

**GRANT AGREEMENT FOR
Department for Transport**

BETWEEN

SOUTH YORKSHIRE MAYORAL COMBINED AUTHORITY

AND

Rotherham Metropolitan Council

Re O0209 Local Transport Capital Funding – DfT, Potholes

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The Agreement Date: ()

PARTIES

SOUTH YORKSHIRE MAYORAL COMBINED AUTHORITY, whose principal office is at 11 Broad Street West, Sheffield, S1 2BQ ("**Authority**")

Rotherham Metropolitan Brough Council, whose registered office is at Riverside House, Main Street, Rotherham S60 1AE ("**Recipient**")

BACKGROUND

- (2) This Agreement sets out the terms and conditions on which the Grant is made by the Authority to the Recipient
- (3) These terms and conditions are intended to ensure that the Grant is used for the Project and that the Project achieves the Project Outputs and Project Outcomes

GRANT

A grant up to the maximum amount of £826,349 (Eight Hundred Thousand and Two Hundred and Forty Nine Pounds made up of Department for Transport to be paid by the Authority to the Recipient in accordance with the terms of this Agreement.

AGREED TERMS:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement unless the context otherwise requires the following words and expressions shall have the following meanings:

"Accruals Claim Form" means the standard accruals claim form as provided by the Authority;

"Agreement" means this agreement, comprising these clauses and the schedules thereto;

"Approved Claim Form" means the standard claim form as provided by the Authority;

"Base Interest Rate" means the base rate of Barclays Bank plc (or the base rate of such other bank as the Authority may from time to time stipulate);

Bribery Act: 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;

"Change" means an amendment to the Project which meets the test set out in Clause 2.2(a)

"Claim Period" means the period commencing on the Commencement Date and ending on the last day of the next Quarter thereafter and each subsequent period of one quarter until 31 March;

“Clawback” means the repayment part of the Grant as a result of the Project not achieving the Project Outputs and Project Outcomes, as provided for by clause 11 and Schedule 4;

“Clawback Notice” means formal notification from the Authority to the Recipient confirming the requirement to repay a proportion or all of the Grant, in accordance with clause 11;

“Clawback Review Date” as specified in Schedule 2, Paragraph 2.1 means the date by which the Authority will consider whether Clawback is required;

“Clawback Sum” means the proportion of the Grant requiring repayment to the Authority, in accordance with clause 11;

“Commencement Date” as set out in Schedule 2, Paragraph 2.1 means the date from which the Eligible Costs and Project Outputs and Project Outcomes and Social Value Outcomes may be attributed to the project;

“Completion Date” as set out in Schedule 2, Paragraph 2.1 means the date by when the Eligible Costs and Project Outputs in Schedule 4, Paragraph 4.1, must be achieved;

“Consents” means any approval, consent, exemption, licence or permission by or from any governmental or other authority or other person including (but not limited to) consents from the Recipient's landlord and any adjoining owner and any consents required from any local planning authority including planning permission and (where required) listed building consent, building regulation approval and fire officer approval and any other consents required in relation to the Works and/or the Project or otherwise required to enable the Recipient to complete the Works, maintain and use the Site and to comply with its obligations contained in this Agreement;

“Closure Date” as set out in Schedule 2, Paragraph 2.1 means the date by when the Agreement will be formally concluded by the Authority;

“Data Protection Legislation” means the Data Protection Act 2018 (DPA), and the General Data Protection Regulation ((EU) 2016/679) (GDPR) so far as it has been preserved by the European Union (Withdrawal) Act 2018 and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and any successor legislation to the GDPR or the DPA;

“Date of Practical Completion” means the date when the Works are practically complete as evidenced by the Recipient's architect's certificate of practical completion issued under the relevant building contract or building contracts in respect of such works or (if later) the date when the Authority notifies the Recipient that it is satisfied that such Works are practically complete in accordance with the Consents and this Agreement and **“Practical Completion”** shall in each case be construed accordingly;

“Diversity” means the promotion of a culture that recognises individual difference by providing a working and social environment where everyone has the opportunity to develop their full potential;

“EIR” means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information commissioner in relation thereto;

“Eligible Costs” means the specific costs that the Grant can be used for as set out in Schedule 3, Paragraph 3.3;

“Environmental Information” has the meaning ascribed to it in Regulation 2(1) of the EIR;

“Event of Default” means an event or circumstance as defined in clause 7.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation thereto;

“Final Evaluation Date” as set out in Schedule 2, Paragraph 2.1 means the date by when the Recipient will submit final evaluation reports to the Authority, as detailed in Schedule 5;

“Final Review Date” as set out Schedule 2, means the date by when the Project Outcomes in Schedule 4 must be achieved;

“Financial Year” means the Authority's financial year which runs from 1 April to 31 March;

“Grant” means the amount provided by the Authority as reimbursement of Qualifying Expenditure defrayed by the Recipient in relation to the Project in accordance with clause 3 up to the Maximum Amount;

“Grant Manager” means the person appointed by the Authority to manage the Grant in relation to this Agreement and / or any such person notified from time to time to the Recipient or his or her replacement;

“Held on Behalf of” has the meaning, in relation to information held for the purposes of FOIA, in the definition at Section 3(2) of FOIA; and in relation to Environmental Information held for the purposes of the EIR, in the definition at Regulation 2(1) of the EIR;

“ICT” means information and communications technology;

“Information” means the information recorded in any form;

“Intellectual Property” means any or all of the following: patents, trademarks, service marks, drawings, designs, registered designs, utility models, design right, copyright (including copyright in computer software), database right, inventions, trade secrets and other confidential information, technical information, Know-How, business or trade names, rights to prevent passing off, and all other intellectual property rights and rights of a similar or corresponding nature in any part of the world, whether registered or not or capable of registration or not and including all applications and the right to apply for any of the foregoing rights;

“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;

“Law” means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Recipient is bound to comply;

“Maximum Amount” means (subject to the provisions of clause 2 (Recipient's Obligations)) the maximum amount of Grant available to be claimed by the Recipient being £826,349 (Eight

Hundred Thousand and Two Hundred and Forty Nine Pounds including non-recoverable VAT (if any) which is to be allocated to the following Financial Years: 2023 – 2024. The Maximum Amount is the Total Grant Award less any grant previously awarded via the Stage 1 Grant Letter and/or a Stage 2 Grant Letter;

"Maximum Yearly Sum" for any Financial Year has the meaning given to it in clause 3.5;

"Principles" means the principles of acceptable subsidies set out in Article 3.4 of the UK-EU TCA Rules.

"Prohibited Act": means:

- (a) offering, giving or agreeing to give to any servant of the Authority 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 any other contract with the Authority; or
 - (ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Authority;
- (b) entering into this Agreement or any other contract with the Authority where a commissioning 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 Authority;
- (c) 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 any other contract with the Authority; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Authority;

"Project" means the project as described in Schedule 1, Paragraph 1.2;

"Project Accounts" has the meaning given to it in sub-clause 5.2;

"Project Costs" means the cost of delivering the Project as detailed in Schedule 3, Paragraph 3.2;

"Project Intellectual Property" means all Intellectual Property arising from or which comes into existence as a result of carrying out the Project to the extent that it is owned or acquired or is otherwise under the control of the Recipient;

"Project Learning Review" means the evaluation report referred to in Schedule 5, as provided by the Authority;

"Project Manager" means the Recipient's manager of the Project identified in Schedule 1, Paragraph 1.3 and any replacement from time to time as agreed by the Authority;

"Project Monitoring Period" means from Commencement Date to Closure Date as specified in Schedule 2, Paragraph 2.1;

"Project Outputs" means the product of the Works, as set out in Schedule 4, Paragraph 4.1;

"Project Outcomes" means the benefits of the Works, as set out in Schedule 4, Paragraph 4.2;

"Project Reference Number" means O0209 Local Transport Capital Funding – DfT, Potholes,, the reference assigned to the Project by the Authority, to be quoted on all Notices from the Recipient to the Authority;

"Qualifying Expenditure" means the amount which the Authority is satisfied has been reasonably and properly incurred and paid by the Recipient in executing the Works (excluding financial costs interest charges and VAT which is recoverable from HM Customs & Excise or any other person);

"Quarter" means a three-calendar month period in the Financial Year, the first Quarter commencing on the same date as the Financial Year;

"Request for Information" shall have the meaning set out in FOIA or any apparent request for Information under the FOIA, the EIR or the Code of Practice on the discharge of public authorities' functions under part 1 of the FOIA;

"Retention" means the sum of 5% to be retained against each Grant claim, in accordance with clause 4;

"Site" means the Rotherham area site, as set out in Schedule 1 (Project);

"Subsidy Rules" means the UK-EU TCA Rules and the WTO-ASCM Rules together

"Sustainable Development" means social progress which recognises the needs of everyone, effective protection of the environment, prudent use of natural resources and economic development that is inclusive, efficient and stable;

"UK-EU TCA Rules" means the subsidy provisions set out in Title XI Chapter 3 of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community of the one part and the United Kingdom of Great Britain and Ireland of the other part dated 24 December 2020

"VAT" means value added tax and any tax or duty of a similar nature levied in addition to or in substitution for the same;

"Works" means the works necessary to deliver the Project Outputs as detailed in Schedule 1, Paragraph 1.3.

