**Dated […………..]**

**Grant Agreement**

between

**THE INFORMATION COMMISSIONER**

and

**[NAME OF GRANT RECIPIENT]**

**TABLE OF CONTENTS:**

[**1.** **INTRODUCTION** 3](#_Toc481147060)

[**2.** **DEFINITIONS AND INTERPRETATION** 4](#_Toc481147061)

[**3.** **PURPOSE AND SCOPE OF GRANT** 8](#_Toc481147062)

[**4.** **PAYMENT OF GRANT** 9](#_Toc481147063)

[**5.** [**DISPOSAL OF ASSET, CHANGE OF USE AND ASSIGNMENT]** 10](#_Toc481147064)

[**6.** **SPENDING CONTROLS – MARKETING, ADVERTISING, COMMUNICATIONS AND CONSULTANCY….** 10](#_Toc481147065)

[**7.** **REDUCTION AND RECOVERY OF GRANT** 11](#_Toc481147066)

[**8.** **LOSSES, GIFTS AND SPECIAL PAYMENTS** 11](#_Toc481147067)

[**9.** **BORROWING** 11](#_Toc481147068)

[**10.** **CHANGES TO THE AUTHORITY’S REQUIREMENTS** 12](#_Toc481147069)

[**11.** **ACKNOWLEDGEMENT AND PUBLIC STATEMENTS** 12](#_Toc481147070)

[**12.** **TERMINATION** 12](#_Toc481147071)

[**13.** **AMENDMENT OR VARIATION OF THE AGREEMENT** 14](#_Toc481147072)

[**14.** **CONSEQUENCES OF TERMINATION AND SUPPORT FOR TRANSFER OF RESPONSIBILITY** 14](#_Toc481147073)

[**15.** **DISPUTE RESOLUTION** 14](#_Toc481147074)

[**16.** **EXIT PLAN (Not Used)** 15](#_Toc481147075)

[**17.** **GRANT REVIEW** 15](#_Toc481147076)

[**18.** **MONITORING, REPORTING, INTERNAL AUDIT AND ASSURANCES** 15](#_Toc481147077)

[**19.** **ACCOUNTS AND RECORDS** 17](#_Toc481147078)

[**20.** **FINANCIAL MANAGEMENT** 18](#_Toc481147079)

[**21.** **GRANT RECIPIENT PERSONNEL** 19](#_Toc481147080)

[**22.** **INTELLECTUAL PROPERTY RIGHTS** 19](#_Toc481147081)

[**23.** **INSURANCE** 20](#_Toc481147082)

[**24.** **CONFLICTS OF INTEREST AND FINANCIAL OR OTHER IRREGULARITIES** 20](#_Toc481147083)

[**25.** **TRANSPARENCY** 20](#_Toc481147084)

[**26.** **LEGISLATION, PROCUREMENT REQUIREMENTS AND STATE AID LAW** 21](#_Toc481147085)

[**27.** **GOVERNING LAW** 22](#_Toc481147086)

[**ANNEX 1 – Grant Offer Letter** 23](#_Toc481147087)

[**ANNEX 2 -The Funded Activities** 27](#_Toc481147088)

[**ANNEX 3 -Payment Schedule** 28](#_Toc481147089)

[**ANNEX 4 - Eligible Expenditure schedule (breakdown of forecast grant expenditure)** 30](#_Toc481147090)

[**ANNEX 5 - Agreed Outputs/Long Term Outcomes and Key Performance Indicators** 32](#_Toc481147091)

**AGREEMENT- TERMS AND CONDITIONS**

1. **INTRODUCTION**
	1. The following standard terms and conditions apply to organisations receiving financial assistance **(a “Grant Recipient”)** from the **Information Commissioner** (**“the Authority”).** These conditions should be read in conjunction with the Grant Offer Letter issued by the Authority (the **“Offer Letter”**) and annexed hereto. The terms and conditions set out in this document, together with the Offer Letter, and accompanying Annexes together comprise the “Agreement” pursuant to which financial assistance (in the form of the Grant) is given by the Authority to the Grant Recipient.
	2. The Grant Recipient should note that:
2. the Authority has general duties to promote good practice and disseminate information about the operation of data protection legislation.
3. the Authority is not permitted to pay Grants in advance of need, but Grants will usually be paid in advance of expenditure;
4. no VAT is payable on Grants;
5. all references to "the **Financial Year"** refer, unless expressly indicated otherwise, to the Cabinet Office’s own financial year, which runs from 1 April to 31 March; and
6. failure to comply with the conditions of the Agreement may result in the Grant payments being suspended, reduced, reclaimed or withheld, and/or the Grant offer being withdrawn.
7. **DEFINITIONS AND INTERPRETATION**
	1. In this Agreement the following terms will have the following meanings:

**“Annex/es”** means the annexes attached to this Agreement;

**[“Asset”** means any assets (excluding Intellectual Property Rights) that are to be purchased or developed using Grant monies;**]**

“**Background IPRs**” means any Intellectual Property Rights vested in or licensed to the Parties before the Effective Date and/or created by the Parties independently of the Funded Activities;

**“Breach”** means a failure to comply (by act or omission) with any of the Terms and Conditions of the Agreement;

**“Bribery Act”** means the Bribery Act 2010;

**“Confidential information”** means all confidential information (however recorded or preserved) disclosed by a Party or its personnel to another Party and that Party’s personnel whether before or after the date of this Agreement, including but not limited to:

(a) any information that would be regarded as confidential by a reasonable business person relating to:

(i) the business, affairs, customers, clients, suppliers or plans of the disclosing Party; and

(ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party; and

(b) any information developed by the Parties in the course of delivering the Funded Activities;

**[“Disposal”** means the disposal, sale, transfer of the grant or any interest in any Asset and includes any contract for disposal;]

**“DPA”** means the Data Protection Act 1998;

**“Effective Date”** means the date upon which this Agreement is signed by both Parties.

**“EIR”** means the Environmental Information Regulations 2014;

**“Eligible Expenditure”** means expenditure in relation to the Funded Activities that complies in all respects with the eligibility rules set out in Annex 4 of this Agreement;

