

3 February 2021

Ian Wright  
Middlesbrough Council  
Middlesbrough House  
Elm Street  
Middlesbrough  
TS1 2DA

**Ref: BHF1-3/Brownfield Housing Fund/ BHF01-2021**

Dear Ian,

**PART 1 - OFFER LETTER – Middlehaven Housing scheme ('the Project')**

Tees Valley Combined Authority ('TVCA') are pleased to confirm approval of your funding application in relation to the Project.

This Offer Letter, and the documents attached to it, constitute the terms and conditions of the Grant ('the Agreement'). The Agreement is therefore made up of the following Parts, which are to be read as a single document:-

- a) **Part 1 – this Offer Letter** – which you are required to sign to confirm your acceptance of the Grant on the terms and conditions set out in this Agreement;
- b) **Part 2 – the Funding Particulars**– which sets out the amount of the Grant you will receive, the specific key terms which apply to the provision of the Grant, and any amendments to TVCA's Standard Terms and Conditions of Funding;
- c) **Part 3 – the Standard Funding Terms** – which apply to the provision of the Grant (subject to any amendments set out in the Funding Particulars); and
- d) **Part 4 – your Business Case** – which sets out the purposes for which the Grant was sought.

The words and expressions used in this Offer Letter have the meaning set out in the Standard Funding Terms at Part 3. The expressions 'You' and 'Yours' means the 'Grant Recipient' or 'the Grant Recipient's'.

**1. Use of the Grant**

The Grant is made strictly for the Agreed Purposes as set out in the Funding Particulars.

**2. Next Steps**

You are required to sign and date two (2) copies of this Offer Letter and to return both copies to TVCA at the following address within fourteen (14) days of receipt:-

**Julie McCartney, Programme Development Manager, Tees Valley Combined Authority, Cavendish House, Teesdale Business Park, Stockton on Tees, TS17 6QY.**

TVCA shall sign both copies on receipt and return one fully signed copy to you for your records.

Please note that TVCA will be unable to release any payment to You until TVCA receive the signed Offer Letter from You in hard copy. TVCA reserves the right to rescind the offer of the Grant if TVCA do not receive a signed Offer Letter within fourteen (14) days of the date of this Offer Letter.

### **3. Effect of Acceptance of the Grant**

In signing this Offer Letter, You confirm that:-

- a) You accept the Grant offered on the terms of the Agreement;
- b) You are duly authorised to accept the Grant by the Grant Recipient;
- c) You will comply in full with all obligations set out in the Agreement; and
- d) You understand that TVCA may withhold, or require repayment of, the Grant if You fail to comply in full with Your obligations as set out in the Agreement

IN WITNESS whereof the duly authorised representatives of the Parties have signed this Agreement as a Deed on                      day of                      2021.

Signed as a deed by  
**TEES VALLEY COMBINED  
AUTHORITY** by

.....  
Authorised Signatory

.....  
Name of Authorised Signatory

Signed as a deed on behalf of  
**MIDDLESBROUGH COUNCIL**  
by

.....  
S151 Officer  
Authorised Signatory

.....  
Name of Authorised Signatory

**PART 2 – FUNDING PARTICULARS**

<b>Project</b>	Middlehaven Housing scheme				
<b>Grant Recipient</b>	Middlesbrough Council				
<b>Grant Recipient's Address for Notice</b>	Middlesbrough House, Elm Street, Middlesbrough, TS1 2DA				
<b>Application Approval Date</b>	3 <sup>rd</sup> February 2021				
<b>Pre-conditions</b>	None				
<b>Agreed Purposes – Assets to be Funded</b>	<p>The agreed purposes are for the land enabling and site preparation works (as per the breakdown in the business case), to prepare for subsequent housing construction, which includes:</p> <ul style="list-style-type: none"> <li>• The remediation and site clearance of 8 hectares of Brownfield located on Middlehaven as per the site plan;</li> <li>• The infrastructure and enabling works for the highways, remediation and service diversions, including site surveys; and</li> <li>• The service diversions and connections, including the new power connection.</li> </ul>				
<b>Approved Use of Asset</b>	The approved use of the land is for the construction of 634 housing units.				
<b>Approved Use Period of Asset</b>	30 years from the date of Practical Completion of housing units in line with the building contract entered into by the Grant Recipient for the construction of the new asset ('Practical Completion Date'). Any changes to the approved use of the asset must be first agreed with TVCA in writing before any changes are made.				
<b>Planned Disposal of Asset</b>	None				
<b>Key Milestones</b>	The scheme will be delivered over 5 phases. The key milestones are as follows:				
	<b>Key milestones Description</b>	<b>Expected Completion Date</b>			
		<b>Phase 1</b>	<b>Phase 2</b>	<b>Phase 3a</b>	<b>Phase 3b</b>
	<b>Bright Ideas</b>	<b>Boho PF</b>	<b>Northern Parcels</b>	<b>Boho Towers</b>	<b>JAP City</b>

	Formal agreement with development partner	30 Nov 20	31 Oct 20	31 Mar 21	31 May 21	30 June 21
	Planning permission approved (RIBA stage 3)	31 Oct 20	30 Nov 21	30 Sep 21	31 May 21	31 Oct 21
	RIBA Stage 3 achieved	31 Jan 21	31 Dec 21	31 Jul 21	30 Jun 21	30 Nov 21
	Public sector phases - formal agreement with end user	28 Feb 21	31 Oct 20	31 Oct 21	31 Jan 22	31 Oct 21
	Date construction contract let	28 Feb 21	31 Jan 22	31 Oct 21	31 Jan 22	31 Oct 21
	Upfront works start on site	31 Jan 21	30 Jun 21	31 Jan 21	31 Jan 21	31 Jan 21
	Upfront works completed	31 Jan 22	31 Oct 23	31 Mar 22	31 Mar 22	31 Dec 21
	Residential units start on site	30 Apr 21	31 Mar 22	31 Jan 22	31 Mar 22	31 Jan 22
	Residential units completed	31 Jan 22	31 Dec 24	30 Sep 24	30 Jun 23	31 Mar 23
<b>Agreed Outputs</b>	A full Monitoring and Evaluation Plan will be developed which will form the basis of reporting requirements for the outputs in this section and other KPIs as set out in the business case.					
	<b>Output</b>	<b>Target</b>		<b>Timescale</b>		
	Remediation of net additional brownfield land	8ha		31 March 2022		
	Net additional affordable residential units developed by Affordable Homes Programme	634		31 December 2024		
	On and offsite net additional jobs pa supported (safeguarded) by the construction of the net additional units	1965		Per annum (2021/24)		
	Net additional apprenticeships created	21		31 December 2024		
	Energy efficient homes that have energy efficiency rating above E	634		31 March 2024		

