



**Walsall Council**

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**DATED**

**2018**

**SUBJECT TO GRANT**

**(1) WALSALL METROPOLITAN BOROUGH COUNCIL**

**AND**

**(2) XXXXXXXXXXXXXXXX**

**GRANT AGREEMENT**

**Relating to a  
Black Country Growth Deal Project**

**Generic Growth Deal Grant Agreement  
November 2018**

Legal Services  
Walsall Council  
Civic Centre  
Darwall Street  
Walsall, WS1 1TP

**THIS GRANT AGREEMENT** is made on \_\_\_\_\_ **2018**

**BETWEEN**

- (1) **WALSALL METROPOLITAN BOROUGH COUNCIL** of Civic Centre, Darwall Street, Walsall, WS1 1TP (the ‘**Council**’); and
- (2) **XXXXXXXXX** [(Company Registration no [.....])] [whose registered office is at] *OR* [of] [*Insert Grantee’s registered office or usual trading address*] (the “**Grantee**”).

**BACKGROUND**

- A. By the Local Growth Deal known as the Black Country Growth Deal (‘Growth Deal’), published on 7 July 2014, the Black Country Local Enterprise Partnership (‘BCLEP’) was successful in securing £103,400,000 from Central Government’s Local Growth Fund (being the funding stream from Central Government which provides Growth Deal funding) to support economic growth in the Black County up to 2021, including a number of capital projects that would unlock growth for the area, with £25,800,000.00 of new funding confirmed for 2015/16 and £77,600,000.00 for 2016/17. With the Growth Deal Expansion and the pre-committed Local Transport Board Funding, there will be a total investment of £162m of Growth Deal Funding between 2015 and 2021;
- B. This substantial investment from Central Government is anticipated to bring forward at least £312 million of additional investment from local partners and the private sector, to create a combined total new investment package of £451 million for the BCLEP;
- C. By 2021, the Growth Deal is anticipated to create:
- 5,000 new jobs;
  - Over 1400 new homes;
  - 3,200 additional businesses helped to grow;
  - 7,000 additional learners supported to develop skills needed by businesses.
- D. The Council is a statutory body empowered to make grants and has been appointed to act as Accountable Body for the Growth Deal by BCLEP, to administer and distribute the funding to eligible delivery partners who can demonstrate a commitment to deliver the Growth Deal’s outcomes;
- E. The Grantee has been selected as a grant beneficiary.

**NOW IT IS AGREED AS FOLLOWS:**

**1. Definition and Interpretation**

1.1 In this Agreement the following terms and expressions shall have the meanings given to them below

<u>Definition</u>	<u>Meaning</u>
<b>Agreement</b>	This agreement, all of its Schedules and any variations to it
<b>Agreed Payment Period</b>	[DD MM YYYY – DD MM YYYY]
<b>Application</b>	An application to or by the Grantee for any part of the Funding
<b>Approved Use</b>	Use of an Asset for those uses agreed between the Parties to enable the Project to achieve the Outcomes
<b>Asset</b>	An asset which may be either a Fixed Asset or a Major Asset as appropriate in the relevant context and “ <b>Assets</b> ” shall be construed accordingly
<b>Asset Register</b>	A register of each Asset purchased, funded with or otherwise acquired with the Grant, in a form/layout to be agreed by the Parties
<b>Authorised Representative</b>	The person or persons appointed as representatives for the Parties and set out in Schedule 5, or his or her nominated representative as may be substituted from time to time upon prior written notice to the other Party
<b>BCLEP</b>	The Black Country Local Enterprise Partnership
<b>BCLEP Assurance Framework</b>	The BCLEP’s assurance framework which guides local decision making and covers the Growth Deal, details of which are at: <a href="http://www.blackcountrylep.co.uk/about-us/our-board/assurance-framework">http://www.blackcountrylep.co.uk/about-us/our-board/assurance-framework</a>
<b>Best Value</b>	The optimum combination of whole life costs and benefits, in accordance with the Best Value Statutory Guidance published by the Department for Communities and Local Government in September

	2011 and any subsequent guidance and be in accordance with all relevant procurement laws and regulations, where applicable
<b>Black Country Joint Committee</b>	The lead decision making forum for the Growth Deal.
<b>Business Day</b>	Any day that is not a Saturday, Sunday or public holiday in England
<b>CDM Regulations</b>	The Construction (Design and Management) Regulations 2007, and/or the Construction (Design and Management) Regulations 2015
<b>CEDR</b>	Centre for Effective Dispute Resolution
<b>Change</b>	Any change to the Project within agreed Tolerances to the Eligible Expenditure and/or Outcomes
<b>Claw Back Agreement</b>	The agreement (if required and confirmed in the Grant Offer) by which the Grantee grants a right of claw back, or overage, or uplift, or similar to the Council, in the form set out at Schedule 12
<b>Code</b>	The Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of FOIA
<b>Confidential Information</b>	Subject to the Council's statutory obligations under the Freedom of Information Act 2000, any information which has been designated as confidential by either party in writing or which in the normal course of business for similar transactions would be considered a matter which ought to be confidential between the parties as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, personnel, customers and suppliers of either party or their respective agents and all Personal Data and sensitive Personal Data within the meaning of the Data Protection Legislation
<b>Connected Party</b>	A 'subsidiary' of or 'holding company' of the Grantee (and such terms have the meanings ascribed to them by Section 1159 of the Companies Act 2006) and/or any person or company connected with the Grantee or any Director of the Buyer and 'connected' has the same meaning as given to such term in Section 252 of

	the Companies Act 2006 or Sections 1122 and 1123 of the Corporation Tax Act 2010
<b>Consents</b>	Any approval, authorisation, consent, exemption, licence, permit, permission or registration by of or from any governmental or other authority or any person including - but not limited to - consents required from the Grantee's landlord (if any), any adjoining owner or from the local planning authority in relation to the Project or any part of the Project, or otherwise required to enable the Project to be lawfully carried out and maintained
<b>Data</b>	The data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Council or the Grantee by or on behalf of Central Government; or (ii) which the Grantee is required to generate, process, store or transmit pursuant to this Agreement or the Growth Deal as it relates to the Project; or any Personal Data for which the Council or the Grantee is the Data Controller
<b>Data Controller</b>	Shall have the same meaning as set out in the Data Protection Legislation
<b>Data Processor</b>	Shall have the same meaning as set out in the Data Protection Legislation
<b>DPA</b>	Data Processing Agreement
<b>Data Protection Legislation</b>	The Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, GDPR and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner

<b>Data Subject</b>	Shall have the same meaning as set out in the Data Protection Legislation
<b>Deed of Priority</b>	An agreement by which (if required and confirmed in the Grant Offer) the Grantee, any parties with an existing charge over the Site and the Council will agree the order of priority in which all charges (including any charge in the Council's favour pursuant to this Agreement) will rank and the respective rights they will have in relation to the Site – if such an agreement is required, its form will be set out at Schedule 11)
<b>Delivery Partner</b>	Any person or organisation to whom the Grantee tasks any part of the Project
<b>Disposal</b>	The disposal, sale, transfer or the grant of any estate or interest in any Asset, including any contract for a disposal and “ <b>Dispose</b> ” shall be construed accordingly
<b>Due Diligence Questionnaire</b>	The Questionnaire completed by the Grantee (together with all clarifications to the Questionnaire) and submitted to the Council prior to the Project being approved by the Council and started by the Grantee
<b>EIR</b>	The Environmental Information Regulations 2004 (and all relevant codes of practice and guidance)
<b>Eligible Expenditure</b>	Expenditure in relation to this Project that complies in all respects with the Growth Deal, the Project and this Agreement
<b>EU Procurement Requirements</b>	Includes - but is not restricted to - the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2006 (SI No 6/2006), the Public Contracts and Utilities Contracts (Amendment) Regulations 2007 (SI No 2007/3542) the EU Commission Interpretive Communication (2006/C 179/02) and the principles of transparency, non discrimination, equality of treatment, proportionality and mutual recognition in the EC Treaty
<b>Event of Default</b>	Includes: (a) the Grantee fails to comply with this Agreement;

	<p>(b) the Project is not commenced within 3 months after the date of this Agreement, or such other time as is agreed by the Parties in the Grant Offer.</p> <p>(c) Completion of the Project has not been achieved within the Grant Period;</p> <p>(d) a Material Change is made to the Project without the prior written approval of the Council;</p> <p>(e) the European Commission or a European Court requires any Grant paid to be recovered by reason of a breach of State Aid Law;</p> <p>(f) the Grantee fails to comply with the provisions of any exemption or scheme under State Aid Law that applies to the Grant;</p> <p>(g) any report or certificate made by the Grantee'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);</p> <p>(h) the Grantee is in financial difficulty;</p> <p>(i) the Grantee owes any other sum to the Council or Central Government;</p> <p>(j) An Asset's use for the Project has ceased before the expiry of its Useful Economic Life</p>
<p><b>Financial Impropriety</b></p>	<p>Includes fraud or other impropriety; mismanagement; use of Grant for improper purposes; and failure to comply with requirements in the Growth Deal as it relates to the Project, about the control and propriety of Project expenditure</p>
<p><b>Fixed Asset</b></p>	<p>Any land and/or buildings, plant, machinery or other thing that is, or is to be, fixed to any land and/or buildings, which is to be acquired, developed, enhanced, constructed and/or installed as part of the Project; or alternatively any land and/or buildings agreed by the Parties to be in lieu of such Project-specific fixed assets (and in whatever form, the Fixed Asset will be stated in the Grant Offer)</p>