**[“Fixed Assets”** means any Asset which consists of land, buildings, plant and equipment acquired, developed, enhanced, constructed or owned by the Grant Recipient in connection with the Funded Activities;]

**“FOIA”** means the Freedom of Information Act 2000;

**“Funded Activities”** means the activities set out in Annex 2 of this Agreement **[**and the Grant Offer Letter**]***;*

“**Funded Activity Specific IPRs"**

|  |
| --- |
| means: |
| 1. IPRs in or arising out of the Funded Activities, Items provided pursuant to the Agreement and all updates and amendments to the same created or arising during the Funding Period;
 |
| 1. any materials, data and other works of any kind whatsoever created or compiled in the course of the performance of this Agreement in which IPRs may subsist;
 |
| 1. the IPRs in any modifications, updates and developments to the Authority’s Background IPRs and modifications, amendments, updates and new releases of the Grant Recipient’s Background IPRs which arise specifically in the course of the provision of the services and the performance of the Grant Recipient’s obligations under this Agreement;
 |
| 1. any personal data provided or available to the Grant Recipient for the purposes of this Agreement; any data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible or other media, and which are supplied to the Grant Recipient by or on behalf of the Authority; or the Grant Recipient is required to receive, commission, generate, process, store or transmit pursuant to this Agreement; and/or
 |
| 1. any data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible or other media, and which are supplied to the Grant Recipient by or on behalf of the Authority; or the Grant Recipient is required to receive, commission, generate, process, store or transmit pursuant to this Agreement.
 |

**“Funding Period”** means the period for which the Grant is awarded starting on the date of this Agreementand ending on**[insert date]** or such earlier date if this Agreement is terminated for any reason;

**“GDPR”** means the General Data Protection Regulation 2016/679;

**“Grant”** means the sum or sums of money GB pounds sterling to be provided to the Grant Recipient in accordance with this Agreement;

**“Grant Manager”** means the individual who has been nominated by the Authority to be the single point of contact for the Grant Recipient in relation to the Grant;

 **“HRA”** means the Human Rights Act 1998;

**“Ineligible Expenditure”** means expenditure which is not Eligible Expenditure as set out in Annex 4 of this Agreement;

"**Information Acts**" means the DPA, GDPR, FOIA and the EIR;

**“Intellectual Property Rights”** or **“IPRs” means**  copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and other rights in Confidential Information which includes guidance, specifications, instructions, toolkits, plans, data, drawings, patterns, software, models and designs, technical specifications, user manuals, operating manuals, process definitions and procedures and any modifications, amendments, updates and new releases of the same;

“**KPIs** mean the Key Performance Indicators set out in Annex 5 of this Agreement;

**“Losses”** means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and “**Loss**” will be interpreted accordingly;

**“Material Breach”** means a breach of the Agreement (including an anticipatory breach) which is not minimal or trivial in its consequences;

**“Maximum Sum”** means the maximum amount of the Grant to be provided by the Authority to the Grant Recipient for the Funded Activities;

“**Minimum Requirements of the Scheme**” means the agreed KPIs and Outcomes set out in Annex 5 and any other agreed outcome from time to time which tailor the Agreement to the particular Funded Activity.

**“Party”** means the Authority or Grant Recipient, and “**Parties**” shall be interpreted accordingly;

**“Procurement Regulations”** means the Public Contracts Regulations 2015, Concession Contracts Regulations 2016, Utilities Contracts Regulations 2016 and Defence Security Public Contracts Regulations 2011;

 "**Prohibited Act**" means:

 (a) offering, giving or agreeing to give to any servant of the Authority or the Crown any gift or consideration of any kind as an inducement or reward for:

 (i) 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

 (ii) showing or not showing favour or disfavour to any person in relation to this Agreement;

 (b) committing any offence:

 (i) under the Bribery Act;

 (ii) under legislation creating offences in respect of fraudulent acts; or

 (iii) at common law in respect of fraudulent acts in relation to this Agreement; or

 (c) defrauding or attempting to defraud or conspiring to defraud the Authority or the Crown;

**“Public Accounts Committee”** the select committee of the British House of Commons which is responsible for overseeing government expenditures;

**“Representatives”** means any of the Parties’ duly authorised directors, employees, officers, agents, professional advisors and consultants;

**“State Aid”** will have the meaning given in Article 107(1) Treaty for the Functioning of the European Union;

**“Terms and Conditions”** means the terms and conditions set out in this Agreement and upon which the Grant is payable;

 “**Unspent Monies**” means any monies paid to the Grant Recipient which remain unspent and uncommitted at the end of the Funding Period (or, in the event of termination, the point of breach).