<b>Amount of Grant</b>	A maximum sum of £7,922,000 (seven million, nine hundred and twenty-two thousand pounds) subject to the terms and conditions of this Agreement.																											
<b>Match Funding Required</b>	<p>The Grant Recipient is required to provide an additional £76,535,392 (seventy-six million, five hundred and thirty-five thousand, three hundred and ninety-two pounds) to fund construction of the housing units from:</p> <ul style="list-style-type: none"> <li>• Middlesbrough Development Company borrowing £16,404,266 (sixteen million, four hundred and four thousand, two hundred and sixty-six pounds);</li> <li>• PF borrowing £26,469,527 (twenty-six million, four hundred and sixty-nine thousand, five hundred and twenty-seven pounds);</li> <li>• BCEGI capital £24,421,599 (twenty-four million, four hundred and twenty-one thousand, five hundred and ninety-nine pounds); and</li> <li>• Affordable Homes Programme £9,240,000 (nine million and two hundred and forty thousand pounds).</li> </ul>																											
<b>Funding Profile</b>	<p>Unless otherwise agreed in writing and subject to the terms of this Agreement, payments will be made by TVCA to the Grant Recipient quarterly in arrears, based on the actual expenditure incurred on land remediation works in the period.</p> <p>Subject to the above the cashflow will be profiled as follows:-</p> <table border="1"> <thead> <tr> <th></th> <th>Total</th> <th>Jan-Mar21</th> <th>Apr-Jun21</th> <th>Jul-Sep21</th> <th>Oct-Dec21</th> <th>Jan-Mar22</th> <th>22/23</th> <th>23/24</th> </tr> <tr> <th></th> <th>£m</th> <th>Q4 20/21</th> <th>Q1 21/22</th> <th>Q2 21/22</th> <th>Q3 21/22</th> <th>Q4 21/22</th> <th></th> <th></th> </tr> </thead> <tbody> <tr> <td><b>Quarterly / Annual cash out totals</b></td> <td><b>7.922</b></td> <td><b>0.744</b></td> <td><b>1.063</b></td> <td><b>0.362</b></td> <td><b>2.084</b></td> <td><b>1.935</b></td> <td><b>1.096</b></td> <td><b>0.639</b></td> </tr> </tbody> </table> <p>The Grant Recipient will from time to time (acting reasonably) agree to such revisions to the Funding Profile as are necessary taking into account (amongst other things) the actual progress of the Project and the consequent timings of payments due to the progress of contracted activity under the Project. For the avoidance of doubt this provision will not require TVCA to commit any funding to the Project in additional to the agreed Amount of Grant.</p>		Total	Jan-Mar21	Apr-Jun21	Jul-Sep21	Oct-Dec21	Jan-Mar22	22/23	23/24		£m	Q4 20/21	Q1 21/22	Q2 21/22	Q3 21/22	Q4 21/22			<b>Quarterly / Annual cash out totals</b>	<b>7.922</b>	<b>0.744</b>	<b>1.063</b>	<b>0.362</b>	<b>2.084</b>	<b>1.935</b>	<b>1.096</b>	<b>0.639</b>
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<b>Eligible Expenditure</b>	Eligible expenditure incurred in respect of the Agreed Purposes only and as detailed in the business case, or as agreed in writing by TVCA (agreement not to be unreasonably withheld) prior to the first payment of the Grant.																											
<b>VAT Position</b>	TVCA considers that all payments of Grant are outside of the scope of Value Added Tax, but where this is or becomes chargeable, all payments of Grant shall be deemed to be inclusive of Value Added Tax.																											
<b>Agreed Completion Date</b>	31 March 2025 (or such later date as maybe agreed with TVCA if there is project slippage) or the date on which all outputs have been achieved, whichever is earlier.																											
<b>Claim Requirements</b>	As set out in clause 8 (Payment of Grant).																											

<p><b>Acknowledgment or Publicity Requirements</b></p>	<p>Work with the TVCA Communications &amp; Marketing Team on any project announcements prior to the development of the joint Communications and Marketing Plan. See clause 14.</p> <p>TVCA and HM Gov must both be acknowledged as a partner in all publicity, including on-site hoarding boards. and provided with the appropriate notice to input into and approve content. A joint marketing and communications plan is to be agreed by all parties.</p> <p>Two weeks advance notice must be given of any publication or press releases in relation to the scheme to allow time for review by TVCA and MHCLG. This may result in a ministerial visit.</p>
<p><b>Commercially Sensitive Information</b></p>	<p>None</p>
<p><b>Monitoring Period</b></p>	<p>From the Application Approval Date to the Agreed Completion Date and delivery of all outputs.</p>
<p><b>Frequency and Format of Reports</b></p>	<p>In addition to the requirements set out in clause 12 (Monitoring and Reporting) the Grant Recipient shall provide:</p> <ul style="list-style-type: none"> <li>• An annual statement on the delivery programme of the scheme which includes but not limited to: <ul style="list-style-type: none"> <li>○ Performance against the outputs and milestones in the delivery plan;</li> <li>○ Spending against the overall funding profile;</li> <li>○ Amount of remediated brownfield land readied for development;</li> <li>○ Housing starts and completions – this should identify tenure type and whether funded by other Government Investment programmes;</li> <li>○ Additionality and wider economic benefits delivered;</li> <li>○ Delivery risks and mitigating actions</li> </ul> </li> <li>• The annual statement must be submitted by the 30<sup>th</sup> April each year, with quarterly reports being submitted by 15<sup>th</sup> of July, October and January.</li> <li>• A full risk register which is to be reviewed and updated on a regular basis to be summarised in the Quarterly Monitoring Reporting.</li> <li>• Provide TVCA with final project evaluation report (and give TVCA the opportunity to contribute to this work).</li> <li>• Engage in the programme evaluation and provide information as requested by TVCA.</li> </ul>
<p><b>Agreed Share of Assurance Framework Costs</b></p>	<p>None</p>

<p><b>Amendments to the Standard Funding Terms (if any)</b></p>	<p>None</p>
<p><b>Additions to the Standard Funding Terms (if any)</b></p>	<p>The granting of the Brownfield Housing Fund (BHF) will be subject to the following conditions being met as specified or otherwise throughout the Term. The Grant recipient will:</p> <ol style="list-style-type: none"> <li>1. Invite TVCA to sit on the project delivery group (or equivalent) for the scheme throughout the Term;</li> <li>2. Ensure a full risk register is completed, updated and maintained on a regular basis to be summarised in the Quarterly Monitoring Reporting, along with a full delivery programme to be summarised in the Quarterly Monitoring Reporting;</li> <li>3. Agree a joint Marketing and Communication Plan with TVCA Communications &amp; Marketing Team by end of 28 February 2021 and deliver its agreed emblems throughout the Term;</li> <li>4. Work with TVCA to agree a monitoring and evaluation plan that meets the requirements of the MHCLG funding contract by 28 February 2021 and to comply with that plan throughout the Term;</li> <li>5. Ensure a start on site for construction before 31 March 2025;</li> <li>6. Provide a copy of the agreed procurement Strategy by 28 February 2021, detailing the open market competitive process in line with the Public Contracts Regulations 2015, or other competitive procurement methods, where appropriate. Each tender document and outcome should be provided to TVCA in writing along with an agreed programme of works</li> <li>7. Provide a signed copy of each of the land purchase agreement for Phases 1 and 2 by 31 March 2021; and copies of signed land agreements for phases 3a,3b and 4 by 30 September 2021;</li> <li>8. Provide copies of agreed forward funding agreements with Registered providers by <b>30 September 2021;</b></li> <li>9. Acquire planning permission for phases 2, 3a, 3b and 4 by 30 November 2021; BHF funding for Year 2 is conditional on acquiring planning approvals, with Year 1 subject to clawback, if planning permission is not approved. This will be applied for subsequent years for the term;</li> <li>10. Provide written confirmation of approval by the relevant Board or Cabinet for the £76,535,392 match funding to fund construction of the housing units together with a commitment to meeting any project cost overruns by <b>30 April 2021;</b></li> </ol>