<b>FOIA</b>	The Freedom of Information Act 2000 (and all relevant codes of practice and guidance)
<b>Framework</b>	A valid OJEU procured framework agreement where the Grantee or any Delivery Partners are named potential users of or are otherwise lawfully able to access the framework and the Grantee is satisfied that the framework is suitable for the purposes of Growth Deal and the Project
<b>Full Business Case</b>	The summary of the Project which was used as a basis for the decision to award Funding and which is attached at Schedule 9
<b>Funding</b>	Central Government's commitment to support the delivery of the Growth Deal
<b>GDPR</b>	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of Personal Data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016, together with any implementation of the above into UK law
<b>Grant</b>	The sum offered to the Grantee, as stated in the sum in the Grant Offer, for the Project, subject to the Council being in receipt of sufficient Funding from Central Government
<b>Grant Claim</b>	A claim for Grant made to the Council by the Grantee in the form of the Grant Claim Template set out at Schedule 3
<b>Grant Claim Dates</b>	The dates it is anticipated (at the date of this Agreement) for Grant Claims to be made, as set out at Schedule 4
<b>Grant Claim Template</b>	The form by which the Grantee shall make a Grant Claim, as set out in Schedule 3
<b>Grant Offer</b>	The Growth Deal offer to the Grantee, the core terms of which are set out at Schedule 1
<b>Grant Period</b>	1 April 2015 to 31 March 2021



<b>Growth Deal</b>	The Black Country Growth Deal, details of which are at: <a href="http://www.blackcountrylep.co.uk/about-us/plans-for-growth/growth-deal">www.blackcountrylep.co.uk/about-us/plans-for-growth/growth-deal</a>
<b>Identity Guidelines</b>	Central Government's guidance about the 'Growth Deals' logo which is attached at Schedule 10 and can be found at <a href="https://www.blackcountrylep.co.uk/upload/files/Growth%20Deal/Growth_Deals_Brand_Guidelines_2015_web_accessible.pdf">https://www.blackcountrylep.co.uk/upload/files/Growth%20Deal/Growth_Deals_Brand_Guidelines_2015_web_accessible.pdf</a>
<b>Independent Person</b>	A person who may be appointed by the Parties in event of a dispute, who shall be an accountant, a surveyor or another professional person, dependent on the nature of the dispute and who will have not less than 10 years' experience in the subject matter of the dispute
<b>International Organization</b>	Shall have the same meaning as set out in the Data Protection Act 1998 and the GDPR
<b>IPR</b>	All intellectual property rights, including rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, know-how and any other intellectual property rights whatsoever owned by either Party before the start of this Agreement or developed by either Party during the Grant Period
<b>Key Personnel</b>	The Project Manager and Authorised Representatives for the Parties set out at Schedule 5
<b>Law</b>	Any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body
<b>Legal Charge</b>	A legal charge (if required by the Council and confirmed in the Grant Offer) to be granted by the Grantee in favour of the Council in respect of all land and property that comprises the Project site, in the form set out at Schedule 7

<b>Major Asset</b>	An Asset which is not a Fixed Asset but has a value as at the date of this Agreement (or date of acquisition if the acquisition is funded (in whole or in part) by this Grant) of at least £10,000.00
<b>Match Funding</b>	The contribution to the Project to meet the balance of match funding from other financial sources, as set out in the Grantee's Full Business Case and confirmed in the Grant Offer
<b>Material Breach</b>	A breach of either this Agreement or the Growth Deal as it relates to the Project which in the opinion of the Council or Central Government is material
<b>Material Change</b>	Includes, but is not restricted to, changes: <ul style="list-style-type: none"> <li>a) in profiled, forecast and overall Eligible Expenditure greater than 10% of the in-year Grant; and/or</li> <li>b) which are significant in relation to the Outcomes and/or the nature or purpose of the Project; and/or</li> <li>c) in the ownership, control and nature of business of the Grantee</li> </ul>
<b>Milestones</b>	The Project's key events and dates, as set out in Schedule 2
<b>Other Security</b>	Any form of security (if required by the Council and confirmed in the Grant Offer) to be given by the Grantee in favour of the Council, in the form set out at Schedule 13

<b>Outcomes</b>	The Milestones and Outputs by which the Project will be measured, set out at Schedule 2
<b>Outputs</b>	The ways in which the progress and success of the Project will be measured, as set out in Schedule 2
<b>Parties</b>	The Council and the Grantee
<b>Party</b>	The Council or the Grantee, as appropriate
<b>Personnel</b>	Relevant officers, employees, suppliers, contractors, officers and agents, including students on work experience, and volunteers who, in each case, are from time to time engaged or employed in connection with the Project
<b>Personal data</b>	Shall have the same meaning as set out in the Data Protection Legislation and includes personal data which is either supplied to the Grantee by the Council or is obtained by the Grantee in the course of performing its obligations under the Agreement
<b>Processing</b>	Shall have the same meaning as set out in the Data Protection Legislation
<b>Project</b>	The Grantee's project, being part of the Growth Deal, as set out in the Grant Offer and other Schedules

<b>Project Manager</b>	The person appointed by the Grantee responsible for the day to day running of the Project (the first appointee's details being set out in 5) and who will be the first point of contact for all Black Country local authorities, Central Government, BCLEP, Delivery Partners and all other Project partners
<b>Recipient</b>	Shall have the same meaning as set out in the Data Protection Legislation
<b>Regulatory Bodies</b>	The government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or the Growth Deal as it relates to the Project, or any other affairs of Central Government and 'Regulatory Body' shall be construed accordingly
<b>Site</b>	All and any land and/or buildings that is, or is to be, acquired, developed, enhanced, constructed and/or installed as part of the Project a plan of which is attached at Schedule 8 (if applicable to the Project)
<b>State Aid Law</b>	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)
<b>Third Country</b>	Shall have the same meaning as set out in the Data Protection Legislation
<b>Tolerances</b>	The extent of any permitted changes to the Project, as agreed by BCLEP and the Black Country Joint Committee from time to time
<b>Useful Economic Life</b>	The period that any Asset shall be used for the Project which unless otherwise specified in the Grant Offer r shall be until 31 March 2021
<b>VAT</b>	Value Added Tax

- 1.2 The interpretation and construction of this Agreement shall be subject to the following provisions:
- 1.2.1 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;
  - 1.2.2 the headings to this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
  - 1.2.3 references to Conditions are references to Conditions in the section of this Agreement in which they appear, unless otherwise stated;
  - 1.2.4 where the context allows, references to male gender include the female gender and the neuter, and the singular includes the plural and vice versa;
  - 1.2.5 The Schedules form part of this Agreement.

## **2. Growth Deal and Project**

- 2.1 The Grantee agrees and acknowledges that the Council is bound by the terms of the Growth Deal and the Project for the ways in which it uses or distributes the Funding and that the Council must act in accordance with its obligations under the Growth Deal and the Project.
- 2.2 The Grantee accepts and agrees that the Council, BCLEP and Central Government may request information from the Grantee, or require its compliance with the Growth Deal (as it applies to the Project), about the ways in which the Grantee uses or distributes the Funding.
- 2.3 In the event of any inconsistency between any part of this Agreement and the Growth Deal and the Project, this Agreement shall take precedence.

## **3. Conditions Precedent**

- 3.1 The Grantee confirms that it is lawfully empowered to receive grants.
- 3.2 The Grantee confirms that all information and statements given by it in its Full Business Case for the Project and in its Due Diligence Questionnaire is correct and that it shall immediately notify the Council of any Material Change to such information and statements.
- 3.3 The Grantee shall comply with and adhere to the BCLEP Assurance Framework.
- 3.4 Before starting the Project, the Grantee shall provide to the Council with evidence that:

- 3.4.1 it holds the freehold title and/or has unencumbered ownership and possession of any Fixed Asset, including (for any land with registered title) that the freehold title is registered in the name of the Grantee at the Land Registry, or that the Grantee is able to warrant that it has sufficient interest in the Site and sufficient rights to enable the Project and the Works to be fully carried out; and
  - 3.4.2 the Project can be undertaken either with full Planning Permission or that there is no need for Planning Permission; and
  - 3.4.3 it can secure the Match Funding.
- 3.5 The Grantee shall ensure that any Delivery Partners shall use their best endeavours to carry out and complete the Project and comply with the requirements of this Agreement and the Growth Deal within the time limits set out in this Agreement, including the Outcomes and for the avoidance of doubt, the Grantee's obligations under this Agreement shall also apply to any Delivery Partners.
- 3.6 The Grantee may, with the Council's prior written consent, ask Delivery Partners to carry out parts of the Project, provided that in doing so, it shall not in any way reduce any of the obligations or liability of the Grantee under this Agreement.
- 3.7 For the avoidance of doubt, the Grantee shall be liable for the acts of Delivery Partners as they relate to the Project and the Grantee indemnifies the Council against all and any losses (including – but not limited to – any request by Central Government for repayment of any of the Funding), whether as a result of the Grantee's actions, or of the actions of any Delivery Partners.
- 3.8 The Grantee must immediately inform the Council if there is a change in its management and/or legal status.
- 3.9 This Agreement, together with any Project specific amendments set out in the Grant Offer, constitutes the entire agreement between the Parties and replaces and supersedes all previous communications, representations and agreements between them (except for any fraudulent misrepresentations made by either Party upon which the other Party can be shown to have relied), subject to any:
- (i) agreed Change; and
  - (ii) subsequent grant determination letter or other way in which Central Government, as regards its funding terms and conditions for the Growth Deal, changes - or imposes further - terms and conditions;

#### **4. Grant, Grant Period and Grant Payment**

- 4.1 The Grant is for the Grant Period only.
- 4.2 In consideration of the Grantee fulfilling its obligations pursuant to this Agreement, the Council will pay the Grant to the Grantee:
  - 4.2.1 For the Project;
  - 4.2.2 For Eligible Expenditure incurred within the Agreed Payment Period, unless otherwise agreed between the Parties;
  - 4.2.3 Upon the Council being in receipt of the Funding; and
  - 4.2.4 Upon the Grantee's compliance in all other respects with this Agreement.
- 4.3 The Council shall be under no obligation to make payment to the Grantee until the Council is satisfied that the Grantee has and continues to comply with this Agreement.
- 4.4 Should any part of the:
  - 4.4.1 Project not be completed by the end of the Grant Period, and/or
  - 4.4.2 Grant remain uncommitted at the end of the Grant Period;
  - 4.4.3 Milestones not be met;then the Grantee shall refund to the Council any remaining Grant.
- 4.5 Any liabilities arising at the end of the Project including any redundancy liabilities for the Grantee's Personnel or for Delivery Partners and their Personnel must be managed and paid for by the Grantee and Delivery Partners; and the Grantee will indemnify the Council against any such claims.
- 4.6 The Grantee shall bear its own costs and expenses in relation to and in compliance with the obligations in this Agreement and for the avoidance of doubt, the Council shall not be liable for any costs and expenses incurred by Delivery Partners in relation to and in compliance with the obligations in this Agreement.
- 4.7 The Grantee will be directly responsible for the payment of all bills and accounts connected with and arising out of the Project and in this respect the Council will not be responsible for any other or additional expenses or debts incurred by the Grantee or Delivery Partners.
- 4.8 The Grantee acknowledges that any financial support provided by the Council shall not be used for purposes which would constitute a breach by the Council of Part II of the Local Government Act 1986.

