

## STANDARD TERMS AND CONDITIONS OF GRANT AGREEMENT

THESE TERMS AND CONDITIONS ARE THE STANDARD TERMS AND CONDITIONS FOR THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF TOWER HAMLETS (THE COUNCIL) WHEN THE COUNCIL AWARDS GRANTS. THESE TERMS AND CONDITIONS APPLY TO ALL GRANTS BY THE COUNCIL UNLESS OTHERWISE SPECIFICALLY AGREED IN WRITING BY THAT OTHER TERMS AND CONDITIONS ARE TO APPLY BY THE COUNCIL. WHERE A RECIPIENT PURPORTS TO OFFER ALTERNATIVE TERMS AND CONDITIONS FOR THE FUNDING OF GRANTS THE RECIPIENT MUST ASSUME THAT IT IS THE COUNCIL'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 COUNCIL REPRESENTED BY THE COUNCIL'S LEGAL SERVICES SERVICE HEAD OR HIS DULY AUTHORISED REPRESENTATIVE. THE COUNCIL MAY VARY THESE TERMS AND CONDITIONS WITHOUT GIVING NOTICE TO THE RECIPIENT AND UPLOAD THEM ONTO THE COUNCIL'S WEBSITE WHEREUPON SUCH AMENDED TERMS AND CONDITIONS SHALL APPLY TO GRANTS. BY ACCEPTING THE COUNCIL'S GRANT OFFER LETTER THE RECIPIENT ACCEPTS THESE TERMS AND CONDITIONS FOR THE FUNDING OF GRANTS AND WARRANTS THAT ITS STATEMENTS UNDER ITS APPLICATION IS TRUE, ACCURATE AND NOT MISLEADING IN ANY WAY TO THE COUNCIL.

### IN RELATION TO THESE TERMS AND CONDITIONS IT IS AGREED AS FOLLOWS:

- (A) The Council sent an Invitation to the Recipient in respect of the Purpose Of The Grant and the Council received the Recipient's Application in respect of the same further to which the Council transposed the arrangements into the Grant Offer Letter.
- (B) This Agreement and the Grant Offer Letter constitutes the entire agreement between the Council and the Recipient.
- (C) The Council has agreed to pay the Grant Award to the Recipient to assist it in carrying out the Purpose Of The Grant.
- (D) This Agreement together with the Grant Offer Letter sets out the terms and conditions on which the Grant Award is made by the Council to the Recipient.
- (E) These terms and conditions are intended to ensure that the Grant Award is used for the Purpose Of The Grant.

### 1. **Definitions:** in this Agreement the following terms shall have the following meanings:

- 1.1 **"2000 Act"** means the Freedom of Information Act 2000 and any subordinate legislation made thereunder from time to time together with any guidance and codes of practice issued by the Information Commissioner in relation thereto;
- 1.2 **"Agreement"** means the terms and conditions contained in this document and the Grant Offer Letter and includes any variations to this agreement by virtue of additional schedules, attachments, annexures or uploads onto the Council's website;
- 1.3 **"Bribery Act"** means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;
- 1.4 **"Confidential Information"** means Information, data and material of any nature which either Party may receive or obtain in connection with this Agreement and:
  - (i) which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the DPA 1998); or
  - (ii) the disclosure of which would or would be likely to prejudice the commercial interests of either Party or any other person and the public interest in maintaining non-disclosure would outweigh the public interest in disclosure; or
  - (iii) the disclosure of which by the Council would constitute a breach of confidence actionable by the Recipient or a third Party,and includes this Agreement;
- 1.5 **"Council"** means the Mayor and Burgesses of the London Borough of Tower Hamlets;
- 1.6 **"DPA"** means the Data Protection Act 1998;