	<ol style="list-style-type: none"><li>11. Provide confirmation of the delivery partner for each phase (as per the key milestones) following procurement and a signed copy of the building contract agreement, along with a detailed programme of works; and</li><li>12. Provide a copy of the RIBA 4 Design and Site Surveys for all phases by 31 December 2021. Any increased costs resulting from this (above the agreed BHF grant) must be met by MBC and developer contributions.</li></ol>
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## **PART 3 – TVCA STANDARD TERMS AND CONDITIONS OF FUNDING**

### **1. DEFINITIONS AND INTERPRETATION**

In this Agreement, unless the context otherwise requires, expressions shall have the following meanings set out in the Appendix to this Part 3 (TVCA Standard Terms and Conditions of Funding).

### **2. COMMENCEMENT AND TERM**

This Agreement shall commence on the Application Approval Date of this Agreement and shall continue for the Term, unless terminated in accordance with Clause 16 (Events of Default).

### **3. CONDITIONS PRECEDENT**

3.1 TVCA will not make the first payment of Grant and/or any subsequent payment of Grant unless all of the Preconditions have been complied with, in addition to any Preconditions listed in the Contract Particulars:-

3.1.1 the Grant Recipient has satisfied TVCA that the Grant Recipient has sufficient Match Funding committed to achieve Completion of the Project by the Agreed Completion Date;

3.1.2 the Grant Recipient has satisfied TVCA that the Grant Recipient has all funding needed to pay for expenditure in relation to the Project which is Not Eligible Expenditure;

3.1.3 the Grant Recipient has paid the Assurance Framework Costs in full;

3.1.4 any Preliminary Expenditure which is Eligible Expenditure has been used in accordance with any conditions relating to it;

3.1.5 a Certificate of Title in respect of the ownership of the Site and the Grant Recipient's estate or interest therein (being either the freehold estate or a Long Lease) has been issued to TVCA by a firm of solicitors acceptable to TVCA; and

3.1.6 the Grant Recipient shall have supplied to TVCA and TVCA shall have approved the Project Specifications.

3.2 Notwithstanding clause 3.1, TVCA may waive in whole or in part any Precondition without prejudicing TVCA's right to require subsequent fulfilment of such Precondition provided always that the payment of a Grant Claim shall not operate as a waiver of any of the obligations in this clause 3 or exclude the right for TVCA to exercise any of its rights under this Agreement.

### **4. OBLIGATIONS OF TVCA**

4.1 Subject to clause 4.2, TVCA shall make the Grant to the Grant Recipient in accordance with the Funding Profile.

4.2 TVCA's obligation to make the Grant is conditional on the Grant Recipient:-

- 4.2.1 having all necessary Consents to proceed with the Project;
  - 4.2.2 subject to clause 3.2, having met all Preconditions in full;
  - 4.2.3 satisfying TVCA that the Grant Recipient is meeting, and can continue to meet, its obligations as set out in clause 5 (Obligations of the Grant Recipient); and
  - 4.2.4 satisfying TVCA that none of the circumstances described in clause 16 (Events of Default) have occurred.
- 4.3 For the avoidance of doubt, TVCA shall have no obligation to provide any further funding in relation to the Project, or any future project, other than as provided for specifically in this Agreement.

## 5. **OBLIGATIONS OF THE GRANT RECIPIENT**

### 5.1 The Grant Recipient agrees with TVCA that it will:-

- 5.1.1 progress the Project in an efficient and business-like manner;
- 5.1.2 not make any material alteration to the Project unless TVCA agrees otherwise in writing;
- 5.1.3 apply the Grant exclusively for the Agreed Purpose and in relation to Eligible Expenditure only;
- 5.1.4 deliver the Agreed Outputs;
- 5.1.5 meet the Key Milestones;
- 5.1.6 comply with the following at all times throughout the Project:-
  - a) the terms of any Consents;
  - b) all applicable Law including all requirements pursuant to the Public Contracts Regulations 2015 and State Aid Law; and
  - c) the terms and conditions of this Agreement, including but not limited to:-
    - i. the monitoring and reporting requirements set out in clause 12 (Monitoring and Reporting);
    - ii. the intellectual property requirements set out in clause 13 (Intellectual Property); and
    - iii. the public relations and marketing requirements set out in clause 14 (Public Relations and Marketing);
- 5.1.7 not charge, assign, transfer or otherwise dispose of the benefit of this Agreement;

- 5.1.8 provide TVCA with such information as TVCA may reasonably require in connection with the Project;
  - 5.1.9 submit Claim Forms with full supporting evidence in accordance with the Funding Profile (pursuant to clause 8 (Payment of Grant));
  - 5.1.10 secure all other sources of funding required to deliver the Project as identified in the Application Form including any Match Funding; and
  - 5.1.11 meet all cost overrun(s) associated with the Project.
- 5.2 The Grant Recipient further agrees with TVCA that it shall as soon as reasonably practicable inform TVCA in writing of:-
- 5.2.1 any Change; and/or
  - 5.2.2 any event which might adversely affect the carrying out and completion of the Project or any part of it.
- 5.3 The Grant Recipient may, with the consent of TVCA, task a Delivery Partner to carry out certain of the Project Activities provided that such shall not in any way reduce any of the obligations or liability of the Grant Recipient under this Funding Agreement. If Consent is given, the Delivery Partner shall be named in the Funding Particulars.
- 5.4 For the avoidance of doubt, the Grant Recipient shall be liable for the acts of its Delivery Partner including any Corrections resulting therefrom.
- 5.5 The Grant Recipient shall not use the Grant to:-
- 5.5.1 make any payment to members of its Governing Body; or
  - 5.5.2 pay for any expenditure commitments of the Grant Recipient entered into before the Application Approval Date,
- unless this has been approved in writing by TVCA.
- 5.6 The Grant Recipient shall not spend any part of the Grant on the delivery of the Project outside of the Approved Use Period.
- 5.7 Should any part of the Grant remain unspent after the expiration of the Approved Use Period, the Grant Recipient shall ensure that any unspent monies are returned to TVCA unless otherwise agreed in writing by TVCA.
- 5.8 Any liabilities arising after the Agreed Completion Date must be managed and paid for by the Grant Recipient using the Grant or other resources of the Grant Recipient. There will be no additional funding available from TVCA for this or any other purpose.
6. **PROJECT WORKS**
- 6.1 The Grant Recipient agrees with the TVCA that:-

