

Growth Programme Grant Funding Agreement – Terms and Conditions

PARTIES

- (1) The Secretary of State for Environment, Food and Rural Affairs of Nobel House, Seacole Building, 2 Marsham Street, London, SW1P 4DF, acting through the Rural Payments Agency, whose principal address is at North Gate House, 21-23 Valpy Street, Reading, RG1 1AF (the **Authority**).
- (2) The Beneficiary identified in the Agreement Document (the **Beneficiary**)

BACKGROUND

- (A) The Authority has agreed to pay the Grant to the Beneficiary for the purpose of delivering the Project, subject to the terms and conditions set out below and in the Agreement Document.
- (B) The Authority is a delivery body responsible for managing the Growth Programme, the scheme under which the Grant is paid, which forms part of the wider RDPE. The Authority is also the accredited paying agency for the RDPE pursuant to Article 65(2) (b) of Regulation (EU) No 1305/2013 and fulfils both delivery body and paying agency functions for the Growth Programme scheme.
- (C) These terms and conditions apply to all Beneficiaries receiving a Grant under the Growth Programme scheme and should be read in conjunction with the details of the Project set out in the Agreement Document, which are individual to the Beneficiary. These terms and conditions and the Agreement Document together form the agreement between the Authority and the Beneficiary (“the **Agreement**”).
- (D) Further information and guidance are set out in the Guidance. The Beneficiary must familiarise itself with this document and ensure that it complies with all relevant requirements as a condition of receiving the Grant.
- (E) In the event of any conflict between these terms and conditions and the documents referred to in paragraphs (C) and (D) above, these terms and conditions shall prevail, followed by the Agreement Document, and then the Guidance.
- (F) The Managing Authority has overall responsibility for the RDPE and may directly enforce any terms of the Agreement against the Beneficiary in accordance with clause 28.2.

1. DEFINITIONS AND INTERPRETATION

In the Agreement the following terms shall have the following meanings:

Agreement Document: the document accompanying these terms and conditions, which describes the Grant to be paid to the Beneficiary and the Project to be undertaken

Application: the application for the Grant submitted by the Beneficiary containing details of the proposed Project (including any documentation submitted by the Beneficiary in support of the Application)

Claim Form: the claim submitted by the Beneficiary for payment of the Grant

Growth Programme or the Scheme: Growth Programme, a scheme which is run by the Rural Payments Agency on behalf of the Managing Authority, implementing measures under Title III of Regulation (EU) No 1305/2013 to achieve the priorities for rural development set out in that regulation

EAFRD: the European Agricultural Fund for Rural Development, which funds rural development under the Common Agricultural Policy (and jointly funds the RDPE, together with the Managing Authority)

End Date: the date on which the Agreement comes to an end, being five years after the date of the final payment

Grant: the sum to be paid to the Beneficiary under the Agreement for the purpose of delivering the Project

Guidance: the “Guide to Managing Successful Projects” which sets out additional requirements and further information and guidance for Beneficiaries, as further described in clause 5

Intellectual Property Rights: all patents, 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

Managing Authority: the Department for Environment, Food and Rural Affairs (DEFRA), which has overall responsibility for the RDPE pursuant to Article 65(2) (a) of Regulation (EU) No 1305/2013

Project: the work to be undertaken by the Beneficiary (as set out in the Application and in the Agreement Document)

Project Completion Date: the date on which the Project must be completed (as set out in the Agreement Document)

RDPE: the Rural Development Programme for England (2014-2020), which is jointly funded by the EAFRD and the Managing Authority

Start Date: the date on which the Agreement commences (as set out in the Agreement Document)

Working Day: any day other than a Saturday, a Sunday or a public holiday in England

- 1.1 References to **clauses** are to the clauses of these terms and conditions. Clause headings shall not affect the interpretation of these terms and conditions.
- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.
- 1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.5 A reference to a public organisation includes a reference to any successor of that public organisation.
- 1.6 Any words following the terms **including, include, in particular or for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