## 5. Asset Provisions

### Inventory of the Assets

- 5.1 Using the Asset Register, the Grantee must establish and maintain an inventory of all of the Assets and submit this to the Council with each Grant Claim.

### Report on Title

- 5.2 Where it is a requirement of this Grant (to be set out in the Grant Offer), the Grantee shall let the Council have a report on title in respect of a Fixed Asset, prepared by the Grantee's solicitor, addressed to the Council and in the form of the draft certificate on title set out at Schedule 6.

### Fixed Assets, Legal Charge and Other Security

- 5.3 Where it is a requirement of this Grant (to be set out in the Grant Offer), the Grantee shall procure, execute and/or register the following:
- 5.3.1 A Legal Charge [and Deed of Priority] over a Fixed Asset, to be registered at the Land Registry within the Grantee's priority period search protecting the Legal Charge;
  - 5.3.2 All necessary documents for Other Security;
  - 5.3.3 (Where the Grantee is a UK registered company or LLP) the Legal Charge, [and/or Deed of Priority] and/or any other charge (pursuant to 5.3.2), to be registered with Companies House within 21 days of its creation, delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006;
  - 5.3.4 Copies of any consents required to enable the Grantee to enter into this Agreement and grant the Legal Charge or any other charge;
  - 5.3.5 Such other deeds and/or documents as are reasonably required by the Council.

### Restriction on Title

- 5.4 Where it is a requirement of this Grant (to be set out in the Grant Offer), then before starting the Project, the Grantee will enter a restriction on title within 21 days of this Agreement at the Land Registry on any Fixed Asset and:
- 5.4.1 the restriction shall state:



***No disposition of the registered estate by the proprietor of any registered estate or by the proprietor of any registered charge is to be registered without a written consent signed on behalf of Walsall Metropolitan Borough Council.***

### **Evidence of Report on Title, Legal Charge, Other Security and/or Restriction on Title**

- 5.5 Within 5 Business Days of the Grantee's receipt of any documents created and /or receipt of registration as a result of the Grantee's obligations pursuant to 5.3 - 5.4 above, the Grantee shall let the Council's Authorised Representative have original or certified copies of such documents, including – but not limited to - a certified copy of the updated title document(s) and until such documents are submitted to and verified by the Council, no Grant will be paid to the Grantee.

### **Claw Back**

- 5.6 Where it is a requirement of this Grant (to be set out in the Grant Offer), the Grantee will enter into a Claw Back arrangement with the Council, by which the parties entering into this Agreement will also create a legally binding agreement in the terms set out in the Grant Offer **[and at Schedule 12]**.

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

- 5.7 The Grantee shall not use or permit the use of any Asset for any purpose other than the Approved Use throughout the Useful Economic Life of the Asset.
- 5.8 During the Useful Economic Life of each Asset, the Grantee shall ensure that any Asset, or any part of the Asset continues to be used for the Approved Use throughout the Useful Economic Life and if the Grantee wishes to cease to use such Asset for the Approved Use the Grantee shall seek the Council's prior written consent. If the Council gives such consent, it may do so, subject to any reasonable conditions, which may include repayment by the Grantee of all or part of the Grant.

### **Charging of any Asset**

- 5.9 During the Useful Economic Life of each Asset the Grantee shall not create or permit the creation of any charge, legal mortgage, debenture, or lien over any Asset (other than to the Council) without the Council's prior written consent.

### **Disposal of any Asset**

- 5.10 The Grantee must not Dispose of or permit the Disposal of any interest in any Asset without the Council's prior written consent, who may require any such Disposal to be subject to satisfaction of certain conditions, to be determined by the Council and in any event the Grantee:

5.10.1 shall notify the Council in writing at least 30 days before the intended date of transfer;

5.10.2 must:

- (i) let the Council have such reasonable information about the proposed Disposal as the Council may request; and
- (ii) satisfy the Council that the proposed new owner or controller of the Asset has formally agreed to allow all and any licenses, grants or other permissions so as to enable the Project to continue;

5.11 Where the Grantee makes any Disposal in default of the above requirements:

5.11.1 The Council shall be entitled to deem such Disposal to be a Material Breach;

5.11.2 The Grantee shall ensure that the proceeds of the Disposal (limited to the total amount paid by the Council to the Grantee under this Agreement) shall be held on trust for the benefit of the Council;

5.11.3 The Grantee's liability shall be separate from its liability to comply with any decision of the Council to require repayment of the whole or any part of the Grant.

### **Project Works**

5.12 The Grantee shall:

5.12.1 not carry out nor permit any works to be carried out in performance of the Project without having ensured that all necessary Consents for such activities on the Site have been obtained and in particular shall not carry out nor permit any such works constituting development for which planning permission is required under the Town and Country Planning Act 1990 without having ensured that detailed planning consent for such works has been obtained, and shall if requested by the Council produce to the Council such documents or certified copy documents as the Council may reasonably require;

5.12.2 at all times throughout the Project ensure that all necessary Consents including the relevant planning consent are being and have been complied with;

5.12.3 prior to the submission of any planning application for the Site, submit a copy to the Council for information;

5.12.4 ensure that the Council and its Authorised Representative are permitted to attend any Project meetings including any site meetings with a relevant building contractor;

5.12.5 permit the Council and its Authorised Representatives to visit a Site upon reasonable prior notice.

## **6. Match Funding Arrangements**

6.1 Payment of the Grant is conditional upon the Grantee committing the Match Funding. The BCLEP and the Council reserve the right to require that the Grantee provides evidence of this Match Funding.

6.2 The Match Funding shall be compliant with the Growth Deal and the Project.

6.3 The Grantee shall notify the Council in writing immediately of any failure by the Grantee or a Delivery Partner to make a contribution due under the Match Funding, or any circumstances that affect or might affect the payment or availability of Match Funding.

## **7. Grant Claims Procedure**

7.1 The Grantee shall make all Grant Claims in arrears in accordance with the timetable in Schedule 4.

7.2 The Grantee shall submit each Grant Claim to the Council's Authorised Representative.

7.3 Each Grant Claim shall include accounting documents of verifiable value, which shall include without limitation all evidence of Project expenditure in such format and detail as may be required by the Council, relating to the amount of Eligible Expenditure claimed in each Grant Claim.

## **8. Changes**

8.1 No Material Changes to the Project and/or the Eligible Expenditure will be allowed without the Council's and the BCLEP's prior written consent and the Grantee's failure to obtain such consent may result in the termination of the Grant and repayment of any and all of the Grant of which it is already in receipt.

8.2 No Changes to the Project and/or Eligible Expenditure will be allowed without the BCLEP's prior written consent and the Grantee's failure to obtain such consent may result in the termination of the Grant and repayment of any and all of the Grant of which it is already in receipt.

8.3 Until such time as a Material Change is made, the Parties shall, unless otherwise agreed in writing, continue to perform their obligations pursuant to this Agreement.

8.4 The Grantee shall immediately notify the Council in writing of any amendments or alterations to the persons responsible for the Project's management.

8.5 The Grantee must immediately inform the Council if there is a change in its management and/or legal status.

## 9. **Legislation, State Aid and Eligibility Rules**

9.1 The Grantee confirms that it understands its obligations in relation to compliance with State Aid Law and that it is lawfully empowered to receive grants.

9.2 If the Grantee believes that the Grant is lawful State Aid pursuant to the *de minimus* exemption, then the Grantee undertakes to the Council that it has not received or is due to receive any other forms of State Aid from any sources whatsoever for a rolling period of 3 years during which this Grant will be paid, from which the Grant would form part of total funding exceeding the *de minimus* exemption level for State Aid, which at the date of the Agreement is €200,000.00.

9.3 The Grantee shall procure and maintain the necessary expertise and resources to support the Project in accordance with the State Aid Law.

9.4 The Grantee shall administer and spend the Grant in accordance with State Aid Law.

9.5 The Grantee agrees to maintain appropriate records of compliance with the State Aid law for at least 10 years from the end of this Project and agrees to take all reasonable steps to assist the Council and Central Government to respond to any investigation(s) instigated by the European Commission into the Project.

9.6 Where the Grantee is in breach of any part of this section, the Grantee will be solely responsible for any clawback of the Grant (including of any interest, fines and associated costs) and shall indemnify the Council against all such claims.

9.7 For the avoidance of doubt, the Grantee shall ensure for the purposes of the Project, all Delivery Partners shall also be subject to these State Aid requirements.