"WTO-ASCM Rules" means the subsidy provisions set out in the World Trade Organisation Agreement on Subsidies and Countervailing Measures dated 15 April 1994

- 1.2 References to Clauses, sub-clauses, Schedules and Annexes are to the clauses, sub-clauses, schedules and annexes of this Agreement unless otherwise stated.
- 1.3 Headings are for convenience only and shall not affect the interpretation of this Agreement.
- 1.4 In this Agreement references to the masculine include the feminine and the neuter, and the singular shall include the plural, and vice versa as the context admits or requires.

- 1.5 In this Agreement references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.6 In the event of a conflict between the following elements comprising this Agreement the priority shall prevail in the following descending order -
- (a) The conditions set out in the main body of this Agreement;
 - (b) The Schedules attached to this Agreement;
 - (c) The Full Business Case as approved.

2 RECIPIENT'S OBLIGATIONS

2.1 Grant

- (a) The Recipient shall use the Grant only for the Eligible Costs subject to the and in accordance with the terms and conditions set out in this Agreement. The Grant shall not be used for any other purpose without the prior written agreement of the Authority.
- (b) The Recipient shall only claim Qualifying Expenditure defrayed from the Commencement Date to the Completion Date. Any Qualifying Expenditure claimed outside of these dates will be deemed ineligible for Grant purposes.
- (c) Where the Recipient intends to apply to a third party for other funding for the Project, 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. The payment of Grant is conditional upon the provision of match funding letters being provided to the Authority in advance of the submission of an Approved Claim Form.
- (d) The Recipient agrees and accepts that it shall neither apply for nor accept:
 - (i) duplicate funding in respect of any part of the Project or any related administration costs that the Authority is funding in full under this Agreement;
 - (ii) any funding to be applied to the Eligible Costs which would result in a breach of any threshold for funding the Eligible Costs set out in the Subsidy Rules.
- (e) The Recipient shall promptly notify the Authority in writing: -
 - (i) as soon as it becomes aware that it does not intend to claim the Maximum Amount of the Grant available under this Agreement; and
 - (ii) by no later than 31 December in any Financial Year if it does not intend to claim the Maximum Yearly Sum for that Financial Year, without prejudice to the provisions of clause 3.4.
- (f) The Recipient warrants and confirms that if there is a shortfall in the match funding anticipated in Schedule 3 Paragraph 3.2.1 or there is a cost overrun, the Recipient shall procure alternative funding or provide the funding itself to ensure that the Project

Outputs, and Project Outcomes are achieved by the Completion Date and Final Review Date;

2.2 Change Control

- (a) The Recipient shall not make any change to the Project:
 - (i) which is significant; or
 - (ii) which has the potential to result in the provision of the Grant breaching any Subsidy Ruleswithout the Authority's prior written agreement.
- (b) For the avoidance of doubt but not as an exhaustive list, significant changes include those changes affecting the Completion Date, Project Outputs, Project Outcomes, Maximum Amount, Final Review Date Clawback Review Date and/or which have the potential to result in the provision of the Grant breaching any Subsidy Rules.
- (c) All Changes must be approved by the Authority prior to the relevant Change being deemed to be effective. The Grant Recipient shall request the Change on a change request form. The Authority shall either agree to the change request or reject the change request within 60 days of the date of receipt of the Change Request Form and/or any supporting information requested by the Authority, whichever is the later date.
- (d) Until such time as a Change is made in accordance with clause 2.2, the Parties shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms before such Change.

2.3 Project Works

- (a) The Recipient shall promptly and efficiently procure the carrying out and completion of the Project and comply with all the accounting, payment, information and other requirements and obligations contained in this Agreement.
- (b) Without limitation to the generality of clauses 2.1 to the Recipient shall, where relevant:
 - (i) procure the commencement of the Works (unless the same have already been commenced by the date of this Agreement) within 30 days from the date of this Agreement and procure Practical Completion of the same by the Completion Date;
 - (ii) procure that all the Project Outputs are achieved by the Completion Date; and
- (c) Where relevant, the Recipient shall notify the Authority in writing within 30 days of Practical Completion of the Works.
- (d) The Recipient shall comply with all relevant requirements contained in or having effect under Law relating to health, safety and welfare at work.

- (e) The Recipient shall ensure that the planning and operation of the Project reflect the principles of Sustainable Development to ensure sustainability within the area of the Authority.
- (f) The Recipient shall not, and shall use its best endeavours to procure that its employees, agents and/or sub-contractors shall not, knowingly do or omit to do, anything in relation to this Agreement or in the course of their other activities, that may bring the standing of the Authority into disrepute or attract adverse publicity for the Authority.
- (g) The Recipient shall: -
 - (i) promote equal opportunities;
 - (ii) subject to Law, promote the sourcing of local skills and resources and the ethical purchasing of goods and materials;
 - (iii) co-operate fully with the Authority on any initiatives proposed by it and in relation to any of the matters referred to in this sub-clause; and
 - (iv) work with the Authority to link the Site into other regeneration and development initiatives.

3 AUTHORITY'S OBLIGATIONS

- 3.1 Subject to this clause 3 and clauses 6 and 15 (Termination), the Authority shall comply with the payment provisions of this clause 3 provided that the Authority has received from the Recipient full and accurate information and documentation as required by this Agreement.
- 3.2 Provided that the Authority is satisfied that the conditions set out at clause 3.3 below are met, the Authority shall (subject to all the terms and provisions of this Agreement including this clause 3) pay by way of reimbursement a percentage of the Qualifying Expenditure actually defrayed by the Recipient prior to the quarter-end up to the Maximum Amount.
- 3.3 The Authority will not be required to make any payment under clause 3.2 unless and to the extent that it is satisfied that:
 - (a) any such payment will not result in a breach of the Subsidy Rules
 - (b) the Recipient is not in breach of any obligation under this Agreement;
 - (c) the warranties provided by the Recipient at clauses 13.4 and 14 remain true; and
 - (d) the Recipient has conducted sufficient due diligence to satisfy itself that any such payment will not result in a breach of the Subsidy Rules.
- 3.4 The Authority is under no obligation to make any payments other than those provided under this clause 3 including (without limitation) any increase in the cost to the Recipient in delivering the Project.
- 3.5 The Recipient acknowledges that where in the definition of Maximum Amount any part of the

Grant is allocated to a particular Financial Year ("the Maximum Yearly Sum") then such part or parts of the Grant shall be available for that Financial Year only provided that the Authority may in its absolute discretion allow any unclaimed amount from any particular Maximum Yearly Sum for one Financial Year to be carried over and included in the Maximum Yearly Sum for the next Financial Year. Any change pursuant to this clause 3.5 shall be subject to the Change Control Process as detailed in clause 2.2.

3.6 Notwithstanding anything contained in this clause 3, the Authority may at any time in its absolute discretion (but without any obligation on the Authority to do so) pay any part or parts of the Grant to the Recipient in advance of the date or dates when such payments would otherwise be due ("Advance Payments") and in such event:-

(a) such Advance Payments shall form part of the Grant and shall be deducted from any further payment or payments which would otherwise be due under this Agreement;

(b) where in any Financial Year the Authority makes any Advance Payments which individually or together exceed the Maximum Yearly Sum for that Financial Year then the Maximum Yearly Sum for any future Financial Year or Financial Years shall be reduced by an amount equal to the overpayment.

3.7 If at any time (and whether or not following notification by the Recipient under clause 2.1(e) or report in support of a financial claim under clause 6.1) it appears to the Authority that the Recipient is not likely to claim Grant in accordance with the profile in Schedule 3, then the Authority may, subject to clause 3.9, by notice to the Recipient re-profile the Grant (by reference to Schedule 3).

