

STANDARD CONDITIONS OF GRANT

Part 1 - Main obligations for the Recipient

In consideration for the payment to you of the relevant Grant Monies by the Council of the Borough of Kirklees (the “**Council**”), you (as the “**Recipient**”) understand and agree to comply with the following conditions.

Unless agreed otherwise by the parties in writing, these conditions, together with the Recipient’s application form, any supporting document submitted with the application (including, but not limited to, the Council’s Grant Award Letter and any standard forms or Grant Award Agreement completed and returned by the Recipient), constitute the entire Agreement between the parties, and supersede and extinguish all previous contracts, drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

For the avoidance of any doubt, in the event of any conflict between the provisions of these conditions (as amended from time to time), and of the Grant Award Letter or Agreement (as applicable), the provisions of the Grant Award Letter or Agreement (as applicable) will take precedence.

1. To use any Grant Monies awarded by the Council solely for the purposes, projects and/or activities set out in the application form submitted by the Recipient (the “**Project**”). For the avoidance of doubt, the Recipient shall **NOT** use the Grant to:

- a) promote any purposes which are party political in nature or for the purpose of promoting any religious belief;
- b) where applicable, make any payment to its staff, or any of its officers or any members of its governing or managing body;
- c) purchase buildings or land; or
- d) pay for any expenditure commitments of the Recipient entered into before the award of the Grant funding,

unless this has first been approved in writing by the Council.

2. Subject to the provisions of this Paragraph 2:

- a) to utilise any part of Grant funding within six (6) months of receiving said funding from the Council; and
- b) for the avoidance of any doubt, not to spend any part of the Grant funding after the end of the Project.

3. Should any part of the Grant funding remain unspent after the end of the Project, you shall ensure that:

- a) any unspent Monies are returned to the Council immediately following the Council’s request for return of said Monies; or
- b) if agreed in advance and in writing with the Council, the Recipient shall be entitled to retain the unspent Monies to use for any purpose agreed in writing between the parties.

4. Any liabilities arising at the end of the Project, including any redundancy liabilities for any staff employed by the Recipient to deliver the Project must be managed and paid for by the Recipient using the Grant or other resources of the Recipient. There will be no additional funding available from the Council for this purpose.

5. Not to make any major changes to the Project and/or purpose of expenditure identified in the Recipient’s budget for which the Grant Monies will be used for without first receiving the written agreement from the Council in accordance with Paragraph 2 of **Part 2** below. Any proposed changes by the Recipient to budget or expenditure agreed by the parties prior to the award of the funding must be first approved by the Council in writing.

6. Not to sell or dispose of any equipment or other non-fixed assets, which have been purchased with any Grant Monies without the prior written agreement of the Council. For the avoidance of doubt, the Council reserves the right to reclaim any equipment or non-fixed assets purchased by the Recipient using any Grant funding within three (3) years of date of the Council’s Grant Award Letter or Agreement.

7. Where applicable, not to change the sections of the Recipient’s articles and memorandum of association, constitution or governing documents, which relate to paying members of the governing body, distributing assets or admitting members without the prior written agreement of the Council.

8. Where applicable, to notify the Council of any of the following events:

- a) the Recipient suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts; or
 - i) the Recipient (being an individual sole trader) is either subject to a bankruptcy petition or order, dies, or by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation
 - ii) the Recipient (being a limited company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - iii) the Recipient (being a partnership) has any partner to whom any of the foregoing apply; or
- b) the Recipient (being a limited company) commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors, other than for the sole purpose of a scheme for a solvent amalgamation of the Recipient with one or more other companies or the solvent reconstruction of the Recipient; or
- c) where a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Recipient (being a limited company), other than for the sole purpose of a scheme for a solvent amalgamation of organisation with one or more other companies or the solvent reconstruction of the Recipient; or
- d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Recipient (being a limited company); or
- e) the holder of a qualifying floating charge over the assets of the Recipient (being a limited company) has become entitled to appoint or has appointed an administrative receiver; or
- f) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the Recipient; or
- g) a creditor or encumbrancer of the Recipient attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Recipient’s assets and such attachment or process is not discharged within ten (10) working days (for the avoidance of any doubt, “**working day**” for the purposes of this Paragraph and the rest of these conditions shall mean any day Monday to Friday, but shall not include Saturdays and Sundays or any bank holidays within the United Kingdom); or
- h) any event occurs, or proceeding is taken, with respect to the Recipient in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) above (inclusive); or
 - i) the Recipient suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - j) there is a change of control of the Recipient (within the meaning of section 1,124 of the Corporation Tax Act 2010).

