXX

Date:

APPENDIX 1 – PROJECT SPECIFICS
PROJECT DESCRIPTION AND OUTPUTS TO BE DELIVERED

Part A: Intended Outputs to be achieved by the Completion Date:

Part B: Formula for calculation of Capital Grant:

Part C: Formula for calculation of Revenue Grant

APPENDIX 2 – CLAIM MONITORING AND REPORTING REQUIREMENTS

1 General Requirements

- 1.1 Full financial documentary evidence of the Project must be kept (for a period of 10 years calculated from and including the date of the last Grant Claim pursuant to this Agreement) including full records of payments and their dates.
- 1.2 The Council/**Accountable Body** will need to be satisfied that the systems used by You are sound and that Grant Claims are valid. Upon reasonable request, You must make available relevant documentary evidence which demonstrates Eligible Expenditure including, but not limited to the accounting records of the Project that show the date invoices were paid, receipts and statements from suppliers, bank statements, and correspondence with payees and with auditors.
- 1.3 The Council/**Accountable Body** will need to be satisfied that the Project costs have been paid. 'Paid' is defined as when the Project has given money for goods and/or services and the money due has passed out of Your control In the UK the point at which this occurs is when the money is given or sent to the supplier by post or electronic instruction to Your bank.
- 1.4 Full financial records for the Project must be made available for inspection (throughout the Term) by the Council/**Accountable Body** and The Department of Levelling Up, Housing and Communities, or other third party staff on the request of either of them.
- 1.5 You should contact the Council if in any doubt as to whether a particular item of expenditure is considered to be Eligible Expenditure
- 1.6 The Council will review Your performance under this Agreement monthly. To this end, You must complete and review all monitoring or other documents and provide such reports as reasonably required by the Council, to measure Your performance and monitor compliance with this Agreement. Please refer to paragraph 4 below, the monthly reporting timetable, for information.
- 1.7 The Grant shall be clearly identified in Your accounts.
- 1.8 If You receive more than one grant from the Council, relating to this and other projects, each grant received must be individually identified in Your accounts.

2 Claims and Reporting

- 2.1 In addition to the requirements of clause 9 of this Agreement You must
 - 2.1.1 provide evidence of expenditure **[and must distinguish within the total Eligible Expenditure between the part paid by Match Funding and the part claimed for payment from the Council.] [The Council/Accountable Body shall not pay that part of Eligible Expenditure which is required to be paid by You as Match Funding;]**
 - 2.1.2 refer to the Monthly Claims Process Timetable set out in paragraph 3, Appendix 2 (*Claim Monitoring and Reporting Requirements*) for the timetable.

3 MONTHLY FINANCIAL CLAIMS TIMETABLE

Claims should be submitted to the Council on or before the 28th day of each calendar month during the Funding Period

4. REPORTING:

A report shall be submitted to the Council on or before the working 5th day of the sixth month [and completed on the reporting template to be provided by The Department of Levelling Up, Housing and Communities each report should include the information required as follows :

[insert reporting information requirements]

4.1.1 Monthly Output Reporting Requirements: Key Performance Indicators

4.1.2-Milestones table:

APPENDIX 3 – TENDERING REQUIREMENTS AND PROCUREMENT PROCEDURES

Body governed by public law or contracting authority

1. If You are a body governed by public law or a contracting authority, You are required by this Agreement to follow all United Kingdom procurement legislation and any other legislation and statutory obligations in respect of any procurement of goods, services or works in relation to the Project for which the value is above the current FTS (Find a Tender) contract value advertising thresholds.
2. If You are a body governed by public law or a contracting authority then, in respect of below current FTS (Find a Tender) contract value advertising thresholds, You are required by this Agreement to follow all United Kingdom procurement legislation and any other legislation and statutory obligations in respect of any procurement of goods, services or works in relation to the Project, as well as, to the extent they do not conflict with all United Kingdom procurement legislation and any other legislation and statutory obligations, Your internal below FTS (Find a Tender) contract value advertising threshold rules.
3. Procurements must not be artificially split with the intention of avoiding a contract threshold.
4. The Council may require copies of procurement records and undertake spot checks on procurement processes.
5. If the procedures detailed in this Appendix 3 are not followed, the Council may require that the Grant is returned in accordance with Clause 6 (*Clawback*).

APPENDIX 4 – PUBLICITY REQUIREMENTS

1. You shall acknowledge the Grant in Your annual report and accounts, including an acknowledgement of the Council and The Department of Levelling Up, Housing and Communities as the source of the Grant.
2. You must acknowledge the support of 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 Council's name and logo, and that of or any future name or logo adopted by the Council) using the templates provided by the Council. You will regularly update the Council on publicity you are undertaking to enable the Council to meet any of its reporting obligations.
3. In using the Council and The Department of Levelling Up, Housing and Communities name and logos, You shall comply with all reasonable branding guidelines issued by the Council from time to time.
4. You agree to participate in and co-operate with promotional activities relating to the Project that may be instigated and/or organised by the Council.
5. The Council may acknowledge Your involvement in the Project as appropriate without prior notice.
6. You shall comply with all reasonable requests from the Council/**Accountable Body** to facilitate visits, provide reports, statistics and case studies that will assist the Council in its promotional activities relating to the Project.