- 1.7 **“End Date”** means the date stated in the Grant Offer Letter;
- 1.8 **“Environmental Information Regulations”** means the Environmental Information Regulations 2004;
- 1.9 **“Equal Opportunities / Equalities Policy”** means policies in respect of equal opportunities and equalities;
- 1.10 **“Exit Strategy”** means a strategy approved by the Council in respect of the Grant Award following expiry of the End Date;
- 1.11 **“Governing Body”** means the governing body of the Recipient including its directors or trustees;
- 1.12 **“Grant Award”** means the sum or the sums to be paid to the Recipient in the manner and frequency stipulated in the Grant Offer Letter expressed as a single or annualised sum;
- 1.13 **“Grant Offer Letter”** means the letter sent by the Council to the Recipient acknowledging acceptance of the Recipient’s Application with any alterations identified in the Grant Offer Letter appended to this Agreement;
- 1.14 **“Grant Officer”** means the individual who has been nominated to represent the Council for the purposes of this Agreement in the Grant Offer Letter;
- 1.15 **“Grant Period”** means the period for which the Grant Award is awarded starting on the Start Date and ending on the End Date stated in the Grant Offer Letter during which the Grant Award may be used on the Purpose Of The Grant;
- 1.16 **“Law”** means:
- (i) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
  - (ii) any enforceable EU right within the meaning of Section 2(1) of the European Communities Act 1972;
  - (iii) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;
  - (iv) National Standards; and
  - (v) any applicable industry code
- 1.17 **“Improvement Plan”** means an improvement plan developed by the Council in a format and style determined by the Council to address the Council’s concerns pertaining to the Recipient’s delivery of the Purpose Of The Grant;
- 1.18 **“Intellectual Property Rights”** means all patents, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and Know-How however arising for their full term and any renewals and extensions;
- 1.19 **“Invitation”** means the initial information provided by the Council against which the Recipient submitted the Recipient’s Application;
- 1.20 **“Know-How”** means information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale;
- 1.21 **“National Standards”** means those standards applicable to the Council under the Law as amended from time to time;
- 1.22 **“On-Going Conditions”** means the conditions set out in the Grant Offer Letter;
- 1.23 **“Outputs and Outcomes”** means the outputs and outcomes the Recipient will comply with during the Grant Period as more particularly set out in the Grant Offer Letter;
- 1.24 **“Party or Parties”** means the Council and the Recipient as stated in the Grant Offer Letter;
- 1.25 **“Pre-Grant Award Conditions”** means conditions precedent that the Recipient must comply with prior to the Council agreeing to make the Grant Award as may be more particularly set out in the Grant Offer Letter;
- 1.26 **“Progress Reports”** means reports to be provided by the Recipient relating to the Recipient’s delivery of the Purpose Of The Grant as may be set out in the Grant Offer Letter;
- 1.27 **“Prohibited Act”** means:
- (i) offering, giving or agreeing to give to any servant of the Council any gift or consideration of any kind as an inducement or reward for:

- (a) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Council; or
    - (b) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Council;
  - (ii) entering into this Agreement or any other contract with the Council where a commission has been paid or has been agreed to be paid by the Recipient or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council;
  - (iii) committing any offence:
    - (a) under the Bribery Act;
    - (b) under legislation creating offences in respect of fraudulent acts;
    - (c) at common Law in respect of fraudulent acts in relation to this Agreement or any other contract with the Council ;
    - (d) defrauding or attempting to defraud or conspiring to defraud the Council;
- 1.28 **“Project Manager”** means the individual who has been nominated to represent the Recipient for the purposes of this Agreement in the Grant Offer Letter;
- 1.29 **“Purpose Of The Grant”** means, subject to clause 2.1, the purpose of the provision of the Grant Award as set out in Grant Offer Letter and references to ‘Project’ in the Grant Offer Letter shall mean the Purpose Of The Grant;
- 1.30 **“Recipient”** means the organisation named in the Grant Offer Letter and references to ‘you’ ‘your’ or ‘organisation’ in the Grant Offer Letter shall be deemed to mean the Recipient
- 1.31 **“Recipient’s Application”** means the Recipient’s response to the Invitation submitted to the Council by the Recipient as and as transposed by the Council into the Grant Offer Letter;
- 1.32 **“Reporting Requirements”** means the Council’s requirements in connection with the Recipient evidencing its delivery and performance of The Purpose Of the Grant;
- 1.33 **“Start Date”** means the date stated in the Grant Offer Letter;
- 1.34 **“Total Grant Award”** means the total of the Grant Award that will be awarded to the Recipient in the Grant Period as may be stipulated in the Grant Offer Letter

## **2 Purpose And Use of the Grant Award**

- 2.1 In the event of a conflict between this Agreement and the Grant Offer Letter and the latter shall prevail over the former.
- 2.2 The Recipient shall use the Grant Award only for the Purpose Of The Grant and in accordance with the terms and conditions set out in this Agreement. The Recipient shall ensure that it complies with, including but not limited to, its obligations in respect of:
- 2.2.1** Outputs and Outcomes;
  - 2.2.2** Reporting Requirements;
  - 2.2.3** Progress Reports
- in connection with the Purpose Of The Grant as stipulated in the Grant Offer Letter.
- 2.3 The Recipient agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Purpose Of The Grant or any related administration costs that the Council is funding in full under this Agreement. The Grant Award shall not be used for any other purpose without the prior written agreement of the Council.

