



Department  
for Education

# **Terms and Conditions DfE Grant Funding Agreement**

**For Agreements entered into from 1st  
September 2019**

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## **For all grants agreements entered into prior to 1<sup>st</sup> September 2019**

### **Standard terms and conditions of Agreement**

These terms and conditions are the standard terms and conditions for the Department for Education (Department) when the Department awards discretionary grants. These standard terms and conditions apply to all general grants by the Department and amend the previous version published on the GOV.UK website so are also applicable to grants awarded prior to the date of publication. Where a Recipient purports to offer alternative terms and conditions for the funding of grants, You must assume that it is the Department's intention to always automatically reject such terms and conditions and provide these terms and conditions for grants funding. This is the default position unless otherwise agreed in writing by the Department represented by the Departments' commercial policy service head or his duly authorised representative.

The Department may vary these terms and conditions and upload them onto the GOV.UK Website whereupon such amended terms and conditions shall apply to general grants. The Department is in the process of adopting new terms and conditions based on central Government standard terms and conditions. The Department anticipates that those terms and conditions will apply only to grants awarded after 1 September 2019. By accepting the Department's Grant Offer Letter, You accept these terms and conditions.

# 1 Introduction

- 1.1. The following standard terms and conditions apply to organisations receiving financial assistance (a “Grant Recipient”) from the Department. These conditions should be read in conjunction with the Grant Offer Letter issued by the Department. The terms and conditions set out in this document, together with the Grant Offer Letter, and accompanying Annexes together comprise the “Agreement” pursuant to which financial assistance (in the form of the Funding) is given by the Department to the Grant Recipient.
- 1.2. This Agreement is intended to replace any previous versions.

# 2 Definitions

2.1 In this Agreement the following terms will have the following meanings:

<b>Agreement</b>	<b>these Terms and Conditions plus the Grant Offer Letter and any relevant Annexes and associated documents;</b>
<b>Asset</b>	any item capable of being purchased for money or money’s worth which has a continuous useful life of one year or more, regardless of whether or not it is treated as such by Your accounting policy;
<b>Breach</b>	a failure to comply with any term of this Agreement;
<b>Budget</b>	the details of grant resource budget allocations set out in Annex E to the Grant Offer Letter, as varied from time to time in accordance with this Agreement;
<b>Contracting Authority</b>	a public body that is subject to and must comply with the Public Contract Regulations 2015;
<b>Committed</b>	at a particular date means Funding that the Recipient is contractually obliged to pay to a third party in respect of any part of the Funded Activities provided i) that the relevant Funded Activities have been undertaken by the third party at the particular date, ii) that the payment to a third party is approved as part of the Funded Activities, and iii) the arrangement to pay the third party is on standard arms’ length terms;
<b>Conflict</b>	any conflict of interest, any risk of a conflict of interest and any apparent conflict of interest arising through the Grant Recipient (or the Grant Recipient’s Personnel) engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Grant Recipient in performing the activity fairly and independently;
<b>Department</b>	the Department for Education;
<b>Data Protection Legislation</b>	(i) the General Data Protection Regulation, (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable law about the processing of personal data and privacy; See Data Protection Definitions
<b>EIR</b>	the Environmental Information Regulations 2014;

<b>Eligible Expenditure</b>	payments made by You during the Funding Period as defined in Clause 12 (Eligible Expenditure);
<b>Exit Plan</b>	means the plan required allowing for the smooth closure or transfer of the grant Funded Activities as set out at Clause 34 (Exit Plan);
<b>Financial Year</b>	means the 12 months from 1 April to 31 March in any year;
<b>FOIA</b>	the Freedom of Information Act 2000;
<b>Fraud</b>	means any offence under legislation or common law creating offences in respect of fraudulent acts including: fraudulent acts in relation to the Agreement, defrauding or attempting to defraud or conspiring to defraud the Crown;
<b>Funded Activities or Activity</b>	the Project (as set out in the Grant Offer Letter) including any tasks, activities, services or other purposes for which Funding is provided. The Funded Activities are more particularly described in Annex F to the Grant Offer Letter (the Activity Proposal);
<b>Funding</b>	means the Funding set out in Annex E to the Grant Offer Letter (Details of Grant Resource Budget Allocation);
<b>Funding Period</b>	means the period specified in the Grant Offer Letter during which the Funded Activities must be completed – this is the total period for which the Funding is allocated;
<b>Grant Manager</b>	means the Department staff authorised to undertake day-to-day grant monitoring and management, and the single point of contact for the Grant Recipient;
<b>Grant Claim</b>	Grant Claims made by You under clause 10;
<b>Grant Offer Letter</b>	the signed and dated letter from the Department to the Grant Recipient confirming the award of the Funding;
<b>Grant Recipient or Recipient</b>	the party specified in the Grant Offer Letter;
<b>HRA</b>	the Human Rights Act 1998;
<b>Improvement Plan</b>	an improvement plan prepared and developed by the Recipient in a format and style determined by the Department to address Our concerns pertaining to Your delivery of the Funded Activities;
<b>Information Legislation</b>	Data Protection Legislation, Freedom of Information Act 2000 and the Environmental Information Regulations 2004;
<b>Match Funding</b>	the contribution to the Funded Activities to meet the balance of Eligible Expenditure not supported by Funding. The Match Funding details and any additional specific conditions relating to this financial contribution are documented in the Grant Offer Letter;
<b>Material Breach</b>	any Breach by the Recipient (including an anticipatory Breach) which, in the reasonable opinion of the Department, has or will have a serious and adverse impact on the Funded Activities or achievement

	of the Outcomes, or is otherwise a breach of any of clauses 4, 12, 20, 22, 28, or 40-43 inclusive;
<b>Milestone</b>	any dates set out in Annex F to the Grant Offer Letter for achievement of Outcomes,
<b>Month</b>	calendar month;
<b>Outcomes</b>	the outcomes for the Funded Activities, as set out in Annex F to the Grant Offer Letter;
<b>Partner</b>	person or organisation (other than You) who is engage by You to undertake the relevant activity;
<b>Party / Parties</b>	A party to this Agreement;
<b>Performance Indicator or KPI</b>	the standards the Grant Recipient must achieve in providing the Funded Activities as set out in this Agreement;
<b>Performance Issue and Performance Improvement Plan</b>	have the meanings given in Clause 15;
<b>Personnel</b>	in relation to the Grant Recipient, any employee, officer, agent, volunteer, subcontractor or professional adviser of the Grant Recipient, engaged in the performance of the Funded Activities;
<b>Report</b>	Any report required by the Grant Offer Letter (including without limitation under Annexes G or J thereof) and any reports required under these terms of grant including without limitation clauses 14 and 15
<b>Secretary of State</b>	the Secretary of State for Education;
<b>Subcontractor</b>	any contractor, person or organisation who is engaged by You to undertake the relevant Funded Activities (and any of that contractor's, person or organisation's employees, agents and Subcontractors). 'Subcontracts' has a corresponding meaning;
<b>Terms and Conditions</b>	the conditions as set out in this document;
<b>Us/We/Our</b>	the Secretary of State and the Department for Education and includes Our employees and those acting for us;
<b>Unspent</b>	at a particular date means Funding that has not been spent or Committed by the Recipient;
<b>You/Your</b>	the Grant Recipient.