2. BENEFICIARY’S DECLARATIONS

- 2.1 The Beneficiary confirms that:

- (a) the declarations made in its Application remain true and accurate to the best of its knowledge and belief;
- (b) it has full capacity and authority to enter into the Agreement;
- (c) it is not aware of any circumstances which would prevent it from fulfilling its obligations under the Agreement;
- (d) if there are any changes to the Beneficiary's circumstances which could affect its eligibility or suitability for the Grant or its ability to fulfil its obligations under the Agreement, it will notify the Authority in writing without delay;
- (e) it has read and understood and will comply with all mandatory elements of the Guidance;
- (f) it has not received and will not receive any duplicate funding or allowances from other public sources in respect of the same obligations it is required to undertake under the Agreement;
- (g) its obligations under the Agreement do not duplicate and will not duplicate any other legal obligations it would otherwise be required to undertake;
- (h) its obligations under the Agreement do not and will not conflict in whole or in part with any other legal or contractual obligations on the Beneficiary; and
- (i) it will at all times comply with all relevant domestic and EU legislation in the performance of its obligations under the Agreement.

2.2 Subject to any provision to the contrary in the Agreement Document, the Beneficiary understands that it must not receive any other public funding for the Project. Where other public funding is permitted, full details are set out in the Agreement Document. If the Beneficiary receives any other public funding which is not explicitly permitted in the Agreement Document, the Authority reserves the right to recover the Grant in accordance with clause 9 and/or terminate the Agreement in accordance with clause 19.

2.3 The Beneficiary confirms that it has obtained and will maintain and comply with any permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of its obligations under the Agreement.

2.4 The Beneficiary understands that the giving of any approval, consent or acknowledgement, or the review of any document or course of action by or on behalf of the Authority does not relieve the Beneficiary of any of its obligations under the Agreement unless expressly permitted in writing by the Authority.

2.5 The Beneficiary understands that it is an offence to knowingly or recklessly provide false or misleading information or intentionally obstruct or fail to assist any person carrying out public functions in connection with the Agreement, and that such conduct by the Beneficiary may attract criminal penalties.

2.6 The Beneficiary shall make its own enquiries as to the accuracy and adequacy of any information on which it relies in connection with the Agreement.

3. BENEFICIARY'S OBLIGATIONS

3.1 In applying for and receiving the Grant, the Beneficiary agrees to comply with these terms and conditions and any mandatory requirements set out in the Guidance.

- 3.2 The Beneficiary shall use the Grant to deliver the Project by the Project Completion Date.
- 3.3 The Beneficiary undertakes that any items funded by the Grant in connection with the Project will remain in the Beneficiary's ownership and be used and maintained for the purpose and in the manner for which they were intended until the End Date. The Beneficiary shall not make any change to the ownership or use of any such item before the End Date without the Authority's prior written consent.

4. TERM

- 4.1 The Agreement shall commence on the Start Date and, subject to any earlier termination in accordance with clause 19, it shall continue in force until the End Date.

5. THE GUIDANCE

- 5.1 The Beneficiary shall comply with the mandatory elements of the Guidance as a condition of receiving the Grant.
- 5.2 The Authority reserves the right to update or amend the Guidance from time to time. In such circumstances the Beneficiary will be notified in writing of any changes.

6. CHANGES TO OWNERSHIP OF BUSINESS OR PROJECT

- 6.1 The Beneficiary must notify and seek agreement from the Authority in writing in advance of any proposed changes affecting any part of its business including (without limitation):
- (a) the sale or transfer of all or part of its business to a new owner;
 - (b) the acquisition by the Beneficiary of any new business interests which are of significant size or value and may affect the Beneficiary's eligibility for the Grant;
 - (c) the sale or transfer of any land which is capable of having an impact on the Project;
 - (d) the granting, termination or expiry of any lease or tenancy which is capable of having an impact on the Project; or
 - (e) any material change to the Beneficiary's financial circumstances which could affect its ability to carry out the Project.
- 6.2 The Beneficiary must request and seek prior consent from the Authority in writing if they wish to grant any legal charge over any land or other asset funded in whole or in part by the Grant.
- 6.3 The Beneficiary acknowledges and accepts that any significant change affecting its business may have consequences for the Agreement. In some circumstances the Authority may be required to recover all or part of the Grant.