3.8 If at any time (and whether or not following notification by the Recipient under clause 2.1(e) or report in support of a financial claim under clause 6.1) it appears to the Authority that the Recipient is not likely to claim the Maximum Amount, then the Authority may, subject to clause 3.9, by notice to the Recipient reduce the Maximum Amount.

3.9 Prior to re-profiling the Grant under clause 3.7 or reducing the Maximum Amount under clause 3.8, the Authority shall consult the Recipient regarding the consequences for the Recipient and the Project of the proposed re-profiling or reduction (as the case may be) and invite the Recipient to make representations in relation thereto within such reasonable period as the Authority may specify. The Authority shall consider any representations made by the Recipient and shall not re-profile the Grant or reduce the Maximum Amount (as the case may be) where it appears to the Authority (acting reasonably) that the proposed re-profiling or reduction would be likely to cause material prejudice to the Recipient or the Project.

4 GRANT RETENTION

4.1 The Authority shall pay by way of reimbursement of Qualifying Expenditure pursuant to clause 3.2, an amount which is equal to 95% of each claim which is validly submitted by the Recipient and approved by the Authority in accordance with the provisions of clause 6 (as a "**Retention**");

4.2 Without prejudice to any other provision of this Agreement, the Authority shall release the Retention at 2.5% of the amount claimed up to the Maximum Amount upon completion of the

Project Outputs by the Completion Date. This shall not be released unless and until the following events have occurred –

- (a) practical completion of the Works;
- (b) the Authority has received, and is satisfied with, the interim Project Learning Review;
- (c) the Authority has conducted a review meeting, site visit and received a certificate of Practical Completion; and
- (d) all audit issues outstanding have been resolved.

4.3 Without prejudice to any other provisions of this Agreement, the Authority shall release the remaining Retention of 2.5% of the amount claimed up to the Maximum Amount upon confirmation that the Project Outcomes have been delivered by the Final Review Date. This shall not be released unless and until the following events have occurred -

- (a) delivery of the full Project Outcomes [and Social Value Outcomes];
- (b) the Authority has received, and is satisfied with, the final Project Learning Review;
- (c) the Authority has conducted a review meeting and received evidence of the delivery of the Project Outcomes; and
- (d) all audit issues outstanding have been resolved.

4.4 The release of the Retention shall be without prejudice to the Authority exercising any of its rights under this Agreement.

5 PROJECT FINANCIAL RECORDS

5.1 The Recipient shall retain documentary evidence of all capital and revenue purchases to support the amounts claimed from the Authority. This shall include an invoice register of suppliers' and contractors' invoices and all other documents relating to the purchase of all capital and revenue items funded by the Authority.

5.2 The Recipient shall maintain full and accurate accounts for the Project (the "Project Accounts"). At the end of each Financial Year a statement of grant expenditure must be completed and certified by the Chief Financial Officer of the Recipient as part of the quarterly claims and returns process.

5.3 The 'statement of grant expenditure' must be audited by the Recipients external auditor. The audited final accounts, certificate and auditor's report ("Audited Form") must be sent to the Authority as soon as possible and at the latest by the end of July following each Financial Year which arises during the Financial Years 2023 – 2024. If in respect of any such Financial Year the Audited Form has not been received for that Financial Year by the following 31 July the Grant may be suspended until receipt of the Audited Form for such Financial Year. Such Project Accounts shall be retained for at least ten years after the end of the Financial Year in which the last payment is made under this Agreement

- 5.4 The Recipient shall allow access to its business premises on 2 days' notice during 9.00 a.m. – 5.00 p.m. to the Authority's internal auditors or its other duly authorised staff or agents, Government Office, or the National Audit Office to inspect such documents as the Authority considers necessary in connection with this Agreement and shall co-operate with, and provide such assistance as is required by, any such parties. The Authority shall be entitled to interview employees of the Recipient in order to obtain oral and/or written explanations of documents and the Recipient shall provide access to the relevant employees at such times as may be reasonably required to enable the Authority to do so. The Authority reserves the right to have such staff or agents carry out examinations into the probity, economy, efficiency and effectiveness with which the Recipient has used the Authority's resources in the performance of this Agreement.

6 FINANCIAL CLAIMS TO THE AUTHORITY

- 6.1 Financial claims to the Authority shall be prepared by the Recipient quarterly in arrears during each Claim Period using the Approved Claim Form. Without prejudice to clauses 6.2 and 6.3, the claims shall be sent within 30 working days of the end of the relevant Claim Period. The Recipient or his or hers nominated representative or accountant shall –
- (a) certify on the Approved Claim Form that the amount claimed is in accordance with the Agreement and represents goods or services received and paid for and that the claim does not include any costs being claimed from any other body or individual or from the Authority within the terms of another contract;
 - (b) submit a transaction list detailing the breakdown of the Eligible Costs for that Claim Period, in support of each Approved Claim Form;
 - (c) provide such receipted invoices and other reasonable evidence that the Eligible Costs has been paid and incurred as shall be required by the Authority; and
 - (d) each quarterly claim shall be supported by a monitoring report in accordance with Schedule 5.

The Authority has the right to specify a different claims procedure from time to time during each Financial Year.

- 6.2 For the final Claims Period of each Financial Year the Recipient shall promptly submit an Accruals Claim Form, alongside an Approved Claim Form, in accordance with clause 6.1. The claims submission shall cover all Eligible Costs incurred and defrayed on the Project to date plus a prudent estimate of all outstanding Eligible Costs to be incurred and defrayed on the Project to 31 March. Unless otherwise advised by the Authority, the claim submission shall be submitted to the Authority not later than 15 March of each of the relevant Financial Years. No later than 30 days following expiry of that Financial Year, the Recipient shall submit to the Authority an Approved Claim Form in accordance with clause 6.1 to the value of the Accruals Claim Form, which will enable payment of the Qualifying Expenditure as forecast on the Accruals Claim Form.
- 6.3 At the end of each Financial Year the Recipient shall submit to the Authority a year end compliance certificate in a form to be provided by the Authority to adjust for any minor overpayment made by the Authority during the previous Financial Year. It shall be the responsibility of the Recipient to ensure that the final reconciling statement covers all

outstanding Eligible Costs for which reimbursement may be claimed. Provided that all previous claims have been duly paid, on due payment of the final claim by the Authority all amounts due to be reimbursed under this Agreement shall be deemed to have been paid and the Authority shall have no further liability to make reimbursement of any kind.

- 6.4 Within 3 months of the Date of Practical Completion the Recipient shall certify the full Project costs actually defrayed in accordance with the terms of this Agreement, and specifically with reference to Schedule 3, Paragraph 3.2 ('Project Costs'), and shall submit the reconciliation statement to the Grant Manager. The reconciliation statement shall be signed by the Recipients Section 151 Officer or equivalent and shall be used for the purpose of clause 11. below.
- 6.5 Schedule 3, Paragraph 3.1.2 of this Agreement sets out the agreed quarterly financial claim profile for the Project. The Recipient hereby agrees (subject to any changes to the profile of the Grant made in accordance with this Agreement) to adhere to this claims profile and make claims only for the amount specified in the claims profile for the relevant Claim Period.
- 6.6 The Authority aims to pay all duly completed claims in accordance with the Agreement within 30 days of receipt. The Authority shall not be responsible for any delay in payment caused by incomplete or illegible claims. Time of payment shall not be of the essence.
- 6.7 The Recipient shall have regard to the need for economy in all Qualifying Expenditure. Where any Qualifying Expenditure in a claim, in the Authority's reasonable opinion, is excessive having due regard to the purpose for which it was incurred, the Authority shall only be liable to reimburse so much (if any) of the Qualifying Expenditure which, in the Authority's reasonable opinion after consultation with the Recipient, would reasonably have been required for that purpose.
- 6.8 Payment of funding for any Financial Year after the first is subject to the Authority (acting reasonably) being satisfied with the Project performance for the previous Financial Year or Financial Years and to the Recipient performing the terms of this Agreement.
- 6.9 For the avoidance of doubt and to promote accounting clarity, the Recipient acknowledges that payment of funding is towards capital expenditure and to be treated as funded by a capital receipt to reflect section 25(1)(b) of The Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 which permits the giving of a loan, grant or other financial assistance towards expenditure which would, if incurred by the Authority, be capital expenditure.
- 6.10 Notwithstanding the provisions of this clause 6, the Parties may by agreement vary the provisions for making financial claims (and the payment of such claims).