### 3 Interpretations

- 3.1 In this Agreement, unless the context otherwise requires:
- a) the singular includes the plural and vice versa;
  - b) reference to a gender includes any gender;
  - c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
  - d) a reference to any law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time;
  - e) the words "including", "other", "in particular", "for example" and similar words will not limit the generality of the preceding words and will be construed as if they were immediately followed by the words "without limitation";
  - f) references to "writing" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing will be construed accordingly;
  - g) references to "representations" will be construed as references to present facts, to "warranties" as references to present and future facts and to "undertakings" as references to obligations under this Agreement;
  - h) references to "Clauses" and "Schedules" are, unless otherwise provided, references to the clauses and Schedules of this Agreement and references to any Annex are, unless otherwise provided, references to the Annexes to the Grant Offer Letter; and
  - i) the headings in this Agreement are for ease of reference only and will not affect the interpretation or construction of this Agreement.

### 4 Purpose and Scope of Funding

- 4.1 The Parties confirm that it is their intention to be contractually bound by this Grant Funding Agreement. The Parties further acknowledge and agree that the Funding is not being allocated by the Department as consideration for provision of services to the Department. .
- 4.2 You must use the Funding only for the delivery of the *Funded Activities* set out in Annex F to the Grant Offer Letter (Activity Proposal) of this Agreement and must not, without the prior written consent of the Department, make any material changes to the Funded Activities.
- 4.3 The Funding must not be used to support activity which influences or attempts to influence Parliament, Government or political parties, to propagate a religion or belief, or to influence the awarding or renewal of contracts or grants, or to influence legislative or regulatory action.
- 4.4 The Department makes no commitment to renewing or continuing funding after the term of this Agreement and will not be liable for any additional cost incurred by You either during or after the Funding Period.
- 4.5 Where You intend to apply to a third party for other funding for the Funded Activities, You will notify Us in advance of Your intention to do so and, where such co-funding is permitted and obtained, You will provide Us with details of the amount and purpose of that funding.
- 4.6 You agree and accept that You will not apply for duplicate funding in respect of any part of the Funded Activities or any related administration costs that We are funding in full under this Agreement.
- 4.7 You agree that You will not sub-contract to any other organisation to deliver any material part of the Funded Activities unless We have agreed to their involvement in the Grant Offer Letter

or otherwise. For the avoidance of doubt this does not apply to Funded Activities consisting of managing grants to other organisations or purchases of standard office and other supplies in the course of delivering the Funded Activities.

## **5 Changes to the Department's requirements**

- 5.1 We will notify You of any changes to Our activities, which are supported by the Funding.
- 5.2 You will try to accommodate any changes to Our needs and requirements under this Grant Funding Agreement.

## **6 Funding Offer**

- 6.1 Payment of the Funding is subject to You complying with this Agreement and to such further conditions and requirements that We may from time to time reasonably specify.
- 6.2 The Funding will be paid only in respect of Eligible Expenditure incurred by You to deliver the agreed Funded Activities. The Funding must not be used to fund activities that may be party-political in intention, use or presentation, or to propagate a religion or belief.

## **7 Amount of Funding**

- 7.1 The maximum amount of the Funding will be stipulated in the Grant Offer Letter; if subsequent years are to be funded, We will send You a formal statement of the amount of Funding approved for the subsequent years. The amount of Funding to be paid in any financial year will be decided by us after considering Your estimates of income and expenditure in respect of the grant Funded Activities as set out in Annex F to the Grant Offer Letter (Activity Proposal). The Funding reimburses 100% of the agreed actions and activities eligible costs. The detailed information of the Funding for the funding period is set out in Annex F to the Grant Offer Letter (Activity Proposal).
- 7.2 Eligible costs must be declared under the table in Annex E to the Grant Offer Letter (Resource Budget).



## 8 Variation to the Funded Activities

- 8.1 If You want to seek a variation to the Funded Activities, including postponement of the completion date for a Milestone or change in an intended Outcome as specified in the Activity Proposal (Annex F to the Grant Offer Letter), You must submit a notice to Department in writing setting out:
- (i) details of the proposed variation to the Funded Activities or relevant Milestone completion date or change in an intended Outcome and reasons for the request;
  - (ii) in relation to requests to postpone a Milestone completion date, reasons why the Funded Activities cannot be performed in such a way as to meet the given date; and
  - (iii) the impact the proposed variations will have on:
    - a) effective delivery of the Funded Activities;
    - b) the Budget; and
    - c) the Milestones.
- 8.2 We will give You a written notice accepting or rejecting Your request.
- 8.3 Notwithstanding Department's acceptance of a proposed variation, We will not vary this Agreement or be binding unless and until a variation to this Agreement is made in accordance with Clause 35 (Variation).

## 9 Match Funding Arrangements

- 9.1 The payment of Funding is conditional upon the receipt by You of the Match Funding or the Match Funding being committed.
- 9.2 The Match Funding shall be compliant with the provisions of the Eligibility expenditure (Clause 12).
- 9.3 You shall notify us in writing immediately of any failure by You or a third party to make a contribution due under the Match Funding, or any circumstance that affects or might affect the payment or availability of Match Funding.
- 9.4 The first payment of Funding and/or any subsequent payment of Funding is conditional on You satisfying us that You have sufficient Match Funding committed at an agreed start date to achieve completion of the agreed Funded Activities by an agreed completion date.

**[Note to Recipient:** *If match funding expenditure is not a condition to Our offer, or Your bid/application and is not a condition to any project costs / budgets to be provided by You or others, then this condition would not apply to this agreement.*]

## 10 Payment arrangements

- 10.1 Funding will normally be paid in instalments in arrears. Grant claims must be made on the standard form provided by us (Annex C to the Grant Offer Letter Grant Claim Form (Arrears) or (where the Department has agreed) Annex D to the Grant Offer Letter Grant Claim Form (Advance)), and must be certified by Your Chief Financial Officer (or equivalent) or by such

other person appointed for this purpose with Our approval; claims must be sent to Your principal contact in the Department.

- 10.2 Incomplete or incorrect claims (including claims without full supporting documentation) will be returned unpaid; late claims may not be paid.
- 10.3 Payment will normally be made by us within 10 days of the receipt of a satisfactory Grant Claim, in accordance with the agreed payment schedule at Annex H to the Grant Offer Letter (Planned Payments).
- 10.4 If You enter into a contract in connection with the activities relating to this Agreement (as approved in the Grant Offer Letter or otherwise approved by Us), You must specify in any contract that all valid invoices issued by the contractor to You will be paid by You within 30 days of receipt. We will not pay invoices received from Your contractors.
- 10.5 You shall take all reasonable steps to satisfy Yourself that any third party, which You engage with, in relation to the funding under this Agreement, is suitable in all respects to perform the services required to deliver the funding activities as set out in the Grant Offer Letter.

### **Reduction of Funding**

- 10.6 Without limiting any other right or remedy of the Department, We may reduce the amount of any instalment of Funding under this Agreement:
- a) if by the date for payment of the instalment You have not spent Funding in accordance with any agreed payment criteria, by the amount that has not been spent; or
  - b) if Funding have been spent other than in accordance with this Agreement, by the amount that was spent other than in accordance with this Agreement.