## 10. **Monitoring Progress**

10.1 The Grantee must provide such additional information in such format as the Council may at any time require, including – but not limited to - information about the progress of the Project, the achievement of the Outcomes and any other

information required to enable the Council and Central Government to meet reporting obligations and other obligations.

10.2 The Grantee warrants the accuracy of the reports and information it gives pursuant to this section and further warrants that it has diligently made full and proper enquiry of the subject matter pertaining to the reports and information given.

10.3 Without prejudice to any provision of this Agreement conferring a remedy for failure to achieve any of the Outcomes, the Grantee's obligations pursuant to this section shall subsist until the Outcomes or for the duration of the Grant, whichever is the longer.

## **11. Procurement and Best Value Requirements**

11.1 The Grantee warrants that if relevant, it has complied and will comply with EU Procurement Requirements in relation to the Project.

11.2 The Council shall be entitled to request information to verify that there has been compliance with EU Procurement Requirements in relation to the Project.

11.3 The Grantee must, if required by the Council, provide an account in writing or by providing relevant documents about procurement practices adopted for the Project and about how it has assessed, evaluated and selected Delivery Partners.

11.4 Where the Grantee can demonstrate access to a lawful framework agreement in order to procure goods and/or services for the Project, the Grantee must:-

11.4.1 ensure that any such framework complies with EU Procurement Requirements;

11.4.2 call off orders in a manner approved by and compliant with the framework.

11.5 The Grantee shall observe its own contract rules, or, as a minimum, the Council's Contract Rules (which the Council shall supply to the Grantee upon its request) for the way in which it procures goods, services or works for and as part of the Project.

11.6 All and any expenditure incurred by the Grantee or Delivery Partners for the Project shall be in accordance with 'Best Value' principles.

## **12. Notification by the Grantee**

Notwithstanding any other reporting requirements of this Agreement, the Grantee shall notify the Council in writing as soon as practicable in the event of:

12.1 The occurrence of an Event of Default;

12.2 As soon as practicable after any event which might adversely affect the carrying out and/or completion of the Project or any part of it;

- 12.3 Any Material Change or Change in actual or estimated Project costs and of any event which materially affects the continued accuracy of such information;
- 12.4 Its receipt (or offer) of any other public sector financial assistance or guarantees of other public sector financial assistance or other funding obtained by the Grantee in relation to the Project, in respect of any part of the Project;
- 12.5 A proposal to Dispose or charge an Asset before 31 March 2021;
- 12.6 A proposal to change use of any Asset from the Approved Use during its Useful Economic Life;
- 12.7 Any other change to the Project which might adversely affect the carrying out and/or completion of the Project or any part of it.

### **13. Record Keeping**

- 13.1 The Grantee shall provide the Council and Central Government with such information and documentation as the Council or Central Government may require in connection with the Project at all times until the Grantee has fulfilled all of its obligations under this Agreement.
- 13.2 The Grantee must comply within 5 Business Days with any written requests by the Council or Central Government for information about the Project.
- 13.3 The Grantee must keep a record of all Eligible Expenditure, all invoices, quotes, tenders and procurement practices, all financial contributions made towards the Project and all income generated by the Project.
- 13.4 The Grantee will provide to the Council or Central Government as required such information as is available about the number of persons employed in connection with the Project and such other information as may be requested by the Council or Central Government about the benefits derived from the provision of Funding.
- 13.5 Without prejudice to the generality of this section and any requirements in the Grant Claim Template, the Grantee must on the anniversary of this Agreement and every anniversary thereafter until 31 March 2021 inform the Council about the performance of the Project and the Outcomes.
- 13.6 The Grantee must comply with the requirements of the Council and Central Government about the keeping of records available on any Council or Central Government websites.
- 13.7 The Grantee must keep full records (to include all records and receipts of all costs records, contracts and service level agreements and records of all Outcomes achieved relating to the Project and the Eligible Expenditure) for a period of no less than 10 years from the end of this Project.

## **14. Accounting Records and Supporting Evidence**

- 14.1 The Grantee shall maintain full and accurate accounts and documentary evidence for the Project on an open book basis and the Grantee will permit the Council and Central Government and persons authorised by them to inspect audit and take copies of all reports, books, accounting records and vouchers which the Council or Central Government properly considers relevant to the Project.
- 14.2 The Grantee shall maintain either a separate accounting system or an adequate accounting code for all transactions relating to the operation without prejudice to national accounting rules.
- 14.3 The Grantee shall comply with any of Central Government's audit monitoring and reporting audit requirements for Grantees.
- 14.4 The Grantee shall acknowledge in its annual report and accounts that the BCLEP via the Council is the source of the Grant.
- 14.5 The Grantee will make available the original documents or verified true copies of the documents relating to the Project and its implementation and financing if and when required to do so by the Council, Central Government, the European Court of Auditors, the European Commission auditors, the National Audit Office (and also their respective auditors).
- 14.6 Where the Council has to make enquiries, or carry out inspections, or extend its audit sample size, or carry out a full audit of the Grantee's activities insofar as they relate to the Project and/or the Grantee's compliance with this Agreement, due to the Council:-
- 14.6.1 finding a significant level of error when carrying out an audit; and/or
- 14.6.2 receiving any questions, allegations, or complaints about Grantee's activities;
- then the Grantee shall indemnify the Council for all of its reasonable costs, where any such significant level of error, or question, allegation or complaint is upheld; and the Council may set-off/deduct such costs from any part of the Grant not yet paid to the Grantee.

## **15. CDM Regulations**

- 15.1 As between the Grantee and the Council, the Grantee shall be entirely responsible for the safety of any design which forms part of the Project and for the adequacy, stability and safety of all site operations and methods of construction.
- 15.2 The Grantee shall observe, perform and discharge and/or shall procure (including by all Delivery Partners) the observance, performance and discharge of the

obligations, requirements and duties arising under the CDM Regulations in connection with the Project.

15.3 The contractor (as defined in the CDM Regulations) shall ensure that the Project's health and safety file is revised as often as may be appropriate to incorporate any relevant new information in relation either to Project during the Grant Period.

## 16. **VAT**

16.1 The Grant is paid to cover net Project costs and will not include recoverable VAT if the Grantee is able to reclaim VAT.

16.2 Irrecoverable VAT may be included as Eligible Expenditure if the Grantee can demonstrate to the Council's reasonable satisfaction that any VAT contained within a claim is a cost and cannot be recovered.

16.3 Should the Grantee subsequently recover any irrecoverable VAT (as referred to in the above sub-clause), it must repay this to the Council.

## 17. **Conflicts of interest and financial irregularities**

17.1 The Council requires the Grantee, all Personnel, Delivery Partners and any other persons or organisations engaged or consulted by the Grantee in connection with the Project to use all reasonable endeavours to prevent any conflicts of interest.

17.2 The Grantee shall have formal procedures obliging all such persons to declare any actual or potential personal or financial interest in any matter concerning the Project and to be excluded from any discussion or decision-making relating to the matter concerned.

17.3 Should the Grantee become aware of any actual or possible conflict of interest, it shall immediately notify the Council in writing, whose decision about whether the person or organisation for whom there is – or may be - a conflict of interest may continue to be involved in the project shall be final.

17.4 If the Grantee has any grounds for suspecting any Financial Impropriety in the use of any of the Grant, it must notify the Council immediately, explain what steps are being taken to investigate the suspicion and keep the Council informed about the progress of the investigation.



17.5 If the Council or Central Government suspect any fraud or other financial irregularity on the part of the Grantee, Delivery Partners or any other persons or organisations in connection with the Project:

17.5.1 The Council and Central Government shall be entitled to interview any of the Grantee's Personnel upon reasonable notice; and

17.5.2 The Grantee shall use all reasonable endeavours to enable the Council and Central Government to interview Delivery Partners' Personnel.

## **18. Insurance, Risk and Indemnity**

18.1 The Grantee must ensure that the Project is fully and adequately insured to cover 'all risks' (including fire, theft, employers' liability, professional indemnity, public liability, occupier's liability and third party damages) and such insurance cover must:

18.1.1 cover the full reinstatement or replacement costs of any Asset and/or Site; and

18.1.2 be produced, upon request by the Council, to the Council or to any third party nominated by the Council.

18.2 The Council will make every effort to pay the Grant promptly but accepts no liability in respect of loss attributable to delay in the payment or to any suspension, reduction or cancellation of the Funding.

18.3 The Council accepts no liability for any losses, claims, damages, costs or other liability arising pursuant to this Agreement, or from any act or omission arising from or related to this Agreement, whether in tort, contract or otherwise except those arising directly from the Council's wilful neglect or default.

18.4 Nothing in this Agreement shall exclude or limit either Party's liability for death or personal injury, fraud or any other liability which cannot be excluded or limited by law.

## **19. Publicity**

19.1 The Grantee consents to the Council, the BCLEP and Central Government publicising details about the Grant and Project, using any information gathered from the Grantee, or from any Delivery Partner, or from the monitoring of the Project.

19.2 The Grantee shall positively acknowledge the BCLEP's support in any materials that refer to the Project and in any written or spoken public presentations about the Project.

19.3 During all stages of the Project, the Grantee shall comply with the:-

19.3.1 Identity Guidelines; and

19.3.2 BCLEP's requirements for the use of appropriate signage and logos at the Site (such requirements can be found at: [https://www.blackcountrylep.co.uk/upload/files/Growth%20Deal/Growth\\_Deals\\_Brand\\_Guidelines\\_2015\\_web\\_accessible.pdf](https://www.blackcountrylep.co.uk/upload/files/Growth%20Deal/Growth_Deals_Brand_Guidelines_2015_web_accessible.pdf)).

19.3.3 BCLEP's requirements to provide high resolution images of the Project and the Site upon reasonable request and at the Grantee's expense.

19.4 The Grantee shall acknowledge the support of the Council in its role as accountable body, from time to time.

19.5 If using the Council or the BCLEP's name, the Grantee shall comply with all reasonable branding guidelines issued by the Council or the BCLEP from time to time.

