

## Schedule 1: Terms of Funding ('Agreement')

**This is a supporting legal document which you should read before signing the Acceptance of Funding Offer to enter into the Funding Agreement.**

**Between:**

**(1) Construction Industry Training Board** (Registered charity numbers 264289 and SC044875) whose principal place of business is Sand Martin House, Bittern Way, Fletton Quays, Peterborough, PE2 8TY ('CITB' or 'we', 'us' or 'our');

**and**

**(2) [Company name]**, a company registered in England and Wales (company registration number [xxxxxxx]) whose registered office is at [Company address] ('Recipient' or 'you' or 'your');

(each a 'party' and together the 'parties').

### Background

- (A) CITB has reviewed the Recipient's proposal (the '**Project**') and agreed to grant funds\* (the '**Funds**') to the Recipient to assist the Recipient in carrying out the Project.
- (B) The purpose of the Project is to [e.g. support you with the expansion of your training facilities so that you can accommodate the increase in people/adults numbers and training due to the growth / demand from the construction industry].
- (C) These Terms of Funding set out the terms and conditions on which the Funds are granted to you and should be read in conjunction with the Funding Offer Letter and all annexes hereto (the '**Agreement**').
- (D) These Terms of Funding are intended to ensure that the Funds are used for the purpose for which they are awarded.

\*in the sum communicated to you separately in the covering letter of this Agreement (the '**Funding Offer Letter**').

### 1. Funding and Tax

- 1.1. CITB grants the Funds to the Project inclusive of any VAT if applicable, subject to the below clause 1.5.
- 1.2. The Funds will only be used by you and any participating businesses named in your application and only for the Project.
- 1.3. The amount of the Funds shall not be increased in the event of any overspend by you in the delivery of the Project.
- 1.4. You shall promptly repay to CITB any money incorrectly paid to you either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Funds have been paid in error before all conditions attaching to the Funds have been complied with by you.
- 1.5. You understand that our obligation does not extend to paying you any amounts in respect of VAT in addition to the Funds and that the Funds we give are inclusive of any VAT if applicable.
- 1.6. You shall not use the Funds to:
  - 1.6.1. fund employees, directors or trustees other than in accordance with the criteria set out in Annex 3 (KPI Summary); or
  - 1.6.2. fund your operational costs other than in accordance with the criteria set out in Annex 5 (KPI Summary); or
  - 1.6.3. purchase building or land or large infrastructure unless agreed in advance in writing by us; or
  - 1.6.4. fund any capital expenditure unless agreed in advance in writing by us.

### 2. Eligible Expenditure

- 2.1. '**Eligible Expenditure**' means payments made by you during the period that the Funds are allocated for the purposes of the funded activities of the Project.
- 2.2. All expenditure must be claimed net of any VAT that is recoverable from HM Revenue and Customs.

- 2.3. Where agreed in advance in writing by us, Eligible Expenditure also includes retentions for building work where these are held by you until the work has been completed satisfactorily.
- 2.4. A payment is defined as taking place at the moment when money passes out of your control.
- 2.5. You must not deliberately incur liabilities for Eligible Expenditure in advance of need; nor pay for Eligible Expenditure sooner than the due date for payment. The following costs must be excluded from Eligible Expenditure:
  - 2.5.1. activities of a political or exclusively religious nature;
  - 2.5.2. goods or services that you have a statutory duty to provide;
  - 2.5.3. payments reimbursed or to be reimbursed by other public or private sector grants;
  - 2.5.4. contributions in kind (i.e. a contribution in goods or services, as opposed to money) unless specifically included in Annex 2 (Delivery Payment Schedule) and approved by CITB in advance in writing;
  - 2.5.5. depreciation, amortisation or impairment of fixed assets owned by you;
  - 2.5.6. the acquisition or improvement of fixed assets unless the applicable expenditure is agreed by us in advance in writing;
  - 2.5.7. interest payments (including service charge payments for finance leases);
  - 2.5.8. gifts to individuals other than promotional items with a value of no more than £25 a year to any one individual;
  - 2.5.9. entertaining (anything that would be a taxable benefit to the person being entertained according to current UK tax regulations);
  - 2.5.10. statutory fines, criminal fines or penalties; or
  - 2.5.11. liabilities incurred before the issue of this Agreement unless agreed in writing by us; or
  - 2.5.12. any proportion of an on-site training hub or construction training centre that will be used commercially.
- 2.6. You must seek prior written permission from us before purchasing any items not for the sole purpose of delivering your Project.
- 2.7. If your Eligible Expenditure does not match the Funds allocated, CITB, at its absolute discretion, reserves the right to withhold payment of the Funds until you can provide evidence of such expenditure.

