

DATED \_\_\_\_\_ 2017

(1) NOTTINGHAMSHIRE COUNTY COUNCIL

(2) [COMPANY FULL NAME]

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GRANT AGREEMENT

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Legal Services

County Hall

West Bridgford

Nottingham

NG2 7QP

Ref:

**THIS DEED** is dated

**2017**

## **PARTIES**

(1) The Nottinghamshire County Council of County Hall, West Bridgford, Nottingham NG2 7QP (the "**Council**").

(2) **[COMPANY NAME]** a company limited by guarantee registered in England and Wales (company number xxxxxxxx) whose registered office is at **[FULL REGISTERED ADDRESS]** (the "**Organisation**")

## **BACKGROUND**

(A) The Council has agreed to pay the Grant to the Organisation to assist it in carrying out the Project.

(B) This Grant Agreement sets out the terms and conditions on which the Grant is made by the Council to the Organisation.

(C) These terms and conditions are intended to ensure that the Grant is used for the purpose for which it is awarded.

## **AGREED TERMS**

### **1. Definitions used in this Grant Agreement**

The "Council", "we", "us" and "our" means Nottinghamshire County Council being the funders of the Grant

The "Organisation", "you" and "your" means the organisation receiving the Grant bound by these terms and conditions.

The "Bidding Guidance" means the guidance issued by Nottinghamshire County Council explaining how organisations shall bid for a grant from the Economic Development Capital Fund.

The "De Minimis" means the Regulation of Commission (EC) Regulation 1407/2013

The "Economic Development Capital Fund" the Economic Development Capital fund set up by Nottinghamshire County Council.

The "GBER" is the General Block Exemption Regulation (Commission Regulation (EU) 651/2014 of 17 June 2014)

The "Governing body" means the body responsible for the management of your organisation which shall include the board of directors where you are a company.

The "Grant" means the grant funding awarded to the Organisation for the Project.

The "Grant Agreement" includes and incorporates these standard terms and conditions and the Grant Award (and any additional terms and conditions contained therein) and the Project Proposal.

The "Grant Award" the grant award set out in Schedule 1.

The "Intellectual Property Rights" means all patents, trademarks, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and know-how however arising for their full term and any renewals and extensions.

The "Project" means the project for which the Grant has been awarded as detailed in the Grant Award

The "Project Proposal" means your proposals for the Project, as set out in the Stage 1 and Stage 2 forms of your application together with any associated correspondence between the two parties, supporting documents such as budget information, a timetable and any other documents that set out how the Project will be managed and set out in Schedule 2.

Where there is any conflict or inconsistency between the provisions of this Grant Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:

- a Schedule 1 (The Grant Award) to this Grant Agreement;
- b The clauses of this Grant Agreement;
- c Schedule 2 (The Project Proposal) to this Grant Agreement.

## **2. In general**

You confirm and agree that:

- 2.1. You will make sure that all current and future members of your Governing Body, receive a copy of these terms and conditions while this Grant Agreement remains in force;
- 2.2. You have all the necessary resources and expertise to deliver the Project (assuming due receipt of the Grant);
- 2.3. You must not be subject to any contractual or other restriction imposed by your own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Grant.
- 2.4. Your organisation is solvent and is not unable to pay its debts as defined by section 123 of the Insolvency Act 1986.

## **3. The Project**

- 3.1. You will only use the Grant for the delivery of the Project and in accordance with these terms and conditions.
- 3.2. You acknowledge that the Grant is paid on trust to the Organisation for the sole purpose of delivering the Project and the Organisation will hold any unused part of the Grant on trust for the Council at all times and will repay any Grant (including any unused Grant) to the Council immediately upon demand.
- 3.3. You must not make any change to the Project that would result in a 10% or greater change to the agreed costs or any of the outputs for the Project without first obtaining our written approval.
- 3.4. You will start the proposal within three month of the date of this Grant Agreement, or if it is delayed, you must write to us giving reasons for the delay and asking for an extension.
- 3.5. You agree to make satisfactory progress with the Project and complete it within the time period specified in the Grant Award.
- 3.6. You will not use the Grant to pay for any spending commitments you have made before the date of this Grant Agreement unless you have our prior written agreement.

3.7. You will tell us of any offer of funding for the Project you obtain from anyone else at any time during the Project. You agree and accept that you will not apply for duplicate funding in respect of any part of the Project or any related administration costs that we are funding under this Grant Agreement.

3.8. If you spend less than the whole Grant on the Project, you will return the unspent amount to us promptly. If the Grant part-funds the Project, you will return the appropriate share of the unspent amount to us.