## **3 Payment of Grant Award**

- 3.1 Subject to the Recipient satisfying the Pre-Grant Award Conditions and clauses 2.2, 2.3, 9 and 6.5, the Council shall pay the Grant Award to the Recipient in accordance with the Grant Offer Letter, subject to the necessary funds being available when payment falls due. **The Recipient agrees that payments of the Grant Award can only be made to the extent that the Council has available funds and the Council shall not be liable to the Recipient for**

any direct or indirect loss occurring to the Recipient in the event that such Grant Award are not provided for during the Grant Period.

- 3.2 The Recipient shall be liable for any expenditure which exceeds the amount of the Grant Award as specified in the Grant Offer Letter and the Council shall not be liable for such additional sums howsoever arising.
- 3.3 The Grant Award shall be paid into an ordinary business bank account in the name of the Recipient.
- 3.4 The Recipient shall not transfer any part of the Grant Award to bank accounts which are not ordinary business accounts within the clearing bank system, without the prior written consent of the Council.
- 3.5 The Recipient shall promptly repay to the Council any money incorrectly paid to it either as a result of an administrative error or otherwise.

#### **4 Use of Grant Award**

- 4.1 The Grant Award shall be used by the Recipient for the delivery of the Purpose Of The Grant only.
- 4.2 Where the Recipient has obtained funding from a third party in relation to its delivery of the Purpose Of The Grant, the amount of such funding shall be identified and accounted for by the Recipient separately to the Grant Award provided by the Council.
- 4.3 The Recipient shall not use the Grant Award to:
  - 4.3.1 make any payment to members of its Governing Body;
  - 4.3.2 purchase buildings or land; or
  - 4.3.3 pay for any expenditure commitments of the Recipient entered into before the Start Date,unless otherwise approved in writing by the Council.
- 4.4 The Recipient shall not spend any part of the Grant Award on the delivery of the Purpose Of The Grant after the end of the Grant Period, unless otherwise agreed by the Council in writing or subject to an approved Exit Strategy.
- 4.5 Any Grant Award which remains unspent at the end of the Grant Period will be returned to the Council immediately, unless otherwise agreed by the Council in writing or subject to an approved Exit Strategy. The Council shall provide any additional funding will be available to pay for any liabilities arising at the end of the Grant Period, including but not exclusively, any redundancy liabilities for staff employed by the Recipient to deliver the Purpose Of The Grant.

#### **5 Accounts and Records**

- 5.1 The Grant Award shall be shown in the Recipient's accounts as a restricted fund and shall not be included under general funds under any circumstances.
- 5.2 The Recipient shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Grant Award received by it.
- 5.3 The Recipient shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Grant Award for a period of at least six years following receipt of any Grant Award to which they relate. The Council may review, the Recipient's accounts and records that relate to the expenditure of the Grant Award during business hours and on providing a minimum of 48 hours prior notice (except in exceptional circumstances when no notice shall be required) and shall have the right to take copies of such accounts and records.
- 5.4 If so requested the Recipient shall provide the Council with a copy of its annual accounts within six months (or such lesser period as the Council may reasonably require) of the end of the relevant financial year in respect of each year in which the Grant Award is paid.

#### **6 Monitoring and Reporting**

- 6.1 The Recipient shall closely monitor the delivery and success of the Purpose Of The Grant throughout the Grant Period in accordance with the Reporting Requirements and or

otherwise to the Council's satisfaction to ensure that the Purpose Of The Grant is being met and that this Agreement is being adhered to.