7 EVENTS OF DEFAULT AND REMEDY OF DEFAULT

7.1 Events of Default

The Authority may in its absolute discretion reduce, suspend or withhold the Grant, require the Grant to be repaid and/or terminate this Agreement if: -

- (a) there is a Change to the Project without the prior written approval of the Authority, as required by clause 2.2, or any attempt is made to transfer or assign any rights, interests or obligations created under this Agreement or substitute any person in

respect of any such rights, interests or obligations, without the agreement in advance of the Authority;

- (b) any information provided by the Recipient to the Authority (including without limitation information contained in the application for funding or in a claim for payment or in subsequent or supporting correspondence) is found to be incorrect or incomplete to an extent which the Authority considers to be material;
- (c) the Works are not commenced within 3 months following execution of this Agreement;
- (d) the Grant has not been used for, or in the reasonable opinion of the Authority will not be used for, the purpose for which it was or will be given or applied to costs other than Eligible Costs;
- (e) the Authority considers that the Recipient has not made satisfactory progress with the delivery of the Project in accordance with Schedule 2, Paragraph 2.1 (Key Milestones) and 2.2 (Delivery Milestones);
- (f) there is failure of the Recipient to submit monitoring returns in accordance with Schedule 5, and as may be additionally required, to the satisfaction of the Authority
- (g) any other circumstances or events that are likely to affect the Recipient's ability to achieve the Project Outputs or Project Outcomes or result in a risk that the Project as approved will not be completed;
- (h) any report or certificate made by the Grant Recipient's auditor or reporting accountant is unsatisfactory (where, for example, the report or certificate refers to a fundamental uncertainty or disagreement, or contains a material qualification, or states that the auditor or accountant is unable to form an opinion about any item, or reports that any amount is not correctly stated in the accounts or records examined);
- (i) the Recipient owes any sum to the Authority under an agreement for the financial support of any other project or activities;
- (j) there is a failure to keep and maintain the records specified in this Agreement;
- (k) the Recipient fails to comply with any branding guidelines and conditions of use issued by the Authority (or any future name or logo adopted by the Authority);
- (l) insufficient measures are being taken to investigate and resolve any reported irregularity;
- (m) the Recipient has acted negligently or dishonestly;
- (n) the Recipient obtains any form of duplicate funding in relation to the Project;
- (o) the Recipient is required to repay to a third party any funds provided to the Authority by that third party to be utilised to pay the Grant;
- (p) the Recipient is, or becomes an ailing or insolvent economic actor as defined in

clause 8.5;

- (q) 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);
- (r) 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;
- (s) the Recipient breaches any provision of clause 8;
- (t) the Parties are unable to resolve a dispute between them in accordance with clause 19;
- (u) the Recipient fails to observe and perform any other obligation on its part contained in or implied by this Agreement and after receiving notice from the Authority requiring the relevant breach to be remedied within such period (as shall be specified in such notice) as the Authority shall determine to be reasonable the Recipient fails to remedy such breach to the satisfaction of the Authority within the said period.

7.2 Opportunity to Remedy an Event of Default

- (a) If the Authority gives written notice to the Recipient pursuant to clause 7.1 to reduce, suspend, withhold or require repayment of the Grant, such notice shall specify the relevant Event of Default and give the Grant Recipient an opportunity to rectify the relevant Event of Default within such period as the Authority shall determine to be reasonable and as shall be set out in such written notice (or such extended period as the Authority shall thereafter determine).
- (b) The written notice referred to above may include a requirement for the Recipient to provide specified information to the Authority to assist in determining whether the Event of Default has been satisfactorily rectified.
- (c) Where the rectification of the Event of Default requires a Change the Change Control Procedure under clause 2.2 shall be followed.
- (d) The Authority shall not by reason of the occurrence of an Event of Default which is, in the opinion of the Authority, capable of remedy, exercise its rights under either clause 7.1 or clause 15 unless the Recipient has failed to rectify the Event of Default pursuant to clause 7.2, to the satisfaction of the Authority.

7.3 The provisions of sub-clause 7.1 and 7.2 are without prejudice to the Authority's rights in clause 15 (Termination).

7.4 Repayment of Grant

- (a) Where the Authority requires the Recipient to repay any amount of Grant, the Recipient shall repay the amount concerned in accordance with clause 20.

8 SUBSIDIES

- 8.1 The Parties agree that the Grant is subject to the Subsidy Rules and the Recipient warrants and represents that the Grant is not prohibited by the Subsidy Rules and either:
- (a) the Grant complies with the Principles; or
 - (b) that it has received less than 325,000 IMF Special drawing rights in subsidies (including the Grant) over a period of 3 years preceding the date of this Agreement.
- 8.2 The Recipient shall
- (a) comply with the Subsidy Rules;
 - (b) ensure that all requirements of the Subsidy Rules and Principles are met in relation to the Project; and
 - (c) confirm to the Authority's satisfaction that all requirements of the Subsidy Rules and Principles are met in relation to the Project.
- 8.3 The Recipient shall not take any action or fail to take any action, or (insofar as it is reasonably within its power) permit anything to occur that will cause the Authority to be in breach of the Subsidy Rules.
- 8.4 The Recipient shall provide such reasonable assistance as is requested by the Authority to enable the Authority to comply with the Subsidy Rules. No payments shall be made to the Recipient if it becomes subject to a recovery order following a decision of any competent court declaring the Grant and/or any other subsidy illegal.
- 8.5 The Recipient confirms that it is not an ailing or insolvent economic actor for the purposes of Article 3.5 Paragraph 3 UK-EU TCA Rules (which for the purposes of this Agreement shall bear the same meaning as a company in difficulty as defined in Article 2.18 of General Block Exemption Regulation of the EU) and commits to informing the Authority as soon as reasonably practicable of a change in this status.
- 8.6 Prior to the start of the Project, an application was submitted by the Recipient which confirmed the undertaking's name and size; description of the project, including its start and end dates; location of the project; list of project costs and type and amount of public funding required and an analysis of the viability of the project with and without the Grant. The Recipient shall inform the Authority immediately upon becoming aware of any Change or likely Change in the information submitted as part of this application.
- 8.7 The Recipient has informed the Authority of any other public funding applied for or awarded against the Eligible Costs covered by this Agreement. The Authority has relied on this

information when ensuring that the total public funding for the project is within the amounts permitted by the Principles.

- 8.8 The Recipient consents to the publication within 6 months of the date of this Agreement of the following information:
- (a) the legal basis and policy objective or purpose of the Grant;
 - (b) the name of the Recipient;
 - (c) the date of the Grant, the duration of the Grant and any other time limits attached to the Grant; and
 - (d) the amount of the Grant or the amount budgeted for the Grant.
- 8.9 The Recipient shall maintain detailed records with the information and supporting documentation necessary to establish that the Principles and all the conditions set out in this Agreement are fulfilled. Such records shall be maintained for 10 years following the granting of the aid and without prejudice to any other provision of this Agreement the Recipient shall make such information available to the Authority within a period of 20 working days if requested.
- 8.10 The Authority may monitor the Recipient's compliance with the requirements of its obligations under this Agreement and for the avoidance of doubt any failure by the Recipient to comply with this clause 8 shall be deemed a breach of a term or condition of this Agreement and an Event of Default for the purposes of clause 7.1
- 8.11 The Authority may vary or withhold any or all of the payments and/or require repayment of grant already paid, together with interest from the date of payment, if the Authority is required to do so as a result of a decision by a competent Court. The interest rate payable will be set by the Authority at a level sufficient for the Authority to comply with any such requirement or obligation.

9 MANAGEMENT AND MONITORING

9.1 Management

- (a) The Recipient shall manage the Project in accordance with the terms of this Agreement and shall appoint a Project Manager. The Project Manager shall be the Authority's main contact point for the Project and is detailed in Schedule 1, Paragraph 1.3. The Recipient shall be responsible to the Authority for ensuring that the Project Manager delivers the Project and provides all monitoring information required by the Authority. Any change in Project Manager must be notified to the Authority promptly.
- (b) The Project Manager shall immediately notify in writing the Grant Manager of any circumstances which may result in a possible breach of any of the terms of this Agreement (which shall include a possible Event of Default) including, without limitation, any concerns relating to the financial stability of the Recipient, the management of the Project and probity issues.
- (c) The Authority shall be entitled at any time to specify a replacement for the Grant Manager and shall promptly notify the Recipient of the identity and contact details of

the Grant Manager.