**“Working Day”** means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday in England.

 2.2 In this Agreement, unless the context otherwise requires:

* + 1. the singular includes the plural and vice versa;
		2. reference to a gender includes the other gender and the neuter;
		3. references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
		4. a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
		5. 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**";
		6. 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;
		7. 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;
		8. references to “**Clauses**” and “**Annexes**” are, unless otherwise provided, references to the clauses and annexes of this Agreement and references in any Annex to parts, paragraphs and tables are, unless otherwise provided, references to the parts, paragraphs and tables of the Annex in which these references appear; and
		9. the headings in this Agreement are for ease of reference only and will not affect the interpretation or construction of this Agreement.
1. **PURPOSE AND SCOPE OF GRANT**
	1. The Parties acknowledge and agree that nothing in this Agreement or the provision of Grant monies gives or is intended to give rise to contractual relations.
	2. The Grant Recipient must use the Grant only for the delivery of the Funded Activities set out in Annex 2 of this Agreement and must not, without the prior written consent of the Authority, make any material changes to the Funded Activities.
	3. The Grant 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. The Authority 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 the Grant Recipient either during or after the Funding Period.
	5. Where the Grant Recipient intends to apply to a third party for other funding for the Funded Activity, it will notify the Authority in advance of its intention to do so and, where such funding is obtained, it will provide the Authority with details of the amount and purpose of that funding.
	6. The Grant Recipient agrees and accepts that it will not apply for duplicate funding in respect of any part of the Funded Activities or any related administration costs that the Authority is funding in full under this Agreement.
2. **PAYMENT OF GRANT**
	1. The Grant will be paid only in respect of Eligible Expenditure incurred by the Grant Recipient to deliver the Funded Activities.
	2. The Authority will pay the Grant to the Grant Recipient in accordance with Annex 3 of this Agreement (Payment Schedule).
	3. The Grant represents the Maximum Sum the Authority will pay to the Grant Recipient under this Agreement with the actual amount paid to the Grant Recipient in accordance with Annex 3 of this Agreement.
	4. The first instalment of the Grant will be paid within 30 days of the Effective Date of this Agreement and receipt from the Recipient of any financial information required by The Authority’s Head of Finance. The final instalment of the Grant must be claimed by the Recipient within 30 days of the date the final Funded Activity is completed by submitting a final financial report.
	5. Time for payment of the Grant amounts will not be of the essence. The Authority will have no liability to the Grant Recipient for any Losses caused by a delay in the payment of a Grant amount howsoever arising.
	6. The Authority reserves the right not to pay any instalment of the Grant if it is not satisfied with the financial information or financial report provided by the Grant Recipient.
	7. In the event of the Grant Recipient spending more money on the Funded Activities than originally anticipated under this Agreement, the Authority will not be obliged to increase the Grant amount.
	8. **The Authority may require the Grant to be paid into a separate bank account in the name of the Grant Recipient which must be an ordinary business bank account. All cheques from such account must be signed by at least [two] individual Representatives of the Grant Recipient.**
	9. Where the Grant Recipient enters into a contract with a third party in connection with the Funded Activities the Grant Recipient will remain responsible for settling payment in respect of those invoices. Third party invoices must not be submitted to the Authority for payment.
	10. The Authority will not make any payment of the Grant unless or until the Authority is satisfied that:
3. such Grant payment will be used for Eligible Expenditure; and
4. any Grant payments have been used for the Funded Activities or, where there are Unspent Monies, have been accounted for and shown on any Grant claim or repaid to the Authority in accordance with clause 7.5 of this Agreement.
5. **[DISPOSAL OF ASSETS, CHANGE OF USE AND ASSIGNMENT**
	1. The Authority reserves the right to determine the outcome of any Assets created as a result of the Funded Activities or purchased with Grant monies.
	2. The Grant Recipient must seek approval from the Authority if the Grant Recipient or its contractors wish to Dispose of, transfer or change the use of any Asset that was acquired or improved with Grant monies and must not sell any Asset below market value without prior written permission from the Authority.
	3. Any proceeds will be surrendered to the Authority in full, unless otherwise agreed by the Authority.
	4. The Grant Recipient may not, without the prior written consent of the Authority, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement.]
6. **SPENDING CONTROLS – MARKETING, ADVERTISING, COMMUNICATIONS AND CONSULTANCY**
	1. As part of the government’s efficiency and reform programme, public funding for marketing, advertising, communications and consultancy is closely controlled. The Grant Recipient must seek permission from the Authority prior to any proposed expenditure in these areas, either in connection with, or using funding provided, under this Agreement. A complete list of the controlled activities can be found at https://www.gov.uk/government/publications/cabinet-office-controls.
	2. The Grant Recipient should provide evidence that any marketing, advertising, communications and consultancy expenditure carried out in connection with, or using funding provided under this Agreement will deliver measurable outcomes that meet government objectives and can secure value for money.
7. **REDUCTION AND RECOVERY OF GRANT**
	1. It is the Authority’s intention that the Grant will be paid to the Grant Recipient in full and in accordance with Annex 3 (Payment Schedule) of this Agreement.
	2. Without prejudice to the Authority's other rights and remedies, the Authority may withhold or suspend payment of the Grant and/or require the Grant Recipient to repay any Unspent Monies if any of the events set out in clause 7.7 and clause 12 arise.
	3. If the Grant Recipient fails to comply with any of the Terms and Conditions of this Agreement the Authority may require that all or part of the Grant be repaid.
	4. The Grant Recipient may not retain any portion of the Grant that has not been used by the end of the Funding Period without the Authority’s written permission.
	5. Where all or a proportion of the Grant remains unspent before the final instalment is paid or as a result of termination or breach of this Agreement the Unspent Monies, as calculated by the Authority, must be repaid to the Authority within 30 days of a request for repayment.
	6. If any amount repayable in accordance with clause 7.5 is not repaid within 30 days of a request for repayment, the Authority reserves the right to unilaterally deduct that amount from the final instalment and/or other sum which is due or which may later become due under this Agreement.
	7. If the Grant Recipient is wound up or goes into liquidation, administration, receivership or bankruptcy, or enters into any compromise or other arrangement of its debts with its creditors, the Authority will be entitled to recover any grant money that has not been spent and/or may withhold any further payments. If any of the money is held by the Grant Recipient’s contractors, the Grant Recipient must attempt to recover those sums from its contractors.
8. **LOSSES, GIFTS AND SPECIAL PAYMENTS**
	1. In connection with this Agreement, the Grant Recipient must obtain prior written consent from the Authority before:
9. writing off any debts or liabilities;
10. offering to make any special payments; and
11. giving any gifts.
	1. The Grant Recipient will keep a record of all gifts, both given and received, in connection with the Grant or any Funded Activity.
12. **BORROWING**
	1. The Grant Recipient must obtain prior written consent from the Authority before:
13. borrowing or lending money from any source;
14. charging or agreeing any security over any Asset; and/or
15. giving any guarantee, indemnities or letters of comfort,

that relate to any of the conditions of the Agreement, or have any impact on the Grant Recipient’s ability to deliver the Funded Activities set out in the Agreement.