## **11 When can the Department withhold payment?**

- 11.1 The Department can withhold any or all of a Funding payment if it considers that You:
- (a) have not carried out Funded Activities in accordance with this Agreement;
  - (b) have not spent the Funding in accordance with this Agreement;
  - (c) have breached any other term of this Agreement;
  - (d) have breached any other agreement and in the Department's reasonable opinion the breach affects Your ability or suitability to perform this Agreement;
  - (e) have caused a Performance Issue;
  - (f) have provided false or incorrect statements or information in your bid or request for Funding; or
  - (g) that any director or employee of the Grant Recipient has:
    - (i) acted dishonestly or negligently at any time during the term of this Agreement;
    - or

- (ii) taken any actions which unfairly bring or are likely to unfairly bring the Department's name or reputation and/or the Department into disrepute. Actions include omissions in this context

11.2 The Department will pay the withheld Funding payment under clause 11.1(a) when You have carried out the Funded Activities to which the payment relates, according to the requirements of the Agreement.

11.3 For the purposes of clause 11.1(d), being in breach of any other agreement means being in serious breach of any other agreement (being a breach which would entitle a party to terminate the other agreement).

## 12 Eligible Expenditure

12.1 Eligible Expenditure consists of payments made by You for the purposes of the Funded Activities. All expenditure must be claimed net of any VAT that is recoverable from HM Revenue and Customs. Eligible Expenditure also includes:

- fees charged or to be charged to You by the external auditors/accountants for reporting/certifying that the Funding paid was applied for its intended purposes (see Annex G part 1 to the Grant Offer Letter and Clause 9); and
- retentions for building work where these are held by You until the work has been completed satisfactorily.

12.2 A payment is defined as taking place at the moment when money passes out of Your control. This may take place when:

- legal tender is passed to a supplier (or, for wages, to an employee);
- a letter is posted to a supplier or employee containing a cheque; or
- an electronic instruction is sent to a bank to make a payment to a supplier or employee by direct credit or bank transfer.

12.3 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:

- activities of a political or exclusively religious nature;
- goods or services that the Grant Recipient has a statutory duty to provide;
- payments reimbursed or to be reimbursed by other public or private sector grants;
- contributions in kind (i.e. a contribution in goods or services, as opposed to money);
- depreciation, amortisation or impairment of Assets [non-current assets] owned by the Grant Recipient;
- the acquisition or improvement of Assets [non-current assets] by the Grant Recipient (unless the Funding is explicitly for capital use or We have given written approval for the purchase of Assets [non-current assets] with the Grant Funding – this will be stipulated in the Grant Offer Letter);
- interest payments (including service charge payments for finance leases);
- gifts to individuals other than promotional items with a value of no more than £25 a year to any one individual;
- entertaining (entertaining for this purpose means anything that would be a taxable benefit to the person being entertained, according to current UK tax regulations);
- statutory fines, criminal fines or penalties; or
- liabilities incurred before the issue of this Funding Agreement unless agreed in writing by us.

12.4 You must seek prior written permission from us before purchasing any items not for the sole purpose of delivering the Funded Activities as included in this Agreement.

## 13 VAT

13.1 The Grant Recipient acknowledges that the Funding is not consideration for any taxable supply for VAT purposes. You understand and acknowledge that the Department's obligation does not extend to paying any amounts in respect of VAT in addition to the Funding.

13.2 The Funding has been made on the basis that the costs presented to the department take account of all VAT liabilities. If it is later found that the costs increase because an error was made regarding VAT recovery, the department shall be under no obligation to increase the Funding to pay any VAT liability of the Grant Recipient.

13.3 You agree to immediately repay any VAT that is recovered whether by off-set, credit or repayment to the extent that any such VAT cost was included in the Funding.

13.4 The Grant Recipient shall not charge VAT on expenses, which are not chargeable to VAT.

## 14 Monitoring progress

### Progress meetings

14.1 The Parties, at Department's discretion, will meet at the times and in the manner reasonably required by Us to discuss any issues in relation to this Agreement or the Funded Activities. You must ensure that Your Grant Manager, and Department must ensure the Department Grant Manager, is reasonably available to attend such meetings and answer any queries relating to the Funded Activities raised by either Party.

### Reporting

14.2 You must provide us with Reports in accordance with the Grant Offer Letter. When You provide us with a Report, We will notify You in writing within 30 days after receiving the Report that it has either:

(i) accepted the Report; or

(ii) rejected the Report, providing reasons for its rejection.

14.3 Acceptance of a Report by us does not constitute a release of You in respect of any matter, an admission or acceptance that Your performance complies with this Agreement, or acceptance of the accuracy of the Report.

## 15 Progress reporting

15.1 The Department may at any time require Reports in different formats or for different periods than those set out in this Agreement.

15.2 You must provide a Report on progress (Annex J to the Grant Offer Letter (Reporting) against agreed objectives as set out in Annex F to the Grant Offer Letter (Activity Proposal). This

Report must also include details of any Assets You have either acquired or improved using Funding and details of any Asset disposal.

- 15.3 You must provide us with a full FINAL Activity Report form on Your evaluation of Your performance of the agreed activities within at least three months of completing the agreed Funded Activities, using a report form prescribed by Us.
- 15.4 In the event that the Department is not satisfied with Your delivery of the Funded Activities, We reserve the right to withhold, suspend or cancel payment of the Funding they would or would have fallen due in accordance with Annex H to the Grant Offer Letter (Planned Payments)
- 15.5 You must inform us immediately if You are experiencing any financial, administrative, managerial etc. difficulties that may hinder or prevent You from fulfilling Your obligations under this Agreement. We may set Key Performance Indicators (KPIs) prior to the commencement of the Funding period. In the event that such KPIs are not agreed by that time, We reserve the right to terminate this Agreement immediately. KPIs may be subject to change during the Funding period, with agreement by both parties.
- 15.6 You must also submit a final yearly Report to us within 60 days of completion of the Funding period or termination of the Funding, whichever is earlier to the satisfaction of the Department. This Report shall summarise the work carried out under the Funding during the funding period, quantifying what has been achieved by reference to the Funded Activities' targets and, where appropriate, showing the progress made to date in the Exit Plan.

### **Performance Improvement Plan**

- 15.7 If there is a potential failure or failure to meet a Milestone, perform the Funded Activities or achieve the Outcomes in accordance with this Agreement (Performance Issue), You must immediately notify us of the Performance Issue.
- 15.8 If You notify us of a Performance Issue in accordance with Clause 15.7 or if We notify You of a Performance Issue, then without limitation to any of Our rights or Your obligations under this Agreement, You must, if requested by us, within **7 days** (or such longer period as determined by us) prepare and submit to us a Report (Performance Improvement Plan) identifying:
- i. the nature and extent of the Performance Issue;
  - ii. the consequences of the Performance Issue and in particular the Milestones and Outcomes that are likely to be affected; and
  - iii. steps You will take to rectify the Performance Issue.
- 15.9 After receiving Your Performance Improvement Plan in accordance with Clause 15.8, We will within 30 days review the Performance Improvement Plan and give You notice that We (a) approve the Performance Improvement Plan; or (b) We do not approve the Performance Improvement Plan.
- 15.10 If We reject the Performance Improvement Plan, You must amend and resubmit Your proposed Performance Improvement Plan (again within the timeframe determined in accordance with Clause 15.8), to take account of any concerns that We may have with it, including in relation to matters such as the steps proposed to be taken by You, and the timeframe in which any steps are proposed to occur.

## 16 Evaluation

- 16.1 Department may at any time undertake or engage an expert to undertake a review or evaluation of the Funded Activities or Department's grant programmes.
- 16.2 In relation to any review or evaluation of the Funded Activities or Department's grant programmes, You must within 14 days, or such time as the parties may agree, after a request by Department (or any expert):
- (i) provide all reasonable assistance to Department (and any expert);
  - (ii) respond to all reasonable requests from Department (and any expert); and
  - (iii) provide any information reasonably required by Department (and any expert).