3.9. You will tell us promptly about any changes to the information you have provided us and will make sure that the information we hold is always true and up to date. You will tell us immediately if any of your key contacts change.

3.10. You agree to meet all laws regulating to the way you operate, the work you carry out, the staff you employ or the goods you buy. You will ensure that you have appropriate policies in place at all times to help you comply with the law and good practice including but not limited to equal opportunities, data protection and employment law. You will obtain all approvals and licences and any profile checks required by law or by us.

#### **4. Payment of the Grant**

4.1. You agree and accept that payments of the Grant can only be made to the extent the Council has available funds.

4.2. No Grant will be paid until we are satisfied that payment will be used for proper expenditure in the delivery of the Project.

4.3. You agree and understand that the way you will be paid will be set out in the award letter although you agree that in any event the last 5% of Grant will be held back and not released until you submit a final claim.

4.4. You will promptly repay to us any money incorrectly paid to you as a result of an administrative error or otherwise. This include situations where an incorrect sum has been paid or where grant monies have been paid in error before you have complied with all conditions attaching to the Grant.

#### **5. VAT**

5.1. You acknowledge that the Grant is not consideration for any taxable supply of VAT purposes. You understand our obligation does not extend to paying you any amounts in respect of VAT in addition to the Grant and that the Grant made by us is inclusive of VAT.

#### **6. Your Organisation**

6.1. You will write to us as soon as possible if any legal claims are made or threatened against your Organisation and/or which would adversely affect the Proposal during the period of the Grant (including any claims made against members of your Governing body or staff concerning the Organisation).

6.2. You will tell us in writing as soon as possible of any investigation concerning your Organisation, trustees, directors, employees or volunteers carried out by the Police, the Charity Commission, HM Revenue & Customs, or any other regulatory body.

6.3. You will be available for meeting with the Council and will allow the Council, or those acting for us or the National Audit Office, full and free access to the Organisation's records however and wherever held and to any of the Organisation's offices or building.

## **7. Your annual report and accounts**

7.1. You will acknowledge our Grant in your annual reports and accounts covering the period of the Project.

7.2. You will show our Grant and related expenditure as a separate line in your Organisation's annual accounts. If you have more than one Grant from us or any other body, you will record each grant separately in the notes to the accounts. You will identify unspent funds and assets in respect of the Grant separately in your accounting records.

7.3. You will keep proper and up to date accounts and records for at least ten years after the termination of the Grant, including summary profit and loss accounts and management accounts, personal and payroll records and invoices, which show how the Grant has been used. You will make these financial records freely available to us upon request.

7.4. You will provide us with a copy of your annual accounts within six months (or less as we may reasonably require) of the end of the financial year in respect of each year in which the Grant is paid.

## **8. Monitoring progress of the Project**

8.1. You will monitor the progress of the Project and will complete and return to us monitoring returns every 6 months and attach evidence of expenditure on the Project to demonstrate that the money has been defrayed as expected and you understand and agree that failure to provide this information within three months of the last day of the period to which it relates may result in funding being suspended or reclaimed.

8.2. You will send us any further information we may ask for about the Project or about your organisation, and its activities, the number of jobs created by the Project and such other information we may require from time to time. We may use this information to monitor the Grant and evaluate your grants programmes.

8.3. You will tell us immediately in writing of anything that significantly delays, threatens or makes unlikely the Project's completion.

8.4. You will tell us immediately if there is to be any variation to or decrease in the Project or its outcomes.

8.5. You will retain all the original documents relating to the implementation of the Project and its costs (such as receipts and invoices) for at least ten years after payment of the final amount of funding.

8.6. You will allow any person authorised by us such access to your employees, agents, premises, facilities and records at least once in every 6 month period to discuss, monitor and evaluate your fulfilment of the terms and conditions of this Grant Agreement and will, if so required, provide appropriate oral or written explanations to us. Where, in our reasonable opinion, we consider that additional visits are necessary to monitor the Project, we will be entitled to authorise any person to make such visits on our behalf.

8.7. You will provide us with a final report on completion of the Project which will confirm whether the Project has been successfully and properly completed.

## **9. Publicity**

9.1. You agree not to use the Council's name or the existence of this Grant Agreement or its subject matter in any publicity materials or advertising without the prior written consent of the Council, such consent not to be unreasonably withheld.

9.2. Any use of the Council's logo needs to be approved by the Council's Communications and Marketing team.

9.3. The Council will grant you a licence, without charge, to use the Council's logo for the purposes of this clause 9. The Council's logo should be obtained from the Council's Communications and Marketing team.