1. **CHANGES TO THE AUTHORITY’S REQUIREMENTS**
	1. The Authority will notify the Grant Recipient of any changes to their activities which are supported by the Grant.
	2. The Grant Recipient will endeavour to accommodate any changes to the Authority’s needs and requirements under this Agreement.
2. **ACKNOWLEDGEMENT AND PUBLIC STATEMENTS**
	1. The Grant Recipient will acknowledge the Grant in its annual report and accounts, including an acknowledgement of the Authority as the source of the Grant and will show the Grant Recipient’s related expenditure as a restricted fund in the Grant Recipient’s annual accounts.
	2. The Grant Recipient will not publish any material referring to the Funded Activities or the Authority without the prior written agreement of the Authority. The Grant Recipient will acknowledge the support of the Authority 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 Authority) will include the Authority's name and logo (or any future name or logo adopted by the Authority) using the templates provided by the Authority from time to time.
	3. Any publicity material for the Funded Activities must refer to the programme under which the Grant was awarded and must feature the Authority’s logo. If a third party wishes to use the Authority’s logo, the Grant Recipient must first seek permission from the Authority.
	4. In using the Authority's name and logo, the Grant Recipient will comply with all reasonable branding guidelines issued by the Authority from time to time.
	5. The Grant Recipient will comply with all reasonable requests from the Authority to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Authority in its promotional and fundraising activities relating to the Funded Activities.
3. **TERMINATION**
	1. Either Party may terminate this Agreement at any time by giving at least 3 months’ written notice to the other Party.
	2. The Authority may by notice in writing to the Grant Recipient terminate this Agreement with immediate effect if any of the following events occur:

a) the Grant Recipient intends to use (in the opinion of the Authority), has used in the past, or uses the Grant for purposes other than those for which they have been awarded; or

b) the Grant Recipient fails to comply with the KPI targets set out in Schedule 4 of this Agreement for more than three (3) consecutive months, or three (3) months in any six (6) month rolling period.

c) the Grant Recipient is, in the reasonable opinion of the Authority, delivering the Funded Activities in a negligent manner;

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 the reasonable opinion of the Authority, undertakes activities that are likely to bring the reputation of the Funded Activities or the Authority into disrepute;

f) the Grant Recipient provides the Authority with any materially misleading or inaccurate information;

g) the Grant Recipient commits or committed a Prohibited Act;

h) the Authority determines (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 Authority or (ii) taken any actions which unfairly bring or are likely to unfairly bring the Authority’s name or reputation and/or the Authority into disrepute;

(i) the Grant Recipient transfers, assigns or novates to any third party, or encumbers in any way, the Grant without the Authority’s consent;

(h) the Grant Recipient or any of its directors, trustees or senior management team, or anyone involved in the delivery of this Agreement or the Funded Activities, is under investigation by the Authority, or receives a monetary penalty notice, or is subject to any criminal or civil proceedings in relation to its compliance with the DPA, the Privacy and Electronic Communications Regulations 2003, GDPR, or any other law or regulation relating to data protection or privacy or within the Authority’s regulatory remit;

(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 fails to comply with any of the Terms and Conditions set out in the Agreement and fails to rectify such Breach within 30 days of receiving written notice from the Authority detailing the failure.

* 1. In the event of a Breach of the Agreement, the Authority may serve a notice on the Grant Recipient requiring remedial action to be taken within a specified period. If the Breach cannot be remedied the failure to remedy the Breach will amount to a Material Breach. Where a Grant Recipient is found to have committed a Material Breach the Agreement will be terminated with immediate effect on receipt of notice in writing from the Authority.
	2. In the event a change of government or in policy direction, this Agreement may be terminated by the Authority with immediate effect by notice in writing (such notice period as the Authority determines will be reasonable in all the circumstances).
1. **AMENDMENT OR VARIATION OF THE AGREEMENT**
	1. No amendment or variation to this Agreement will be effective unless it is in writing, agreed and signed by the Representatives on behalf of each of the Parties.
2. **CONSEQUENCES OF TERMINATION AND SUPPORT FOR TRANSFER OF RESPONSIBILITY**
	1. Nothing in this Agreement will affect any provision of this Grant which is expressly or by implication intended to apply or continue to apply upon termination of this Agreement, for any reason.
	2. If the Authority terminates this Agreement in accordance with clause 12.1 the Authority may (without any obligation to do so) pay the Grant Recipient’s reasonable costs in respect of the delivery of the Funded Activities performed up to the date upon which notice of the termination is first given to the Grant Recipient. Reasonable costs will be identified by the Grant Recipient and will be subject to the Grant Recipient demonstrating that they have taken adequate steps to mitigate their costs. For the avoidance of doubt, the amount of reasonable costs payable will be determined solely by the Authority.
	3. The Authority will not be liable to pay any of the Grant Recipient’s costs or those of any contractor/supplierrelated 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.
3. **DISPUTE RESOLUTION**
	1. The Parties will use all reasonable endeavours to negotiate in good faith, and settle amicably, any dispute that arises during the continuance of the Agreement.
	2. In the event that a dispute arises as a result of the Agreement, the dispute will be referred in the first instance to the Parties’ Representatives.
	3. If the dispute cannot be resolved between the authorised points of contact within a maximum of 15 Working Days, then the matter will be escalated to formal meeting between the Grant Manager of the Authority and the Grant Recipient’s Chief Executive (or equivalent).
	4. Without prejudice to any other rights or remedies that the Authority may have, the Authority reserves the right to seek injunctive or other appropriate relief for sufficiently serious, time-critical, actual or anticipated Breach.
4. **EXIT PLAN**

Not used.