- (d) The Recipient shall promptly comply with all reasonable requests or directions of the Grant Manager in respect of the Project.
- (e) The Recipient shall address any enquiries about procedural or contractual matters in writing to the Grant Manager. The Recipient shall quote any applicable Project Reference Number in any correspondence with the Grant Manager.

9.2 Monitoring

- (a) In accordance with Schedule 5 the Recipient shall during and throughout the Project Monitoring Period; -
 - (i) submit monitoring reports to the Authority, as a minimum, on a quarterly basis;
 - (ii) submit all claims to the Authority in accordance with clause 6;
 - (iii) properly evaluate the progress of the Project as required by the Authority; and
 - (iv) co-operate with the Authority and its agents on the monitoring and evaluation by providing such other information as may at any time be reasonably requested by the Authority.
- (b) For the avoidance of any doubt, in the event that the Recipient fails to comply with the reporting requirements of the Authority, the Grant may be suspended or withheld and regarded as an Event of Default in accordance with clause 7.
- (c) The Recipient shall at all times perform all its obligations under this Agreement with due regard to the need for those in a public service environment to observe the highest standards of efficiency, economy, probity, courtesy, consideration and hygiene.

10 DOCUMENT RETENTION

- 10.1 Without prejudice to any other provision of this Agreement the Recipient will ensure that all documents relating to the Project and its implementation and financing are retained for 6 years, in order that these may be made available to the Authority or auditors upon request.
- 10.2 The Recipient will make available the documents relating to the Project and its implementation and financing if and when required to do so by the Authority, and any auditors.
- 10.3 The documents referred to in this clause 10 shall be kept and made available either in the form of the originals or certified true copies of the originals or on commonly accepted data carriers including electronic versions of original documents or documents existing in electronic version only.
- 10.4 Where documents exist in electronic form only, the computer systems used shall meet accepted security standards which ensure that the documents held meet with national legal requirements and can be relied upon for audit purposes. The equipment and software used to

store the documents shall be retained and kept functional for a period of 6 years following the submission of the accounts in which the final expenditure for the Project is included.

11 PROJECT OUTPUTS AND PROJECT OUTCOMES AND CLAWBACK

11.1 The Authority is providing the Grant with a view to the Project Outputs and Project Outcomes and Social Value Outcomes being achieved and the Recipient acknowledges that the Grant is subject to 100% Clawback in accordance with this clause 11 and Schedule 4 to the extent that the Project Outputs and Project Outcomes are not achieved.

11.2 At the Clawback Review Date the Authority shall consider, taking account the evidence submitted by the Recipient, the extent to which the Project Outputs and Project Outcomes as detailed in Schedule 4, have been achieved.

11.3 In the event that the Authority considers that:

(a) the Project Outputs has not been achieved by the Completion Date; or

(b) the Project Outcomes has not been achieved in full by the Final Review Date

it may (at its entire discretion) at any time thereafter by notice (“Clawback Notice”) require the Recipient to repay a proportion of the Grant.

11.4 The Authority shall consider whether any failure to achieve Project Outputs or Project Outcomes is a result of reasons beyond the reasonable control of the Recipient and apply this to proportionate Clawback terms.

11.5 In the event that Clawback is applied; the Recipient shall pay the Clawback to the Authority within one month of the Clawback Notice. Any Grant not so repaid will be a debt to the Authority.

11.6 To the extent that the Project Outputs are fully completed by the Completion Date and the Project Outcomes are fully complete by the Final Review Date, then the Grant is not subject to any right of the Authority to reclaim it or demand repayment.

11.7 The provisions within this clause are without prejudice to clause 7 of this Agreement.

12 ACKNOWLEDGEMENT AND PUBLICITY

12.1 In accordance with Schedule 7, the Recipient shall, and shall procure that it’s sub-contractors, at all times comply with all branding guidelines, publicity and acknowledgement conditions of use issued by the Authority (or any future name or logo adopted by the Authority). The acknowledgement and publicity provisions are to include, but is not limited to -;

(a) direct press - including written or spoken public presentations about the Project;

(b) marketing and communications - including banners, brochures, social media imagery and leaflets; and

(c) on-site acknowledgement - including site hoarding, site and Project temporary and permanent plaques;

12.2 In accordance with clause 12.1 the Recipient shall ensure that they –

- (a) provide advance notice of any announcements (2 weeks if possible);
- (b) use approved descriptions in media releases;
- (c) invite representatives of the Authority to landmark events; and
- (d) provide photographic evidence and examples of compliance to the Grant Manager alongside reporting requirements as detailed in Schedule 5.

12.3 The Recipient shall comply with all reasonable requests from the Authority to facilitate visits, provide additional information and case studies, that will assist the Authority in its promotional and fundraising activities relating to the Project;

12.4 The Recipient shall participate in and co-operate with promotional activities relating to the Project that may be instigated and/or organised by the Authority;

12.5 The Recipient shall acknowledge the Grant in its annual report and accounts, including an acknowledgement of the Authority as the source of the Grant.

12.6 The Authority may acknowledge the Recipient's involvement in the Project as appropriate without prior notice.

12.7 The obligations in this clause shall continue beyond expiry or termination of this Agreement.

13 INTELLECTUAL PROPERTY

13.1 All Project Intellectual Property shall be proprietary to and owned by the Recipient immediately on its coming into existence and to the extent that it subcontracts performance of the Works, the Recipient shall ensure that any Project Intellectual Property emanating from the work of its sub-contractor(s) shall be assigned to it absolutely.

13.2 The Recipient hereby grants to the Authority an irrevocable, world-wide, royalty-free transferable non-exclusive right and licence (with freedom to sub-licence) under the Project Intellectual Property to use and exploit all the Project Intellectual Property.

13.3 Notwithstanding termination of this Agreement for any reason whatsoever the Recipient shall at its expense do and execute, and shall procure that its employees and any subcontractor engaged in the performance of the Works do and execute any further thing or document as may be required by the Authority to give effect to Clause 13.2.

13.4 The Recipient warrants:

- (a) that it shall use its reasonable endeavours to ensure that the Project Intellectual Property will not infringe the rights of any third party and that no third party has threatened or so far as it is aware is currently threatening proceedings in respect of such infringement; and
- (b) that it is able to conduct the Works without breaching any obligations it may owe to any third party now or, as far as it is at present aware, in the future and hereby undertakes to carry out the Works without breaching any such obligations and further undertakes not to assume any obligations to any third party which would be

inconsistent with such undertaking. Without limitation, it warrants that it shall acquire all rights in any Project Intellectual Property obtained or developed by any third-party contractors in the course of or in connection with the Works or shall be duly allowed to licence the same as contemplated under this Agreement.

14 WARRANTIES AND INDEMNITIES

14.1 The Recipient warrants to the Authority that:

- (a) it has all necessary resources and expertise to deliver the Project (assuming due receipt of the Grant);
- (b) it has not committed, nor shall it commit, any Prohibited Act;
- (c) it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Authority immediately of any significant departure from such legislation, codes or recommendations;
- (d) 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 Project;
- (e) all financial and other information concerning the Recipient which has been disclosed to the Authority is to the best of its knowledge and belief, true and accurate;
- (f) it is not aware of anything in its own affairs, which it has not disclosed to the Authority, which might reasonably have influenced the decision of the Authority to make the Grant on the terms contained in this Agreement;
- (g) the execution of this Agreement by the Recipient has been validly authorised and the obligations by or expressed as being assumed by the Recipient under this Agreement constitute valid legal and binding obligations enforceable against the Recipient;
- (h) neither the execution of this Agreement nor the performance or observance of any of its obligations will conflict with or result in any breach of any law or any legal obligation on the Recipient or cause any limitation on the powers of the Recipient or on the right or ability of the officers of the Recipient to exercise such powers to be exceeded;
- (i) all approvals required in connection with delivery validity and enforceability of this Agreement have been obtained and have not been withdrawn;
- (j) the Recipient has all the rights and interests necessary to enable the Works to be carried out and the Site to be fully used for the Project as set out in Schedule 1 without the need to acquire any further land or obtain any rights from any party or seek any release of any covenants or restrictions of any kind;