- 6.1.1 it shall not carry out any Project Activities upon the Site without having obtained all necessary Consents for such activities and in particular shall not carry out any Works constituting development for which planning permission is required under the Town and Country Planning Act 1990 without having obtained detailed planning consent for such Works, and shall if requested by the TVCA produce to it such documents or copy documents as the TVCA may require to demonstrate satisfaction of its obligations under this paragraph;
- 6.1.2 it shall at all times throughout the Project comply with all Consents including the relevant Planning Consent;
- 6.1.3 it shall prior to the submission of any planning application, submit a copy to the TVCA for approval;
- 6.1.4 it shall permit the TVCA and its authorised representatives to attend any Project meetings including any Site meetings with the Grant Recipient's building contractor;
- 6.1.5 it shall permit the TVCA and its authorised representatives to visit the Site upon reasonable notice to view the Works throughout the lifetime of the Project; and
- 6.1.6 it shall use all reasonable endeavours to ensure that the construction and operation of the Project reflect the overall principles of Sustainable Development.

## 7. **WARRANTIES**

### 7.1 The Grant Recipient represents and warrants to TVCA that:-

- 7.1.1 the execution of the Offer Letter has been validly authorised and the obligations assumed by the Grant Recipient constitute valid, legal, binding and enforceable obligations;
- 7.1.2 the Grant Recipient is not at the date of this Agreement aware of any:-
  - a) actual or potential litigation or administrative or arbitration proceeding which might have a material adverse effect on its business, assets or operations or might adversely affect its ability to perform its obligations under this Agreement; or
  - b) circumstances which may result in the bankruptcy or insolvency of the Grant Recipient, or the Grant Recipient making any composition with its creditors;
- 7.1.3 the information provided in the Application Form is true, complete and accurate;
- 7.1.4 it has disclosed to TVCA all information that might reasonably be thought to have influenced TVCA in awarding the Grant to the Grant Recipient; and
- 7.1.5 it is not aware of anything which may materially threaten the success of the Project.

## 8. **PAYMENT OF GRANT**

- 8.1 Subject to the Grant Recipient complying with the Claim Requirements, TVCA shall pay the Grant to the Grant Recipient on the Payment Date(s) and in the amounts set out in the Funding Profile.
- 8.2 The Grant Recipient shall make all Claims no less than fourteen (14) days in advance of each Payment Date by submitting the Claim Form to TVCA.
- 8.3 The Grant Recipient must notify TVCA promptly if at any time it becomes aware that it is unable to make a Claim in accordance with the Funding Profile.
- 8.4 Each Claim shall include accounting documents capable of being independently verified in such format and detail as may be acceptable to TVCA.
- 8.5 TVCA will aim to meet defray the relevant Grant within twenty (20) Working Days of receipt of a Claim, subject to the Grant Recipient satisfactorily meeting any request for further information or evidence. The time for payment of the Claim shall not be of the essence. TVCA shall have no liability to the Grant Recipient for any Losses caused by a delay in the payment of a Claim howsoever arising.
- 8.6 A progress report in respect of the Project must be submitted with each Claim in accordance with clause 12 (Monitoring and Reporting).
- 8.7 By submitting a Claim, the Grant Recipient warrants that:-
- 8.7.1 there is no Event of Default or material breach subsisting by reference to the facts and circumstances existing on each such date; and
  - 8.7.2 if it is not aware of anything which materially threatens the success or successful completion of the intention or purpose of this Funding Agreement.
- 8.8 TVCA shall apply the approach to Value Added Tax in relation to the Grant as set out in the Contract Particulars.
- 8.9 If in any Financial Year (the relevant year) there is a shortfall in the amount of Eligible Expenditure by reference to the amount planned in the Funding Profile, TVCA will be under no obligation to pay Grant for any additional Eligible Expenditure in the following year or any later Financial Year.
- 8.10 If in any Financial Year (the relevant year) there is an overspend in the amount of Eligible Expenditure by reference to the amount planned in the Funding Profile, TVCA will be under no obligation to pay Grant in the following year or any later Financial Year which was overspent in any relevant year.
- 8.11 The Grant shall 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 the bank account must be signed by at least two individual representatives of the Grant Recipient.

- 8.12 The Grant Recipient shall not transfer any part of the Grant to bank accounts which are not ordinary business accounts within the clearing bank system, without the prior written consent of TVCA.
- 8.13 The Grant shall be shown in the Grant Recipient's accounts as a restricted fund and shall not be included under general funds.
- 8.14 The Grant Recipient shall keep separate, accurate and up to date accounts and records of the receipt and expenditure of the Grant monies received by it.
- 8.15 The Grant Recipient shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Grant for a period of at least six (6) years following receipt of any Grant monies to which they relate. TVCA shall have the right to review, at the TVCA's reasonable request, the Grant Recipient's accounts and records that relate to the expenditure of the Grant and shall have the right to take copies of such accounts and records.
- 8.16 The Grant Recipient shall provide TVCA with a copy of its annual accounts within six (6) months (or such lesser period as TVCA may reasonably require) of the end of the relevant Financial Year in respect of each year in which the Grant is paid.
- 8.17 The Grant Recipient shall comply and facilitate TVCA's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and TVCA.

## 9. **CLAUSE NOT USED**

## 10. **CORRECTIONS**

- 10.1 Notwithstanding any other provision in this Agreement, TVCA may impose a Correction. If a Correction is imposed, a notice will be sent to the Grant Recipient setting out the Irregularity that TVCA considers has occurred together with the level of Correction imposed having regard to the Irregularity and/or the value of the Grant Claim to the extent that the Irregularity applies to it.
- 10.2 If a Correction is imposed, the Grant Recipient shall either pay the amount or agree to the Correction being offset from a future Grant Claim as the case may be. TVCA shall be at liberty to offset an amount of Grant in anticipation of a Correction pending the final outcome of any discussions or representations made by TVCA and/or the Grant Recipient in respect of the Correction.
- 10.3 The Grant Recipient shall be at liberty to make representations in writing to TVCA setting out the reasons it considers that the Correction should be adjusted together with evidence in sufficient detail to enable TVCA to reconsider the requirement for the Correction provided always that TVCA's decision shall be final and binding.

## 11. **PROVISIONS RELATING TO ASSETS**

### **Inventory of the Assets**

- 11.1 Using the Asset Register Template, the Grant Recipient must establish and maintain an inventory of all of the Assets.
- 11.2 The Grant Recipient covenants with TVCA that it will not use any Asset for any purpose other than the Approved Use throughout the Approved Use Period of the Asset.