1. **GRANT REVIEW**
	1. The Grant will be reviewed [quarterly] 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 5 of this Agreement. As part of the review the Authority will have regard to any reports produced by the Grant Recipient in accordance with clauses 18-19.
	2. Each review may result in the Authority making a recommendation or a decision that:
2. the Funded Activities and Agreement continue in line with existing plans;
3. there should be an increase or decrease in Grant funding;
4. the KPIs should be re-defined and agreed;
5. the Authority should recover surplus funding;
6. the Agreement should be terminated.
	1. The Grant Recipient may make representations to the Authority regarding any recommendations or decisions made in accordance with clause 17.2. The Authority is not however obliged to take such representations into account when making its recommendation or decision and any such recommendation or decision will be final and may be carried out by the Authority at the Authority’s absolute discretion.
7. **MONITORING, REPORTING, INTERNAL AUDIT AND ASSURANCES**
	1. The Grant Recipient must provide the Authority with all reasonable assistance and co-operation in relation to any ad-hoc information requests made by the Authority in relation to the Funded Activities. Without prejudice to these obligations, the Grant Recipient must also provide a [quarterly] report on:
		1. the progress made towards achieving the agreed KPIs/outputs and the defined longer term outcomes set out in Annex 4 of this Agreement and where possible will quantify what has been achieved by reference to the Funded Activities’ targets; [and
		2. details of any Assets either acquired or improved using Grant funding. ]
	2. Where the Grant Recipient has obtained funding from a third party for its delivery of part of the Funded Activities, the Grant Recipient will include the amount of such funding in its financial reports together with details of what that funding has been used for.
	3. The Grant Recipient will permit any person authorised by the Authority such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Grant Recipient's fulfilment of the conditions of this Agreement and will, if so required, provide appropriate oral or written explanations from them.
	4. The Grant Recipient will notify the Authority as soon as reasonably practicable of:
		1. any financial, administrative, managerial difficulties that may hinder or prevent the Grant Recipient from fulfilling its obligations under the Agreement;
		2. any actual or potential material failure to meet any of the Terms and Conditions of the Agreement;
		3. actual or potential material variations to the Eligible Expenditure agreed in accordance with the Grant offer letter or Annex 4 of this Agreement; and
		4. any change in the information on costs (whether actual or estimated) of carrying out the Funded Activities or any event which materially affects the continued accuracy of such information.
	5. The Grant Recipient will represent and undertake that the reports and information it gives pursuant to this clause 18 are accurate and that it has diligently made full and proper enquiry of the matter pertaining to the reports and information given.
	6. Throughout the Grant Period, the Grant Recipient will maintain an internal audit function which will operate in accordance with the International Standards on Auditing (UK and Ireland) in force from time to time.
	7. The Grant Recipient will comply with (and facilitate the Authority’s compliance with) all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Authority.
	8. The Grant Recipient will permit (and comply with) any surveys of management controls and systems, including internal audit reviews, as may be required by the Authority.
	9. The Grant Recipient must have the Payment Schedule (Annex 3) and the Eligible Expenditure form (Annex 4) independently audited for certification. An auditors or accountants’ report should state whether, in their opinion, the grant paid to the Grant Recipient, was applied in accordance with the Agreement.
	10. The Grant Recipient’s Chief Executive (or equivalent) should ensure that the systems governing the Grant funding are subject to independent review.
	11. The systems in place to govern the Grant funding should be appropriate to the size of Grant Recipient organisation, the level of Grant, risk to the public funds provided and cost of the review. These arrangements may be reviewed by the Authority in line with HM Treasury’s Public Sector Internal Audit Standards.
	12. The Grant Recipient (and any person acting on behalf of the same) will at the request of the Authority permit (a) the Comptroller and Auditor General or appointed representatives; and (b) the Authority or its Representatives access at all reasonable times to all documents (including computerised documents and data) and other information as are connected to the Grant payable under this Agreement for the purpose of the Funded Activities.
	13. The documents, data and information referred to in paragraph 18.12 are such which any internal auditors, external auditors, the Authority or the Comptroller and Auditor General or any department or other public body may reasonably require for the purposes of audit or for carrying out examinations into the economy, efficiency and effectiveness with which the Grant Recipient has used the Grant. In particular, the Grant Recipient will retain such information as would be necessary to provide assurance that the Grant Recipient delivered the Minimum Requirements of the Scheme.
	14. Paragraphs 18.12 and 18.13 do not constitute a requirement for the examination, certification or inspection of the accounts of the Grant Recipient or its partners by the Comptroller and Auditor General under section 6(3) of the National Audit Act 1983. The Comptroller and Auditor General will seek access in a measured manner to minimise any burden on the Grant Recipient and will avoid duplication of effort by seeking and sharing information with the Audit Commission, Wales Audit Office or Audit Scotland as appropriate.
8. **ACCOUNTS AND RECORDS**
	1. Where this Agreement is for a term longer than one Financial Year, the Grant Recipient must provide the following details to the Authority before the end of each Financial Year:
9. a schedule of the Funded Activities and estimates of income and expenditure for the next Financial Year, together with forecast expenditure for the current year;
10. a statement setting out the total Grant agreed for the year;
11. details of any additional funding for delivery of the Funded Activities, other than the Grant, with full details of how it is to be spent;
12. the level of balances held by the Grant Recipient at the end of the Financial Year.
	1. The Grant Recipient will provide revised forecasts of income and expenditure:
13. when these forecasts increase or decrease by more than 15% of the original expenditure forecasts; and/or
14. at the request of the Authority.
	1. The Grant Recipient will keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of Grant monies received from the Authority and any income generated from the Funded Activities.
	2. The Grant 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 funds or other monies.