7. AMENDMENTS

- 7.1 No amendments to the Project shall be permitted unless expressly agreed in writing by the Authority.
- 7.2 Further details of the circumstances in which amendments may be permitted and the process to be followed are set out in the Guidance.

8. CLAIM FORMS

- 8.1 The Beneficiary shall submit Claim Forms and supporting documents to the Authority in accordance with the instructions provided in the Guidance and on the Claim Form itself.
- 8.2 The Grant will be paid directly to the Beneficiary's nominated business bank account via BACS transfer by the Authority, subject to the necessary funds being available when the payment falls due. The Beneficiary agrees and accepts that payment of the Grant can only be made to the extent that the funds are available.
- 8.3 Any failure by the Beneficiary to submit a Claim Form in accordance with the instructions and by the specified deadline (including the provision of any supporting documents necessary to enable the claim to be processed) may result in payment of the Grant being delayed, reduced or withheld.
- 8.4 All Claim Forms will be checked and verified before any sum is paid. If there is any discrepancy between the amount claimed by the Beneficiary and the amount the Beneficiary is entitled to claim, the Grant may be subject to a penalty. In the most severe cases, the Claim Form may be rejected in its entirety. Further details of when penalties may be applied and how they are calculated are set out in the Guidance.
- 8.5 The amount of the Grant shall not be increased in the event of any overspend by the Beneficiary in the delivery of its obligations under the Agreement.
- 8.6 Unless otherwise explicitly permitted in writing by the Authority, the Grant may not be used to reimburse any expenditure incurred or any financial commitments entered into by the Beneficiary prior to the Start Date. This shall include orders placed or agreements entered into by the Beneficiary prior to the Start Date, whether cancellable or otherwise, and in case of doubt the Beneficiary should notify the Authority in advance.

9. REPAYMENT

- 9.1 If the Beneficiary breaches the terms of the Agreement or if there is a change in circumstances affecting its eligibility to receive the Grant, the Authority reserves the right to withhold or require repayment of the Grant. In addition, where the Beneficiary has breached the terms of the Agreement, penalties may be applied. Further details of when penalties may be applied and how they are calculated are set out in the Guidance.
- 9.2 If the Beneficiary receives any overpayment or any payment to which it is not entitled (including in the event of an administrative error), the undue amount must be repaid. It is the Beneficiary's responsibility to check all payments it receives from the Authority and notify the Authority immediately if it has any reason to believe that an error has occurred.
- 9.3 If any sum becomes repayable under the Agreement, it shall be treated as a debt owing by the Beneficiary to the Authority until such time as the outstanding amount is repaid.
- 9.4 Where any sum is repayable under the Agreement, the Authority reserves the right to:
- (a) issue a recovery order to the Beneficiary requiring repayment of the outstanding amount; and/or
 - (b) withhold any future payments and/or deduct the outstanding amount from any future payments which are due to the Beneficiary under this Agreement, any other RDPE grant agreement, or any other sum due to the Beneficiary under the Common Agricultural Policy.
- 9.5 Any recovery order issued to the Beneficiary shall specify the amount to be repaid and the date by which repayment must be made. If the Beneficiary fails to make a repayment within 60 days of the date of the

relevant recovery order, the Authority reserves the right to charge interest on the outstanding debt at a daily rate equivalent to the Bank of England base rate plus 1%.