- 6.2 Throughout the Grant Period, the Council may require Progress Reports on use of the Grant Award and delivery of the Purpose Of The Grant. The Recipient shall provide such Progress Reports within the manner, frequency and timeframes and in such formats as the Council has stipulated in the Grant Offer Letter or as otherwise as the Council may reasonably direct.
- 6.3 Notwithstanding clauses 6.1 and 6.2 in relation to Reporting Requirements and Progress Reports the Recipient shall on request provide the Council with such further information, explanations and documents as the Council may reasonably require in connection with the monitoring reports as stipulated in this Agreement.
- 6.4 The Recipient shall provide the Council with a final report within 60 days of completion of the Grant Period or termination of the Agreement, whichever is earlier to the satisfaction of the Council.
- 6.5 In the event the Council is not satisfied with the Recipient's delivery of the Purpose Of The Grant, the Council may issue an Improvement Plan to the Recipient and reserves the right to withhold, suspend or cancel payment of the Grant Award as they would or would have fallen due in accordance with the Grant Offer Letter.
- 6.6 Throughout the Grant Period the Recipient shall keep a permanent record of the information detailed in the Grant Offer Letter as it relates to the people who benefit from the Grant Award.

## **7 Acknowledgment and Publicity**

- 7.1 The Recipient shall acknowledge the Grant Award in its annual report and accounts, including an acknowledgement of the Council as the source of the Grant Award in a form approved by the Council.
- 7.2 All publicity and publicity materials shall conform with the guidance on publicity supplied by the Council to the Recipient from time to time.
- 7.3 Where the Recipient is required to use the Council's name and logo, the Recipient shall comply with all branding guidelines issued by the Council from time to time.
- 7.4 The Recipient agrees to participate in and co-operate with promotional activities relating to the Purpose Of The Grant as required by the Council.

## **8 Intellectual Property Rights**

- 8.1 The Council and the Recipient agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either the Council or the Recipient before the Commencement Date or developed by either party during the Grant Period, shall remain the property of that Party.
- 8.2 The Recipient hereby grants to the Council a non-exclusive perpetual royalty free licence to use the Intellectual Property Rights owned by the Recipient and developed through the Grant Period referred to in clause 8.1, notifying the Recipient of the Council's intention to use the Intellectual Property Rights each time where possible.
- 8.3 Where the Council has provided the Recipient with any of its Intellectual Property Rights for use in connection with the Purpose Of The Grant (including without limitation its name and logo), the Recipient shall, on termination of this Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by the Council.

## **9 Withholding, Suspending and Repayment of Grant Award**

- 9.1 The Council's intention is that the Grant Award will be paid in accordance with the Grant Offer Letter. However, without prejudice to the Council's other rights and remedies, the Council may at its discretion withhold, suspend or cancel payment of the Grant Award and/or require repayment of all or part of the Grant Award if:
  - 9.1.1 the Recipient uses the Grant Award for purposes other than those for which they have been awarded;

- 9.1.2 the delivery of the Purpose Of The Grant does not start within 6 months of the Start Date and the Recipient has failed to provide the Council with a reasonable explanation for the delay;
  - 9.1.3 the Council considers that the Recipient has not made progress (acting reasonably and having regard to the Recipient's Application and any agreed variance or slippage in the delivery plan as set out in the Grant Offer Letter) with the delivery of the Purpose Of The Grant;
  - 9.1.4 the Council considers that the Recipient is not willing or able to deliver the Purpose of the Grant;
  - 9.1.5 the Recipient is, in the reasonable opinion of the Council, delivering the Purpose Of The Grant in a negligent manner;
  - 9.1.6 the Recipient subsequently obtains duplicate funding from a third party for the Purpose Of The Grant not identified in the Offer Letter;
  - 9.1.7 the Purpose Of The Grant is reliant on activities funded by a third party and such third party fails to provide such funding;
  - 9.1.8 the Recipient obtains funding from a third party which, in the reasonable opinion of the Council, undertakes activities that are likely to bring the reputation of the Purpose Of The Grant or the Council into disrepute;
  - 9.1.9 the Recipient provides the Council with any materially misleading or inaccurate information;
  - 9.1.10 the Recipient or any member of the Governing Body, employee or volunteer of the Recipient commits or has committed a Prohibited Act or acts in such a way which is likely to bring the Council into disrepute;
  - 9.1.11 the 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);
  - 9.1.12 the 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;
  - 9.1.13 the Recipient fails to comply with the Outputs and Outcomes;
  - 9.1.14 the Recipient fails to provide the Progress Reports;
  - 9.1.15 the Recipient fails to comply with the Reporting Requirements; or
  - 9.1.16 the Recipient fails to comply with the On-Going Conditions; or
  - 9.1.17 the Recipient fails to comply with the Council's Improvement Plan;
  - 9.1.18 the Recipient fails to comply with any of the terms and conditions set out in this Agreement or the Grant Offer Letter and fails to rectify any such failure within 14 days of receiving written notice from the Council detailing the failure.
- 9.2 The Council may reduce any subsequent quarterly payment of the Grant Award by such an amount that has been unspent from a previous quarter's payment of the Grant Award.
- 9.3 Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Purpose Of The Grant or compliance with this Agreement it will notify the Council as soon as possible.