	3. The Grant Recipient will keep all original accounting records relating to the Funded Activities, including invoices, receipts, VAT records, accounts and any other relevant documents relating to the expenditure of the Grant for a period of at least six years following receipt of any Grant monies to which they relate.
	4. Where the Grant funding allows for capital spend, the Grant Recipient must keep a register of Fixed Assets, including all land and building acquired or improved with Grant funding.
	5. The Grant Recipient will within 5 working days of a request by the Authority, provide the Authority with such further information, explanations and documents as the Authority may reasonably require, in order for the Authority to establish that the Grant has been used properly in accordance with this Agreement.
	6. Where the Grant Recipient is a company registered at Companies House (or equivalent in the state or country in which the Grant Recipient is based) the Grant Recipient must file their annual return and accounts by the dates specified by Companies House (or their equivalent registration organisation).
	7. Where the Grant Recipient is a registered charity, the Grant Recipient must file their charity annual return by the date specified by the Charity Commission.
	8. The Grant Recipient must provide the Authority with copies of their annual return, accounts and charity annual return (as applicable) within five days of filing them at Companies House and/or the Charity Commission. If a Grant Recipient fails to comply with clauses 19.8 and 19.9 the Authority may terminate this Agreement or suspend payment of the Grant at the Authority’s discretion.
15. **FINANCIAL MANAGEMENT**
	1. The Grant Recipient will at all times comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act.
	2. The Grant Recipient must have a sound administration and audit process, including internal financial controls to safeguard against fraud and theft, and will 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 notified to the Authority as soon as they are identified. The Authority may then request their referral (which the Grant Recipient is obliged to carry out) to external auditors or other third parties as required.
	3. The Grant Recipient must be able to demonstrate on request that the systems of financial and manpower control, management and organisation will enable the Grant Recipient to meet the Funded Activities and objectives of this Agreement.
	4. The Grant Recipient must comply with the recommendations of the Public Accounts Committee and any other expenditure controls specified by Government.
	5. The Grant Recipient will not transfer, assign, novate or otherwise dispose of the whole or any part of the Grant or this Agreement or any rights under it, to another organisation or individual, unless the Grant Recipient has first entered into an agreement, authorised by the Authority, requiring the Grant Recipient to work with another organisation in delivering the Funded Activities.
16. **GRANT RECIPIENT PERSONNEL**
	1. The Grant Recipient will seek the Authority’s prior written approval before creating or replacing staff in posts where they are responsible for delivery of the Funded Activity. The Grant Recipient will appoint replacement staff with appropriate qualifications and experience.
17. **INTELLECTUAL PROPERTY RIGHTS**
	1. Save as expressly granted elsewhere in this Agreement the Grant Recipient will retain all IPRs that are either:
18. its Background IPR; or
19. developed during the period of the Grant but are not Funded Activity Specific IPR.
	1. The Authority will retain:
20. its Background IPR; and
21. intellectual property rights in all Funded Activity Specific IPRs.
	1. Other than as expressly set out in this Agreement, neither Party will have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
	2. Funded Activity Specific IPRs will be made available to the Grant Recipient for use in accordance with the Open Government Licence. 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 the Grant Recipient complies with the terms the Grant Recipient will have permission to use information anywhere in the world. The licence is also non-exclusive which means that the Grant Recipient will not be the only person able to make use of it. The Open Government Licence enables the Grant Recipient to use information for both commercial and non-commercial purposes.
	3. Any intellectual property rights in reports created by the Authority or its subcontractors in relation to this Agreement and the Funded Activities, and the Authority’s name and logo, shall belong to the Authority.
	4. The Authority may freely share any information, know-how, system or process developed during the period of the grant Funded Activities to support similar projects.
	5. Ownership of third party software or other IPR to deliver services will remain with the relevant third party.
	6. The Grant Recipient must ensure that they have obtained the relevant agreement from the Authority before any additions or variations are made to the standard ‘off-the-shelf’ versions of any third party software and other IPR. The Grant Recipient will obtain and maintain all appropriate licences to use the third party software.
22. **INSURANCE**
	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.
	2. The Grant Recipient will upon request produce to the Authority 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.
	3. Where the Grant Recipient receives more than [ X ] per cent of the Grant Recipient’s total income from public funds, the Grant Recipient will notify the Authority. The Authority will review the nature of the control of Grant Recipient’s organisation to determine any resulting requirement for reclassification which may in turn change the insurance requirements under the Agreement.
23. **CONFLICTS OF INTEREST AND FINANCIAL OR OTHER IRREGULARITIES**
	1. The Grant Recipient must have and will keep in place formal procedures that require the Grant Recipient’s Representatives to declare any personal or financial interest in any matter concerning the grant funded activities and if a conflict of interest is identified the individual is to be excluded from any discussion or decision-making relating to the matter concerned.
	2. The Grant Recipient must inform the Authority immediately if there are any grounds for suspecting financial irregularity in the use of the grant, explain what steps are being taken to investigate the irregularity and keep the Authority informed about the progress of the investigation. For these purposes “financial irregularity” includes (but is not limited to) potential fraud or other impropriety, mismanagement, and the use of grant for any purpose other than those stipulated in this Agreement.
24. **TRANSPARENCY**
	1. The Authority and the Grant Recipient acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Information Acts, the content of the Agreement is not Confidential Information.
	2. The Authority will be responsible for determining whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA. The Grant Recipient agrees that the Authority may make any redactions of this Agreement the Authority considers appropriate.
	3. Subject to clause 25.1, with the support of the Grant Recipient, the Authority may publish the Agreement in its entirety (including any agreed changes or redactions) to the general public.
25. **LEGISLATION, PROCUREMENT REQUIREMENTS AND STATE AID LAW**