19.6 The Grantee agrees to participate in and co-operate with promotional activities relating to the Growth Deal and the Project that may be instigated and/or organised by the Council or BCLEP.

19.7 The Council may acknowledge the Grantee's involvement in the Project as appropriate without prior notice.

19.8 The Grantee shall comply with all reasonable requests from the Council to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Council in its promotional and fundraising activities relating to the Project.

19.9 The obligations in this clause shall continue after this Agreement is terminated.

## **20. Withholding and Repayment of Grant**

20.1 The Council, acting reasonably, reserves the right to withhold all or any of the Grant and/or to require that all or any of the Grant is repaid within 28 days if:

20.1.1 the Grantee uses the Grant for purposes other than the Project; or

20.1.2 the future of the Project is in jeopardy; or

20.1.3 there is unsatisfactory progress towards completing the Project Outcomes; or

20.1.4 The Grantee does not achieve Outcomes to the Council's satisfaction; or

20.1.5 Central Government requires repayment from the Council of any Funding,

including – but not limited to - if Central Government:

- (i) exercises any right to terminate the Project and/or the Growth Deal; or
  - (ii) makes a claw back in a subsequent financial year of funding from any previous financial year;
- 20.1.6 the Grantee receives a grant from another funding source or sources towards costs intended to be funded by this Grant, unless such additional funding was taken into account in making this Grant; or
- 20.1.7 the Grantee becomes insolvent or subject to the appointment of an administrator, receiver or administrative receiver; or is the subject of a proposal for a voluntary arrangement or has a petition for an administration order or winding up order brought against it; or passes a resolution to wind-up or makes any composition, arrangement, conveyance or assignment for the benefit of its creditors or purports to do so; or
- 20.1.8 there is Financial Impropriety, or other irregularity, impropriety or negligence where there is any over payment or erroneous payment of the Grant; or
- 20.1.9 any attempt is made to Dispose of, or otherwise transfer or assign any Asset, right, interest or obligation created by this Agreement or to substitute any person in respect of any such rights, interests or obligations, without the Council's prior written agreement, such agreement in the case of the change of Personnel not to be unreasonably withheld or delayed; or
- 20.1.10 a report from the external auditor is unsatisfactory because it contains an adverse opinion, a qualified opinion or a disclaimer of opinion; or
- 20.1.11 the Grantee fails to ensure that it or anyone acting on its behalf complies with the law for the time being in force in the United Kingdom except for minor/non-material matters including, in particular, the requirements of the Health and Safety at Work Act etc. 1974, the Data Protection Legislation, the Human Rights Act 1998 and the Equality Act 2010; or
- 20.1.12 The Grantee fails to ensure that it has secured all necessary permissions and authorities (whether required by legislation or otherwise), to undertake the Project;
- 20.1.13 The Council or Central Government has deemed that there is Event of Default or Material Breach of either this Agreement or the Growth Deal as it relates to the Project.

## **21. Intellectual Property Rights**

21.1 The Parties agree that IPR shall remain the property of that Party.

21.2 Where either Party has provided the other with any of its IPR for use in connection with the Project (including without limitation its name and logo), the receiving Party shall, on termination of this Agreement, immediately cease to use such IPR and shall either return or destroy such IPR upon reasonable request by the other Party.

21.3 The Grantee warrants to the Council that neither the IPR nor any publication by the Council or Central Government of the Project related know-how will infringe, in whole or in part, any IPR of any other person and agrees to indemnify and hold the Council and Central Government harmless against any and all claims, demands and proceedings arising directly or indirectly out of the Council's or Central Government's publication or use of the IPR where this gives rise to or is alleged to give rise to an infringement of third party intellectual property rights.

## **22. Confidentiality**

22.1 Except to the extent set out in this section, or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:-

22.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

22.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent;

22.2 This section shall not apply to the extent that:

22.2.1 such disclosure is a legal requirement placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA (and all relevant codes of practice and guidance), or the EIR and pursuant to the Freedom of Information section of this Agreement;

22.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

22.2.3 such information was obtained from a third party without obligation of confidentiality;

22.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or

22.2.5 such information is independently developed without access to the other Party's Confidential Information.

22.3 The Grantee may only disclose the Council's, the BCLEP's or Central Government's Confidential Information to the Grantee's Personnel who are directly involved in the Project and who need to know the information, and shall ensure that such Personnel are aware of and shall comply with these obligations as to confidentiality.

22.4 The Grantee shall not, and shall procure that its Personnel do not, use any of the Council's, or the BCLEP's or Central Government's Confidential Information received otherwise than for the purposes of this Agreement.

22.5 Nothing in this Agreement shall prevent the Council, BCLEP or Central Government from disclosing the Grantee's Confidential Information:

22.5.1 to any Crown body or any other contracting authority, who shall be entitled to further disclose the Confidential Information to other Crown Bodies or other contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any contracting authority;

22.5.2 to any consultant, contractor or other person engaged by the Council or Central Government or any person conducting a formal review of the Growth Deal;

22.5.3 to enable the Council, the BCLEP and Central Government to meet their reporting obligations and other obligations under State Aid Law or the Growth Deal as it relates to the Project.

22.5.4 for the purpose of any audit;

22.5.5 for the purpose of the examination and certification of the Council's or Central Government's accounts; or

22.5.6 for any official examination of the economy, efficiency and effectiveness with which Central Government has used its resources.

22.6 Notwithstanding the foregoing, the Grantee consents to the Council, the BCLEP and Central Government using and disclosing (including to the press) any techniques, ideas or know-how gained during the performance of the Project.

## **23. Data Protection**

23.1 The Parties must comply with the requirements of the Data Protection Legislation as they apply to the provision of this Agreement and with the Project, for which the Parties agree that either of them may at times be either the Data Controller or the Data Processor.

23.2 The Parties shall:

- 23.2.1 process the Personal Data only in accordance with instructions from each other (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by one Party to the other during the term of this Agreement);
- 23.2.2 process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Project or as is required by Law or any Regulatory Body;
- 23.2.3 process the Personal Data only when the Data Subject has freely given their consent as set out in the Data Protection Legislation for the use of their Personal Data;
- 23.2.4 process the Personal Data in accordance with the terms of this Agreement and on written instructions from the Council, including with regard to international transfers of Personal Data to a Third Country or an International Organisation, unless required to do so by the European Union or legislation to which the Grantee is subject. In such circumstances, the Grantee shall inform the Council of that legal requirement before Processing, unless that legislation prohibits such information on important grounds of public interest;
- 23.2.5 implement and maintain all necessary technical and organisational measures to prevent the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected. Such measures shall be reviewed and updated regularly to ensure that Processing will continue to meet the requirements of the Data Protection Legislation;
- 23.2.6 take reasonable steps to ensure the reliability of any of their Personnel who have access to the Personal Data;
- 23.2.7 ensure that none of their Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by Central Government;
- 23.2.8 permit only those of their personnel that each Party reasonably believes are reliable and need to have access to any of the Personal Data, such access being for the purposes of this Agreement or the Growth Deal only and to ensure that all such personnel Processing the Personal Data have committed themselves to confidentiality and an appropriate statutory obligation of confidentiality;

- 23.2.9 delete or return (at the Data Controller's discretion) all Personal Data at expiry or termination of this Agreement (unless storage retention is required by European Union or member state Legislation);
- 23.2.10 notify the other Party within 5 Business Days if it receives a:
- (i) request from a Data Subject to have access to that person's Personal Data; or
  - (ii) complaint or request relating to the other Party's obligations under the Data Protection Legislation;
- 23.2.11 obtain prior written consent from the other Party in order to transfer the Personal Data to any contractors or affiliates for the provision of the Project;
- 23.2.12 provide the other Party with full cooperation and assistance in relation to any complaint or request made, including by:
- (i) providing the other Party with full details of the complaint or request;
  - (ii) complying with a Data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the other Party's instructions;
  - (iii) providing the other Party with any Personal Data it holds in relation to a Data Subject (within the timescales required by the other Party); and
  - (iv) providing the other Party with any other information requested by them as needed to deal with any complaint or request.
- 23.2.13 permit the other Party or a representative of Central Government, to inspect and audit (subject to reasonable and appropriate confidentiality undertakings) its Processing activities (and/or those of its agents, subsidiaries and contractors) and comply with all reasonable requests or directions by the other Party or Central Government to enable the Council or Central Government (as appropriate) to verify that the Grantee is in full compliance with its obligations under this Agreement and to inform the Data Controller if its instructions in this respect infringe Data Protection Legislation;
- 23.2.14 not process Personal Data outside the European Economic Area without the prior written consent of the other Party and, where the other Party consents to a transfer, to comply with:
- (i) the obligations under the Data Protection Legislation; and

(ii) any reasonable instructions notified to it by the other Party.

23.2.15 ensures that where any sub processor is engaged for carrying out specific Processing in relation to this Agreement, the same data protection obligations outlined in this Agreement are imposed on that sub processor and further that the sub processor shall be required to enter into a DPA and a copy of such DPA should be provided to the Council;

23.2.16 the Provider acknowledges that if it (or any sub Data Processor it engages) infringes the GDPR by determining the purposes and means of Processing, the Data Processor shall be considered to be Data Controller in respect of that Processing and be subject to the same sanctions;

23.2.17 The Parties agree to use all reasonable efforts to assist each other with compliance with the Data Protection Legislation obligations under this Agreement. For the avoidance of any doubt and in relation to a Subject Access Request ('SAR'), this includes:

- (i) providing the other Party with reasonable assistance in complying with a SAR served on them, to allow that Party to respond to a SAR within time limits prescribed under the Data Protection Legislation and the Party agrees to consult with the other Party prior to the disclosure of any Personal Data in relation to such requests; and
- (ii) notifying the other Party (within 2 days) if it receives a SAR from any individual to have access to their Personal Data or a complaint or SAR relating to their obligations under the Data Protection Legislation.