### 3. Duration

- 3.1. Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until the end date specified in the Funding Offer Letter.
- 3.2. Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

### 4. Outputs/Outcomes

- 4.1. For the purpose of this Agreement, the following definitions apply:
  - 4.1.1. **'Outcomes'** means the intended benefits of the funded activities for individuals, companies and the construction industry as set out in Annexes 1 (Project Overview and Deliverables) and 2 (Delivery Payment Schedule);
  - 4.1.2. **Outputs** means the funded activities as set out in Annexes 1 (Project Overview and Deliverables) and 2 (Delivery Payment Schedule).
- 4.2. You undertake to deliver the Outputs and Outcomes as detailed in Annex 2 (Delivery Payment Schedule) and to comply with all requests we make with regards to monitoring and evaluation including regular evaluation of the performance of the Project against the profile outlined in the approved application form with the Outputs and the Outcomes.
- 4.3. Evidence will be submitted [via a secure Microsoft SharePoint site] to CITB in accordance with Annex 2 (Delivery Payment Schedule) to trigger staged payments throughout the duration of the Project.

### 5. Intellectual Property Rights, Marketing and Promotion

- 5.1. For the purpose of this Agreement, the following definitions apply:
  - 5.1.1. **'Intellectual Property Rights'** ('IPR') means any confidential information, patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all existing and future rights capable of present assignment, applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world. . For the avoidance of doubt, data shall fall outside this category and shall be handled as set out in clause 11 (Data Protection) of this Agreement.

- 5.1.2. **'Background IPR'** shall mean IPR owned by you or a third party not created under this Agreement but needed for the performance of the Agreement or for use and exploitation of Foreground IPR.
- 5.1.3. **'Foreground IPR'** means IPR created by you or a subcontractor for the Project.
- 5.2. Any advertising, presentation or media coverage by you and training materials, activity or products connected to the Project shall acknowledge CITB's funding and must comply with CITB's branding guidelines (as contained in CITB's information pack), as amended from time to time.
- 5.3. Except as expressly set out in this Agreement, you are not authorised to use any of CITB's logo and/or trademarks without our prior written approval.
- 5.4. Nothing in this Agreement entitles you to state, either expressly or impliedly, that you are endorsed by, approved by, affiliated with or have any corporate association with CITB.
- 5.5. We may publicise funding the Project and we may use your logo/trademark to do so.
- 5.6. Nothing in this Agreement shall affect your ownership of the Background IPR. The Foreground IPR shall belong to CITB.
- 5.7. You grant us (and will ensure third parties do the same) a perpetual, royalty-free, non-exclusive worldwide licence to use the Background IPR so we can use the Foreground IPR for whatever purpose(s) beyond this Project.
- 5.8. We grant you a perpetual, royalty-free, non-exclusive worldwide licence to use the Foreground IPR.
- 5.9. You will have agreements with third parties equivalent to these IPR provisions and will provide us copies upon request.
- 5.10. We own all the new creative content in the Outputs/Outcomes and may share this across the industry.

## 6. Payment

- 6.1. Payment of the Funds will be made subject to:
- 6.1.1. the submission of satisfactory evidence that the Project is proceeding in accordance with Annex 2 (Delivery Payment Schedule);
- 6.1.2. clause 13.1 (Withholding, Suspending and Repayment of Funding) of this Agreement and your confirmation that payments made by you during the period that the Funds are allocated for have not been funded or part funded by, or cannot be claimed back from, another third party;
- 6.1.3. you meeting the stipulated Outputs and Outcomes; and
- 6.1.4. receipt by us of a properly rendered drawdown invoice quoting the relevant purchase order number.
- 6.2. Incomplete or unsatisfactory evidence, confirmation and/or documentation will be returned unpaid; late claims may not be paid.
- 6.3. You acknowledge and accept that CITB has the right to vary, withhold, retain and/or require repayment of all or part of the Funds paid directly from you.
- 6.4. Any payment of the Funds received by you that is required to be repaid shall be immediately repaid by you to CITB as a debt on demand, or on it first being discovered by you, whichever occurs first.
- 6.5. Subject to clauses 6.1 to 6.4, we shall make payment within thirty (30) calendar days of receipt of the drawdown invoice.
- 6.6. For CITB, the Contract Manager (detailed in Schedule 2 (Acceptance of Funding Agreement)) shall be the programme manager, or such other person appointed in their place, and they shall provide guidance and assistance on all matters relating to this Agreement. The CITB Contract Manager's decision in relation to the submission of evidence and the meeting of Outputs and Outcomes in respect of clause 6.1 shall be final.
- 6.7. There are considerable pressures on the funds available and a failure by you to discuss problems/issues concerned with evidence-based staged payments, Outputs and Outcomes with us may result in funds being redistributed back into the fund. CITB reserves the right not to make the relevant staged payment to you in such circumstances.
- 6.8. If you enter into a contract for any activities relating to this Agreement, you must specify in any contract that all valid invoices issued by the contractor to you will be paid by you within thirty (30) calendar days of receipt. We will not pay invoices received from your contractors.
- 6.9. You shall take all reasonable steps to satisfy yourself that any third party, which you engage with, in relation to funding under this Agreement, is suitable in all respects to perform the services required to deliver the funded activities as set out in Annexes 1 (Project Overview and Deliverables), 2 (Delivery and Payment Schedule) and 3 (KPI Summary).
- 6.10. We may ask you to co-operate and participate in research and to arrange for our researchers to have access to the beneficiaries of your Project.
- 6.11. Where a contribution is to be made by you or any third party to the funded activities for the Project (**'Match Funding'**), such contribution must be used in accordance with clause 2 (Eligible Expenditure) of this Agreement, and the payment of Funds is conditional upon the receipt of the Match Funding or the Match Funding being committed to our satisfaction.