- (k) all the Consents have been obtained and have not been withdrawn; and
 - (l) the obligations of the Recipient under this Agreement shall be performed by appropriately qualified and trained personnel with reasonable skill care and diligence and to such high standards of quality as is reasonable for the Authority to expect in normal circumstances.
- 14.2 The warranties in clause 14.1 will be deemed to be repeated by the Recipient when each claim for funding is submitted pursuant to clause 6 as if made with reference to the facts and circumstances existing at such date. The Recipient acknowledges that the Authority will be relying on the Recipient's skill, expertise and experience in the performance of the Works and upon the accuracy of all representations and warranties made and the advice given by the Recipient in connection with the performance of the Project and the accuracy of any documents conceived, originated, made or developed by the Recipient as part of this Agreement.
- 14.3 The Authority shall not be liable to the Recipient for any informal advice given. In addition, the Authority gives no assurance as to:
- (a) the suitability or viability of the Project or the bid and no endorsement of the same; or
 - (b) the compliance of the Project with the Subsidy Rules.
- 14.4 Without prejudice to any other remedy, if any part of the Works is not performed in accordance with this Agreement then the Authority shall be entitled, where appropriate, to:
- (a) require the Recipient promptly to re-perform or replace the relevant part of the Works without additional cost to the Authority; or
 - (b) assess the cost of remedying the failure (the "Assessed Cost") and to deduct from any sums due to the Recipient the Assessed Cost for the period that such failure continues.
- 14.5 The Recipient shall be liable for and shall indemnify the Authority in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to the Authority or otherwise arising out of or in the course of or caused by the performance of the Project.
- 14.6 The Recipient shall be liable for and shall indemnify the Authority against any expense, liability, loss, claim or proceedings arising as a result of or in connection with any breach of the terms of this Agreement or otherwise through the default of the Recipient.
- 14.7 The Recipient shall ensure that it has adequate insurance cover 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 the Project. The Recipient shall upon request produce to the Authority, its policy or policies of insurance, together with the receipt for the payment of the last premium in respect of each policy or produce documentary evidence that the policy or policies are properly maintained.

14.8 The Recipient shall indemnify and hold the Authority harmless (and keep indemnified and hold harmless notwithstanding termination of this Agreement) against any and all loss or damage (including without limitation any economic loss or other loss of profits, business or goodwill or any consequential loss) suffered by the Authority as a result of the Recipient's breach of any or all the warranties in clauses 13.4 and 14.1

15 TERMINATION

15.1 Without prejudice to any other rights to which it may be entitled, the Authority may give notice in writing to the Recipient terminating this Agreement with immediate effect if the Recipient commits an Event of Default and (if such an Event of Default is remediable) fails to remedy that Event of Default in accordance with the provisions of clause 7.2.

15.2 Without limitation to clause 15.1 the Authority may further give notice in writing to the Recipient terminating this Agreement with immediate effect at any time during the term of this Agreement if:

- (a) the Recipient purports to assign its rights or obligations under this Agreement;
- (b) there is an Event of Default and the Authority invokes any of the provisions described in clause 7;
- (c) the Recipient for whatever reasons fails to achieve the Project Outputs by the Completion Date;
- (d) the Recipient shall for whatever reason fails to procure the Practical Completion of all the Works by the Date of Practical Completion;
- (e) the Recipient ceases to carry on business; and/or
- (f) any of the warranties or representations contained herein are untrue in any material respect or the Recipient or any of the officers or representatives of the Recipient fail to disclose any serious misrepresentation in supplying information required by the Authority in, pursuant to or prior to this Agreement.

15.3 On the termination of this Agreement the Authority shall cease to be under any obligation to provide any further funding to the Recipient under this Agreement and the Authority may further require the Recipient at any time to repay the Grant and the Recipient agrees and undertakes upon receipt of notice requiring repayment it shall forthwith on demand repay to the Authority an amount equal to the total amount of the Grant paid by the Authority under this Agreement together with any sum in respect of interest required by the Authority to ensure compliance with the Subsidy Rules, in accordance with clause 20.

15.4 Termination of this Agreement however caused shall be without prejudice to any rights or liabilities accrued at the date of termination.

15.5 Nothing in this clause 15 shall affect the coming into, or continuance in force of any provision of this Agreement which is expressly or by implication intended to come into force or continue in force upon termination of this Agreement.

16 CONFIDENTIALITY

- 16.1 Subject to clause 17 (Freedom of Information), each Party shall during the term of this Agreement and thereafter keep secret and confidential all Intellectual Property rights or Know-How or other business, technical or commercial information disclosed to it by the other Party in connection with this Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other Party.
- 16.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property rights, Know-How or other business, technical or commercial information which:
- (a) at the time of its disclosure by the disclosing Party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving Party;
 - (b) it is reasonably necessary for either Party to disclose to those of its employees and sub-contractors as may be reasonably necessary or desirable in order to implement the provisions of this Agreement, provided that before any such disclosure the receiving party shall make those employees and sub-contractors aware of its obligations of confidentiality under this Agreement and shall at all times procure compliance by those employees and sub-contractors with them;
 - (c) is already known to the receiving Party as evidenced by written records at the time of its disclosure by the disclosing Party and was not otherwise acquired by the receiving party from the disclosing Party under any obligations of confidence; or
 - (d) is at any time after the date of this Agreement acquired by the receiving Party from a third Party having the right to disclose the same to the receiving Party without breach of the obligations owed by that Party to the disclosing Party.

17 FREEDOM OF INFORMATION

17.1 Provisions Common to FOIA and EIR

- (a) Each Party acknowledges that the other Party is subject to the statutory duties imposed upon public authorities under the FOIA and the EIR and each Party shall assist and cooperate with the other Party to enable that Party to comply with these Information disclosure requirements.
- (b) The Parties shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure under the FOIA and the EIR and shall permit the other Party to inspect such records as requested from time to time.
- (c) Where a Party receives a Request for Information under the FOIA or the EIR which relates to the Agreement, it shall inform the other Party of the Request for Information as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information.

- (d) if either Party determines that Information (including Confidential Information) must be disclosed pursuant to clause 17.2(c)(ii), it shall notify the other Party of that decision at least two Working Days before disclosure

17.2 Freedom of Information Requests

- (a) Where one Party deposits with the other Party information which is intended to be information held on behalf of the other Party it shall clearly indicate at the time of the deposit that this information is Held on Behalf of the other Party.
- (b) Each Party shall and shall procure that its sub-contractors, agents and employees shall where they receive a request for information under FOIA:
 - (i) transfer any Request for Information under the FOIA in respect of the information Held on Behalf of the other Party to the depositing Party as soon as practicable after receipt and in any event within two Working Days of receiving the Request for Information;
 - (ii) provide upon written request of the other Party a copy of all information Held on Behalf of the other Party in the form that the depositing Party requires within five Working Days (or such other period as the depositing Party may specify) of the depositing Party requesting that Information; and
 - (iii) provide all necessary assistance as reasonably requested by the depositing Party to enable the depositing Party to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA.
- (c) The depositing Party shall be responsible for determining at its absolute discretion whether the Information held on its behalf:
 - (i) is exempt from disclosure in accordance with the provisions of the FOIA;
 - (ii) is to be disclosed in response to a Request for Information, and

in no event shall the other party respond directly to a Request for Information unless expressly authorised to do so by the depositing Party.

17.3 Requests for Environmental Information

- (a) The Parties acknowledge that the Party holding information which is Environmental Information Held on Behalf of the other Party may, acting in accordance with the EIR be obliged to disclose Information: -
 - (i) without consulting with the depositing Party, or
 - (ii) following consultation with the depositing Party and having taken its views into account.

18 EQUALITY AND DIVERSITY

The Recipient shall:

- (a) perform its obligations under this Agreement in accordance with all applicable equality Law (whether in relation to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation or otherwise); and
- (b) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- (c) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

19 DISPUTE RESOLUTION

- 19.1 In the event of any complaint or dispute (which does not relate to the Authority's right to withhold funds or terminate as detailed in clause 7 and 15) arising between the Parties to this Agreement in relation to this Agreement the matter should first be referred for resolution to the Grant Manager or any other individual nominated by the Authority from time to time.
- 19.2 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the Grant Manager or other nominated individual, as the case may be, either Party may refer the matter to the Chief Executive of the Authority and the Chief Executive of the Recipient with an instruction to attempt to resolve the dispute by agreement within 28 days, or such other period as may be mutually agreed by the Authority and the Recipient.
- 19.3 In the absence of agreement under clause 19.2, the Parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both Parties). Unless otherwise agreed, the Parties shall bear the costs and expenses of the mediation equally.