### **Change of use of any Asset**

- 11.3 During the Approved Use Period of each Asset, the Grant Recipient shall not cease to use the Fixed Asset or the Major Asset, or any part of the Asset for the Approved Use without the prior written consent of TVCA. If consent is given, it may be subject to any conditions which TVCA may wish to impose. Such conditions may include repayment by the Grant Recipient to TVCA of all or part of the Grant paid to the Grant Recipient under this Funding Agreement.

### **Disposal of any Asset**

- 11.4 The conditions of this clause shall apply throughout the Approved Use Period of any Asset:-
- 11.4.1 in respect of any Planned Disposal, the Grant Recipient need not seek the prior written consent of TVCA to such Planned Disposal, provided the Grant Recipient can demonstrate that the disposal meets the definition of a Planned Disposal as agreed in accordance with this Funding Agreement;
  - 11.4.2 further to clause 11.4.1 above, where the Grant Recipient intends to make a Planned Disposal the Grant Recipient shall notify TVCA in good time prior to such Planned Disposal, supplying evidence that such disposal meets the definition of a Planned Disposal as set out herein, and TVCA shall promptly supply to the Grant Recipient a letter addressed to the relevant Land Registry consenting to the disposal;
  - 11.4.3 the Grant Recipient must not Dispose of any interest in any Asset without the prior written consent of TVCA. If TVCA grants consent to a Disposal, such consent may be subject to satisfaction of certain conditions, to be determined by TVCA;
  - 11.4.4 where the Grant Recipient Disposes of any interest in any Asset without the prior written consent of TVCA, then the proceeds of the Disposal (limited to the total amount paid by TVCA to the Grant Recipient under this Funding Agreement) shall be held on trust by the Grant Recipient for the benefit of TVCA;
  - 11.4.5 the liability under clause 11.4.4 is separate from the liability to comply with any decision of TVCA under clause to require repayment of the whole or any part of the amount paid of the Grant, to the Grant Recipient; and
  - 11.4.6 the Grant Recipient shall provide to TVCA as part of the progress report referred to in clause 12.1 information in relation to any Disposals which it either intends to make or has made with the prior written consent of TVCA at the date of such progress reports.

## 12. **MONITORING AND REPORTING**

12.1 As part of each Claim, the Grant Recipient shall provide a report including the following information:-

12.1.1 a financial summary which identifies:-

- a) the amount of the expenditure since the claim (if any);
- b) breakdown of how the expenditure identified at (a) above was spent; and
- c) confirmation that each item of expenditure identified above at (b) above is Eligible Expenditure.

12.1.2 full evidence of the expenditure itemised at 12.1.1a) above

12.1.3 an update of progress against Key Milestones and confirmation of any Key Milestones which have not been met; and

12.1.4 an update of progress against delivering Agreed Outputs and confirmation of any Agreed Outputs which have not been delivered.

12.2 In addition to the requirements set out in clause 12.1 above, the Grant Recipient shall (to the extent required):-

12.2.1 provide TVCA with financial and operational reports in relation to the Project on the frequency and in the format specified in the Funding Particulars and as further notified by TVCA from time to time;

12.2.2 provide TVCA with such further information as TVCA may reasonably require in order for TVCA to establish that the Grant has been used properly in accordance with this Agreement within fourteen (14) days; and

12.2.3 on reasonable written request, permit any person authorised by TVCA such reasonable access to its employees, agents, facilities and records, for the purpose of evaluating the Grant Recipient's compliance with this Agreement within fourteen (14) days.

12.3 For the duration of the Approved Use Period, the Grant Recipient shall inform TVCA immediately in relation to any Disposal:-

12.3.1 which it intends to make seeking the prior written consent of TVCA; and

12.3.2 which it has made with the prior written consent of TVCA.

12.4 The Grant Recipient shall provide TVCA with a final report within fourteen (14) days of the Agreed Completion Date which shall confirm whether the Project has been successfully and properly completed.



### 13. **INTELLECTUAL PROPERTY**

#### 13.1 The Grant Recipient agrees:-

- 13.1.1 to provide TVCA with digital images in electronic format which accurately demonstrate the Project (as reasonably requested by TVCA from time to time), along with the right to use those images at any time including the right to publish and to alter the images and to share them with relevant third parties;
- 13.1.2 to hereby grant an irrevocable, perpetual and royalty-free licence to TVCA to use, copy, keep and disseminate the Digital Outputs;
- 13.1.3 obtain and maintain in force all authorisations of any kind the Grant Recipient requires to use, copy, keep and disseminate the Digital Outputs and to grant the licence in clause 13.1.2 to TVCA;
- 13.1.4 to contract to the effect that any creation made on its behalf of material which forms Digital Output is undertaken on terms which enable it to grant the licence at clause 13.1.2 to TVCA; and
- 13.1.5 ensure that Digital Outputs are held securely and are available on request by TVCA.

### 14. **PUBLIC RELATIONS AND MARKETING**

#### 14.1 The Grant Recipient agrees:-

- 14.1.1 to include the statement, 'This Project is funded by Tees Valley Combined Authority' and the Logo on or in:-
  - (a) all Site hoardings and billboards;
  - (b) on all communications it releases relating to the Project in whatever format;
  - (c) where the Grant is made in relation to a Fixed Asset, on a sign in a prominent position to be agreed by TVCA; and
  - (d) that such statement and Logo will be given equal prominence to the Grant Recipient's own branding;
- 14.1.2 that TVCA has the right to publicise the Grant and the Project;
- 14.1.3 not to publish or display any item bearing the Logo or the name of TVCA without prior TVCA approval (not to be unreasonably withheld);
- 14.1.4 to give TVCA as much advance notice as possible of announcements and milestone events (at least four (4) weeks) to allow quotes to be arranged for any media releases from the TVCA and/or HM Government as TVCA considers this appropriate;

14.1.5 not to issue any public statement, press release or other publicity in relation to the Project without:-

- a) prior TVCA approval (not to be unreasonably withheld); and
- b) giving TVCA and/or HM Government (where TVCA considers this appropriate) the opportunity to include a quote or comment in the statement; and

14.1.6 to meet any additional acknowledgment or publicity requirements specified in the Funding Particulars or notified by TVCA from time to time, including the requirement to use the Logo in certain contexts.

14.2 TVCA grants to the Grant Recipient a non-exclusive, non-assignable licence to use the Logo where authorised or required to do so pursuant to this clause 14 (Public Relations and Marketing) only.

## 15. **STATE AID**

15.1 The Grant Recipient confirms it has undertaken its own independent assessment of the compatibility of the Project with State Aid Law and confirms to TVCA that the Project is structured so it is compliant with State Aid Law.

15.2 Where TVCA has provided its views on any aspect of State Aid Law, the Grant Recipient confirms that it has considered this information alongside all other sources of State Aid Law available at the time of entering into this Agreement in undertaking its own assessment of the Project's compliance. TVCA has taken into account the Grant Recipient's representations on State Aid Law compliance in deciding to offer the Grant.

15.3 The Grant Recipient agrees to:-

15.3.1 procure and maintain the necessary expertise and resources to deliver the Project in accordance with the State Aid Law for the full term of the Project; and

15.3.2 to maintain appropriate records of compliance with the State Aid Law and agrees to take all reasonable steps to assist TVCA to respond to any investigation(s) instigated by the European Commission into the Project.