## **10 Limitation of liability**

- 10.1 The Council accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient running the Purpose Of The Grant, the use of the Grant Award or from the withdrawal or reduction of the Grant Award. The Recipient shall indemnify and hold harmless the Council, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the Purpose Of The Grant, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties.
- 10.2 The Council's liability under this Agreement to the Recipient is limited to the payment of the Grant Award.

## **11 Warranties**

- 11.1 The Recipient warrants, undertakes and agrees that:

- 11.1.1 it has all necessary resources and expertise to deliver the Purpose Of The Grant (assuming due receipt of the Grant Award);
  - 11.1.2 it has not committed, nor shall it commit, any Prohibited Act;
  - 11.1.3 it shall at all times comply with all relevant Law and shall notify the Council immediately of any significant departure from Law;
  - 11.1.4 it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Purpose Of The Grant;
  - 11.1.5 it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
  - 11.1.6 all financial and other information concerning the Recipient which has been disclosed to the Council is to the best of its knowledge and belief, true and accurate;
  - 11.1.7 it shall comply with any other reasonable requirement of the Council.
- 11.2 The Recipient acknowledges that in entering into this Agreement the Council is relying on the warranties and representation referred to in clause 11.1 and subsequent sub-clauses.

## **12 Insurance**

- 12.1 The Recipient shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Recipient, arising out of the Recipient's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss (the "**Required Insurances**") unless otherwise agreed with the Council.
- 12.2 The Required Insurances referred to above include (but are not limited to):
- 12.2.1 public liability insurance with a limit of indemnity of not less than two million pounds (£2,000,000) in relation to any one claim or series of claims arising from the Service; and
  - 12.2.2 employer's liability insurance with a limit of indemnity of not less than minimum set down by statute in relation to any one claim or series of claims arising from the Service.
- 12.3 The Recipient shall (on request) supply to the Council a copy of such Required Insurance policies and evidence that the relevant premiums have been paid.

## **13 Duration & Variation Of Agreement or Grant Offer Letter**

- 13.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of the Grant Offer Letter until the End Date or for so long as any Grant Award remain unspent by the Recipient, whichever is longer.
- 13.2 The Council only may extend the Grant Period by giving written notice to the Recipient and such notice may include, but will not be limited to, details in connection with the duration of such extension and other matters pertaining to the Grant Offer Letter.
- 13.3 The Council may vary the terms of this Agreement or the Grant Offer Letter by either giving written notice to the Recipient or uploading the details of such variations on the Council's website in its sole and absolute discretion.
- 13.4 In the event of a variation under clause 13.3 of this Agreement; such amendments shall appended to the original Grant Offer Letter and the Recipient shall and agrees to be bound by the terms of such variations.

## **14 Termination**

- 14.1 The Council may terminate this Agreement and any Grant Award payments on giving the Recipient three months' written notice should it be required to do so by virtue of financial restraints or for any other reason.

## **15 Transfer and Sub-Contracting**

- 15.1 The Council may assign, novate, or sub-contract the whole or any part of this Agreement to any body which performs functions previously performed by the Council upon giving written notice to the Recipient.

- 15.2 The Recipient shall not assign or sub-contract the whole or any part of the Agreement without the prior written consent of the Council.