APPENDIX 5

MATCH FUNDING PROFILE – NOT USED

[INSERT MATCH FUNDING PROFILE IF APPLICABLE]

Appendix 6

Data Sharing Agreement – NOT USED

[insert Data Sharing Agreement if applicable]

Appendix 7

Grant Claim Form

Section 1 – Claimant’s Details	
Name of Recipient	
Bank Details:	
Bank name & address	
Sort code	
Account number	
Account name	
Council’s Order Number	XXXXXX
Contact Name:	XXXXXX
Telephone Number:	XXXXXX
Email Address:	XXXXXX

Section 2: Claim Details	
[insert details of Grant Funding programme] – Total amount being claimed by Recipient	£XXXXXXXX
Claim split between:	
Capital	£XXXXXXXX
Revenue	£XXXXXXXX
Date of Claim	XXXXXXXX
<i>Claims may include VAT that the Registered Provider is not able to reclaim from HM Revenues and Customs or not likely to become able to claim</i>	

Section 3: Match Funding Contribution details	
Amount of Match Funding Contributions made: Total	£XXXXXXX
Details of Match Funding Contributions:	£XXXXXXXX

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Section 4: Senior Officer of the Recipient's Declaration:

I confirm that:

- a. The information and evidence pertaining to this Grant claim is complete, true and accurate; and
- b. We [name of Recipient] have complied with the terms of the Agreement dated XXX and that the sum requested above shall not take the total amount of grant drawn down to date above the maximum grant permitted of £XXXXXXXXXX (XXXXXXXXXXXXXXXX)

Signed:

Name:

Position within Organisation:

Date:

Appendix 8

Part 1: MINIMAL FINANCIAL ASSISTANCE

1. The Grant is awarded as in accordance with Article 3.2.4 of the Trade and Cooperation Agreement and section 36(1) of the Subsidy Control Act 2022 (“the Act”) which enables You to receive up to a maximum level of subsidy without engaging Chapter 3 of the Trade and Cooperation Agreement (a “Minimal Financial Assistance”) and the requirements of the Act. The current threshold is £315,000.00 to a single economic actor over any period of three fiscal years.
2. You acknowledge and accept that the relevant limit for a Minimal Financial Assistance comprises the total amount of Subsidy You may receive from the state during that period or previous 2 fiscal year period. That Subsidy aid will include Subsidy aid relating to other projects, Subsidy provided by other public authorities and their agents, and Subsidy other than grants (for instance, foregone interest on loans). State aid granted prior to the 1 January 2021 or in accordance with State Aid Law (irrespective of whether such State Aid was categorised as de minimis).
3. The award of this Grant will be conditional upon You providing the Council with the Minimal Financial Assistance declaration form confirming how much de minimis subsidy, if any, it has received in the current and previous 2-year fiscal period.
4. The Council may not pay You the Grant if, added to any previous de minimis Subsidy You have received during the current and last two fiscal years, the Grant causes You to exceed the relevant limit for Minimal Financial Assistance.
5. For the purposes of that declaration:
 - a. the fiscal year is the fiscal year used by its business; and
 - b. Subsidy is subsidy, granted to a single economic actor, which may include legal entities separate to You (such as current or former subsidiaries).
6. You must retain the Grant Funding Agreement and the completed Minimal Financial Assistance declaration form and produce it on request by the Council.
7. You acknowledge that it **is Your** responsibility to read Chapter 3 of the Trade and Cooperation Agreement (and implementing legislation) and the statutory guidance to the Act in their entirety and seek advice (including legal advice) on their application to You if appropriate.
8. You acknowledge that the Council and You are jointly and severally responsible for maintaining detailed records with the information and supporting documentation necessary to establish that all the conditions set out in this Grant Funding Agreement are fulfilled.
9. Such records must be maintained by You and the Council for 10 years following the granting of the Subsidy

MINIMAL FINANCIAL ASSISTANCE DECLARATION FORM

Please tick the statement that applies: Either:

You and any other undertaking forming a single economic actor with You, **have not received any subsidy** (whether from or attributable to the Council or any other public authority) during the current and two previous fiscal years (including any State Aid granted prior to 1 January 2021 or in accordance with State Aid Law (irrespective of whether such state aid was categorised as *de minimis*)) which together with receipt of the grant being offered under this Agreement will exceed the MFA threshold, specified in section 36(1) of the Subsidy Control Act 2022, of £315,000.00 .

You , and/or any other undertaking forming a single economic actor with You , **have received one or more Subsidies** during the current and two previous fiscal years particulars of which are set out in the table below and which exceed the MFA threshold.

For and on behalf of **[name of Grant Recipient]**

Signature:

Name:

Position:

Date:

Minimal Financial Assistance Allowance

I/We confirm that I/We have previously received the following Subsidies granted as de minimis aid or as Minimal Financial Assistance under Article 3.2(4) of the TCA during the current and two previous fiscal years from a subsidy awarding body:

Body providing the Subsidy	Value of assistance (in £)	Date Subsidy awarded	Nature of Subsidy/aid