## 17 Income, fees and charges

- 17.1 You must consult with us if You wish to charge a fee to a third party for any Funded Activities. Any charges You do make must be in accordance with HM Treasury guidelines on fees and charges.
- 17.2 You must notify us of any income or contributions generated by the Funded Activities, so that We can decide whether any or all of the Funding, or income generated, should be retained by You or refunded to us.

## 18 Records to be kept and retention period

- 18.1 These will include details of Funding received and disbursed and any income generated from the Funded Activities. Accounting records, including original invoices, receipts, VAT records etc. must be kept.
- 18.2 You must make these available at any reasonable time for inspection by officials from the Department or their representatives or by the Comptroller and Auditor General of the National Audit Office, or his representatives.
- 18.3 You must retain all accounting records relating to the grant Funded Activities for at least seven years from the end date of the Agreement. Where Funding allows for capital spend, or We have given approval for the purchase of Assets, You must keep a register of Assets, including all land and building acquired or improved with Funding, at a cost exceeding £500.
- 18.4 You must maintain a register of all Assets recording the date of purchase or lease, the purchase or lease price, Asset description including serial number, Asset location, the proportion of the Funding used to create or acquire the Asset, the depreciated value of the Asset and (where relevant) details of Asset disposal including the sale price. As and when requested, You shall provide copies of the register of Assets to the DfE.
- 18.5 We consider any equipment and/or supplies purchased in part or fully from Funding as project Assets, if they have a useful life of more than one year; and either (1) the purchase price or development cost of the asset is in excess of £500; or (2) is a group of lower value items where the combined value is in excess of £500; or (3) can be considered an attractive item regardless of cost (e.g. mobile phones, flash drive, hard drive, cameras, laptops, tablets, etc).

## 19 Sale or disposal of Assets and change of use

- 19.1 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 £500) that was acquired or improved with the Funding.
- 19.2 Assets should not be sold below market value without prior written permission from us, and any proceeds shall be paid to us.
- 19.3 If You sells or otherwise dispose of an Asset, funded by the grant Funding, during the Funding Period, the proceeds of any sale or disposal of the Assets forms part of the budget.
- 19.4 We reserve the right to determine the outcome of any Assets created as result of Funded Activities.

## 20 Legislation, Procurement requirements, Value for Money and State Aid

### Compliance with Law and Legislation

- 20.1 You must, and must ensure that Your subcontractors and Personnel, have regard to and comply with, relevant and applicable laws, guidelines and policies, in the UK.
- 20.2 It is agreed that statutory and other constraints on the exchange of information will be fully respected, including the requirements of the Data Protection Legislation, the Freedom of Information Act 2000 and the Human Rights Act 1998 and any amendments or successors to these Acts.
- 20.3 You must observe Your obligations under the Information Legislation and HRA, and under the common law duty of confidentiality but shall immediately comply with any lawful request by the Department to share data for the purpose of preventing or detecting crime.
- 20.4 You hereby acknowledge that We are subject to requirements under the Information Legislation. Where requested by us, You will provide reasonable assistance and cooperation to us to assist Our compliance with Our information disclosure obligations.
- 20.5 On request from us, You will provide us with all such relevant documents and information relating to Your data protection policies and procedures as We may reasonably require.
- 20.6 You acknowledge that We, acting in accordance with the codes of practice issued and revised from time to time under FOIA and/or EIR, may disclose information concerning You and this Agreement either without consulting with You.
- 20.7 We will take reasonable steps to notify You of a request for information to the extent that it is permissible and reasonably practical for us to do so but (notwithstanding any other provision in this Agreement). We will be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Legislation.
- 20.8 The Schedule to this agreement shall only apply in relation to the processing of any Personal Data (as defined therein) as part of the Funded Activities. Unless the Grant Offer Letter sets out a different relationship between the Parties, the Grant Recipient shall process Personal Data as Data Controller only and not on behalf of the Department. As such unless otherwise provided in the Grant Offer Letter, Schedule 1, clauses 50.1 to 50.13 and clause 50A shall apply in relation to data protection.

## **Procurement Law, Subcontracting, State-aid and Value for Money**

20.9 Where You seek to procure the supply of any goods, works or services from a third party in connection with this Agreement You shall ensure that contracts or further distribution of the Funding are procured on a basis that complies in all material aspects with all relevant European and UK legislation in the procurement of goods and services for which You receive Funding so as to secure best value for money.

### **Subcontracting**

20.10 You may engage subcontractors to undertake work in relation to the Funded Activities. You agree that the subcontractors, if any, specified in Details of Grant Resource Budget Allocation (Annex H of the Grant offer letter) will perform work in relation to the Funded Activities in accordance with this Agreement. You remain responsible for compliance with this Agreement, including in relation to any tasks undertaken by subcontractors. You agree to make available to us, when asked, the details of any of Your subcontractors engaged to perform any tasks in relation to this Agreement upon request.

### **Subcontracts**

20.11 You must ensure that any subcontractor or other party approved under this Agreement complies (as if it were You, the Grant Recipient). You must ensure that the other party to the subcontract is prohibited from further subcontracting the Funded Activities without the prior written approval of the DfE; and if requested, You will promptly provide a copy of the relevant subcontract to us. If we terminate or reduce the scope of this Agreement, You must exercise any right of termination or reduction you have against any of your Subcontractors.

### **Responsibility**

20.12 You are (and will remain at all times) fully responsible for undertaking the Funded Activities even if You subcontract any aspect of the Funded Activities and for the performance of all of Your obligations under this Agreement.

20.13 Where You are a Contracting Authority, You warrant that You will comply, as necessary, with the applicable procurement laws when procuring goods and services.

20.14 Where You reasonably consider that there is an objective justification for not complying with procurement rules and seek to rely on such a justification, You shall seek prior approval from the Department, setting out the reasons for non-compliance in a structured business case.

20.15 If You use a single tender procedure (for any value of opportunity) You must be able to provide evidence to justify doing so. In all other cases, You should use a competitive tendering procedure as laid down by UK Regulations (see footnote<sup>1</sup>)

20.16 You shall not carry out any activities that could be constituted as state-aided, and nor shall You pay illegal State Aid to any organisation or individual. You will take all reasonable steps to ensure that where any awards are made from the Funded Activities those awards are compatible with State Aid law including requesting such documentation from the award Recipients as is necessary to ensure compliance with State Aid law.

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<sup>1</sup> <http://www.cabinetoffice.gov.uk/resOurce-library/policy-and-standards-framework-best-practice-guidance>



## **21 Access to opportunities for small to medium size (SME) and Voluntary and Charitable Sector Enterprise (VCSE) organisations**

- 21.1 You shall have regard to the need to ensure that SME and VCSE organisations (when compared with other potential sub-contractors) are given fair, equal and proportionate access to any sub-contracting opportunity.
- 21.2 In addition to any other reporting requirements, You shall, on request, provide information to the Department of spend with SMEs and VCSEs in respect of the Funded Activities

## **22 Forecast of expenditure in the forthcoming financial year**

- 22.1 For Funding lasting more than one financial year, You must provide the following details, before the end of each financial year:
- a schedule of the programme of activities and estimates of income and expenditure for the next financial year, together with forecast outturn for the current year;
  - a statement setting out the total Funding agreed for the year;
  - details of income other than the Funding and how it is to be spent;
  - the level of balances held at the end of the financial year; and
  - revised forecasts of income and expenditure when required.
- 22.2 You shall provide revised forecasts of income and expenditure when these change significantly or when requested to do so by us.