## 16. **EVENTS OF DEFAULT**

16.1 TVCA may at its absolute discretion:-

16.1.1 reduce, suspend or withhold the Grant or any part of it; and/or

16.1.2 require that all or part of the Grant be repaid, and/or

16.1.3 may terminate this Agreement, or any part of it, on written notice with immediate effect;

on the occurrence of any of the Events of Default listed in clause 16.2.

## 16.2 The Events of Default are:-

### 16.2.1 the Grant Recipient:-

- a) is in breach of a material term of this Agreement which (in the reasonable opinion of TVCA) is not capable of remedy;
- b) is in breach of a material term of this Agreement which is (in the reasonable opinion of TVCA) is capable of remedy and the Grant Recipient has failed to remedy the breach within fourteen (14) days of receipt of written notice from TVCA specifying the breach and requesting that it be remedied;
- c) fails to commence the Project Activities by the date which is three (3) months after the date of this Agreement;
- d) does not claim the expenditure in line with the Expenditure Profile;
- e) does not complete the Project Activities by the Agreed Completion Date;
- f) fails to meet any Key Milestone or to deliver any Agreed Output;
- g) becomes bankrupt or insolvent, makes any composition with its creditors, or has a receiver appointed under the Mental Health Act 1983;
- h) dies or becomes unable to perform their obligations under this Agreement due to incapacity for any consecutive or aggregate period of four (4) weeks in any period of twelve (12) calendar months;
- i) ceases or threatens to cease to carry on its business;
- j) is guilty of any conduct bringing itself or TVCA into serious public disrepute, including but not limited to, a breach of clause 25 (Prevention of Bribery); or
- k) in the opinion of TVCA (acting reasonably) commits any act of dishonesty or serious or persistent misconduct in connection with or referable to the Project or this Agreement (including a material breach of health and safety legislation or of The Public Contract Regulations 2015); or

16.2.2 any Consent necessary to enable the Grant Recipient to deliver the Project is not obtained or, having been obtained, is revoked, withdrawn, suspended, modified or made subject to conditions;

16.2.3 the Approved Use of any Asset has ceased without the prior written consent of the TVCA;

16.2.4 any of the warranties given or representations made by the Grant Recipient as set out in clause 7 (Warranties) and clause 25.2 (Prevention of Bribery) prove to be untrue or incorrect;

- 16.2.5 a Change occurs without the prior written approval of the TVCA;
- 16.2.6 any event or circumstance which (in the reasonable opinion of TVCA) might materially adversely affect:-
- a) the carrying out and completion of the Project or any part of it, or
  - b) the Grant Recipient's ability to achieve the Agreed Outputs; or
  - c) the Grant Recipient's ability to meet the Key Milestones; or
- 16.2.7 a finding of non-compliance with State Aid Law is made in respect of the Project by the European Commission or a Court of competent jurisdiction (in which case, the Grant Recipient acknowledges and agrees to repay the Grant with interest in accordance with the European Commission's reference rates on request).

## 17. **DISPUTE RESOLUTION PROCEDURE**

- 17.1 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause 17.
- 17.2 The Parties shall endeavour to:-
- 17.2.1 notify each other of any anticipated disputes so that any potential dispute can be avoided by negotiation between them; and
  - 17.2.2 resolve any failure to agree matters or any disputes by direct negotiations between senior representatives of the Parties.
- 17.3 Where direct negotiations have failed to resolve the dispute, either Party may refer the matter to an adjudicator ("the Adjudicator"). The Adjudicator shall be selected by the President for the time being of the Chartered Institute of Arbitrators unless the Parties in dispute agree another appropriate person.
- 17.4 The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or their determination or the procedure used to reach the determination.
- 17.5 The Grant Recipient shall continue to comply with, observe and perform all its obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this clause 17.
- 17.6 The Parties shall give effect forthwith to every decision of the Adjudicator delivered under this clause 17.

## 18. **SURVIVAL**

- 18.1 The following clauses will survive termination or expiry of this Agreement:-

- 18.1.1 clause 5 (Obligations of the Grant Recipient) to the extent the obligations continue to be capable of being met;
- 18.1.2 clause 6 (Project Works);
- 18.1.3 clause 10 (Corrections);
- 18.1.4 clause 11 (Provisions Relating to Assets);
- 18.1.5 clause 12 (Monitoring and Reporting);
- 18.1.6 clause 13 (Intellectual Property);
- 18.1.7 clause 14 (Public Relations and Marketing);
- 18.1.8 clause 15 (State Aid);
- 18.1.9 clause 16 (Events Of Default) in relation to the right to require repayment of the Grant only;
- 18.1.10 clause 20 (Freedom of Information and Data Protection);
- 18.1.11 clause 21 (Confidentiality);
- 18.1.12 clause 22 (Limitation of Liability);
- 18.1.13 clause 23 (insurance);
- 18.1.14 clause 25 (Prevention of Bribery);
- 18.1.15 clause 28 (Severance); and
- 18.1.16 clause 31 (Law and Jurisdiction).

## 19. **VARIATION**

- 19.1 No variation or modification to this Agreement is valid unless it is in writing and signed by each of the Parties.

## 20. **FREEDOM OF INFORMATION AND DATA PROTECTION**

- 20.1 The Grant Recipient acknowledges that TVCA is required to comply with the provisions of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
- 20.2 The Grant Recipient agrees to assist and co-operate with TVCA as required by TVCA to enable TVCA to comply with its information disclosure obligations.
- 20.3 The Grant Recipient acknowledges that the Commercially Sensitive Information is indicative only and that TVCA may be obliged to disclose it to comply with its information disclosure obligations.

- 20.4 The Grant Recipient will not answer any request for information itself without the prior written consent of TVCA, but shall pass these on to TVCA at the earliest opportunity for TVCA to respond to.
- 20.5 The Grant Recipient shall (and shall procure that any of its staff involved in connection with the Project shall) comply with all applicable requirements of the Data Protection Legislation which arise in connection with this Agreement.

## 21. **CONFIDENTIALITY**

- 21.1 Subject to clause 20 (Freedom of Information and Data Protection), each Party shall during the Approved Use Period and thereafter keep secret and confidential all intellectual property rights (as per clause 13) or other business, technical or commercial information (including the Commercially Sensitive Information) disclosed to it as a result of the 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.
- 21.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any intellectual property rights, or other business, technical or commercial information which:-
- 21.1.1 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; or
  - 21.1.2 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
  - 21.1.3 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.

## 22. **LIMITATION OF LIABILITY**

- 22.1 TVCA accepts no liability for any consequences, whether direct or indirect, that may come about from the Grant Recipient running the Project, the use of the Grant or from withdrawal of the Grant. The Grant Recipient shall indemnify and hold harmless TVCA, its employees, agents, officers or Subcontractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Grant Recipient in relation to the Project, the non-fulfilment of obligations of the Grant Recipient under this Agreement or its obligations to third parties.
- 22.2 Subject to clause 22.1, TVCA's liability under this Agreement is limited to the payment of the Grant.