## **16 Freedom Of Information**

- 16.1 The Recipient acknowledges that the Council is subject to the requirements of the Environmental Information Regulations and the 2000 Act and agrees to use all reasonable endeavours to assist the Council (at the Recipient's expense) to comply with the Council's obligations imposed under those provisions.
- 16.2 The Recipient shall, and shall procure that its sub-contractors shall:
- 16.2.1 transfer any Request for Information (as defined under the 2000 Act) received by the Recipient or its sub-contractors to the Council promptly and, in any event, within two working days of its receipt;
  - 16.2.2 provide the Council with a copy of all Information in its possession or power in the form and within the time scale that the Council requires;
  - 16.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request For Information within the time for compliance prescribed by section 10 of the 2000 Act; and
  - 16.2.4 not respond directly to a Request For Information or disclose or release Information without the prior written authority of the Council.
- 16.3 The Recipient acknowledges that the Council may be obliged under the 2000 Act or the Environmental Information Regulations to disclose Information:
- 16.3.1 without consulting the Recipient; or
  - 16.3.2 following consultation with the Recipient and having taken its views into account; and
  - 16.3.3 that the Recipient considers to be Confidential Information.

## **17 Confidentiality**

- 17.1 Subject to clauses 17.2 to 17.4 inclusive each Party undertakes to the other Party:
- 17.1.1 to treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly;
  - 17.1.2 not to disclose any Confidential Information belonging to the other Party without the prior written consent of that Party, except where such disclosure is necessary for the performance of the Agreement or is otherwise expressly permitted by this Agreement; and
  - 17.1.3 to use any Confidential Information received from the other Party only for the purpose of or in connection with the Agreement.
- 17.2 Clause 17.1 shall not apply to any disclosure of Confidential Information:
- 17.2.1 which a Party can demonstrate has or becomes publicly available otherwise than through a breach of clauses 17.1;
  - 17.2.2 which was in the possession of the receiving Party without restriction as to its disclosure, before receiving it from the disclosing Party;
  - 17.2.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - 17.2.4 which is required by Law, any judicial or administrative process, the rules of any stock exchange or governmental or regulatory authority having the force of Law;
  - 17.2.5 by either Party to any department, office or agency of the Government;
  - 17.2.6 which is independently developed without access to the Confidential Information;
  - 17.2.7 by the Council to Tower Hamlets Homes insofar as this is reasonably necessary for the proper discharge of the Council's functions; or
  - 17.2.8 which is to the Council's professional financial and legal advisors or such other professional advisers.
- 17.3 Nothing in this clause 17 shall prevent either Party from using any ideas, know-how or techniques gained during the performance of this Agreement in the course of its normal business, to the extent that this does not result in the disclosure of Confidential Information or an infringement of Intellectual Property Rights.



- 17.4 The Recipient acknowledges to the Council that nothing in this clause 17 shall fetter or affect the Council's discretion and or obligations under the DPA 1998, the 2000 Act or the Environmental Information Regulations.

## **18 Data Protection Act**

- 18.1 The Recipient shall comply in all respects with the DPA and not knowingly place the Council in breach of the Council's obligations under the DPA.
- 18.2 Notwithstanding the generality of clauses 18.1 where this Agreement requires the Recipient to collect Personal Data and or Sensitive Personal Data (as defined under the DPA) and release such Personal Data and or Sensitive Personal Data to the Council the Recipient shall obtain the direct positive consent for such release from the person to whom the Personal Data and or Sensitive Personal Data relates.
- 18.3 In the event the Recipient receives a request for the release of Personal Data and or Sensitive Personal Data (pursuant to section 7 of the DPA or otherwise) from or concerning a service user or any other person for whom the Recipient processes Personal Data and/or Sensitive Personal Data on behalf of the Council, the Recipient shall:
- 18.3.1** as soon as possible and in any event within 2 working days, send the request to the Council's Information Governance Team for processing;
  - 18.3.2** provide all reasonable co-operation and assistance to the Council in responding to the request; and
  - 18.3.3** provide such Data (including Personal Data and Sensitive Personal Data) as the Council may require in order to respond to the request, including confirmation as to the extent of the search the Recipient has undertaken.
- 18.4 The Recipient shall indemnify the Council against all claims and proceedings and all liability, loss, costs and expenses incurred by the Council resulting from the Recipient's failure to comply with the DPA and all DPA and Confidential Information provisions under this Agreement.