## **23 Financial Management**

- 23.1 You must have a system of internal financial controls to safeguard against fraud and theft (which shall be developed and maintained in accordance with generally accepted accounting practices having regard to the amount of Funding and size of your organisation), and shall require that the internal/external auditors report on the adequacy or otherwise of that system. All cases of fraud or theft (whether proven or suspected) relating to the Funded Activities must be referred to us.
- 23.2 You should be able to demonstrate that the systems of financial and manpower control, management and organisation will enable You to meet the Funded Activities and objectives of this Agreement.
- 23.3 You must comply with the recommendations of the Public Accounts Committee and any other expenditure controls specified by Government.
- 23.4 You must inform us immediately if You are experiencing any financial difficulties or any delays, which could affect Your ability to deliver the Funded Activities, set out in the Agreement.

## 24 Internal Audit

- 24.1 Your Chief Executive (or equivalent) should ensure that the systems governing the Funding are subject to independent review.
- 24.2 The systems in place should be appropriate to the size of Your organisation, the level of Funding, risk to the public funds provided and cost of the review.
- 24.3 These arrangements may be reviewed by us in line with HM Treasury's Public Sector Internal Audit Standards (see footnote<sup>2</sup>).

## 25 Borrowing

- 25.1 You must obtain prior written consent from us before:
- borrowing or lending money from any source;
  - charging any Asset; or
  - giving any guarantees, indemnities or letters of comfort

that relate to any of the conditions of this Agreement or have any impact on Your ability to deliver the Funded Activities set out in this Agreement.

## 26 Losses, Gifts and Special payments

- 26.1 In connection with this Agreement, You must obtain prior written consent from us before:
- writing-off any debts or liabilities;
  - offering to make any special payments; and
  - giving any gifts
- 26.2 You shall will keep a record of all gifts, both given and received, in connection with the Funding or any Funded Activities.

## 27 Spending Controls - Marketing, advertising, communications and consultancy

- 27.1 As part of the Government's Efficiency and Reform programme, public funding for advertising, marketing, communications and consultancy is controlled. You must seek permission from us prior to any proposed expenditure in these areas either in connection with or using funding provided under this Agreement. For a complete list of exactly what is caught by the Controls You should read the advertising, marketing and communications, and consultancy sections of the Cabinet Office controls guidance. (See footnote<sup>3</sup>)
- 27.2 You should provide evidence that any advertising, marketing and communications, and consultancy expenditure carried out in connection with, or using funding provided under, this

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<sup>2</sup> <https://www.gov.uk/government/publications/public-sector-internal-audit-standards>

<sup>3</sup> <http://www.cabinetoffice.gov.uk/resOurce-library/cabinet-office-controls-guidance>

Agreement shall deliver measurable outcomes that meet Department objectives and can secure value for money.

- 27.3 Publicity material for Your Funded Activities must refer to the programme under which the Funding was awarded and must feature Our logo.
- 27.4 We will only endorse the funded programme/project of work and not the organisation. If a third party wishes to use Our logo, You must first seek permission from Our Grant Manager who will liaise with Our internal Corporate Communications Team.

## 28 Acknowledgement and Public Statements

- 28.1 You will acknowledge the Funding in Your annual report and accounts, including an acknowledgement of the Department as the source of the Funding and will show the related expenditure as a restricted fund under the Funded Activities in Your annual accounts.
- 28.2 You will not publish any material referring to the Funded Activities or the Department without the prior written agreement of the Department. You will acknowledge the support of the Department in any materials that refer to the Funded Activities and in any written or spoken public presentations about the Funded Activities. Such acknowledgements (where appropriate or as requested by the Department) will include the Department's name and logo (or any future name or logo adopted by the Department) using the templates provided by the Department from time to time.
- 28.3 Any publicity material for the Funded Activities must refer to the programme under which the Funding was awarded and must feature the Department's logo. If a third party wishes to use the Department's logo, the Grant Recipient must first seek permission from the Department.
- 28.4 In using the Department's name and logo, the Grant Recipient will comply with all reasonable branding guidelines issued by the Department from time to time.
- 28.5 The Grant Recipient will comply with all reasonable requests from the Department to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Department in its promotional and fundraising activities relating to the Funded Activities.
- 28.6 The Department consents to the Grant Recipient carrying out any reasonable publicity about the Funding and the Funded Activities as required, from time to time.

## 29 Copyright, Intellectual Property Rights and sharing good practice

- 29.1 You and/or Your contractors will retain all Intellectual Property Rights (IPR) that are either:
- vested in, used, or controlled by You or Your contractors prior to this Agreement; or
  - developed during the period of the Funding but unconnected to the Funded Activities.

You shall secure or provide such licences as are reasonably required to enable the Department to carry out its activities related to the Funded Activities

- 29.2 The Crown will retain:
- any IPR controlled by Us prior to this Agreement; and
  - copyright in all reports, materials and other documents produced in whole or in part by You or any partner or Sub-Contractor using funding provided under this Agreement.

- 29.3 Any materials produced using funding provided under this Agreement will be made available to You for use in accordance with the Open Government Licence (see footnote<sup>4</sup>). The Open Government Licence (OGL) is a simple set of terms and conditions under which information providers in the public sector can license the use and re-use of their information. Provided that You comply with the terms, You have permission to use information anywhere in the world. The licence is also non-exclusive which means that You will not be the only person able to make use of it. The Open Government Licence enables You to use information for both commercial and non-commercial purposes.
- 29.4 We may freely share any information, know-how, system or process developed during the period of the Funded Activities to support similar projects.

## 30 Third party software & other Intellectual Property Rights

- 30.1 Ownership of third-party software or other IPR to deliver services shall remain with the relevant third party. You shall ensure you do not breach any Crown or third party IPR.
- 30.2 You must ensure that You have obtained the relevant agreement from us before any additions or variations are made to the standard 'off-the-shelf' versions of any third-party software and other IPR. You will obtain and maintain all appropriate licences to use the third-party software.

## 31 Insurance

- 31.1 The Grant Recipient will during the term of the Agreement and for 6 years after termination or expiry of this Agreement, ensure that it has and maintains, at all times adequate insurance with an insurer of good repute to cover claims under this Agreement or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with this Agreement.
- 31.2 The Grant Recipient will upon request produce to the Department its policy or policies of insurance or where this is not possible, a certificate of insurance issued by the Grant Recipient's insurance brokers confirming the insurances are in full force and effect together with confirmation that the relevant premiums have been paid.

## 32 Annual Funding Review

- 32.1 In addition to any evaluation (Clause 16 (Evaluation)), the Funding will be reviewed annually and will take into account the Grant Recipient's delivery (during the Funding Period) of the Funded Activities against the KPIs and/or agreed outputs set out in Annex F to the Grant Offer Letter (Activity Proposal) of this Agreement. As part of the annual review the Department will have regard to the reports produced by the Grant Recipient in accordance with Clause 21 (Forecast of Expenditure).
- 32.2 Each annual review may result in the Department making a recommendation that:
- I. the Funded Activities and Agreement continue in line with existing plans;
  - II. there should be an increase or decrease in Funding for the subsequent financial year;
  - III. the KPIs should be re-defined and agreed;

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<sup>4</sup> <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>

- IV. the Department should recover surplus funding;
- V. the Agreement should be terminated.

32.3 The Grant Recipient may make representations to the Department regarding any recommendations made in accordance with clause 31.2 The Department is not however obliged to take such representations into account when making its recommendation and any recommendation will be final and at the Department's absolute discretion.