- 6.12. You shall notify us in writing immediately of any failure by you or any third party to make a contribution due under the Match Funding, or any circumstance that affects or might affect the payment or availability of Match Funding.

## 7. Indemnity

- 7.1. You shall indemnify and hold harmless CITB including its employees, agents, officers and subcontractors from and against any and all third party actions, claims, loss, damage, costs, demands, expenses (including reasonable legal fees) and all other liabilities arising from the Project or incurred by reason of the actions and/or omissions (including without limitation infringement of IPR rights) of you in relation to the Project, nonfulfillment of obligations of you under this Agreement or your obligations to third parties.

## 8. Insurance

- 8.1. You shall, at your own cost, effect and maintain adequate insurance in respect of all risks which may be incurred by you arising out of your performance of the Project and this Agreement. The following minimum level of insurance cover is required:
- 8.1.1. Employer's Liability Insurance: minimum as required by law;
  - 8.1.2. Public Liability Insurance: £1 million; and
  - 8.1.3. Professional Indemnity Insurance: £2 million.
- 8.2. If requested by CITB, you shall supply us with the relevant insurance documentation and evidence that the relevant premiums have been paid.

## 9. Discrimination

- 9.1. You shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) against anyone.
- 9.2. You shall take reasonable steps to secure observance of this clause by all servants, employees or agents engaged by you and all supplier and subcontractors engaged on the Project.

## 10. Safeguarding

- 10.1. If the Project involves work with children, young people or vulnerable adults (vulnerable people), you will take all reasonable steps to ensure their safety.
- 10.2. You will obtain written agreement from the legal carer or guardian before any direct contact with vulnerable people and have policies and procedures to safeguard them, obtaining appropriate disclosure checks for anyone in contact with them.
- 10.3. You will undertake all necessary actions to comply with current legal safeguarding requirements and must make the necessary checks to ensure that employment that involves regular contact with young people under the age of eighteen (18) or other vulnerable people is not offered to or held by anyone who has been convicted of certain specified offences, or whose name is included on lists of people considered unsuitable for such work held by the Disclosure and Barring Service ('DBS'). You must undertake an adequate risk assessment to establish what action is required where their employees have regular contact with young people under eighteen (18) or other vulnerable adults.

## 11. Data Protection

- 11.1. For the purposes of this Agreement:
- 11.1.1. **'Data Protection Legislation'** means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the UK GDPR, the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC), the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019; any other United Kingdom or European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and any other law relating to data protection, the processing of personal data and privacy as a consequence of the United Kingdom leaving the European Union; and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.
  - 11.1.2. the terms **"Data Controller"**, **"Data Subject"**, **"Data Processor"**, **"Joint Controller"**, **"Personal Data"**, **"Process"**, **"Processing"**, **"Sub Processor"** and **"appropriate technical and organisational measures"** shall have the meaning prescribed under the Data Protection Legislation.
  - 11.1.3. **Independent Data Controller** shall mean where a Data Controller in accordance with clause 11 has provided Personal Data to another party which is not a Processor or a Joint

Data Controller because the recipient itself determines the purposes and means of Processing but does so separately from the Data Controller providing it with Personal Data and **"Independent Data Controller"** shall be construed accordingly