20 RECOVERY OF SUMS DUE AND INTEREST

- 20.1 Wherever any sum of money shall be recoverable from or payable by the Recipient to the Authority, the Authority may deduct the same from any sum then due to the Recipient or which at any time thereafter may become due to the Recipient either under this Agreement or under any other contract with the Authority.
- 20.2 Without prejudice to clause 20.1 where any sum of money is due to be paid by the Recipient to the Authority under this Agreement the Recipient shall pay to the Authority interest thereon at the greater of:

- (a) 4% per annum above the Base Interest Rate compounded with rests on the usual quarter days for the period between the date on which the relevant sum should have been paid and the date on which it is paid (as well after as before any judgment);
- (b) a rate determined by any competent court to be required in order to ensure compliance with the Subsidy Rules.

21 NO PARTNERSHIP OR AGENCY

This Agreement shall not create any partnership or joint venture between the Authority 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.

22 ENTIRE AGREEMENT

This Agreement constitutes the entire understanding between the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, promises, representations, undertakings negotiations, discussions and implications between the Parties and any third parties relating to it or which the Recipient may purport to apply to the Agreement.

23 FREEDOM TO CONTRACT

The Parties declare that they each have the right, power and authority and have taken all action necessary to execute and deliver, and to exercise their rights and perform their obligations under this Agreement.

24 SEVERABILITY

If any part of this Agreement becomes invalid, illegal or unenforceable the Parties shall in such an event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible validly gives effect to their intentions as expressed in this Agreement. Failure to agree on such a provision within six months of commencement of those negotiations shall result in automatic termination of this Agreement. The obligations of the Parties under any invalid, illegal or unenforceable provision of this Agreement shall be suspended during such a negotiation.

25 AMENDMENTS

Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the Parties to it.

26 ASSIGNMENT

The Recipient shall not without the prior written consent of the Authority assign, transfer, charge or deal in any other manner with this Agreement or its rights under it or part of it, or purport to do any of the same, or sub-contract any or all of its obligations under this Agreement. Such consent when given, may be made subject to any conditions which the Authority considers necessary.

27 VAT

27.1 The payment of the Grant by the Authority under this Agreement is believed to be outside the scope of VAT but if any VAT shall become chargeable the payment of the Grant (including the Maximum Amount) shall be deemed to be inclusive of all VAT and the Authority shall not be obliged to pay any VAT over and above the Grant.

27.2 All sums or other consideration payable to the Authority or provided by the Recipient to the Authority at any time shall be deemed to be exclusive of all VAT payable and where any such sum shall become payable or due or other consideration provided the Recipient shall at the same time or (as the case may be) on demand by the Authority in addition to such sums or other consideration pay to the Authority all the VAT so payable upon receipt of a valid VAT invoice.

28 WAIVER

No delay or omission by either Party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not bar the exercise or enforcement of it at any time or times thereafter.

29 NOTICES

29.1 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, or mailed (first class postage prepaid) to the address given below of the Party to whom the notice is to be given (or such other address as the recipient may have notified the sending party in writing). If personally delivered 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) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

Notices to the Authority

Notices to the Recipient

Attention: Emma Pashley

Attention: Richard Jackson

Address: 11 Broad Street West,
Sheffield
S1 2BQ

Address: Main Street
Rotherham
S60 2AE

29.2 All notices to be given by the Recipient to the Authority shall quote the Project Reference Number and shall be copied at the same time to Steve Davenport, Director of Legal and Governance, South Yorkshire Mayoral Combined Authority, 11 Broad Street West, Sheffield, S1 2BQ or to such other officer and such other address or addresses as the Authority may at any time notify to the Recipient.

30 FORCE MAJEURE

30.1 In this clause 30, 'Force Majeure' event means strikes or lockouts not involving the Recipient or its Workers, Acts of God, war, radiation, major cyber-attacks, compliance with the express

instructions of the police or other emergency services, compliance with any law or governmental order, rule, regulation or direction to the extent that any of the same are beyond the reasonable control of the Party seeking to rely on this clause 30 or any other event or occurrence which is outside the reasonable control of either Party concerned or which is not attributable to any act or failure to take preventative action by the Party concerned

30.2 If either Party is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by reason of a Force Majeure event then:

- (a) that Party's obligations under this Agreement shall be suspended for so long as the Force Majeure event continues and to the extent that the Party is so prevented, hindered or delayed;
- (b) as soon as reasonably possible after commencement of the Force Majeure event that Party shall notify the other Party in writing of the occurrence of the Force Majeure event, the date of commencement of the Force Majeure event and the effects of the Force Majeure event on its ability to perform its obligations under the Agreement;
- (c) that Party shall use all reasonable efforts to mitigate the effects of the Force Majeure event upon the performance of its obligations under this Agreement and that Party shall forthwith notify the other Party in writing of the cessation of the Force Majeure event and, wherever possible, shall resume the performance of its obligations under the Agreement as soon as reasonably possible after such cessation.
- (d) Should the Force Majeure event result in a significant Change to the Project being delivered in accordance with the terms of this Agreement, the Recipient will submit to the Authority a Change Request Form which will be subject to the Change Control Process in clause 2.2.

30.3 If the Force Majeure event continues for more than 30 days after the commencement of the Force Majeure event, either Party may terminate the Agreement by giving not less than 30 days' Notice in writing to the other Party (unless otherwise agreed in writing between the Parties). The termination provisions in clauses 15.3 to 15.5 shall apply.

31 DATA PROTECTION LEGISLATION

31.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation.

32 LOCAL GOVERNMENT TRANSPARENCY CODE 2015

32.1 As a Local Authority, the Authority must publish details of any contract, commissioned activity, purchase order, framework agreement and any other legally enforceable agreement with a value that exceeds £5,000. If the value of this Agreement exceeds £5,000, or if any extension

or variation to the Agreement results in its total value exceeding £5,000, the following details of the Agreement will be published by the Authority on its website on a quarterly basis:

- (a) reference number: O0029
- (b) title of agreement: Local Transport Capital Funding – DfT, Potholes
- (c) local authority department responsible: South Yorkshire Mayoral Combined Authority Executive Team
- (d) description of the goods and/or services being provided: To repair 0.38km full carriageway of resurfacing, 0.72km carriageway repair and 6x structural repairs to classified roads - tarmac in the RMBC area
- (e) Recipient name and details: RMBC, Main Street, Rotherham, S60 2AU
- (f) sum to be paid over the length of the contract or the estimated annual spending or budget for the contract: £826,349
- (g) Value Added Tax that cannot be recovered: n/a
- (h) start, end and review dates: 1 August 2023 – 30 June 2024
- (i) whether or not the contract was the result of an invitation to quote or a published invitation to tender: n/a
- (j) whether or not the Recipient is a small or medium sized enterprise and/or a voluntary or community sector organisation and where it is, provide the relevant registration number: n/a

32.2 The Recipient will notify the Authority as soon as reasonably possible of any change to the information included in clause 32.1, and the Recipient consents to the Authority publishing the information set out in clause 32.1 on a quarterly basis.

33 THIRD PARTY RIGHTS

Save as expressly provided in this Agreement, no term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party (being any person other than the Parties and their permitted successors and assignees).

34 GOVERNING LAW AND JURISDICTION

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.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED (but not delivered until the date)
hereof) by affixing the common seal of)

SOUTH YORKSHIRE MAYORAL)
COMBINED AUTHORITY)
)

in the presence of:

Authorised Signatory

Date:

EXECUTED (but not delivered until the date)
hereof) by affixing the common seal of)
Rotherham Metropolitan Borough Council)
)
)

in the presence of:

Authorised Signatory

Date:

Item 18: MCA - 31st July 2023

SCHEDULE 1 – PROJECT

1.1 Background

On 31ST July 023 the Authority approved delivery of Local Authority Capital Allocations 2023/24” grant from the Department of Transport (DfT) and onward award.

This was approved by the MCA based on delegations on 31 July 2023 and is subject to the terms of this Agreement.

1.2 Project

The Project will deliver repair work to xxxx sqm of tarmac to the roads within the RMBC area.

1.3 Works

The Project will consist of the following Works -

- 0.38km full carriageway resurfacing
- 0.72km carriageway repair
- 6x structural repairs to classified road
-

1.5 Key Contacts

Role	Parties	Name	Job Role
Project Manager	Recipient	Emma Pashley	Senior Officer, Funding, Monitoring and Reporting
Grant Manager	Authority	Richard Jackson	Project Manager

SCHEDULE 2 – KEY DATES

The Recipient is to provide updates on progress against the Key Milestones and Delivery Milestones in accordance with Schedule 5.