## 33 Accounts

- 33.1 Each year, on the date agreed with the Grant Manager, You must supply us with a full set of financial accounts/income and expenditure statement (dependant on the requirements for Your organisation and audited where appropriate to the size and nature of Your organisation) that includes details of any income and expenditure not covered by Funding provided by the Secretary of State.
- 33.2 Where applicable, the Funding will be shown in the Grant Recipient's separate account as a restricted fund and will not be included or mixed with the Grant Recipient's general Funding or other monies.
- 33.3 You must also submit a yearly Report to us summarising the work carried out under the Funding during the funding period, quantifying what has been achieved by reference to the Funded Activities' targets and, where appropriate, showing the progress made to date in the Exit plan as per (Annex I to the Grant Offer Letter).

## 34 Annual Certification of Expenditure Arrangements

- 34.1 You must present an annual Certification of Expenditure form (Annex G part 1 to the Grant Offer Letter), the payment schedule (Annex H to the Grant Offer Letter) and the Eligible Expenditure condition [Clause 12 of these T&Cs] to Your external independent accountants or auditors to certify. The DfE Grant Manager shall determine and inform You if the Statement of Grant Usage (Annex G part 2 to the Grant Offer Letter), is a relevant document for use by You. The DfE Grant Manager shall determine and inform You which official(s) from your organisation must sign the Statement of Grant Usage (Annex G part 2 to the Grant Offer Letter),
- 34.2 You must return the certified form to Your main contact in the Department, within three months of the end of each and all financial years of funding. The external auditors/accountants' report [Annex G part 1 to the Grant Offer Letter] should say whether, in their opinion, Funding paid, was applied in accordance with the Agreement.
- 34.3 Where You have obtained funding from a third party for delivery of part of the Funded Activities, You will include the amount of such funding in Your financial reports together with details of what that funding has been used for. Such third-party funding shall be included on Annex H to the Grant Offer Letter and shall be subject to and included on the Certificate of Expenditure form (annex G part 1 and part 2 to the Grant Offer Letter).
- 34.4 Officials of the Department, and of the National Audit Office or their nominees, will be permitted, at reasonable notice, to visit Your premises to inspect Your books of account and other financial documents relevant to the Agreement.
- 34.5 The Comptroller and Auditor General of the National Audit Office may also investigate how efficiently You have used Your resources in discharging Your' Funded Activities.
- 34.6 The Grant Recipient will within 5 working days, of a request by the Department, or such time as the parties may agree, provide the Department with such further information, explanations

and documents as the Department may reasonably require, in order for the Department to establish that the Funding has been used properly in accordance with this Agreement.

## 35 Exit plan

- 35.1 You should prepare an exit plan within the first three months of the agreement to allow the smooth closure or transfer of the Funded Activities. A sample Exit Plan is provided at Annex I to the Grant Offer Letter.
- 35.2 As part of the exit plan, We shall jointly agree a plan for communicating with all partners and employees during the exit period, in a way that avoids any detrimental impact on Our respective business resulting from the closure or transfer, and shares responsibilities between the two parties.

## 36 Amendment or variation or termination of the Funding

- 36.1 No amendment or variation to this Agreement shall be effective unless it is in writing, agreed and signed by those authorised to do so on behalf of each of the parties.
- 36.2 This Agreement may be terminated by the Department by giving at least 3 months' notice in writing.
- 36.3 In the event of any Breach of the Agreement, We may serve a notice on You requiring remedial action to be taken within a specified period, to allow a remedial plan to be agreed in writing by both parties. If the Breach has not been remedied as per the remedial plan, this Agreement will be terminated with immediate effect on receipt of notice in writing.
- 36.4 In the event of a change of Government or in policy direction, this Agreement may be terminated by us, or We may reduce the scope of the Funded Activities, with immediate effect by notice in writing (such notice period as will be reasonable in all the circumstances)

### Termination by default

- 36.5 We may by notice in writing to You terminate this Agreement, or reduce the scope of the Funded Activities, with immediate effect if any of the following events occur:
- a) The Grant Recipient intends to use, has used in the past, or uses the Funding for purposes other than those for which they have been awarded;
  - b) The Grant Recipient fails to comply with the KPI targets set out in Annex F to the Grant Offer Letter of this Agreement for more than three (3) consecutive months, or three (3) consecutive months, in any six (6) month rolling period; and
    - i. following the implementation of a Performance Improvement Plan the Department considers that the KPI failure persists;
    - ii. that the KPI failure has not been remedied to the satisfaction of the Department; or
    - iii. the KPI failure reoccurs within a subsequent 6-month period from the date of approval of the Performance Improvement Plan,

- c) the Grant Recipient is, in the reasonable opinion of the Department, delivering the Funded Activities in a negligent manner; in this context negligence includes but is not limited to failing to prevent or report fraud or corruption;
- d) the Grant Recipient obtains duplicate funding from a third party for the Funded Activities;
- e) the Grant Recipient obtains funding from a third party which, in Our reasonable opinion, undertakes activities that are likely to bring the reputation of the Funded Activities or the Department into disrepute;
- f) the Grant Recipient provides us with any materially misleading or inaccurate information;
- g) the Grant Recipient commits or committed a Prohibited Act or fails to report a Prohibited Act to the Department, whether committed by the Recipient or a third party as soon as they become aware of it;
- h) We determine (acting reasonably) that any director or employee of the Grant Recipient has:
  - (i) acted dishonestly or negligently at any time during the term of this Agreement and to the detriment of the Department; or
  - (ii) taken any actions which unfairly bring or are likely to unfairly bring the Department's name or reputation and/or the Department into disrepute. Actions include omissions in this context;
- i) the Grant Recipient transfers, assigns or novates to any third party, or encumbers in any way, the Funding without Our consent;
- j) the Grant Recipient ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- k) the Grant Recipient becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due;
- l) the Grant is found to be unlawful State Aid;
- m) the Grant Recipient commits a Material Breach of the Agreement;
- n) The Grant Recipient breaches the Code of Conduct and/or fails to report an actual or suspected breach of the Code of Conduct by the Grant Recipient or its Representatives in accordance with paragraph 44.2
- o) the Grant Recipient fails to comply with any of the Terms and Conditions set out in the Agreement and fails to rectify such Breach within such period set out in a notice under clause 35.3, or, if no period is specified, within 14 days of receiving written notice from us detailing the failure;
- p) the Grant Recipient is a partnership, consortium or a company and there is a Change in Control. "Change in Control" means that the person(s) (including corporate bodies) directly or indirectly in Control of the Recipient at the time this Agreement is entered into cease to be in Control. "Control" means the power of a person to secure that the affairs of the Recipient are conducted in accordance with the wishes of that person.
- q) If any of the circumstances listed in clause 11 (Withholding of Funding) occurs

## **37 Transfer of Responsibility on Expiry or Termination of the Funding**

- 37.1 You should provide the Department with whatever support it needs (e.g. delivery of relevant documents and data) to ensure a smooth transfer of responsibility prior to early termination or transfer of the Funded Activities.
- 37.2 A plan detailing arrangements for the transfer of any work in progress should be delivered six months prior to expiry, or within one month of the service of notice of termination.