- 11.1.4. **Shared Personal Data** is the Personal Data to be shared between the parties as set out in Annex 5 (Data Processing Information), the **Data Discloser** is the party that discloses Shared Personal Data to the other party and the **Permitted Recipients** are the parties to this Agreement, the employees of each party and any third parties engaged to perform obligations (and approved by CITB in writing) in connection with this Agreement.
- 11.2. Both parties acknowledge that CITB and the Recipient are each a Controller in respect of the Shared Personal Data that is the subject of this Agreement and that they are not joint Controllers (as defined within Data Protection Legislation) save where a specific agreement is made to that effect between the parties.
- 11.3. This clause 11 sets out the framework for the sharing of Personal Data between the parties as Controllers. Each party acknowledges that one party (referred to in this clause as the Data Discloser) may disclose to the other party Shared Personal Data collected by the Data Discloser for the purposes of this Agreement (the **"Agreed Purposes"**).
- 11.4. Each party shall comply with all the obligations imposed on a Controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within thirty (30) calendar days of written notice from the other party, give grounds to the other party to terminate this Agreement with immediate effect.
- 11.5. Each party shall:
- 11.5.1. Ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
  - 11.5.2. Give full information to any Data Subject whose Personal Data may be Processed under this agreement of the nature of such Processing. This includes giving notice that, on the termination of this Agreement, Personal Data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
  - 11.5.3. Process the Shared Personal Data only for the Agreed Purposes;
  - 11.5.4. Not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
  - 11.5.5. Ensure that all Permitted Recipients are subject to written mandatory obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement;
  - 11.5.6. Ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;
  - 11.5.7. Not transfer any Personal Data received from the Data Discloser outside the United Kingdom or the European Union unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.
- 11.6. Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:
- 11.6.1. Consult with the other party about any notices given to Data Subjects in relation to the Shared Personal Data;
  - 11.6.2. Promptly inform the other party following the receipt of any Data Subject rights request;
  - 11.6.3. Provide the other party with reasonable assistance in complying with any Data Subject rights request;
  - 11.6.4. Not disclose, release, amend, delete or block any Shared Personal Data in response to a Data Subject rights request without first consulting the other party wherever possible;
  - 11.6.5. Assist the other party, at the cost of the other party, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with the Information Commissioner or other regulators;
  - 11.6.6. Notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
  - 11.6.7. At the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless the Shared

Personal Data is held to fulfil a statutory purpose or the party is required by law to store the Shared Personal Data;

- 11.6.8. Use compatible technology for the Processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from Personal Data transfers;
  - 11.6.9. Maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and allow for audits by the other party or the other party's designated auditor; and
  - 11.6.10. Provide the other party with contact details of the Data Protection Officer or any other designated person confirmed in writing as the point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.
- 11.7. The Recipient shall fully indemnify and keep indemnified CITB, its officers, servants or agents against all claims, awards, costs, professional fees and disbursements etc. of dealing with any claims made in respect of information subject to Data Protection Legislation which claims would not have arisen but for the act, omission or negligence of the Recipient or its staff, agents or contractors or sub-contractors.
- 11.8. The provisions of this clause 11 shall apply during the term of the funding and indefinitely after the expiry or termination of this Agreement.

## 12. Freedom of Information

- 12.1. You acknowledge that CITB is subject to the requirements of the Freedom of Information Act 2000 ('FOIA') and the Environmental Information Regulations 2004 ('EIR').
- 12.2. You undertake to:
- 12.2.1. provide all necessary assistance and cooperation as reasonably requested by CITB and enable CITB to comply with its obligations under FOIA and EIR;
  - 12.2.2. transfer to CITB all requests for information relating to this Agreement that you receive as soon as practicable and in any event within two (2) working days of receipt;
  - 12.2.3. provide CITB with a copy of all information belonging to CITB requested in the request for information which is in your possession or control in the form that CITB requires within five (5) working days (or such other period as CITB may reasonably specify) of CITB's request for such information; and
  - 12.2.4. not respond directly to a request for information unless authorised in advance in writing to do so by CITB.
- 12.3. You acknowledge that CITB may be required under the FOIA and EIR to disclose information without consulting or obtaining consent from you. CITB shall take reasonable steps to notify you of a request for information to the extent that is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) CITB shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and EIR.