Failure to adhere to the required reporting provisions may result in an Event of Default and the Authority withholding payment of Grant in accordance with clause 7.

2.1 Key Dates

Key Dates refer to the **Agreed Terms, 1. Definitions and Interpretation** within the Agreement.

Key Dates	Date
Commencement Date	1 August 2023
Completion Date	31 July 2024
Monitoring Report Submission Dates (annually)	Q1 – July Q2 – October Q3 – January Q4 – April
Clawback Review Date	1 October 2024
Final Review Date	1 October 2024
Closure Date	1 November 2024

2.2 Delivery Milestones

For the Works, as detailed at Schedule 1, Paragraph 1.2, the delivery milestones are -

Delivery Milestones	Commencement Dates	Completion Dates
Practical Completion		31 July 2024

SCHEDULE 3 – PROJECT COSTS

3.1 Funding Profile

The Funding Profile below refers to the anticipated profile of funding by Financial Year and by Claims Period.

For the avoidance of doubt, the Authority will only pay Grant to the Recipient against Qualifying Expenditure incurred by within the Financial Year. Any Qualifying Expenditure defrayed by the Recipient after this/these date(s) will not be eligible to claim under the terms of this Agreement.

3.1.1 Financial Year

2023/24	Total (£)
£826,349	£826,349

3.1.2 Claims Period

Claim Period	Date of Claim	Claim Amount (£)
Q4 2023-24	March 2024	£826,349
Total for Financial Year 1		
Total		£826.349

3.2 Project Cost

The Project Cost refers to the total amount of funding required to deliver the Project.

	2023/24	2024/25	Total (£)
Grant	£400,000	£426,349	£826,349
Total (£)	£400,000	£426,349	£826,349

3.3 Eligible Costs

Eligible Costs refers to the breakdown of the Project Cost as required to deliver the Project.

	2023/24	2024/25	Total (£)
Delivery Cost (Works / Building and Construction)	£400,000	£426,349	£826,349
Total (£)	£400,000	£426,349	£826,349

SCHEDULE 4 – PROJECT OUTPUTS AND PROJECT OUTCOMES

4.1 Subject to Clawback

The Recipient will deliver the Works, detailed in Table 1(a) below, by the Completion Date as per Schedule 2 (“Project Outputs”); and

The clawback provisions related to the Project Outputs and Project Outcomes is as detailed in clause 11 of this Agreement.

Table 1(a) –

Project Outputs in 2023/24
<ul style="list-style-type: none">• 0.38km full carriageway resurfacing• 0.72km carriageway repair• 6x structural repairs to classified road

SCHEDULE 5 – MONITORING AND EVALUATION

The Recipient shall submit performance reports to the Authority throughout the Project Monitoring Period. This will include completion of the following -

- a) Inception Report;
- b) Monthly/quarterly monitoring returns (as required by the Authority);
- c) Approved Claim Forms and supporting evidence;

5.1 Inception

Following execution of the Agreement the Recipient shall complete an inception report and return it to the Authority prior to the inception meeting. The purpose of this meeting is to clarify contractual expectations.

5.2 Monitoring Reports

Monitoring is the collection of data to check progress against Delivery Milestones, Key Dates, Project Outputs, Project Outcomes and Social Value Outcomes and ensure successful delivery of the funding objectives. Monitoring data also plays a key part in evaluation by tracking changes in deliverables over time.

The Recipient shall complete a monitoring return for the final month of each Claim Period. By exception the Authority may also require the Recipient to complete a highlight report on a monthly basis. All monitoring reports are to be accompanied by -

- a) updated Project Risk Log in accordance with Schedule 6;
- b) updated works programme for the Project; and
- c) where relevant, an Approved Claim Form and supporting evidence for the amount claimed for that Claim Period in accordance with clause 6 of this Agreement.

The Authority is at liberty to request additional documentation as may be required from time to time.

5.3 Evaluation

Evaluation is the assessment of a project's effectiveness and efficiency during and after implementation. This includes measuring the causal effect of the project on planned outcomes and impacts, assessing whether the anticipated benefits and value for money have been realised and whether any unanticipated impacts occurred. Reasons to evaluate include to -

- Demonstrate how Grant was spent;
- Understand to what extent the Project achieved its approved objectives;
- Learn from the implementation, in order to improve processes in the future; and
- Evidence future requests for investment

The Recipient shall ensure adequate resource is available to undertake the agreed monitoring and evaluation for the Authority in line with its Monitoring and Evaluation Framework and DfT.

Associated costs are not an Eligible Cost unless specifically identified in Schedule 3, Paragraph 3.4.

SCHEDULE 6 – PROJECT RISK LOG

The Recipient will maintain a Project Risk Log throughout the Project Monitoring Period in a format satisfactory to the Authority. The baseline Project Risk Log is attached below.

An up to date Project Risk Log is to be submitted to the Authority in accordance with the reporting provisions within Schedule 5.

- Risk log to produced and submitted to SYMCA within 3 months of Grant Agreement been signed.

SCHEDULE 7 - ACKNOWLEDGEMENT AND PUBLICITY EXAMPLES

In accordance with clause 12, the Recipient is to comply with, and shall ensure that any sub-contractors comply with, the publicity requirements and use of the logos included in the South Yorkshire Mayoral Combined Authority and DfT brand guidelines.

The Recipient is to liaise with the Grant Manager in the first instance on all matters related to the suitability of proposed acknowledgement, brand application and publicity in media. The Grant Manager will work with the SYMCA marketing team for publicity approvals, brand application and marketing suggestions.

7.1 Examples for the South Yorkshire Mayoral Combined Authority

a) Text for Project marketing material

Any Project marketing material should feature the following paragraph where space allows –

Capital Pot Holes is being delivered by RMBC and is part-funded by South Yorkshire Mayoral Combined Authority.'

b) Approved wording for Press Release 'Notes to Editors' and on Websites

Any press releases regarding the Project requires approval from the Authority prior to release, and should include the following wording –

The South Yorkshire Mayoral Combined Authority (SYMCA) is led by Mayor of South Yorkshire Oliver Coppard, and brings together the local authorities of Barnsley, Doncaster, Rotherham and Sheffield and the private sector through its Local Enterprise Partnership (LEP).

The Mayor, MCA and LEP have a shared purpose to create a stronger, greener, fairer South Yorkshire. To work together to unlock the potential of South Yorkshire people, businesses and places and ensure they prosper.

The SYMCA's Strategic Economic Plan (SEP) provides the blueprint for how to transform the region, to keep people and businesses moving and to help them grow, delivering a public transport network and attracting investment to create a stronger, greener, fairer South Yorkshire by 2040.

SYMCA's vision is to grow an economy that works for everyone. To develop inclusive and sustainable approaches that build on South Yorkshire's strengths in innovation and embrace the UK's 4th Industrial Revolution, to contribute more to the country's prosperity and enhance quality of life for all. SYMCA have powers and resources, devolved from Westminster to South Yorkshire, which means they can take decisions locally about its economy, transport, skills, housing, and infrastructure.

To use these to create a vibrant, thriving South Yorkshire where people want to live and work.

Attract new investment to the region and build the conditions for inclusive economic growth which benefits everyone. Help create good jobs, by backing businesses to grow, invest and locate in South Yorkshire.

To support people so they have the training and skills to find work, remain in work or progress in work. To help businesses secure the skills they need to be more productive and grow.

To serve South Yorkshire every day and connect people and businesses to the places they need to be. As the body responsible for South Yorkshire's public transport network, managing the 102 million passenger journeys made each year in South Yorkshire. Building a transport system which is reliable, green and affordable.

Investing in infrastructure to transform our places, revitalise high streets and deliver new homes.

For more information visit southyorkshire-ca.gov.uk

'The South Yorkshire Mayoral Combined Authority can be contacted 0114 220 3400, <https://southyorkshire-ca.gov.uk>, or enquiries@southyorkshire-ca.gov.uk'

c) Verbal/written description of the Project and funding

For use across marketing collateral, where concise details of the Project are required:

'Pot Holes Capital Fund is being supported and part funded by the South Yorkshire Mayoral Combined Authority. The Mayor, MCA and LEP have a shared purpose to create a stronger, greener, fairer South Yorkshire. To work together to unlock the potential of South Yorkshire people, businesses and places and ensure they prosper. The South Yorkshire Mayoral Combined Authority can be contacted 0114 220 3400, <https://southyorkshire-ca.gov.uk>, or enquiries@southyorkshire-ca.gov.uk'