## **38 Consequences of termination and support for transfer of responsibility**

- 38.1 Nothing in this Agreement shall affect any provision of this Funding, which is expressly or by implication intended to apply or continue to apply upon termination of this Agreement, for any reason.
- 38.2 If We terminate this Agreement in accordance with clause 35, We will (at our discretion having regard to the circumstances leading to Termination) pay reasonable costs incurred in respect of the delivery of Funded Activities performed prior to the date of termination.
- 38.3 Reasonable costs will be identified and agreed by the two parties as soon as possible. You should efficiently assess, and seek to mitigate these costs.
- 38.4 We will not be liable to pay any of Your costs or those of any contractor related to any transfer or termination of the employment of any employees engaged in the provision of the Funded Activities prior to the date of termination.
- 38.5 Upon receiving notice of termination, You will review the agreed Exit Plan with us.

## **39 Your Project Personnel**

- 39.1 You will seek Our prior written approval before upgrading posts, creating new posts or replacing staff in posts where they are responsible for delivery of the Funded Activities relating to this Agreement. You shall appoint replacement staff with appropriate qualifications and experience.
- 39.2 Funding may be used by You to employ Personnel other than any specified Personnel where provision for such was included in Your Proposal. They may be employed by You full-time or part-time, as required, for the funding period. Personnel costs are eligible, if they are related to



Personnel working for You under an employment contract (or equivalent appointing act such as a service contract) and wholly assigned to the agreed activities in the Grant Offer Letter.

#### **Appropriate Personnel to perform the Project:**

39.3 All positions funded by this agreement must be filled by persons that have appropriate knowledge, skills, behaviours, qualifications or experience for such positions.

#### **Responsibility for employees:**

39.4 You acknowledge that all Personnel employed or otherwise engaged by You in the conduct of the agreed Funded Activities shall be Your sole responsibility.

39.5 You must have appropriate policies in place at all times to help You comply with the law and good practice including, but not limited to Data Protection, Equal opportunities including discrimination on the basis of race, age, gender, disability, religion and/or sexuality and Employment law.

## **40 Liability**

40.1 We make no commitment to renewing or continuing funding after the term of this Agreement.

40.2 You must not assume that funding will continue beyond the period stated in the Grant Offer Letter or that We will be liable for any additional cost, such as to cover the costs of redundancies, pension etc. at the conclusion of this Agreement. You must, therefore, try to minimise Your dependence by obtaining funding from other sources.

## **41 Conflict of interests**

41.1 You warrant that, as at the date of this Agreement, to the best of Your knowledge after making reasonable inquiries, no conflict of interest exists or is likely to arise in performing this Agreement.

41.2 You must set up formal procedures that require Your officers, members, volunteers and employees to declare any personal or financial interest in any matter concerning the grant Funded Activities and to be excluded from any discussion or decision-making relating to the matter concerned.

41.3 You must take all necessary measures to prevent any Conflict.

41.4 You must inform the Department without delay of any situation constituting or likely to lead to a conflict of interest. It must take immediately all the necessary steps to rectify this situation. The Department may verify that the measures taken are appropriate and may require additional measures to be taken by a specified deadline.

41.5 Where You are unable to reasonably satisfy Us, in respect of a Conflict, We may terminate this agreement immediately.

## **42 Financial or other irregularities**

42.1 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 Funding for any purpose other than those stipulated in this Agreement.

## 43 Prevention of Fraud

43.1 The Department places the utmost importance on the need to prevent Fraud and irregularity in the delivery of this Agreement. You, Your partners and Sub-contractors are required to:

- a) 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;
- b) ensure that their performance management systems do not encourage individual staff to make false claims regarding achievement of agreement performance targets;
- c) 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 the Department;
- d) ensure that an audit system is implemented to provide periodic checks, as a minimum at six (6) Monthly intervals, to ensure effective and accurate recording and reporting of agreement performance.

43.2 You shall use Your best endeavours to safeguard the Department 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 Funding against misleading claims for payment and shall notify the Department immediately if it has reason to suspect that any serious irregularity or fraud has occurred or is occurring.

## 44 Information and Management Surveys

44.1 If requested by us You will promptly provide any information required about the organisation, operation and financial control of Your affairs including any correspondence with Your auditors. In particular, any information (issues/concerns) relating to the Funded Activities.

44.2 You will permit and comply with any surveys of management controls and systems, including internal audit reviews, as may be required by us

## 45 Code of Conduct for Grant Recipients

45.1 You acknowledge that by signing the Grant Funding Agreement You agree to take account of the Supplier Code of Conduct (see footnote<sup>5</sup>) (the Code of Conduct) and that You will ensure that Your Representatives undertake their duties in a manner consistent with the principles set out in the Code of Conduct.

45.2 You shall immediately notify Us if You become aware of any actual or suspected breaches of the principles outlined in the Code of Conduct.

45.3 You acknowledge that a failure to notify Us of an actual or suspected breach of the Code of Conduct may result in Us immediately suspending the Grant funding, terminating the Grant

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<sup>5</sup> <https://www.gov.uk/government/publications/supplier-code-of-conduct>

Funding Agreement and taking action to recover some or all of the funds paid to You as a civil debt in accordance with paragraph 35.5.n.

## 46 Recovery of Funding and set-off

- 46.1 If You do not comply with any of the conditions and requirements of the Agreement, We may require all or part of the Funding to be repaid.
- 46.2 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 Funding which remains 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.
- 46.3 Any monies which We do not agree to be retained must be repaid to us within 30 days of a request by us to do so. If any amount repayable in accordance with this clause is not repaid within 30 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.
- 46.4 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 Funding that has not been spent and withhold any further payments. If any of the money is held by Your contractors, You must attempt to recover it.

## 47 Revision

- 47.1 This Agreement will be reviewed as agreed in the Grant Offer Letter.
- 47.2 After consultation with You, We may revise or revoke any of the terms of this Agreement. You may Yourself make representation to us for revision or revocation.

## 48 Transparency

- 48.1 We and You acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Information Legislation, the content of the Agreement is not confidential information.
- 48.2 We shall be responsible for determining, at Our absolute discretion, whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the Information Legislation. We may make any redactions We consider appropriate.
- 48.3 Subject to Clause 46 (Revision), with the support of You, We may publish the Agreement in its entirety, including any agreed changes to the public.

## 49 Research Surveys, Questionnaires [Optional where applicable]

- 49.1 At the option of the Department, We may occasionally conduct research exercises, including by way of surveys, or questionnaires, or requests for feedback, into Your experience of the Funding, and on Your business needs, and other related matters. Participation in any such exercise would be confidential and voluntary, and the results will be handled in such a way

that they do not identify individual respondents, unless consent is obtained or, for instance, You agree to be contacted as a case study.

- 49.2 For the purposes of analysing the outcome of any research, Your input may be combined with other information which We have, but We will do so in a way that does not affect the anonymity of the individual participants. The Department will share any reports and findings of any such exercise on an anonymised basis with any or all of the Related Parties from time to time.
- 49.3 Any information about Yourself and/or Your business which is disclosed to Department in the course of any such exercise shall be added to, and become part of, the Data, and the terms and conditions of this Agreement shall apply to it.

## 50 Interpretation and Resolution of Disputes

- 50.1 Questions arising on the interpretation of the arrangements in this Agreement shall be resolved by both parties.
- 50.2 Both parties shall use all reasonable endeavours to negotiate in good faith, and settle amicably, any dispute that arises during the continuance of this Agreement.
- 50.3 In the event that a dispute arises as a result of this Funding, the dispute shall be referred in the first instance to You and Our respective Grant Managers.
- 50.4 If the dispute cannot be resolved by these representatives within a maximum of 30 days, then the matter must be escalated and put to a formal meeting at official level between both parties; to the Accounting Officer of the Department and Your Chief Executive; and ultimately shall be resolved by the Secretary of State.