## 13. Withholding, Suspending and Repayment of Funding

- 13.1. You shall use the Funds for this Project and no other purpose. We may ask you to show how the funds were used by completing forms and such other documents as we require. You shall return these documents within ten (10) working days of any such request.
- 13.2. CITB's intention is that the Funds will be paid to you in full. However, without prejudice to CITB's other rights and remedies, we may at our discretion withhold or suspend payment of the Funds and/or require repayment of all or part of the Funds if:
- 13.2.1. the Funds have not been used for the purpose of the Project or for which they were awarded;
  - 13.2.2. you do not tell us of changes to the Project we deem substantial;
  - 13.2.3. the future of the Project is in jeopardy;
  - 13.2.4. your application form contained, or you provided inaccurate, false or misleading information or acted dishonestly or disreputably;
  - 13.2.5. progress towards completion of the Project or meeting expected Outcomes & Outputs is unsatisfactory or we consider that there is no reasonable prospect of you meeting them by the respective dates or at all;
  - 13.2.6. you are, in the reasonable opinion of CITB, delivering the Project in a negligent manner;
  - 13.2.7. there is a serious delay or delivery fails in some other way;
  - 13.2.8. we discover that the Project has been funded or part funded by, or that the payments made by you in connection with the Project may be claimed back from, another third party;
  - 13.2.9. we discover that commercial training represents more than 50% of the total training undertaken at any facility acquired or improved under the Funds;

- 13.2.10. any income or contributions are generated by the funded activities, so that we can decide whether any or all of the Funds, or income generated, should be retained by you or refunded to us; or
- 13.2.11. at the end of the Project you have failed to deliver all of the funded activities stipulated in the application.
- 13.3. If we make an overpayment for any reason, you will repay that to CITB on demand.
- 13.4. If applicable, you may not retain any portion of the funding that has not been used by the end of the financial year in the funding period without our written permission. Any Funds which remain unspent at the end of the financial year or as a result of termination or breach of this Agreement must be returned to us and not carried forward for use in the following financial year.
- 13.5. Any monies which we do not agree to be retained must be repaid to us within thirty (30) calendar days of a request by us to do so. If any amount repayable in accordance with this clause 13.5 is not repaid within thirty (30) calendar days of a request for repayment, we reserve the right to unilaterally deduct that amount from any other sum which is due or which may later become due to you under this Agreement or any other agreement or contract you may have with us.
- 13.6. If you are wound up or go into liquidation, administration, receivership, or bankruptcy, or enter into any compromise or other arrangement of your debts with your creditors, then we will be entitled to recover any Funds that has not been spent and withhold any further Funds. If any of the Funds are held by your contractors, you must attempt to recover it.

## 14. Accounts and Records

- 14.1. The Funds shall be shown in your accounts as restricted funds and shall not be included under general funds.
- 14.2. You shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Funds, which we may see upon reasonable request.
- 14.3. You shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Funds for at least seven (7) years following receipt of any of the Funds to which they relate. We shall have the right to review, at our reasonable request, your accounts and records that relate to the expenditure of the Funds and shall have the right to take copies of such accounts and records.
- 14.4. You shall have your accounts externally audited and shall provide us with a copy of the audited annual accounts within six months (or lesser period as CITB may reasonably require) of the end of the relevant financial year ending 31<sup>st</sup> March (or such other year end date confirmed by CITB in writing) in respect of the year in which the Funds were paid.
- 14.5. You shall comply and facilitate CITB's compliance with all applicable statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns.
- 14.6. You must retain all accounting records relating to the funded activities for at least seven (7) years from the end date of the Agreement.
- 14.7. Where funding allows for capital spend, you must keep a register of fixed assets, including all land and building acquired or improved with the Funds, at a cost exceeding £2,500 until such time as CITB advises you otherwise.

## 15. Assets, Disposal of Assets and Change of Use (if applicable)

- 15.1. For the purposes of this section:
  - 15.1.1. an '**Asset**' shall be considered to have been financed by CITB if it has been acquired wholly or partly with funds provided by CITB;
  - 15.1.2. the use of any Asset shall be considered to have changed if you use it for any purpose other than delivery of the funded activities;
  - 15.1.3. '**the appropriate proportion thereof**' shall be the proportion represented by the amount of funding provided by CITB to acquire, develop or improve an Asset in relation to the entire price paid for its acquisition, or its market value when its development or improvement have been completed; and
  - 15.1.4. any reference to an "**Asset Log**" is referring to the template set out in Annex 4 (Reporting Template).
- 15.2. Unless agreed otherwise in writing by CITB's Contract Manager, the Funds must not be used to purchase or improve your existing assets.
- 15.3. Where there are Assets involved, you must keep an up-to-date register of all Assets purchased and/or improved (if any) during the duration of the Agreement and must ensure you retain the Asset Log are completed in accordance with the guidance provided by CITB within the Asset Log.
- 15.4. You must permit CITB access to the premises where the Asset(s) is located to enable CITB to monitor and view the Asset(s) in use on at least an annual basis when requested.
- 15.5. You must seek approval from us if you and/or any of your contractors wish to dispose of, transfer or change the use of any Asset (with a market value exceeding £2,500) that was acquired or improved with the Funds.