9.4. You must not undertake any activity which, in the reasonable opinion of the Council, bring or are likely to bring the reputation of the Council into disrepute.

9.5. You agree to follow our branding guidelines in relation to any use of our name and logo and any marketing and communications activity referring to the Project or the Council.

9.6. You will not make or consent to the making of any public statement or announcement, or engage in any promotional or marketing activity, concerning this Agreement or any involvement of the Council concerning the Project without the Council's consent.

9.7. You must provide us a copy of any proposed marketing, publicity or other information regarding the Project as soon as it is available, but no later than four weeks before any specific event or events happening as part of the Project.

9.8. You will work with us to agree how information will be communicated via digital channels.

9.9. You hereby consent to any publicity about the Grant and the Project as we may from time to time require. We may carry out any forms of publicity and marketing to promote the award of the Grant as we think fit. For instance, details of the Project may be broadcast on television, on our website, in newspapers and through other media. You agree to do whatever we reasonably require in order to assist with any form of publicity and marketing, including any press or media related activities.

9.10. You will comply with all our reasonable requests to facilitate visits, provide reports, statistics, photographs and case studies that will assist us in our promotional activities relating to the Project.

9.11. Where we have provided you with any of our Intellectual Property Rights for use in connection with the Project (for instance, the Council's name and logo), you will, on termination of this Grant Agreement, cease to use such Intellectual Property Rights immediately and will either return or destroy such Intellectual Property Rights as requested by the Council.

## **10. Security**

10.1. If we feel it is necessary, we will take security on the freehold or leasehold interest or other asset or assets, or ask for some other appropriate form of security for your responsibilities under the terms of the Grant. We may demand that you provide us with copies of all the documents affecting the title to the

property (for example, all mortgages, conveyances, leases and so on that affect the legal rights to the property).

10.2. If we feel it is necessary, we will require you to provide us with a parental undertaking and guarantee from the Organisation's parent company in the form we provide.

10.3. We reserve the right to request any type of security or additional security (now or in the future) or consolidated security if it is considered necessary and desirable given the circumstances of the Project. We will also consider past capital projects funded by us in reaching a decision as to our requirements. If we require security, you understand that no payments of the Grant will be made until we have received the requested documents completed to our satisfaction.

## **11. Assets or goods purchased with the Grant**

11.1. You will keep all assets funded by the Grant safely and in good repair and will make sure you have adequate insurance cover for all of them. Any loss resulting from payments made for assets before delivery will be your responsibility. If the asset is damaged, destroyed or stolen, you must tell us in writing and you must repair or replace it.

11.2. You acknowledge and agree that where the Grant is paid under Article 14 (Regional Investment Aid) or 17 (Investment aid to SMEs) of the GBER that the investment will be retained in the location of operation for at least 5 years after completion (or three years in the case of SMEs, as appropriate). Therefore, and in any event during the period covered by the Grant, if you buy, restore, conserve or improve assets or goods with the Grant you will not sell or dispose of those items:

- a without the prior written agreement of the Council; and
- b any sale or disposal of them must be at their current market value.

11.3. If we have contributed (or will contribute) towards the buying, restoring, conserving or improving of land, buildings or any other asset, you must not apply for a mortgage over that asset or use it as security without our prior written approval.

11.4. We may insist on third party rights being given to us (and in a form approved by us) under any contract that you have with contractors and suppliers in relation to the Project.

11.5. If you sell or give away the capital assets bought, with the Grants, we will be entitled to recover the Grant in full. Interest may also be payable if the Grant is held to be unlawful State aid.

## **12. Insurance**

You will maintain adequate insurance at all times in respect of all risks which may be incurred you, arising out of your performance of this Grant Agreement, including death or personal injury, loss of or damage to property or any other loss and if asked, will supply copies of confirmation to us. This includes employer's liability and public liability insurance and insurance that covers the full replacement value of anything we have funded.

### **13. Length of Grant Agreement and State aid requirements**

13.1. These terms and conditions and this Grant Agreement will remain in force for whichever of these is the longest time:

- a For ten years following the date of the last payment of the Grant in respect of the requirement to keep accounting and other records;
- b As long as any part of the Grant remains unspent;
- c The expiry of the maximum period required under the Grant for asset monitoring pursuant to GBER Articles 14 and 17,
- d As long as you do not carry out any of the terms and conditions of this Grant Agreement, including any of our reporting requirements, or any breach of them continues (this includes any outstanding reporting on grant expenditure or proposal delivery).