***Legislation***

* 1. The Grant Recipient must observe its obligations under FOIA, DPA, GDPR, EIR and HRA, and under the common law duty of confidentiality, and shall comply with all applicable laws, regulations, best practice and codes of practice (and shall notify the Authority immediately of any significant departure from such legislation, regulations or codes).
	2. The Grant Recipient hereby acknowledges that the Authority is subject to requirements under the Information Acts. Where requested by the Authority, the Grant Recipient will provide reasonable assistance and cooperation to the Authority to assist the Authority’s compliance with its information disclosure obligations.
	3. On request from the Authority, the Grant Recipient will provide the Authority with all such relevant documents and information relating to the Grant Recipient’s data protection policies and procedures as the Authority may reasonably require.
	4. The Grant Recipient acknowledges that the Authority, acting in accordance with the codes of practice issued and revised from time to time relating to FOIA and/or EIR, may disclose information concerning the Grant Recipient and this Agreement without consulting with the Grant Recipient.
	5. The Authority will take reasonable steps to notify the Grant Recipient of a request for information to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority will be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Acts.
	6. The Grant Recipient agrees that it is the data controller of any personal data processed by it pursuant to the Funded Activities, as those terms are defined in the Information Acts in force at the relevant time. It will comply fully with the Information Acts to the extent that they are applicable to it and with the ICO’s public guidance for data controllers.
	7. The Grant Recipient agrees that the Authority, its employees and contractors may use personal data which the Grant Recipient provides about its staff, partners and participants involved in the Funded Activities to administer and evaluate the Grants programme, and to exercise the Authority’s rights under this Agreement. The Grant Recipient agrees that the Authority may also share the Grant Recipient’s staff’s names and contact details with other recipients participating in the ICO’s Grants programme.
	8. The Grant Recipient agrees that the Authority may share details of the Grant, the name of the Grant Recipient’s organisation and any personal data obtained from it with the UK Government and that such details may appear on the Government Grants Information System database which is available for search by other funders. The Grant Recipient also agrees to the Authority publishing any details of the Grant on the ICO website.
	9. The Grant Recipient will notify the Authority of any change to its constitution, legal form, membership structure (if applicable) or ownership, and of any complaint or investigation by any regulatory body or the police into its activities or those of its staff or officers or volunteers.

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

* 1. The Grant Recipient will procure that any of its Representatives involved in the Funded Activities will, adopt such policies and procedures that are required in order to ensure that value for money has been obtained in any procurement of goods or services funded by the Grant.
	2. Where the Grant Recipient is a contracting authority within the meaning of the Procurement Regulations the Grant Recipient warrants that it will comply, as necessary, with the applicable procurement laws when procuring goods and services.
	3. Where the Grant Recipient reasonably considers that there is an objective justification for not complying with procurement rules and seeks to rely on such a justification, it will seek prior approval from the Authority, setting out the reasons for non-compliance in a structured business case.
	4. To the extent that the Grant is deemed to constitute State Aid, you acknowledge that the Grant is made under the ‘de minimis’ exemption and confirm that you have not received funding from a public body in the three years prior to the date of the Grant that would aggregate with the Grant to exceed the permitted threshold. You shall inform the ICO immediately if you receive or intend to receive any public funding within three years from the date of the final payment of this Grant which will or may constitute further State Aid. If necessary, notwithstanding the other provisions in this Agreement, you shall immediately repay any funding which, in the ICO’s absolute discretion, may constitute unlawful State Aid
1. **GOVERNING LAW**
	1. This Agreement will 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.
	2. No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.
	3. Nothing in this Agreement creates or implies any partnership, joint venture, agency or employment relationship between the Authority and the Grant Recipient. The Grant Recipient has no authority to make any representation or commitment, nor to incur any liability, on behalf of the Authority.

|  |  |
| --- | --- |
| **SIGNED by: [Steve Wood]** **for and on behalf of the The Information Commissioner** | **………………………………………………….****Signature** |
| **Title:** Head of International Strategy & Intelligence**Date: ….………………………………….** |
|  |  |
| **SIGNED by: [*insert authorised signatory’s name*]****for and on behalf of [insert name of Grant Recipient]** | **…………………………………………………****Signature** |
| **Title:** ………………………………………………**Date: ………………………………………** |

**ANNEX 1 – Grant Offer Letter**



[**Name and registered address details for Grant Recipient.**

**Include charity number (if any).]**

**For the attention of**: [Insert name of grant manager at Grant Recipient]

**Dated** as at the date of the ICO’s authentication below.

Dear [insert name]

**Grants Programme**

**Background:**

The Information Commissioner has established a Grants Programme (the “Programme”)

to stimulate and facilitate the development of a research community focused on privacy research and solutions, raise public awareness and promote best practice.

As part of the Programme you have made an application and the Commissioner and her office (the “ICO”) has decided to award you the Grant detailed below, to assist you in carrying out the Funded Activities as described in Annex 2 of the attached Grant Agreement and in accordance with that Agreement.

The ICO’s offer of the Grant is subject to the terms and conditions in the Grant Agreement.

**Basic details**

*Grant amount*: £[amount of grant] to be paid in two instalments in accordance with Annex 3 of the Agreement.

*Contacts*:

You: [insert name and contact details]

ICO: [ Steve Wood (Grant Manager)

 Head of International Strategy & Intelligence

 ICO, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK95AF

 Tel: 0161 545706

 Email: steve.wood@ico.org.uk]

**Commitment to the Programme:**

You undertake to:

(a) commit sufficient people and resources to ensure the success of the Funded

 Activities;

(b) engage with the ICO and anyone appointed by it to deal with you in relation to the

 Funded Activities; and

(c) be open to collaborating with other initiatives, to sharing learning and to contribute

 to the overall aims of the Grants Programme.

**Eligible Expenditure:**

You will use the Grant for the Funded Activities as described in Annex 2 of the Grant Agreement, in accordance with any agreed budget included in your application and in accordance with the eligibility rules set out in Annex 4 of the Grant Agreement, and the other terms of the Grant Agreement.

If it forms part of the agreed Funded Activities, you will also use the Grant to assist with dissemination of the results and, in any event, you will provide the ICO with information about the Funded Activities throughout their duration to enable the ICO to evaluate them on their merits and in relation to the Grants Programme in general.

**Special Conditions:**

The ICO does not anticipate imposing special conditions on Grantees over and above the terms and conditions of the Grant Agreement. However the Grant Recipient’s attention is drawn specifically to paragraphs 7 (‘Reduction and Recovery of Grant’) and 12 (‘Termination’) in the Grant Agreement.

At all times the ICO reserves the right to end its funding relationship with you in accordance with the terms of the Agreement and pay no further instalments of the Grant.