10. ACCESS TO DOCUMENTS AND INFORMATION

The Beneficiary shall, upon request, supply any documents, information, data, reports or written or verbal explanations which may be required by the Authority or any UK or EU public authority (or their authorised representatives or auditors) in connection with the Agreement or the Scheme.

11. SITE VISITS

11.1 The Beneficiary shall allow the Authority or any UK or EU public authority (or their authorised representatives or auditors) to access its land and/or premises in connection with the Agreement. Such access may be required with or without notice. The Beneficiary agrees to assist and cooperate with any person authorised to carry out any site visits (including controls and spot-checks) and shall provide access to any land, premises, plant, equipment or documents which may be required.

11.2 In addition to any consequences arising as a result of a breach by the Beneficiary of these terms and conditions, the Beneficiary understands that it is a criminal offence to intentionally obstruct, or fail to assist or provide information to any person exercising powers under this clause and performing other tasks in connection with the Agreement.

12. MAINTENANCE OF ACCOUNTS AND RECORDS

12.1 The Beneficiary shall keep accurate and up-to-date accounts and records of the receipt and expenditure of the Grant monies received by it and evidence of its compliance with its obligations under the Agreement which shall comply with any applicable standards and requirements set out in the Agreement Document, the Guidance and in any separate instructions issued to the Beneficiary.

12.2 The Beneficiary shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Grant for a period of at least seven years from the date of the final payment. The Authority shall have the right to review the Beneficiary's accounts and records relating to the Grant and shall have the right to take copies of such accounts and records.

12.3 The Beneficiary shall comply with and facilitate the Authority's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Authority.

12.4 In addition to its obligations to provide information to the Authority, the Beneficiary shall provide any of the information referred to in this clause to the Managing Authority or any other UK or EU public authority (or their authorised representatives or auditors) upon request.

13. EVALUATION

13.1 The Beneficiary acknowledges that as a condition of receiving the Grant funding it may be required to participate in an evaluation procedure, which may take place either during the Agreement or after its expiry or termination.

13.2 The Beneficiary understands that its contact details may be disclosed to third parties for evaluation purposes and agrees to assist and cooperate with any person authorised by any UK or EU public authority to carry out such an evaluation.

14. ACKNOWLEDGEMENT AND PUBLICITY

- 14.1 The Beneficiary shall comply with all instructions and guidance from the Authority or the Managing Authority in relation to acknowledgement and publicity of the Grant, including using any materials or templates which are provided to it for this purpose. Such acknowledgement and publicity may include, where appropriate, a statement on any website operated by the Beneficiary for business purposes, and/or a poster, plaque or billboard displayed on the Beneficiary's land or premises. Further details of the publicity requirements applicable to Beneficiaries are set out in the Guidance.
- 14.1 Where the Beneficiary uses the name and logo of any other organisation in its publicity, it shall comply with all reasonable branding guidelines or instructions it is given in relation to the use of such name or logo.
- 14.2 The Beneficiary agrees to participate in and co-operate with promotional activities relating to the Scheme if required to do so by the Authority or the Managing Authority.
- 14.3 The Authority or the Managing Authority may acknowledge the Beneficiary's involvement in the Scheme as appropriate without prior notice.
- 14.4 The Beneficiary shall comply with all reasonable requests from the Authority or the Managing Authority to facilitate visits, provide reports, statistics, photographs and case studies that will assist them with any promotional and publicity activities relating to RDPE.