### **14. Policies and procedures**

You agree and undertake to comply with all of our policies and procedures which are relevant to the Grant as notified to you by us from time to time.

### **15. No discrimination**

During the period of the Grant you will act in a fair and open manner without distinction as to race, gender, religion, age or disability, sexual orientation or otherwise and in compliance with relevant legislation.

### **16. Freedom of Information**

16.1. You acknowledge that the Council is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and will assist and co-operate with the Council (at your own expense) to enable us to comply with these information disclosure requirements.

16.2. You accept that we may share information about the Grant or Project with any parties of our choice as well as with members of the public who make a request for information under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004

16.3. You will not respond directly to a request for information unless expressly authorised to do so by the Council.

16.4. You will ensure that all information produced in the course of this Grant Agreement or relating to this Grant Agreement is retained for disclosure and will permit us to inspect such records as requested from time to time.

### **17. Compliance with Data Protection**

You will (and secure that any staff involved in connection with the activities under this Grant Agreement will) comply with any notification requirements under the Data Protection Act 1998 (DPA) and both



parties will observe all their obligations under the DPA, which arise in connection with this Grant Agreement.

## **18. Circumstances where the Grant may be withheld, suspended or may need to be repaid**

18.1. You acknowledge and agree that:

a The Council can only guarantee the Grant as long as the funds allocated to the Economic Development Capital Fund by us have not been otherwise awarded to other bodies and we continue to operate.

b The Council will not increase the Grant if you spend more than the amount set out in the award letter.

c If you have not answered all relevant questions and sent the information we require we will not process your application.

d The Council may want to investigate any matters concerning the Grant (or any other grants you have given to us) at any time while this Grant Agreement is in force, you understand that we accept no liability for any consequences, whether direct or indirect, that comes about from any investigation even if the investigation finds no cause for concern.

e The Council may withhold or suspend payment of the Grant and/or demand repayment of all or part of the Grant at the Council's absolute discretion in any of the following circumstances if:

- You fail to meet any of these terms and conditions, or the terms and conditions attached to any other grants from the Council for which a grant agreement is still in force.
- We consider you have not made satisfactory progress with the delivery of the Project;
- You, in our reasonable opinion, deliver the Project in a negligent manner;
- You completed the application form dishonestly or significantly incorrectly or in a misleading manner or in any way not in accordance with the Bidding Guidance.
- You or any other person or organisation operating for the Organisation gave us any significantly misleading or inaccurate information, whether deliberately or accidentally, during the applications process, or during the period of this Grant Agreement.
- You pass a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of your directors or members resolve to make an application for an administration order in relation to the Organisation or any party gives or files notice of intention to appoint an administrator of the Organisation or such an administrator is appointed, or the court makes a winding-up order, or you make a composition or arrangement with your creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of the Organisation's property under the terms of a fixed or floating charge; or you become unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986.
- If at any time while this Grant Agreement is in force, in our opinion acting reasonably, any event occurs in relation to the Grant or to the Organisation which is likely to have a material adverse effect on the Council's reputation as a custodian and distributor of publicly generated funds and/or as a Government sponsored body.

- Members of your Governing Body, or staff act at any time during the Grant dishonestly or negligently or in any way, directly or indirectly, to our detriment or to the detriment of our organisation or the Grant or to the Economic Development Capital Fund or to the detriment of our reputation.
- The Organisation, members of the Organisation's Governing Body or employees are subject to an investigation or formal enquiry by the Police, the Charity Commission, HM Revenue & Customs, or other regulatory body.
- You receive duplicate funding from any other source for the same or any part of the Grant.
- You do not take positive steps to ensure equal opportunities in your own employment practices and the delivery of an access to your services.
- There is a significant change of purpose, ownership or recipient, either during the Grant funding period or within a reasonable period after its completion, so that we judge that the Grant is unlikely to fulfil the purpose for which you made it.
- At any stage of the application process or during the period of this Grant Agreement you do not let us have information that would affect our decision to award, continue or withdraw all or part of the Grant.
- You are or become legally ineligible to hold the Grant.
- If we have reasonable grounds to believe that it is necessary to protect public money.
- You commit any offence under the Bribery Act 2010 or you directly or indirectly offers, induces or rewards any employee of the Council a financial or other advantage or commit any offences relating to fraudulent acts in relation to this Grant Agreement or any other contract with us or defraud or attempt or conspire to defraud the Council;