9. To inform the Council of any changes to the Recipient’s bank or building society account.

10. To ensure that the activities funded by the Grant are at all times conducted in accordance with all applicable laws and regulations (including (but not limited to) the Health and Safety at Work Act 1974, the Bribery Act 2010, the Equality Act 2010, the Data Protection Legislation, the Children Act 1989 and 2004, Freedom of Information Act 2000, and the Environment Information Regulations 2004, and ensure that it has the necessary policies and paperwork in place including Disclosure and Barring Service checks and a Child Protection Policy. The Recipient will also ensure that it maintains adequate levels of public liability

insurance cover and employer's liability insurance cover with reputable insurers acceptable to the Client and at a sufficient level of cover to comply with statutory requirements.

For the avoidance of any doubt, "Data Protection Legislation" for the purposes of this Paragraph and the remainder of these conditions, shall have the following meaning:

- a) **until 25th May 2018** the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to Processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner; or
- b) **on or after 25th May 2018**, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such Data, and repealing Directive 95/46/EC (the "General Data Protection Regulation" or "GDPR"), the Data Protection Act 2018, and all such other applicable laws and regulations relating to Processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

11.

- a) To comply with the Department for Communities and Local Government's ("DCLG") Code of Recommended Practice on Local Authority Publicity when the Council provides assistance to the Recipient to issue publicity.
- b) Where applicable, to acknowledge the receipt of the Grant from the Council in its Annual Report and any publicity materials produced about the Project and to supply copies of these documents to the Council if requested. With respect to any such publicity materials, the Recipient agrees that it shall not publish any material referring to the Grant or the Council without the prior written agreement of the Council, and that the Recipient shall only include the Council's name and logo (or any future name or logo adopted by the Council) using the templates provided by the Council from time to time.
- c) To allow the Council to use the name of the Recipient and the name and/or description of the Project and/or activities being carried out by the Recipient further to their receipt of the Grant in its own publicity materials. No personal details will be disclosed unless the Council has received prior written consent to using the name of the contact set out above.

12. Where applicable, to inform the relevant Grant team within the Council who is managing the Grant process and/or the Project, and of any situation where confidentiality is a particularly issue.

13. Subject to Paragraph 16 of this Part 1 below, to reimburse the Grant to the Council, within ten (10) working days of a request, if the Recipient is unable to provide evidence of eligible expenditure as required by the application form.

14. To monitor the progress of and any spending in relation the Project and complete a monitoring form if requested by the Council.

15. To keep financial records and accounts, including receipts for items bought with the Grant, for at least six (6) years from receiving the Grant and to make these or copies available to the Council's on request. It is acknowledged that this requirement does not release the Recipient from any legal requirement to keep records from longer periods.

16. The Council's intention is that the Grant Monies in respect of the Project will be paid to the Recipient in full. However, without prejudice to the Council's other rights and remedies, the Council may at its discretion withhold or suspend payment of the Grant and/or require repayment of all or part of the Grant if:

- a) in the event of any failure to observe any of the conditions of this Agreement;
- b) if the application form, or any the supporting documentation provided by the Recipient prior to the award of the Grant funding, contained false or misleading information or where the Recipient is unable to provide evidence of eligible expenditure as required by the application form;