## 23. **INSURANCE**

- 23.1 The Grant Recipient shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Grant Recipient, arising out of the Grant Recipient's performance of the Agreement, including death or personal injury, loss of or damage to property (including any Assets) or any other loss (the "Required Insurances").
- 23.2 The Required Insurances referred to above include (but are not limited to):-
- 23.2.1 public liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Project; and
  - 23.2.2 employer's liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims arising from the Project.
- 23.3 The Grant Recipient shall (on request) supply to TVCA a copy of such insurance policies and evidence that the relevant premiums have been paid.

## 24. **NOTICES**

- 24.1 Any notices required to be given by either Party to the other shall be in writing and shall be served personally or sent by registered post to the address stated in this Agreement for the relevant Party.
- 24.2 Any notice served will be deemed to have been served as follows:-
- 24.2.1 notice served personally will be deemed to have been served on the day of delivery; and
  - 24.2.2 notice sent by post will be deemed to have been served forty eight (48) hours after it was posted.

## 25. **PREVENTION OF BRIBERY**

- 25.1 The Grant Recipient shall not, and shall procure that any employee, agent or representative of the Grant Recipient shall not, in connection with this Agreement or the Project, commit a Prohibited Act.
- 25.2 The Grant Recipient warrants, represents and undertakes that it is not aware of any financial or other advantage being given or promised to be given to any person working for or engaged by TVCA.

## 26. **THIRD PARTY RIGHTS**

- 26.1 This Agreement is enforceable only by the Parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Agreement pursuant to The Contract (Rights of Third Parties) Act 1999 are excluded.

27. **NO WAIVER**

27.1 Failure by any Party at any time to enforce any one or more of the provisions of this Agreement or to require performance by another Party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Agreement nor affect the validity of this Agreement or any part of it or the right of the Parties to enforce any provision in accordance with its terms.

28. **SEVERANCE**

If any provision of this Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

29. **COSTS AND EXPENSES**

29.1 The Parties have agreed to share the costs incurred by TVCA in ensuring compliance with its Assurance Framework in the proportions set out in the Funding Particulars. The Grant Recipient notes that its share of these costs are to be deducted from the Grant as specified in the Funding Profile.

29.2 Each Party shall pay their own legal and administrative costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Agreement.

30. **NO AGENCY OR PARTIESHIP**

Nothing contained in this Agreement, and no action taken by the Parties pursuant to this Agreement, will be deemed to constitute a formal partnership, joint venture, principal and agent or employer and employee. No Party has, nor may it represent that it has, any authority to act or make any commitments on any other Party's behalf.

31. **LAW AND JURISDICTION**

This Agreement shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English Courts.



**APPENDIX 1 to Part 3 – Definitions and Interpretation**

1. In this Agreement, unless the context otherwise requires:-

- 1.1. references to any individual includes his or her personal representatives and successors by law and references to 'TVCA' include its permitted assigns;
- 1.2. reference to any statute or statutory provision includes a reference to that statute or provision as from time to time amended, extended, re-enacted or consolidated and all statutory instruments or orders made pursuant to it;
- 1.3. words denoting the singular shall include the plural and vice versa, words denoting any gender include all genders, and words denoting persons shall include firms and corporations and vice versa; and
- 1.4. references to clauses and clause headings are for convenience only; and
- 1.5. the following expressions shall have the following meanings:-

“Agreed Completion Date” means the date specified in the Funding Particulars or such other date as may be agreed in writing by TVCA for the completion of the Project;

“Agreed Purpose” means the purpose for which the Grant may be used by the Grant Recipient as specified in the Funding Particulars;

“Agreed Outputs” means the outputs or deliverables that the Grant Recipient has agreed to deliver as part of the Project as specified in the Funding Particulars;

“Agreement” means the documents setting out TVCA’s agreement to provide (and the Grant Recipient’s agreement to accept) the Grant, consisting of the following documents which are to be read as one document:-

- a) Part 1 – the Offer Letter;
- b) Part 2 – the Funding Particulars;
- c) Part 3 – the Standard Funding Terms; and
- d) Part 4 – the Application Form;

and in the event of conflict between any of the Parts of the Agreement, the Parts shall have the order of precedence set out above;


“Application Approval Date” means the date specified in the Funding Particulars, or such other date as may be agreed in writing by TVCA;

“Application Form” means the application form submitted by the Grant Recipient to TVCA attached at Part 4 of this Agreement which sets out the purposes for which the Grant was sought;

“Approved Use”	means approved use of the Asset as set out in the Funding Particulars;
“Approved Use Period”	means the period set out in the Funding Particulars;
“Asset”	means any asset being funded in whole or in part by the Grant as described in the Application Form which may be either a Fixed Asset or a Major Asset as appropriate in the relevant context and Assets shall be construed accordingly;
“Asset Register Template”	means the asset register template notified by TVCA to the Grant Recipient;
“Assurance Framework Costs”	means the amount of the reasonable costs incurred by TVCA as set out in the Funding Particulars in complying with the Tees Valley Single Pot Assurance Framework to ensure accountable and transparent decision making, appraise projects and monitor and evaluate schemes to achieve value for money and ensure that TVCA funds are spent lawfully;
“Audit”	means and inspection and verification of the accounts conducted by an independent qualified accountant;
“Certificate of Title”	means a certificate of title evidencing the Grant Recipient's title to the Site of the Works in the form required and notified by TVCA;
“Change”	means in relation to the Project as defined in the Application any of the following changes:- <ul style="list-style-type: none"><li>a) a change in the Ownership, Control and Nature of Business of the Grant Recipient;</li><li>b) a change in the nature or purpose of the Project;</li><li>c) any change to the Eligible Expenditure;</li><li>d) any change to the Expenditure Profile;</li><li>e) any change to any of the Key Milestone Dates;</li><li>f) any change to any of the Agreed Outputs; or</li><li>g) any material change to the Project Specifications (that is, more than merely trivial and inconsequential in its consequences);</li></ul>
“Claim”	means the submission of a Claim Form by the Grant Recipient to TVCA at the intervals agreed in the Funding Profile;