- 15.6. An Asset(s) should not be sold below market value without prior written permission from CITB, and any proceeds resulting from such sale shall be surrendered to us in addition to any further monies from you to make up the discrepancy of the agreed value of the Asset as set out in the Asset Log.
- 15.7. Upon disposal of an Asset acquired or improved with the Funds, you shall pay to CITB whichever is the greater of either the amount of funding provided by CITB in respect of the Asset or the net proceeds of any disposal of the Asset or the appropriate proportion thereof unless otherwise agreed with CITB.
- 15.8. If you change the use of any Asset(s) acquired or improved with the Funds it will be treated as a disposal and you shall make a payment to CITB in accordance with clause 14.7 above.
- 15.9. CITB reserves the right, at its absolute discretion, to determine the outcome of any Asset(s) purchased, improved and/or created as a result of the Project.
- 15.10. The provisions of this clause shall apply during the continuance of this Agreement and after its termination howsoever arising. CITB shall reserve the right to decide when its interest in Assets financed by CITB under the terms of this Agreement shall cease.

## **16. Limitation of Liability**

- 16.1. CITB accepts no liability for any consequences, whether direct or indirect, that may come about from this Agreement, your running of the Project, the use of the Funds or from withdrawal of the Funds.
- 16.2. Nothing in this Agreement limits any liability which cannot legally be limited, including liability for death or personal injury caused by negligence and fraud or fraudulent misrepresentation.
- 16.3. Subject to clause 16.2, CITB's total liability under this Agreement is limited to the payment of the Funds.
- 16.4. Subject to clause 16.2, your total liability to the CITB shall not exceed three times the value of the Funds awarded for the Project under this Agreement.

## **17. Conflict of interest and financial or other irregularities**

- 17.1. You must set up formal procedures that require your officers, members and employees to declare any personal or financial interest in any matter concerning the funded activities and to be excluded from any discussion or decision-making relating to the matter concerned.
- 17.2. You must inform us immediately if there are any grounds for suspecting financial irregularity in the use of the funding, explain what steps are being taken to investigate the irregularity and keep us informed about the progress of the investigation. For these purposes 'financial irregularity' includes fraud or other impropriety, mismanagement, and the use of the Funds for any purpose other than those stipulated in this Agreement.

## **18. Warranties**

- 18.1. You warrant, undertake and agree that:
  - 18.1.1. you have all necessary resources and expertise to deliver the Project (assuming due receipt of the Funds);
  - 18.1.2. you shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify CITB immediately of any significant departure from such legislation, codes or recommendations;
  - 18.1.3. you shall comply with the requirements of Health and Safety at Work etc. Act 1974 and any other acts, order, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Project;
  - 18.1.4. you have and shall keep in place adequate procedures for dealing with any conflicts of interest;
  - 18.1.5. you have and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
  - 18.1.6. all financial and other information concerning you which has been disclosed to CITB is to the best of your knowledge and belief true and accurate;
  - 18.1.7. you are not aware of anything in your own affairs, which has not been disclosed to CITB, which might reasonably have influenced the decision of CITB to grant the Funds on the terms contained in this Agreement;
  - 18.1.8. you have not committed any offence under all the applicable legislation relating to anti-bribery and anti-corruption including but not limited to the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010;
  - 18.1.9. you comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015 and do not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and



- 18.1.10. since the date of your last accounts there has been no material change in your financial position or prospects and for the avoidance of doubt CITB retains the right to carry out a credit check during the term of this Agreement.

## 19. Assignments/sub-contracting

- 19.1. You shall not assign or sub-contract this Agreement in whole or in part without the prior written approval of CITB. CITB reserves the right to approve or reject any proposed assignee or sub-contractor.
- 19.2. Any assignment or subcontract shall be on terms no worse than these and shall require:
- 19.2.1. payment by you no more than 30 days from receipt of a valid invoice; and
- 19.2.2. your prompt approval of each subcontractor invoice. A subcontractor must include in a sub-contract equivalent terms.
- 19.3. No assignment or subcontract removes an obligation or liability. You are liable for acts and omissions of assignees or subcontractors and their employees as if your own.