## **24 Freedom of Information**

24.1 The Parties shall assist and cooperate with each other to enable each of them to comply with their information disclosure obligations pursuant to the FOIA and EIR.

24.2 Where the Council or Central Government receives a Request for Information pursuant to the FOIA or EIR, the Grantee shall and shall procure that its sub-contractors shall:

24.2.1 Provide the Council or Central Government (as appropriate) with a copy of all Information in its possession, or power in the form that the Council or Central Government (as appropriate) requires within 5 Business Days (or such other period as the Council or Central Government (as appropriate) may specify) of request; and

24.2.2 provide all necessary assistance as reasonably requested by the Council or Central Government (as appropriate) to enable the Council or Central Government (as appropriate) to respond to the Request for Information



within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.

24.3 The Grantee agrees that the Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether any information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.

24.4 The Grantee acknowledges that (notwithstanding the provisions of this section) either the Council or Central Government may, acting in accordance with the Code, be obliged under the FOIA, to disclose information concerning the other party or the Project:

24.4.1 in certain circumstances without consulting the other Party; or

24.4.2 following consultation with the other Party and having taken their views into account;

Provided always that where the foregoing applies, the Council or Central Government (as appropriate) shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Grantee advanced notice, or failing that, to draw the disclosure to the Grantee's attention after any such disclosure.

## 25. **Anti-Corruption**

25.1 The Council may terminate the Agreement and recover any or all of its loss if the Grantee or anyone acting on its behalf does any of the following things:

25.1.1 directly or indirectly offers, promises or gives any person working for or engaged by the Council or the BCLEP a financial or other advantage to:

- (i) induce that person to perform improperly a relevant function or activity;
- (ii) reward that person for improper performance of a relevant function or activity;
- (iii) directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Grant;

25.1.2 commits any offence:

- (i) under the Bribery Act 2010;

- (ii) under legislation creating offences concerning fraudulent acts;
- (iii) at common law concerning fraudulent acts relating to this Agreement; or
- (iv) defrauds, attempts to defraud or conspires to defraud the Council;

25.2 Any other clause of this Agreement limiting the Grantee's liability shall not apply to section.

## 26. **Equality**

For all purposes relating to this Project, the Grantee shall comply with all aspects of the Equality Act 2010.

## 27. **Political Restrictions**

27.1 The Grantee shall not use all or any of the Grant for publicity which in any way supports a political party.

27.2 The Council will treat any breach of this section as a Material Breach entitling it to terminate the Grant without notice and recover any or all of the Grant so far paid.

## 28. **Dispute Resolution**

28.1 The Parties shall make every reasonable effort to resolve by agreement any dispute about any issue relating to this Agreement.

28.2 If a mutually satisfactory resolution cannot be reached within 10 Business Days of a dispute being notified in writing by one Party to the other, the Parties shall comply with the following procedure:

28.2.1 The issue shall be discussed at a meeting, at which the Project Manager and each Party's Authorised Representatives shall attend, within 10 further Business Days;

28.2.2 If the dispute is not resolved within 10 Business Days of the above meeting, the issue shall be referred to senior managers for both Parties;

28.2.3 If the Parties' senior managers fail to resolve the dispute after 10 Business Days of its referral to them, the complaining Party may refer the dispute to either an Independent Person or in accordance with the CEDR Model Mediation Procedure, whichever the complaining Party believes is the most appropriate according to the nature of the dispute.

28.3 If the Parties elect to appoint an Independent Person:

28.3.1 The identity of that Independent Person shall be by agreement between the Parties or, in the absence of agreement, any dispute over the appointment of the Independent Person is to be referred at the request of either Party to the President or other senior available officer of the relevant professional body, who may appoint an Independent Person to determine the dispute;

28.3.2 The Independent Person will make an expert determination of the dispute, for which:

- (i) all of the Parties' submissions of evidence are to be in writing unless the Parties agree within 10 Business Days of the Independent Person's appointment, that this requirement does not apply;
- (ii) the date of the Independent Person's award will be deemed to be the date on which a copy of the award is served on the Parties;
- (iii) the Independent Person will not be entitled to order the rectification, setting aside or cancellation of this Agreement or any other deed or document;
- (iv) the Independent Person will not be entitled to direct that the recoverable costs of his or her independent determination, or any part of it, be limited to a specified amount; or

28.4 If the Parties elect to use the CEDR Model Mediation Procedure:

28.4.1 If the Parties do not agree on the identity of the mediator then either Party may ask CEDR to appoint a mediator;

28.4.2 Any agreement reached as a result of mediation shall be final and binding upon the Parties, but if the dispute has not been settled within 20 Business Days of the mediation starting (which, for the avoidance of any doubt, shall be the first day of a formal mediation session at which the Parties attend), then either Party may instigate court proceedings.

28.5 The fees and disbursements of any Independent Person or mediator appointed pursuant to the above dispute resolution procedure shall be borne between the Parties in such share as the Independent Person or mediator shall determine and in default of determination shall be borne by the Parties in equal shares.

28.6 Use of the above Dispute Resolution procedure shall neither delay nor take precedence over any use of this Agreement's default or termination procedures.

## **29. Reporting Procedure**

Unless otherwise notified, the Parties must address all correspondence to each other to their Authorised Representatives and must mark all such correspondence 'Strictly Private & Confidential'.

## **30. Partnership and Agency**

30.1 The Parties expressly agree that nothing in this Agreement creates a legal partnership.

30.2 The Grantee shall not hold out or claim to be an agent of the Council or purport to bind it to any undertaking.

## **31. Contracts (Rights of Third Parties) Act 1999**

31.1 This Agreement is enforceable by the original parties to it and by their successors in title and permitted assignees.

31.2 Any rights of any person to enforce this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999, except as set out in this section, are excluded.

## **32. Joint and Several Liability**

Where the Grantee is not a company or an incorporated entity with a distinct legal personality of its own, the individual(s) who enter into and sign this Agreement on its behalf shall be jointly and severally liable for its obligations and liabilities arising under this Agreement.

## **33. No Waiver**

If either Party fails to exercise or delays in exercising any right or remedy to which it is entitled under this Agreement or at law then this shall not constitute a waiver of such right or remedy.

## **34. Amendments to this Agreement**

34.1 No amendment or variation to the terms of this Agreement or its Schedules will be effective unless agreed in writing by the Parties and any such agreed amendments or variations will only apply after such written agreement.

34.2 If Central Government notifies the Council that the Project has changed in any material way (including in any subsequent grant determination letter or other manner of Central Government changing or imposing further Growth Deal funding terms and conditions), the Council will let the Grantee have written notice how to treat such changes.

**35. Termination**

The Council may terminate this Agreement and any Grant payments upon giving to the Grantee 90 days' written notice, should it be required to do so by financial constraints resulting from Central Government withdrawing all or any Growth Deal funding, or for any other circumstances beyond the Council's control.

**36. Severance**

If any provision of this Agreement is or becomes invalid or unenforceable it will be severed from the rest of these terms and conditions so that it is ineffective to the extent that it is invalid or unenforceable and no other provision of this Agreement shall be rendered invalid, unenforceable or be otherwise affected.

**37. Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with English Law and the Parties hereby submit to the exclusive jurisdiction of the English Courts.

**[EXECUTION BY DEED]**

**THIS AGREEMENT** has been executed and delivered as a deed by or on behalf of each of the Parties on the date and year stated at the beginning of this Agreement.

**EXECUTED** as a **DEED** by )  
**WALSALL METROPOLITAN** )  
**BOROUGH COUNCIL** with the )  
affixing of its **COMMON SEAL** )  
in the presence of: )

.....  
Authorised Signatory

**EXECUTED** as a **DEED** by )  
**XXXXXXX** )  
**XXXXXXXXXX** with the )  
affixing of its **COMMON SEAL** )  
acting by: )

.....  
Authorised Signatory

*[or adapt as appropriate depending upon how Grantee will execute the Deed]*

**OR**

**[SIGNED UNDERHAND]**

**THIS AGREEMENT** has been signed by or on behalf of each of the Parties on the date stated at the beginning of this Agreement.

Signed by an authorised signatory )  
for and on behalf of )  
**WALSALL METROPOLITAN** )  
**BOROUGH COUNCIL** )

.....  
Authorised Signatory

Print Name:.....

Signed by the duly authorised signatory )  
for and on behalf of )  
**[Insert the GRANTEE'S full name** )  
**In bold]** )

.....

Authorised Signatory

Print Name:.....