15. INTELLECTUAL PROPERTY RIGHTS

- 15.1 All rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, know-how and any other Intellectual Property Rights whatsoever owned by or licensed to either the Authority or the Beneficiary before the Start Date or developed by either party under the Agreement, shall remain the property of that party.
- 15.2 Where the Authority or the Managing Authority has allowed the Beneficiary to use any of its Intellectual Property Rights in connection with the Agreement (including without limitation its name and logo), the Beneficiary shall, on termination of the Agreement, cease to use such Intellectual Property Rights immediately (subject to any ongoing requirement to use Intellectual Property Rights in compliance with the publicity requirements in clause 14).
- 15.3 The Beneficiary shall comply with any provisions relating to Intellectual Property Rights which are specified in the Agreement Document.
- 15.4 Where any documents or materials are provided to the Authority or Managing Authority under this Agreement, the Beneficiary shall ensure that those bodies are entitled to use such documents or materials for the purpose for which they have been provided. Where the Beneficiary owns any Intellectual Property Rights in such documents or materials, it hereby grants a non-exclusive, royalty-free, perpetual licence to the receiving party to use such Intellectual Property Rights to the extent necessary to give effect to this clause.

16. DATA AND INFORMATION

- 16.1 The parties shall comply with all relevant UK and EU data protection legislation in delivering their obligations under the Agreement.
- 16.2 The Authority and/or the Managing Authority may use any information or data provided by the Beneficiary or collected during the course of the Agreement for the purposes of management, control and evaluation and may

share this with other UK and EU public bodies for the purposes of monitoring and administering the Common Agricultural Policy (CAP) further to Article 117 of EU Regulation No 1306/2013.

- 16.3 Information and data about the Agreement (including details about the Beneficiary, the Grant and Project) may be published on public websites.
- 16.4 The Beneficiary consents to its contact details being disclosed to any UK or EU public authority (or their authorised representatives or auditors) for monitoring, inspection or evaluation purposes.
- 16.5 The Beneficiary acknowledges that the Authority and the Managing Authority are subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR).
- 16.6 The Beneficiary shall provide all necessary assistance and cooperation which is reasonably requested by the Authority or the Managing Authority for the purposes of complying with its obligations under the FOIA and EIR. If the Authority or the Managing Authority requires the Beneficiary to supply information pursuant to a FOIA/EIR request, the Beneficiary shall supply all such information which is within its possession or control within 5 Working Days (or such other period as is reasonably required).
- 16.7 If the Beneficiary receives a FOIA/EIR request from a member of the public in connection with the Agreement or the Project, it shall not respond to the request but shall forward the request to the Authority within 2 Working Days of receipt.
- 16.8 The Authority or the Managing Authority (as appropriate) shall determine in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of FOIA and/or the EIR.
- 16.9 Further details about how information about the Beneficiary and the Agreement will be used and shared are set out in the Guidance.

17. LIMITATION OF LIABILITY

- 17.1 Neither party excludes or limits its liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation, or any other liability which cannot be limited or excluded by law.
- 17.2 The Authority accepts no liability for any consequences, whether direct or indirect, arising from the Agreement, the use of the Grant by the Beneficiary, or from the Authority or the Managing Authority exercising its rights under the Agreement.
- 17.3 Subject to clause 17.1 and 17.2, the Authority's total aggregate liability in connection with the Agreement shall not exceed the amount of the Grant.
- 17.4 The Beneficiary shall indemnify the Authority and any persons acting on the Authority's behalf against all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising as a result of the actions or omissions of the Beneficiary in connection with the Agreement.
- 17.5 The Beneficiary acknowledges and accepts that if it suffers any losses which prevent it from fulfilling its obligations under the Agreement, the Authority may require the Grant to be repaid or the losses to be made good at the Beneficiary's own expense, regardless of whether the Beneficiary is insured against such losses.

18. FORCE MAJEURE

- 18.1 If the Beneficiary is prevented from complying with its obligations under the Agreement due to force majeure or exceptional circumstances, the Authority must be notified in writing, within 15 Working Days from the

date on which the Beneficiary (or any person authorised to act on the Beneficiary's behalf) is in a position to do so.

- 18.2 The Authority will consider the facts on a case-by-case basis in deciding whether or not the Beneficiary is relieved of all or part of its obligations under the Agreement and whether all or part of the Grant should be suspended or repaid.