## 20. Prevention of Fraud

- 20.1. You and your sub-contractors (if any) are required to:
- 20.1.1. Have an established system that enables you, your partners and sub-contractor staff to report inappropriate behaviour by colleagues in respect of contract performance claims;
- 20.1.2. ensure that their performance management systems do not encourage individual staff to make false claims regarding achievement of agreement performance targets;
- 20.1.3. ensure a segregation of duties within your, your partner or sub-contractors' operations between those employees directly involved in delivering the agreed activity performance and those reporting achievement of agreement performance to CITB;
- 20.1.4. ensure that an audit system is implemented to provide periodic checks, as a minimum at six monthly intervals, to ensure effective and accurate recording and reporting of agreed performance.
- 20.2. You shall use your best endeavours to safeguard the funding of the agreement against fraud generally and, in particular, fraud on the part of your directors, employees, partners or sub-contractors. You shall pay the utmost regard to safeguarding public funds against misleading claims for payment and shall notify the CITB immediately if it has reason to suspect that any serious irregularity or fraud has occurred or is occurring.

## 21. Termination & Effect of Termination

- 21.1. CITB may terminate this Agreement by written notice to you with immediate effect and without compensation:
- 21.1.1. If you, being an individual, or where a firm, any partner in that firm, shall become bankrupt or equivalent;
- 21.1.2. If you, being a company, pass a resolution of winding up, or equivalent;
- 21.1.3. If you, being a charity/public body, have an analogous event to those in clauses 21.1.1 or 21.1.2;
- 21.1.4. If you have a change of control within the meaning of s416 of the Income and Corporation Taxes Act 1988 which impacts adversely and materially on the performance of the Agreement which is not pre-approved by CITB in writing;
- 21.1.5. If you cease or threaten to cease to carry out the Project;
- 21.1.6. If you seriously breach this Agreement and do not remedy it or, following written notice, do not within thirty (30) calendar days remedy it to CITB's satisfaction;
- 21.1.7. If your acts or omissions do or are likely to bring us into disrepute or attract adverse publicity;
- 21.1.8. If we discover that any payments made by CITB to you in connection with the Project may be claimed back from another third party;
- 21.1.9. If we consider, in our reasonable opinion, that a conflict of interest exists;
- 21.1.10. If the Project has been subject to a substantial modification that constitutes a new funding award; or
- 21.1.11. this Agreement should not have been awarded to you in view of a serious infringement of the obligations set out under The Public Contract Regulations 2015 or any other applicable Law.
- 21.2. Without prejudice to clause 21.1 we shall be entitled to terminate this Agreement at any time by giving you not less than thirty (30) calendar days' written notice.
- 21.3. In the event of notice being given by CITB to terminate this Agreement, howsoever arising:
- 21.3.1. payment for any such parts shall be made in accordance with clause 6;
- 21.3.2. any and all licences granted by CITB to you in respect of Foreground IPR shall immediately cease and you shall forthwith return to CITB any and all related documents and materials;

- 21.3.3. you shall immediately return all CITB Confidential Information (if any) in your possession, power or control;
  - 21.3.4. you shall immediately return all CITB property and copies of information or data provided by CITB to you for the purposes of the Project. You shall certify to CITB that you have not retained any copies of any such information or data, except one copy which you may use for audit purposes; and
  - 21.3.5. you shall immediately return any other information reasonably requested by us.
- 21.4. Termination of this Agreement, howsoever arising, shall be without prejudice to the rights and remedies of CITB accrued prior to termination. Any clause or paragraph which expressly or impliedly has effect after termination shall continue to be enforceable notwithstanding termination.

## **22. Dispute Resolution**

- 22.1. In the event of any complaint or dispute (which does not relate to CITB's right to withhold funds or terminate) arising between the parties to this Agreement in relation to this Agreement the parties shall meet promptly to resolve matters.
- 22.2. If we cannot resolve the dispute within ten (10) working days of a meeting, the parties may, by mutual consent, refer the matter to the Centre for Effective Dispute Resolution to nominate a mediator.