18.2. You acknowledge that the Nottinghamshire County Council Economic Development Capital Fund has been designed to be compliant with the following: (a) the De minimis Regulation, (b) Article 14 of the GBER and (c) Article 17 of the GBER (together referred to for the purposes of this Grant Agreement as "the State Aid Exemption(s)"). Any amount paid under this Agreement is a form of public funding and likely to be regarded by the European Commission as State aid. As such it is your responsibility to ensure that any amount paid to you is not in breach of the State Aid Exemption under which the grant has been paid to you and/or does not exceed the individual limit set out in the relevant State Aid Exemption. Each State Aid Exemption sets limits on the allowable amount that can either be received by or paid to you (as appropriate and referred to in this Agreement as the "Allowable Amount"). In the event that the amount you receive from us exceeds the Allowable Amount you will repay the entire Grant back to us together with interest immediately upon written demand. Interest will be calculated as compound interest from the date on which the Grant was first paid to you until the date of its recovery. The interest rate is set by the European Commission under the Implementing Regulation (EC) 794/2004.

## **19. Circumstances where we may impose additional terms and conditions**

19.1. We have the right to impose additional terms and conditions on the Grant if:

- a You are in breach of this Grant Agreement;
- b We withdraw any part of the funding for the Grant;

c We judge that members of your Governing Body, volunteers or staff or any person or organisation closely involved in carrying out the Project act in a way that may have a detrimental effect on the Project or on our reputation as a distributor of public money or as a Government sponsored body;

d If we have reasonable grounds to believe that it is necessary to protect public money; and/or

e We believe such conditions are necessary or desirable to make sure that the Project is delivered as set out in your application or following any agreed changes.

## **20. Limits to our liability and indemnity**

20.1. The Council accepts no liability for any consequences, whether direct or indirect, that may come about from the Organisation running the Project, the use of the Grant or from withdrawal of the Grant. The Organisation will indemnify the Council, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Organisation in relation to the Project, the non-fulfilment of obligations of the Organisation under this Grant Agreement or its obligations to third parties.

20.2. Subject to paragraph 20.1, the Council's liability under this Grant Agreement is limited to the payment of the Grant.

## **21. Our right to terminate the Grant Agreement**

We may terminate this Grant Agreement and any Grant payments on giving you three months' written notice should we be required to do so by financial restraints or for any other reason.

## **22. Restrictions on your right to assign your rights to another**

You may not, without our prior written consent, assign, transfer or sub-contract any of your rights under this Grant Agreement to any third party or successor body.

## **23. Our right to enforce the Grant Agreement**

If you break any term and/or condition of this Grant Agreement and we do not enforce one or more of our rights straight away, this does not mean that we will not do so in the future. We will give up our right to enforce the Grant Agreement only if we tell you in writing.

## **24. How to give notices and communications to the other party**

All notices and other communications in relation to this Grant Agreement must be in writing and in order to be effective they must be personally delivered, e-mailed, or mailed (first class postage prepaid) to the address of the recipient party, as referred to in this Grant Agreement or otherwise notified in writing.

<b>Method of delivery</b>	<b>Time the communication or notice will be regarded as having been received by the other party</b>
If personally delivered or if e-mailed	At the time it is received by the recipient (except where received on a non-working day or after 4.00 pm on any working day then it will be regarded as being received on the next working day)
If mailed (first class postage prepaid)	The second working day following the date of mailing.

## **25. No partnership or joint venture between you and us**

This Grant Agreement will not create any partnership or joint venture between the Council and the Organisation, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

## **26. Individuals who have joint and several liability**

Where you are not a company or an incorporated entity with a distinct legal personality of your own, the individuals who enter into and sign this Grant Agreement on behalf of the Organisation shall be jointly and severally liable for the Organisation's obligations and liabilities arising under this Grant Agreement.

## **27. Exclusion of third party rights**

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

## **28. The law governing the Grant Agreement**

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

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**Schedule 1 - The Grant Award**

## Schedule 2 – The Project Proposals

**EXECUTED** as a deed but not delivered until the Date hereof by affixing the common seal of The Nottinghamshire County Council in the presence of:

Authorised Signatory: .....

**EXECUTED** as a DEED  
by **XXXXX [CAPITALS] LIMITED**  
acting by and under the signatures of:

**[NAME OF DIRECTOR]** .....  
**[SIGNATURE OF DIRECTOR]**  
Director

**[NAME OF DIRECTOR OR COMPANY SECRETARY]** .....  
**[SIGNATURE OF DIRECTOR]**  
**DIRECTOR OR COMPANY SECRETARY]**