### TEMPLATE VERSION CONTROL

VERSION	DATE	COMMENT
1.0	30 August 2017	Release of DfE Model Grant Funding Agreement
1.1	31 July 2019	Updated of Interpretations, purpose and scope, and Data Protection guidance. Amended Records to be kept to clarify definition of assets and associated costs (paragraph 18), Legislation to clarify compliance with law and legislation (paragraph 20), Termination provisions to clarify the events of default (paragraph 36), processing of personal data (paragraph 20 and 50) New provision paragraph 8 (Variation to the funding activities), paragraph 11 (Withholding of payment), paragraph 15 (performance improvement plan), paragraph 16 (evaluation), paragraph 20 (Subcontracting), paragraph 21 SME, paragraph 32 (annual Funding review), paragraph 45 (Code of Conduct).

Document last reviewed by DfE on 24 January 2019;  
Date for next DfE review 6 January 2020.

## Schedule 1 Personal Data

The following definitions shall have effect:

### Data Protection

“Controller”, “Processor,” “Data Subject”, “Personal Data”, “Personal Data Breach”, “Data Protection Officer”	take the meaning given in the GDPR
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Recipient under the GFA, and/or actual or potential loss and/or destruction of Personal Data in breach of the GFA, including any Personal Data Breach.
“DPA 2018”	Data Protection Act 2018
“Data Protection Impact Assessment”	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
“Data Protection Legislation”	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 (subject to Royal Assent) to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
“Data Subject Access Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
“GDPR”	the General Data Protection Regulation (Regulation (EU) 2016/679)
“LED”	Law Enforcement Directive (Directive (EU) 2016/680)
“Law”	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Recipient is bound to comply
“Protective Measures”	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and testing the effectiveness of the such measures adopted by it including those outlined in Schedule 1

"Sub-processor"	any third Party appointed to process Personal Data on behalf of the Recipient related to the GFA
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## 51 Data Protection

- 50.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Department is the Controller and the Recipient is the Processor. The only processing that the Recipient is authorised to do is listed in the Grant Offer Letter, Schedule 1 by the Department and may not be determined by the Recipient.
- 50.2 The Recipient shall notify the Department immediately if it considers that any of the Department's instructions infringe the Data Protection Legislation.
- 50.3 The Recipient shall provide all reasonable assistance to the Department in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Department, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 50.4 The Recipient shall, in relation to any Personal Data processed in connection with its obligations under the GFA:
- (a) process that Personal Data only in accordance with the Grant Offer Letter, Schedule 1, unless the Recipient is required to do otherwise by Law. If it is so required, the Recipient shall promptly notify the Department before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Department may reasonably reject (but failure to reject shall not amount to approval by the Department of the adequacy of the Protective Measures), having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measure;
  - (c) ensure that:
    - (i) the Recipient Personnel do not process Personal Data except in accordance with the GFA (and in particular the Grant Offer Letter Schedule 1);
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Recipient Personnel who have access to the Personal Data and ensure that they:
      - (a) are aware of and comply with the Recipient's duties under this clause;
      - (b) are subject to appropriate confidentiality undertakings with the Recipient or any Sub-processor;
      - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third

- Party unless directed in writing to do so by the Department or as otherwise permitted by the GFA; and
    - (d) have undergone adequate training in the use, care, protection and handling of Personal Data; and
  - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Department has been obtained and the following conditions are fulfilled:
    - (i) the Department or the Recipient has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Department;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) the Recipient complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Department in meeting its obligations); and
    - (iv) the Recipient complies with any reasonable instructions notified to it in advance by the Department with respect to the processing of the Personal Data;
  - (e) at the written direction of the Department, delete or return Personal Data (and any copies of it) to the Department on termination of the grant arrangement unless the Recipient is required by Law to retain the Personal Data.

50.5 Subject to clause 50.6, the Recipient shall notify the Department immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the GFA;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

50.6 The Recipient's obligation to notify under clause 50.5 shall include the provision of further information to the Department in phases, as details become available.

50.7 Taking into account the nature of the processing, the Recipient shall provide the Department with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 50.5 (and insofar as possible within the timescales reasonably required by the Department) including by promptly providing:

- (a) the Department with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Department to enable the Department to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Department, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Department following any Data Loss Event;
- (e) assistance as requested by the Department with respect to any request from the Information Commissioner's Office, or any consultation by the Department with the Information Commissioner's Office.

- 50.8 The Recipient shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Recipient employs fewer than 250 staff, unless:
- (a) the Department determines that the processing is not occasional;
  - (b) the Department determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - (c) the Department determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 50.9 The Recipient shall allow for audits of its Data Processing activity by the Department or the Department's designated auditor.
- 50.10 The Recipient shall designate a data protection officer if required by the Data Protection Legislation.
- 50.11 Before allowing any Sub-processor to process any Personal Data related to the GFA, the Recipient must:
- (a) notify the Department in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Department;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 50 such that they apply to the Sub-processor; and
  - (d) provide the Department with such information regarding the Sub-processor as the Department may reasonably require.
- 50.12 The Recipient shall remain fully liable for all acts or omissions of any Sub-processor.
- 50.13 The Recipient may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the GFA).
- 50.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Department may on not less than 30 Working Days' notice to the Recipient amend the GFA to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 50.15 Where the Parties include two or more Joint Controllers as identified in Grant Offer Letter Schedule 1 in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule 2 in replacement of Clauses 50.1-50.14 for the Personal Data under Joint Control.

## **50A Statutory Obligations**

50A.1 It is agreed that statutory and other constraints on the exchange of information will be fully respected, including the requirements of the Freedom of Information Act 2000, and the Human Rights Act 1998, and any successor or amended legislation to the same.



## Schedule 1.1 Processing, Personal Data and Data Subjects

*[User note: Note that Schedule 1.1 and Schedule 2 are reproduced in the Grant Offer Letter, Annex K, to allow for the editing and inclusion of contact details and possible modification as mentioned in the table below.]*

1. The contact details of the Controller's Data Protection Officer are: [Insert Contact details]
2. The contact details of the Processor's Data Protection Officer are: [Insert Contact details]
3. The Recipient shall comply with any further written instructions with respect to processing by the Department.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with Clause 1.1.</p> <p><i>[Guidance: You may need to vary this section where (in the rare case) the Customer and Contractor have a different relationship. For example where the Parties are Joint Controller of some Personal Data:</i></p> <p><i>"Notwithstanding Clause 1.1 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of: [Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]</i></p> <p><i>In respect of Personal Data under Joint Control, Clause 1.1-1.15 will not apply and the Parties agree to put in place a Joint Controller Agreement as outlined in Schedule Y instead."</i></p>
Subject matter of the processing	<p><i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i></p> <p><i>[Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]</i></p>
Duration of the processing	<p><i>[Clearly set out the duration of the processing including dates]</i></p>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>

Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), Departments/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
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	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

## **Schedule 2: Joint Controller Agreement**

In this annex the parties must outline each party's responsibilities for:

- providing information to data subjects under article 13 and 14 of the GDPR.
- responding to data subject requests under articles 15-22 of the GDPR
- notifying the information commissioner (and data subjects) where necessary about data breaches
- maintaining records of processing under article 30 of the GDPR
- carrying out any required data protection impact assessment
- the agreement must include a statement as to who is the point of contact for data subjects.

The essence of this relationship shall be published.



Department  
for Education

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