## **23. Notices**

- 23.1. All notices in relation to this Agreement shall be in writing and shall be delivered by hand, or by recorded delivery or by electronic transmission (e-mail) and shall be duly given or sent to the relevant addresses as follows:
  - 23.1.1. where the notice is to be given or sent to CITB to: FAO Commissioning Manager, Bittern Way, Fletton Quays, Peterborough, PE2 8TY and copy emailed to [commissioning@citb.co.uk](mailto:commissioning@citb.co.uk); and
  - 23.1.2. where the notice is to be given or sent to the Recipient, to: [name and address] and a copy emailed to [generic email address];
- 23.2. Each party shall notify the other party of any change in its address specified in this clause 23 by giving notice of such change to the other party in accordance with this clause 23.
- 23.3. Any notice shall be deemed to have been received:
  - 23.3.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the relevant party's address; or
  - 23.3.2. if sent by recorded delivery, at 9:00am on the second Working Day after posting or at the time recorded by the delivery service.
  - 23.3.3. if delivered by e-mail, at the time the notice is received into the relevant inbox or if received after 4pm, the following Working Day.
- 23.4. This clause does not apply to the service of any proceedings or other documents in any legal action where the applicable service method will apply.

## **24. Joint and Several Liability**

- 24.1. Where you are not a company or incorporated entity with a distinct legal personality, the individuals who enter into and sign this Agreement shall be jointly and severally liable for your obligations and liabilities arising under this Agreement.

## **25. Set Off**

- 25.1. We may set off any liability of you to us against any liability of us to you without prejudicing our other rights or remedies.

## **26. No partnership or Joint Venture**

- 26.1. Nothing in this Agreement shall create a partnership or joint venture between us, 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. Variation**

- 27.1. The terms of this Agreement may only be varied in writing and by agreement between both parties.

## **28. Contracts (Rights of Third Parties) Act 1999**

- 28.1. This 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.

## **29. Law and Jurisdiction**

- 29.1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 29.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## **Annex 1: Project Overview and Deliverables**

[Insert details from application for funding]



### Annex 3 – KPI Summary


## Annex 4 – Reporting Template



Quarterly Reporting  
Pack template draft.

- Tab 1 – Payment Schedule
- Tab 2 – Output Performance (KPIs)
- Tab 3 – Participant list
- Tab 4 – Progress Report
- Tab 5 – Risk Log
- Tab 6 - Supporting Evidence
- Tab 7 – Audit Check

Asset Log (if applicable)



Supplier Asset Log  
Template.xlsx

## Annex 5: Data Processing Information

This Annex shall be completed by the Controller(s) and the content of this Annex shall be with the Controller(s) absolute discretion.

The contact details of the Parties Data Protection Officers are as follows:

- CITB: [Information.Governance@citb.co.uk](mailto:Information.Governance@citb.co.uk)
- Recipient: [Insert email address]

Both parties must determine their own basis for processing data, including any non-Personal Data.

### CITB

Description	Details
Subject matter of the processing	[insert title and project reference]
Duration of the processing	For the duration of this Agreement as specified in clause 3 (Duration) including any additional evaluation period.
Nature and purposes of the processing	Data is collected for evaluation and monitoring purposes to determine the impact of the Project in the construction industry  Data may also be used to develop a migration plan for future relevant commission(s) or funding following the expiry of this Agreement.
Type of Personal Data	[insert personal data]
Categories of Data Subject	General personal data [and sensitive personal data]
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Destruction after 6 years in line with CITBs retention requirements

Other information such as non-Personal data the CITB must provide to the Supplier is as follows: N/A

### SUPPLIER

Description	Details
Subject matter of the processing	[insert title and project reference]
Duration of the processing	[Recipient to input]
Nature and purposes of the processing	[Recipient to input]
Type of Personal Data	[insert personal data]
Categories of Data Subject	General personal data [and sensitive personal data]
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	[Recipient to input]



Other information such as non-Personal data the Recipient must provide to CITB is as follows:  
[Recipient to input]

## Schedule 2: Acceptance of Funding Offer

**This Funding Agreement is effective from the date of signing by both parties.**

No variation of this Funding Agreement shall be effective unless it is agreed in writing and signed by both parties (or their authorised representatives).

In signing this Funding Agreement, [Company Name] shall be deemed to accept the Funds on the terms and conditions of this Funding Agreement.

Authorised signatory for and on behalf of [Company Name]:

Signature:		Name: (in capitals)	
Position:			
Address:			
Postcode:		Date:	

Authorised signatory for and on behalf of CITB:

Signature:		Name: (in capitals)	
Position:	Commissioning Manager		
Address:	CITB Sand Martin House Bittern Way Fletton Quays Peterborough		
Postcode:	PE2 8TY	Date:	

Principal contacts:	CITB	[Company Name]
Contact name and postal address:	[Name] CITB Sand Martin House Fletton Quays Peterborough PE2 8TY	[Company Address]
Position:	Commissioning Manager	

	Contract Manager: Name	
Telephone No.:		
Email address:		

Other main contacts for Project:	e.g., Project Manager	e.g., Data Contact
Name:		
Position:		
Telephone No.:		
Email address:		