## SCHEDULE 1

### GRANT OFFER

<b>Name of Grantee</b>	XXXXXX
<b>Project Name and SEP Number</b>	XXXXXX

	2016/17	2017/18	2018/19	2019/20	2020/21	Total
<b>Amount of Grant</b>	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX

<b>Site</b>	Land at XXXXXXXXXXXXXXX, registered with the Land Registry as title number XXXXXXXXXXXXXXX and shown [e.g. edged red] [for the purposes of identification only], in the Site Plan at Schedule
<b>Fixed Asset</b>	[e.g. The Site]
<b>Report on Title</b>	[To be provided to the Council within 10 Business Days of this Agreement]  Or [None]
<b>Legal Charge and Restriction</b>	[1. A [first] legal charge over [e.g. the Site]]  [2. A Restriction on Title on the Site in accordance with part 5.4 of this Agreement and in the form set out at Schedule 7]  Or [None]  Or [For Black County LAs: None: the Black Country Joint Committee Collaboration Agreement places equal responsibility for the success of the Growth Deal programme on all 4 Black Country Local Authorities and the Black Country Consortium. Therefore, unless there is an administrative irregularity by the Accountable Body or lead authority, the 4 Black Country Local Authorities and the Black Country Consortium shall meet the costs of any claw-back of Grant by central government and any related costs, charges or fines in the same proportion to the programme funding that has been expended within each of their administrative areas.]
<b>Deed of Priority</b>	[Where there will be a prior charge: A Deed of Priority made between the Grantee, [the prior chargee] and the Council, in the form set out in Schedule 11 and to be executed by the parties to it and duly registered by the Grantee in accordance



	<p>with clause 5.3 of the Agreement]</p> <p><i>Or [None]</i></p>
<p><b>Other Security for Grant</b></p>	<p><i>Or [None]</i></p>
<p><b>Claw Back</b></p>	<p>[1. A Claw Back Agreement between the Parties in the form set out in Schedule 12.</p> <p>2. The Grantee undertakes to the Council not to make a disposal of the Site at any time during the agreed period (as defined in the Claw Back Agreement) without first:</p> <p>(i) Obtaining the Council's prior written consent; and</p> <p>(ii) Procuring that the person in whose favour the disposal is to be made (the 'Covenator') has executed a Deed of Covenant with the Council and to the Council's satisfaction, which shall be in the same terms as the Claw Back Agreement and which shall require the Covenator, for itself and its successors in title, to covenant with the Council for the benefit and protection of the Site or any part or parts thereof, with the intent of binding the Site into whosoever hands it may come, that the Covenator and the persons deriving title under it will at all times observe and perform the obligations stipulations and restrictions in the Claw Back Agreement.</p> <p>3. Any disposal of the Site to a Connected Party which the Council reasonably considers to be an attempt by the Grantee (or its successors in title) to purposefully avoid making a payment in accordance with the Claw Back Agreement shall be considered by the Council to be a Material Breach of this Agreement by the Grantee]</p> <p><i>Or [for Site Investigations and Development Work <b>only</b>]</i></p> <p>In addition to clause 20 of the Grant Agreement, you will repay the Grant within 28 days of the Council's written request to do so if the development study:</p>

	<p>(i) concludes that delivery stage of the [enter development name] (the 'scheme') will not proceed; or</p> <p>(ii) does not result in a developed scheme or asset by the end of the Grant Period.</p> <p>Or [None]</p>
<b>[Outcome – delete if not a development or site investigation project]</b>	The completion of a development study into [include title of project and nature of studies to be undertaken]. The study will fund the development of [name individual studies or surveys to be completed] (the ['Development Study' or 'Site Investigation']). The Grantee will submit original or certified copies of all such ['Development Study' or 'Site Investigation'] documents (and any other related information funded by the Grant) to the Council's Authorised Representative no later than DD MM YYYY.
<b>Total LGF Allocation</b>	£X,000,000
<b>Agreed Payment Period</b>	DD MM YYYY– DD MM YYYY
<b>LGF Intervention Rate/Match Funding</b>	XX% - £X,000,000 (Capital) £X,000,000 (Capital and Revenue)
<b>Payment Profile</b>	[Monthly] [Quarterly] in arrears
<b>Major variations to the [Initial Proposal/Full Business Case] not included in the Grant Agreement Schedules</b>	The Grantee has confirmed that there have been no Major Changes to its Initial Proposal/Full Business Case since it was submitted to BCLEP other than those set out in this Agreement and agreed with the Council as part of due diligence and set out in the Due Diligence Questionnaire.

All LGF funding will be paid in line with the Grant Claim process in the Grant Agreement and associated Schedules. Monthly spend profiles will be agreed with the Programme Management Office in line with an agreed Change Control process.

Final Pre-Contract Workshops with project sponsors took place in MM YYYY and therefore all remaining contracting issues should now have been resolved.

The Grantee must comply with the BCLEP's requirements for the use of appropriate signage and logos at the Site during all stages of the Project. These requirements will be issued to each project by BCLEP and form part of the obligation to comply with the LEP Assurance Framework and will include a requirement for projects to submit high quality images of the Project and the Site to the BCLEP Programme Management Office for use in BCLEP publications upon reasonable request and at the Grantee's expense

The Growth Deal does not amount to an endorsement of everything in the submitted SEP. All development decisions for specific proposals must go through the normal planning process and be guided by local plans taking into account all material considerations.

Further information on the Black Country Growth Deal can be found at: <http://www.blackcountrylep.co.uk/about-us/plans-for-growth/growth-deal>. Information on the LEP Assurance Framework (with which all projects must agree to comply) can be found on the LEP website via the following link:

<http://www.blackcountrylep.co.uk/about-us/our-board/assurance-framework>

We look forward to working with you on delivering our Local Growth Deal.

Regards

**The Black Country Local Enterprise Partnership Board**

## SCHEDULE 2

### OUTCOMES

#### Milestones

1 April 2017 – 31 March 2018	
Milestones to be achieved by Grantee	Fulfilment By
TBC	MM YYYY
TBC	MM YYYY
TBC	MM YYYY
TBC	MM YYYY
TBC	MM YYYY
TBC	MM YYYY
TBC	MM YYYY
TBC	MM YYYY
TBC	MM YYYY
TBC	MM YYYY
TBC	MM YYYY
TBC	MM YYYY
TBC	MM YYYY
TBC	MM YYYY

1 April 2018 – 31 March 2019	
Milestone	Fulfilment By
TBC	MM YYYY
TBC	MM YYYY

To achieve the following Outputs during the period of 1 April 2015 to 31 March 2021:

Year	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	Total
<b>Core Outputs</b>							
<b>Jobs</b>							
Jobs connected to the intervention	0	0	0	0	0	0	0
Jobs safeguarded	0	0	0	0	0	0	0
<b>Houses</b>							
Housing units started	0	0	0	0	0	0	0
Housing units completed	0	0	0	0	0	0	0
<b>Business Assists</b>							
Number of enterprises receiving grant support	0	0	0	0	0	0	0
Number of new enterprises supported	0	0	0	0	0	0	0
Number of enterprises receiving non-financial support	0	0	0	0	0	0	0
<b>Learner Assists</b>							
Learner Assists	0	0	0	0	0	0	0
Apprenticeship starts	0	0	0	0	0	0	0
Apprenticeship achievements	0	0	0	0	0	0	0
<b>Other outputs</b>							
Commercial floorspace constructed (sqm)	0	0	0	0	0	0	0
New training or learning space (sqm)	0	0	0	0	0	0	0
Area of land remediated (ha)	0	0	0	0	0	0	0
Follow on investment at site, including revenue funding (£m)	£0	£0	£0	£0	£0	£0	£0m

The agreed project finance outcomes are:

	2015/16 £	2016/17 £	2017/18 £	2018/19 £	2019/20 £	2020/21 £	TOTAL £
<b>Funding Breakdown</b>							
BCLGF Pre-Committed	0	0	0	0	0	0	0
BCLGF Competitive	0	0	0	0	0	0	0
Other Public Source	0	0	0	0	0	0	0
Applicants Own Funds (Private)	0	0	0	0	0	0	0
Applicants Own Funds (Public)	0	0	0	0	0	0	0
Private (3 <sup>rd</sup> party)	0	0	0	0	0	0	0
<b>Total Capital</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total Revenue</b>							
<b>Overall Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>LGF Expenditure</b>							
<b>Capital</b>							0
<b>TOTAL</b>	0	0	0	0	0	0	0
<b>In Kind Resources</b>							
Land	0	0		0		0	0
Buildings	0	0		0		0	0

Programme delivery will take place for a 6-year period with the programme due to close in 2021.

## SCHEDULE 3

### GRANT CLAIM TEMPLATE



#### Grant Claim Form & Progress Report 2015-2021

Project Name:	Project Name Part of the Black Country Growth Deal		
Period of Claim			
	Claimed to Date	Claim	TOTAL
Management Cost			
Delivery Costs			
Other Costs			
Total Claim			
Match Funding			

#### GRANT CLAIM CERTIFICATE

On behalf of **XXXX** (the Grantee), I apply for a contribution of the Growth Deal grant towards the expenditure detailed in this claim. I have recorded all details of eligible expenditure incurred (net of recoverable VAT) and all funding received, and details of Outcomes achieved. I have completed all sections of the claim form and I certify to the best of my knowledge and belief that:

1. The information given is correct.
2. No other grants, payments or contributions have been or will be made to **XXXX** for activity against which this claim is made.
3. The expenditure has been incurred on implementing the Project in line with the grant approval by the Walsall Metropolitan Borough Council.
4. The grant claimed is within the Project's limit for the Growth Deal Grant in this financial year and in all other ways complies with the conditions of Project approval.
5. All information given in this claim is supported by appropriate evidence on which the claim can be checked and verified.
6. The Grantee confirms that all expenditure is Eligible Expenditure.

***This is an auditable document and originals must be submitted.***

***Please do not use correction fluid and initial any amendments***

<b>Authorised Signatory</b>	
<b>Organisation</b>	
<b>Signature</b>	
<b>Name</b>	
<b>Position</b>	
<b>Date</b>	

## **EVIDENCE TO SUPPORT CLAIMS**

**The following evidence is required to support your claim where relevant:**

### **ALL CLAIMS**

Signed claims  
 Evidence of spend from your financial/accounting system  
 Copy paid invoices /subcontractor certificates (with LGF funded elements or intervention clearly highlighted where applicable)

### **STAFF TIME ONLY**

Payroll evidence  
 Timesheets  
 Apportionment calculations and methodology

### **ADDITIONAL EVIDENCE ONLY IF REQUESTED BY COUNCIL OR GOVERNMENT:**

Output/outcome evidence  
 Match funding evidence  
 Details and evidence of any contributions in kind  
 Details of any assets  
 Proof of income received

## **GRANT CLAIM REPORTS**

**The following information is required within the grant claim report template to support your claim:**

Evidence of overall achievement  
 Progress against targets  
 Reasons for slippage  
 Forward plan of how targets will be achieved if slippage has occurred  
 Asset Register



## 1. Expenditure in the period:

Only include spend incurred during the period of the claim. Monies committed or planned must not be included in this claim.