“Claim Form”	means the form provided to the Grant Recipient by TVCA to request draw down of the Grant;
“Claim Requirements”	means the requirements which trigger each payment of the Grant as set out in clause 8 (Payment of Grant) and the Funding Particulars (where relevant) or as subsequently notified to the Grant Recipient;
“Commercially Sensitive Information”	any information identified by the Grant Recipient in the Funding Particulars as being of a commercially sensitive nature, which, if disclosed by TVCA would cause the Grant Recipient significant commercial disadvantage or material financial loss;
“Completion”	means completion of the Project Activities to the satisfaction of the TVCA;
“Conditions”	means the terms and conditions upon which the Grant is payable as contained in clause 8 of the main body of this Capital Funding Agreement;
“Consents”	includes any approval, consent, exemption, licence, permission or registration by or from any governmental or other authority or other person to enable the Project to be lawfully commenced, carried out and/or maintained;
“Control”	control as defined by section 416 of the Income and Corporation Taxes Act 1988;
“Corrections”	means an amount to be repaid or withheld from the Grant payable as determined following the finding of an Irregularity in accordance with clause 10;
“Data Protection Legislation”	means the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy;
“Delivery Partner”	means a third party that (in collaboration with the Grant Recipient) shall deliver the Project, itself defray expenditure to be claimed and carry out the Project Activities and which third party is not intended by either Party to be providing services or works under a contract for services or works;
“Digital Outputs”	all material created in or copied into digital format by or for the Grant Recipient in connection with the Project, including all advice, reports, studies and other documentation prepared or commissioned by the Grant Recipient in connection with the Project;
“Disposal”	means the disposal, sale, transfer or the grant of any estate or interest in any Asset including a Lease Disposal, where relevant in the context, and includes the creation of any charge, legal mortgage, debenture,

	lien or other encumbrance and any contract for a disposal and 'Dispose' shall be construed accordingly;
"Eligible Expenditure"	means the costs relating to the Project that the Grant can be used to fund as set out in the Funding Particulars;
"Event of Default"	means any of the events described in clause 16.2;
"Expenditure Profile"	means the information provided by the Grant Recipient detailing the spend forecast for the carrying out of the Project Activities and defrayal of expenditure from the Application Approval Date to the Agreed Completion Date as set out in the Funding Particulars;
"Financial Year"	means 1 April to 31 March;
"Fixed Asset"	means any Asset which consists of land and/or buildings, plant, machinery or other thing that is, or is to be, fixed to any land and which is to be acquired, developed, enhanced, constructed and/or installed as part of the Project;
"Funding Particulars"	means the document detailing the specific core terms agreed between the Grant Recipient and TVCA in respect of the provision of the Grant at Part 2 of this Agreement;
"Funding Profile"	means how and when the Grant shall be defrayed to the Grant Recipient as specified in the Funding Particulars;
"GDPR"	means the General Data Protection Regulation ((EU) 2016/679);
"Governing Body"	means the governing body of the Grant Recipient including its Directors or Trustees;
"Grant"	means the monies to be provided to the Grant Recipient by TVCA for the Agreed Purposes;
"Grant Claim"	means a claim for Grant in accordance with clause 8;
"Grant Recipient"	means the Party named in the Offer Letter;
"Irregularity"	means an infringement of a provision of community law (including State Aid Law and the EU Procurement Requirements) resulting from an act or omission by a Grant Recipient or a Delivery Partner (and/or its agents and Subcontractors), which has, or would have, the effect of prejudicing the general budget of the TVCA by charging an unjustified item of expenditure to the general budget as determined following an Audit;

“Key Milestone”	means any milestone(s) which the Grant Recipient is required to meet with regard to delivering the Project and/or the Agreed Outputs as specified in the Funding Particulars;
“Law”	means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Grant Recipient is bound to comply;
“Lease Disposal”	means the grant of a Market Rent Lease;
“Logo”	means the logo for TVCA, the Tees Valley Mayor and HM Government as follows (and must be reproduced in colour):-
	
“Long Lease”	means a lease for a term equal to or exceeding ninety nine (99) years granted at a premium and reserving either a peppercorn or a nominal rent but which is not a Market Rent Lease;
“Losses”	all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expense) whenever and however arising;
“Major Asset”	means an Asset which is not a Fixed Asset but has a value as at the date of this Funding Agreement (or date of acquisition if the acquisition is funded (in whole or in part) by this Grant) of at least £5,000.00 (five thousand pounds);
“Market Rent Lease”	means any lease which is granted at a full market rent namely not for a nominal rent or at a significant undervalue;
“Match Funding”	means the contribution to the Project to meet the balance of Eligible Expenditure not supported by Grant and the Match Funding details are contained in the Funding Particulars;
“Monitoring Period”	means the period specified in the Funding Particulars or such other period as may be agreed in writing by TVCA;
“Offer Letter”	means the letter to the Grant Recipient offering the Grant forming Part 1 of this Agreement;

“Ownership, Control and Nature of Business”	shall be construed in accordance with section 840 of the Income and Corporation Taxes Act 1988 and section 1162 of the Companies Act 2006 and for the avoidance of doubt shall include an evaluation of dominant influence and shadow directorships in the Grant Recipient from time to time;
“Party”	means the Grant Recipient or the TVCA as appropriate and ‘Parties’ means both the Grant Recipient and the TVCA;
“Payment Date”	means the date or dates given in the Funding Profile for the payment of the Grant or any part of it;
“Payment Period”	means the period from one Payment Date to the next consecutive Payment Date;
“Permitted Security”	any charge, legal mortgage, debenture, lien or other encumbrance over any Asset which has been approved by TVCA the details of which are set out fully in the Funding Particulars;
“Planned Disposal”	means a Lease Disposal of any Fixed Asset (or any part of the Fixed Asset) or the grant of a licence to occupy by the Grant Recipient which is intended as a planned step in the implementation of the Project, was referred to as such in the Application, and the details of which are set out fully in the Funding Particulars;
“Preconditions”	means the Conditions Precedent in clause 3 and any other conditions which the Grant Recipient is required to meet prior to the Grant being paid by TVCA as set out in the Funding Particulars;
“Preliminary Expenditure”	means Eligible Expenditure in relation to site investigation works, site surveys, environmental appraisals and/or feasibility studies carried out in relation to the Project;
“Prohibited Act”	means any offence under the Bribery Act 2010 or any other legislation creating offences concerning fraudulent acts;
“Project”	means the Project in relation to which the Grant has been provided as described in the Funding Particulars;
“Project Activities”	means all activities to be carried out in implementing the Project and includes any Works to be carried out in relation to any Fixed Assets;
“Project Specifications”	means the drawings and specifications describing the Works which have been approved by TVCA in writing, or such revised drawings and specifications as TVCA may from time to time approve in accordance with the provisions of this Funding Agreement;

“Site”	means the land registered in favour of the Grant Recipient under the title numbers referred to in the Certificate of Title including any part thereof and also includes any estate or interest therein;
“Standard Funding Terms”	means TVCA’s Standard Terms and Conditions of Funding attached at this Part 3 of this Agreement;
“State Aid Law”	means the law embodied in Articles 107 -109 of Section 2, Title VII, of the Common Rules on Competition, Taxation and Approximation of Laws- Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union' (2008/C 115/01);
“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;
“Term”	means the period from the Application Approval Date to the Agreed Completion Date;
“TVCA”	means Tees Valley Combined Authority of Cavendish House, Teesdale Business Park, Stockton on Tees, TS17 6QY;
“UK Data Protection Legislation”	means any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation;
“Value Added Tax (VAT)”	value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax; and
“Works”	means any works of construction and/or demolition and/or remediation and/or any other works in relation to a Fixed Asset which are described in the Project Specifications.