## **19 Equalities and Diversities**

- 19.1 The Recipient agrees to operate and actively demonstrate in all matters, the provisions of its Equal Opportunities / Equalities Policy which has been approved by the Council prior to entering into this Agreement.
- 19.2 The Recipient shall ensure that its Equal Opportunities policy complies with all statutory obligations as regards anti-discrimination on the grounds of at least those stated as 'Protected Characteristics' (defined under the Law) in relation to:
- 19.2.1** the running of the Recipient's business;
  - 19.2.2** the performance of this Agreement.
- 19.3 Without limiting clauses 19.1 and 19.2, the Recipient shall comply with the Equality Act 2010 and shall take no actions or allow any omissions that puts itself or the Council in breach of the Equality Duty as defined under the Equality Act 2010.
- 19.4 The Recipient shall comply with any other anti-discrimination legislation which comes into force from time to time throughout the Grant Period including all relevant regulations and statutory codes of practice.
- 19.5 Any amended version of the Recipient's Equal Opportunities / Equalities Policy will be sent to the Council promptly following any amendment. If the Recipient does not have an Equal Opportunities / Equalities Policy, then it will work within the ambit of the Council's Equalities and Diversities Policy until the Recipient develops its own Equal Opportunities Policy.

## **20 Safeguarding**

- 20.1 The Council is committed to the protection of children and vulnerable adults. If the Recipient employs staff or volunteers ("**Staff**") for reasons connected with the Purpose Of The Grant and there is a requirement for the Purpose Of The Grant for the Recipient and its Staff to be engaged with persons under 18 or vulnerable adults (including but not limited to duties such as caring for, training, supervising or being responsible in some way for children or vulnerable adults or who have access to records or information regarding

them), the Recipient shall ensure that such Staff receive for the purposes of and as defined by the Protection of Freedoms Act 2012 (Disclosure and Barring Service Transfer of Functions) Order 2012, an Enhanced Check For Regulated Activity or such other checks reasonably determined by the Council (“Checks”).

- 20.2 The Recipient shall (promptly on the Council's request from time to time) issue the Council with a certificate certifying the Recipient's proper compliance with clause 20.1 in relation to all relevant Staff engaged in relevant activities at the time for the Purpose Of The Grant and such certificate shall be in a form approved by the Council from time to time (acting reasonably).
- 20.3 The Recipient must make available to the Council's Grant Officer for inspection (with all relevant consents in place for the purposes of the DPA) all relevant records to evidence its compliance with clause 20.1
- 20.4 The Recipient must ensure that the checks referred to in clause 20.1 are updated for all relevant Staff within three years of the most recent disclosure.
- 20.5 The Recipient must not allow those of its Staff whose Checks referred to in clause 20.1 reveal serious and adverse matters to have unsupervised access to children under 18 and or vulnerable adults and or access to records relevant to them. If an individual recorded on any of the lists included in the Checks referred to in clause 20.1 then they are deemed unsuitable to work with children under 18 and or vulnerable adults or have access to records relevant to them.
- 20.6 The Recipient shall promptly remove relevant Staff from relevant duties connected to the Purpose Of The Grant in connection with this Agreement if requested by the Council with reasonable grounds to do so.
- 20.7 The Recipient must check with the Independent Services Authority when recruiting new Staff for or in connection with the Purpose Of The Grant, to ensure that the person is eligible to work with children and young people.

## **21 Law and Jurisdiction**

- 21.1 This Agreement shall be subject to the laws of England and Wales and both parties submit to the exclusive jurisdiction of the English courts.

## **22 Non-Waiver Of Rights**

- 22.1 The failure or delay by the Council to exercise any rights or remedies under this Agreement shall not be deemed to be a waiver of any right of the Council under this Agreement.
- 22.2 Where the Council has expressly waived its rights under this Agreement in respect of one occurrence such waiver shall not be deemed to be effective in respect of any subsequent occurrence.

## **23 Conflict Of Interest**

- 23.1 The Recipient warrants that, as at the date of this Agreement, to the best of its knowledge after making reasonable inquiries, no conflict of interest exists or is likely to arise in performing this Agreement.
- 23.2 The Recipient shall immediately notify the Council in writing upon becoming aware of any actual or potential conflict of interest between the interests of the Council and itself or any other third party and fully disclose the nature of the actual or potential conflict. The Recipient shall take all steps reasonably requested by the Council to mitigate or remove the actual or potential conflict.
- 23.3 Where the Recipient is unable to reasonably satisfy the Council in respect of a conflict of interest the Council may terminate this Agreement forthwith.