- c) the Recipient uses the Grant for purposes other than those for which they have been awarded;
- d) in the event of any failure to follow good equal opportunities practice (that is treating others less favourably on the grounds of gender, colour, race, nationality, ethnic or cultural origin, religious persuasion, age, disability, sexual orientation) in employing people, recruiting new members to the Recipient and conducting its business or activities or providing services;
- e) subject to Paragraphs 2, 3, 13 and 14 of this **Part 1** above in the event of any failure to complete the Project spend within six (6) months from the date of payment of the Grant;
- f) the Council considers that the Recipient has not made satisfactory progress with the delivery of the Project;
- g) the Recipient is, in the reasonable opinion of the Council, delivering the Project in a negligent manner;
- h) the Recipient obtains duplicate funding from a third party for the Project;
- i) in the event of any of the circumstances listed in Paragraph 8 of this **Part 1** above;
- j) any failure to comply with any statutory requirements, including (but not strictly limited to) those set out in Paragraph 10 of this **Part 1** above;
- k) in the event that any money has been incorrectly paid to the Recipient, either as a result of an administrative error or otherwise (this includes (without limitation) situations where either an incorrect sum of money has been paid or where Grant Monies have been paid in error before all conditions attaching to the Grant have been complied with by the Recipient);
- l) any member of the governing body, employee or volunteer of the Recipient has (i) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project or (ii) taken any actions which, in the reasonable opinion of the Council, bring or are likely to bring the Council's name or reputation into disrepute; or
- m) the European Commission has stated that the Grant awarded to the Recipient by the Council under this Agreement constitutes unlawful State Aid.

Subject to Paragraph 13 of this **Part 1** above, the Recipient reimburse the Grant to the Council, within ten (10) working days of a request made in accordance with this Paragraph 16. Furthermore, any Grant funding that the Council wishes to reclaim from the Recipient may be set off against any future payments of any Grant Monies from the Council to the Recipient. The Recipient shall make any repayments due to the Council under this Paragraph 16 without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise. Further to Paragraph 8 and the remainder of this Paragraph 16 of this **Part 1** above, should the Recipient be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Project or compliance with the conditions of this Agreement, it will notify the Council as soon as possible so that, if possible, and without creating any legal obligation, the Council will have an opportunity to provide assistance in resolving the problem or to take action to protect the Council, the Grant Monies and the delivery of the Project.

17. To declare that it is totally independent of the Council and is solely responsible for the operation of the business, activities and affairs of the Recipient and will indemnify the Council against any legally enforceable claims, losses, costs, charges, damages, demands, liabilities and expenses made against it arising from the default, neglect or omission of the Recipient in undertaking its business, activities or affairs. Acceptance of funding from the Council in no way implies that the Council is involved in business activities or affairs of the Recipient.

18. The Recipient and its staff must comply with the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and any applicable subordinate legislation and/or codes of practice (the "FOI Legislation"). The Recipient accepts that the Council may be required to disclose information relating to the Recipient and/or the Project in order to comply with its obligations under the FOI Legislation. The Recipient and its staff must not do anything to cause an infringement by the Council of its obligations under the FOI Legislation and must comply with any reasonable request from the Council for this purpose.

19. The Recipient shall (and shall procure that any of its staff involved in the Project (including any employed staff and/or volunteers) comply with any notification requirements under the Data Protection Legislation and both parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with the Agreement.
20. Notwithstanding the general obligation in Paragraph 19 immediately above, the parties agree that neither one of them shall Process any Personal Data on the other party's behalf and any Personal Data which is passed to the other party by them is given because it is strictly necessary for the performance of the of the obligations set out in the Council's Grant Award Letter and these conditions. Both parties agree that they shall refuse to accept any Personal Data which is not strictly required for it to perform the Council's Grant Award Letter and these conditions, and confirm that they are both acting as Data Controller regarding the Personal Data which they do accept from the other party. In performing their respective obligations under the Council's Grant Award Letter and these conditions, both parties agree that they shall act in accordance with the Data Protection Legislation, and shall not do anything which might place the other party in breach of its obligations under the Data Protection Legislation

For the avoidance of any doubt, the terms "processing" "Personal Data" "Data Controller" and "Data Processor" shall have the same meaning as they do under the Data Protection Legislation. The provisions of Paragraphs 18, 19 and 20 of Part 1 of these conditions above shall apply during the continuance of the Project and indefinitely after its expiry or termination (howsoever brought about).