**Non-financial support:**

The ICO is not intending to make non-financial support available to the Grant Recipient. The Grant Recipient must ensure that it has all necessary resources available to complete the Funded Activities.

**Milestones and Payment Schedule:**

The ICO will pay the Grant to you in instalments on completion of the Milestones set out in Annex 3 of the Agreement.

Payments will be made to the following bank account:

[bank details of Grantee]

**Please Note: Grant Recipient must provide the following as proof of bank account details:-**

[ICO Finance Team requirements]

Please sign and return two copies of this letter to indicate your acceptance of the terms and conditions of the Grant.

The ICO will not pay any Grant monies to you until this letter and the Grant Agreement have both been executed by it as set out below.

|  |  |
| --- | --- |
| **SIGNED by:** [Steve Wood] **for and on behalf of the The Information Commissioner** | ………………………………………………….Signature |
| Title: [Head of International Strategy & Intelligence]Date: …………………………………………………. |
| We have read and understand this grant offer letter and the attached Conditions and accept them on behalf of [*name of organisation*] |
| **SIGNED by:** [*insert authorised signatory’s name*]**for and on behalf of [insert name of Grant Recipient]** | …………………………………………………Signature |
| Title: ………………………………………………Date: ……………………………………………… |

**ANNEX 2 -The Funded Activities**

*[Setting out the scope of the Funded Activities should ensure that this description is sufficiently precise to ensure that the Grant is only applied for the purposes intended. However, the description of the Funded Activities should also allow the Grant Recipient an appropriate measure of operational flexibility and degree of freedom in its decision making (within the parameters of the Funded Activities): the Grant Recipient is required to gain the Authority’s permission to amend the Funded* *Activities or to use the Grant for other purposes].*

1. **Background/purpose of the Grant**
	1. **Background**
	2. **Aims and objectives of the Funded Activity**
2. **Funded Activities**

**[Insert details of the Funded Activities ]**

**ANNEX 3 -Payment Schedule**

|  |  |  |
| --- | --- | --- |
| **INSTALMENTS** | **GRANT SUM PAYABLE** | **DUE DATE** |
| Initial payment – [75%] |  | Within 30 days of submission of your financial details following execution of the Agreement |
| Final payment – [25%] |  | Within 30 days of acceptance of your final report by ICO  |

**ANNEX 4 - Eligible Expenditure schedule (breakdown of forecast grant expenditure)**

*[Details of eligible expenditure must be included in all grants agreements, including items of expenditure that are expressly ineligible. Grant recipients are required to provide evidence of their grant expenditure.]*

|  |  |
| --- | --- |
| **Item of Expenditure** | **Budget (in UK Sterling)/forecast expenditure** |
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**FURTHER GUIDANCE REGARDING ELIGIBLE EXPENDITURE**

All Eligible Expenditure must be claimed net of VAT.

The following costs/payments will be classified as Eligible Expenditure if made for the purposes of the Funded Activity [insert/delete as applicable]:

Fees charged or to be charged to the Grant Recipient by the external auditors/accountants for reporting/certifying that the grant paid was applied for its intended purposes.

giving evidence to Select Committees;

attending meetings with Ministers or officials to discuss the progress of a taxpayer funded grant scheme;

responding to public consultations, where the topic is relevant to the objectives of the grant scheme. This does not include spending government grant funds on lobbying other people to respond to the consultation;

providing independent, evidence based policy recommendations to local government, departments or Ministers, where that is the objective of a taxpayer funded grant scheme, for example, ‘What Works Centres’; and

providing independent evidence based advice to local or national government as part of the general policy debate, where that is in line with the objectives of the grant scheme.

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

* + 1. Legal tender is passed to a supplier (or, for wages, to an employee);
		2. A letter is posted to a supplier or employee containing a cheque; or
		3. An electronic instruction is sent to a bank/building society to make a payment to a supplier or employee by direct credit or bank transfer.

The Grant Recipient must not deliberately incur liabilities for Eligible Expenditure in advance of need; nor pay for Eligible Expenditure sooner than the due date for payment.

**INELIGIBLE EXPENDITURE**

The following costs must be excluded from Eligible Expenditure [amend/delete as appropriate]:

1. Payment that supports for lobbying or activity intended to influence or attempt to influence Parliament, Government or political parties, or attempting to influence the awarding or renewal of contracts and grants, or attempting to influence legislative or regulatory action;
2. using grant funding to petition for additional funding;
3. input VAT reclaimable by the Grant Recipient from HMRC; and
4. payments for activities of a political or exclusively religious nature.
5. Goods or services that the Grant Recipient has a statutory duty to provide;
6. Payments reimbursed or to be reimbursed by other public or private sector grants
7. Contributions in kind (i.e. a contribution in goods or services, as opposed to money);
8. Depreciation, amortisation or impairment of fixed assets owned by the Grant Recipient
9. The acquisition or improvement of fixed assets by the Grant Recipient (unless the grant is explicitly for capital use – this will be stipulated in the Grant Offer Letter);
10. Interest payments (including service charge payments for finance leases);
11. Gifts to individuals other than promotional items with a value of no more than [X] a year to any one individual;
12. Entertaining (entertaining for this purpose means anything that would be a taxable benefit to the person being entertained, according to current UK tax regulations);
13. Statutory fines, criminal fines or penalties; or
14. Liabilities incurred before the issue of this funding agreement unless agreed in writing by the Funder.

**ANNEX 5 - Agreed Outputs/Long Term Outcomes and Key Performance Indicators**

The Grant Recipient will comply with the Government Grants Minimum Standards 8, which reads: *“all government grants will have outputs agreed and longer-term outcomes defined, wherever possible, to enable active performance management, including regular reviews and adjustments where deemed necessary”.*

The GrantRecipient shall achieve the following milestones and key performance indicators:

Agreed Outputs

1.

2.

3.

4.

Key Performance indicators/milestones

|  |
| --- |
| KPIs measured quarterly |
| [Report on progress towards agreed outputs.]  |
| [Financial reports.] |
| [ ] |