19. TERMINATION

- 19.1 The Authority reserves the right to terminate the Agreement on written notice to the Beneficiary if:

- (a) the Beneficiary has breached the terms of the Agreement or there is a change in circumstances affecting its eligibility to receive the Grant (whether or not the Authority has taken steps to recover the Grant in accordance with clause 9); or
- (b) the Beneficiary has failed to repay any sum which has become recoverable by the Authority in accordance with clause 9.

- 19.2 In addition to its right to terminate under clause 19.1 above, the Authority may terminate the Agreement and any future Grant payments on giving the Beneficiary six months' written notice at any time. Provided that the Beneficiary is not in breach of the Agreement, Grant payments already paid will not be recoverable.

- 19.3 The Beneficiary may terminate the Agreement at any time by giving written notice to the Authority. The Beneficiary understands that in such circumstances it may be required to repay all or part of the Grant and that its obligations under the Agreement shall not cease until such repayment has been made.

20. CONSEQUENCES OF EXPIRY OR TERMINATION

- 20.1 Expiry or termination of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of expiry or termination which existed at or before the date of expiry or termination.

- 20.2 Expiry or termination of the Agreement shall not affect the continuing rights and obligations of the parties under clauses 9 (Repayment), 10 (Access to Documents and Information), 11 (Site Visits), 12 (Maintenance of Accounts and Records), 13 (Evaluation), 14 (Acknowledgement and Publicity), 15 (Intellectual Property Rights), 16 (Data and Information), 17 (Limitation of Liability), 20 (Consequences of Expiry or Termination), 22 (Severability), 23 (Waiver), 24 (Notices), 25 (Dispute Resolution), 27 (Joint and Several Liability), 28 (Third Party Rights), 29 (Governing Law) or any other provision in the Agreement or mandatory requirement in the Guidance which is expressly stated to survive expiry or termination of the Agreement or which is required to give effect to such termination or expiry or the consequences of such termination or expiry.

21. VARIATIONS TO THESE TERMS AND CONDITIONS

The Authority reserves the right to vary these terms and conditions or the Agreement Document. Any variation will be effected in writing and notified to the Beneficiary in advance. The Authority shall endeavour to give such notice as is reasonable and proportionate, having regard to the nature of the variation and its consequences for the Beneficiary.

22. SEVERABILITY

If any term, condition or provision of the Agreement is held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in the Agreement.

23. WAIVER

No failure or delay by either party to exercise any right or remedy under the Agreement shall be construed as a waiver of any other right or remedy.

24. NOTICES

24.1 All notices in relation to the 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) using the contact details set out in the Agreement Document (or any updated address which is subsequently notified by one party to the other). It is the Beneficiary's responsibility to notify the Authority of any change to its contact details.

24.2 If personally delivered or if e-mailed all such notices shall be deemed to have been given when received (except that if received on a non-Working Day or after 5.00 pm on any Working Day they shall be deemed received on the next Working Day) and if mailed all such notices shall be deemed to have been given and received on the second Working Day following such mailing.

25. DISPUTE RESOLUTION

Any dispute arising between the parties or any complaint or appeal by the Beneficiary in connection with the Agreement shall be resolved according to the procedure set out in the Guidance.

26. NO PARTNERSHIP OR AGENCY

The Agreement shall not create any partnership or joint venture between the Authority and the Beneficiary, 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.

27. JOINT AND SEVERAL LIABILITY

Where the Beneficiary is not a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into the Agreement on behalf of the Beneficiary shall be jointly and severally liable for the Beneficiary's obligations and liabilities arising under the Agreement.

28. THIRD PARTY RIGHTS

28.1 Subject to clause 28.2 below, the Agreement does not and is not intended to confer any benefit on any person who is not a party to the Agreement.

28.2 The terms of the Agreement may be enforced and recovery of any Grant may be sought by the Managing Authority, which shall be entitled to receive the benefit of the Agreement as if it were the Authority.

29. GOVERNING LAW

The 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.