Part 2 - General Provisions

1. Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in this Agreement.
2. The Council may from time to time choose to revise these conditions, the terms of the Recipient's Grant Award Letter or Agreement, and the Council's and the Policies and Positions for Grants. If so, is the Council agrees to notify the Recipient in writing of any such changes as soon as reasonably practicable.
3. For the avoidance of any doubt, the Recipient may only transfer its rights or its obligations under this Agreement to another person if the Council agrees in writing (this includes transferring or paying to any other person all or any part of the Grant). The Council however may transfer its rights and obligations under Agreement to another organisation at any time, but will always notify the Recipient in writing if this happens, but this will not affect the Recipient's rights or the Council's obligations under this Agreement.
4. Except where otherwise specified, the conditions of this Agreement shall apply:
 - a) from the date of the Council's Grant award letter (for the purposes of this Paragraph 4, the "Commencement Date");
 - b) until:
 - i) corresponding calendar day six (6) months from the Commencement Date; or
 - ii) the Project end date as agreed between the parties;
 - iii) subject to Paragraphs 2 and 3 of **Part 1** for as long as such a period any Grant Monies remain unspent by the Recipient; or
 - iv) until such time this Agreement is terminated by the Council in accordance with these conditions,
 whichever is earlier.
5. This Agreement may be terminated by either party if either the Council or the Recipient fails to substantially fulfil the stated aims and objectives of the Project, as defined more fully within the application form and its supporting documentation (if any). Unless stated otherwise within this Agreement, termination will be at the end of a reasonable period from the receipt of written notice, specifying the period of notice from the other party.
6. The Council also reserves the right to terminate this Agreement and any Grant payments either:
 - a) on giving the Recipient immediate written notice following notification of any of the events listed and described in Paragraph 8 of **Part 1** above; or
 - b) on giving the Recipient three (3) months' prior written notice should it be required to do so by financial restraints or for any other reason.
7. Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.
8. If either party fails to insist that the other performs any of its obligations under this Agreement, or if either party fails to enforce its rights against the other, or if either party delays in doing so, that will not mean that they have waived their rights against the other party and will not mean that the other party does not have to comply with those obligations. If either party does waive a default by the other party, they will only do so in writing, and that will not mean that they will automatically waive any later default by the other party.
9. Each of the Paragraphs of set out in this Agreement operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining Paragraphs will remain in full force and effect.
10. All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, emailed or mailed (first class postage prepaid) to the address of the relevant party, as referred to in application form or otherwise notified in writing. If personally delivered or emailed, all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day). If mailed all such communications shall be deemed to have been given and received on the second (2nd) working day following such mailing.
11. In the event of any complaint or dispute (which does not relate to the Council's right to withhold funds or terminate) arising between the **parties** in relation to this Agreement, all such disputes may be referred to the Council's nominated officer referred to in their Grant award letter (or any other individual nominated by the Council, as the case may be), and the relevant Chief Executive, Chairman or equivalent senior officer of the Organisation. The parties shall procure that their representatives, meet to consider the dispute within fourteen (14) days of it being referred to them.
12. If any dispute cannot be resolved by such parties' representatives within a maximum of twenty-one (21) days after it has been referred under Paragraph 11 immediately above, either party may refer the matter to the Assistant Director of Legal, Governance and Monitoring of the Council and (where applicable) the relevant Chief Executive, Chairman or equivalent senior officer of the Recipient with an instruction to attempt to resolve the dispute by agreement within twenty eight (28) days, or such other period as may be mutually agreed by the Council and the Recipient.
13. If the dispute is not resolved pursuant to Paragraph 12 immediately above, either party may (at the relevant meeting or within twenty-eight (28) days of its conclusion) propose to the other in writing that structured negotiations be entered into with the assistance of a neutral adviser or mediator (the "Neutral Adviser") who is accredited by the Law Society of England and Wales or an organisation of equivalent standing before resorting to litigation.
14. Further to Paragraph 17 of **Part 1** above, this Agreement shall not create any partnership or joint venture between the Council and the Recipient, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.
15. Where the Recipient is not a company or an incorporated or associated entity with a distinct legal personality of its own, any individuals who enter into and sign this Agreement on behalf of the Recipient shall be liable for the Recipient's obligations and liabilities arising under this Agreement, both as group acting together and individually.
16. This Agreement is between the Recipient and the Council. No other person shall have any rights to enforce any of its terms.
17. This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

Standard Conditions of Grant last updated March 2018

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