### 1.1 Total Growth Deal Expenditure 2017/18:

Report cumulative totals from 1 April 2017

Growth Deal Expenditure	Agreed Growth Deal Budget 2017/18	Total Growth Deal Grant received to date	Variance to 2017/18 overall profile +/-	Agreed spend for this period £	Growth Deal Claim this period £	Variance with monthly/quarterly profile +/-	Growth Deal forecast for next period £	Forecast for 2017/18 £
Capital	£0							
<b>TOTAL LGF EXPENDITURE</b>								
Match funding	£0							
<b>TOTAL EXPENDITURE</b>								
<b>In-kind resources</b>								
Land	0							
Buildings	0							
Other Assets	0							

**1.2 Explanation of variance to funding profile:**

Explanation of any difference between Funding, Spend against profile and mitigations/action plan to return to profile in the next period:

## 2. Outputs

### 2.1 Outputs achieved

<b>Outputs</b>						
<b>Description</b>	<b>Agreed Outputs</b>		<b>Actual Outputs</b>		<b>Forecast Outputs</b>	
	<b>Current Period</b>	<b>Lifetime</b>	<b>Current Period</b>	<b>To Date</b>	<b>Next Period</b>	<b>Lifetime</b>
<b>Core Outputs</b>						
Jobs connected to the intervention		0				
Jobs safeguarded		0				
Housing units completed		0				
Number of new enterprises supported		0				
Number of enterprises receiving grant support		0				
Learner Assists		0				
Apprenticeship starts		0				
Apprenticeship achievements		0				
<b>Other outputs</b>						
Commercial floorspace constructed		0				
Follow on investment at site (£m)		£0m				

### 2.2 Description of how the outputs have been achieved:

**Explaining in more detail how you have achieved the outputs that have been reported in the period:**

**Where outputs have not been achieved this period, please explain the variance and detail your mitigations and actions to address this in the next period:**

**3. Milestones**

**3.1 Progress to Milestones**

Agreed Milestones	Target Date	Revised Deadline	Date Achieved	Any New Milestones	Target Date	Date Achieved
TBC	MM YYYY					
TBC	MM YYYY					
TBC	MM YYYY					
TBC	MM YYYY					
TBC	MM YYYY					
TBC	MM YYYY					
TBC	MM YYYY					
TBC	MM YYYY					
TBC	MM YYYY					
TBC	MM YYYY					
TBC	MM YYYY					
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TBC	MM YYYY					

TBC	MM YYYY					
TBC	MM YYYY					
TBC	MM YYYY					
TBC	MM YYYY					
TBC	MM YYYY					
TBC	MM YYYY					
TBC	MM YYYY					

**3.2 Explanation of variance:**

**Explanation of any difference between Milestones achieved, and those originally agreed**

--

**3.3 Action plan:**

**Action Plan to overcome any identified under achievement of milestones in the next period.**

--

## SCHEDULE 4

### GRANT CLAIM DATES

It is anticipated that Grant Claims shall be processed in line with the following timetable - please note that the achievement of these dates is subject to any queries raised by the Council being resolved within 2 Business Days:

Period	Completed claim form to be returned to the Council	Claim form to be submitted to Finance for processing	Claim to be processed by Finance and payment made to Grantee
Month/Qtr 1 YYYY/YY	DD MM YYYY	7 days following the claim return date	21 days following the claim return date
Month/Qtr 2 YYYY/YY	DD MM YYYY	7 days following the claim return date	21 days following the claim return date
Month/Qtr 3 YYYY/YY	DD MM YYYY	7 days following the claim return date	21 days following the claim return date
Month/Qtr 4 YYYY/YY	DD MM YYYY	7 days following the claim return date	21 days following the claim return date
Month/Qtr 5 YYYY/YY	DD MM YYYY	7 days following the claim return date	21 days following the claim return date
Month/Qtr 6 YYYY/YY	DD MM YYYY	7 days following the claim return date	21 days following the claim return date
Month/Qtr 7 YYYY/YY	DD MM YYYY	7 days following the claim return date	21 days following the claim return date
Month/Qtr 8 YYYY/YY	DD MM YYYY	7 days following the claim return date	21 days following the claim return date
Month/Qtr 9 YYYY/YY	DD MM YYYY	7 days following the claim return date	21 days following the claim return date
Month/Qtr 10 YYYY/YY	DD MM YYYY	7 days following the claim return date	21 days following the claim return date
Month/Qtr 11 YYYY/YY	DD MM YYYY	7 days following the claim return date	21 days following the claim return date
Month/Qtr 12 YYYY/YY	DD MM YYYY	7 days following the claim return date	21 days following the claim return date



## SCHEDULE 5

### KEY PERSONNEL

#### 1. Project Manager:

1.1 Name:

Position:

Contact Address:

Telephone number:

Email address:

1.2 Unless otherwise agreed between the Parties, the Project Manager shall have responsibility for the general implementation of the Project and the day to day management of the Project, general compliance by the Grantee with the Project and performance management of all relevant Personnel.

#### 2. Authorised Representatives

##### 2.1 Council's Authorised Representative

Name: Mark Lavender

Position: Programme Manager – Growth Deal

Contact Address: Walsall Council  
2<sup>nd</sup> Floor Civic Centre  
Darwall Street  
Walsall  
WS1 1TP

Telephone number: 01922 654772

Email address: [mark.lavender@walsall.gov.uk](mailto:mark.lavender@walsall.gov.uk)

##### 2.2 Grantee's Authorised Representative

Name:

Position:

Contact Address:

Telephone number:

Email address:

- 2.3 The Authorised Representatives shall have immediate responsibility for the maintenance of clear and effective communication between the Parties, the resolution of misunderstandings and disagreements between the Parties, the correction of defaults by and the development and retention of trust, good will and confidence between the Parties.
- 2.4 Each Party shall ensure that its Authorised Representative is available for consultation with the other Party at all reasonable times throughout the Grant Period and at all reasonable time thereafter.

## SCHEDULE 6

### FORM OF CERTIFICATE ON TITLE **NOT USED**

#### CERTIFICATE OF TITLE

To: .....at Walsall Metropolitan Borough Council

In this Certificate, the following expressions shall have the following meanings:

“the Applicant” means [                    ];

“the Project” means [                    ];

“the Site” means [                    ]

We act as solicitors to the Applicant and we have investigated its title to the Site.

We understand and acknowledge that you are proposing to provide funding to the Applicant in connection with the carrying out of the Project.

WE HEREBY CERTIFY that:-

#### **1. Title**

1.1 [The Applicant has a good and marketable title to the Site with vacant possession]

or [The Applicant holds the benefit of a contract with the current owner of the Site for the purchase of the Site [conditional only upon practical completion of the Project] and will acquire on completion of such purchase a good and marketable title to the Site with vacant possession].

1.2 The Site is freehold and is not held subject to any encumbrances (whether mortgages, specific or floating charges or otherwise) and is not subject to any outgoing other than the usual rates and taxes [save as mentioned in paragraph (i) of the Schedule hereto]. The Applicant [is] [will be entitled to become] the registered proprietor of the Site with title absolute at HM Land Registry [upon completion of the purchase of the Site]. The Applicant [is/will become] beneficially entitled to the Site [upon completion of the purchase thereof].

1.3 The title is free from any rights, easements, covenants, restrictions, stipulations, declarations, disputes or other matters which would prevent, inhibit, prejudice or otherwise adversely affect the carrying out and completion of the Project or the use and enjoyment of the Site following completion of the Project.

1.4 The Site is not subject to any overriding interests as referred to in Section 70 of the Land Registration Act 1925.

1.5 All covenants, conditions, agreements, stipulations and other matters affecting the Site have been fully complied with and we are not aware of any breach.

## **2. *Town and Country Planning***

- 2.1 No agreements have been entered into by the Applicant or other estate owners in respect of or affecting the Site under Section 106 of the Town and Country Planning Act 1990 or Sections 38 and/or 278 of the Highways Act 1980 or any legislation of a similar nature other than such agreements as are necessary to enable completion of the Project (brief particulars of the effect of which are contained in paragraph (ii) of the Schedule hereto) which agreements remain valid and have been complied with to date.
- 2.2 There are no onerous or unusual planning conditions other than as mentioned in paragraph (ii) of the Schedule hereto.

## **3. *Access and services etc***

- 3.1 To the best of our knowledge, the Applicant has sufficient rights appurtenant to its estate or interest in the Site to enable the Project and the works to be fully carried out and fully serviced without the need to acquire any further land or obtain any rights from any other party.

## **4. *Possession/Occupation***

- 4.1 There are no leases, underleases, sub-leases, tenancies, licences, agreements, sharing arrangements or any other form of third party occupation rights affecting the Site.

## **5. *Notices, Orders and Proposals***

- 5.1 There is no resolution or proposal for the compulsory acquisition of any part of the Site. No notices have been served or orders made or proposals made public in respect of the Site by any statutory or local authority or other body which affects its use or enjoyment or compliance with which remains outstanding or which will adversely affect the carrying out of the Project and the proper use and enjoyment of the Site following completion of the Project.

## **6. *Accuracy***

- 6.1 We have made the usual and requisite searches at the relevant Local Authority's property and land charges registers. There are no other matters arising as a result of such searches or otherwise within our knowledge which in our opinion adversely affect the Site or the title thereto or the Project and which should be brought to your attention.
- 6.2 The Applicant has confirmed to us immediately prior to the signing of this Certificate of Title that it has no cause to believe that any statement herein is incorrect, incomplete or misleading.
- 6.3 We have considered all the information we believe appropriate or necessary and we give this certificate in the knowledge that you are relying on the accuracy of each and every statement contained herein.

## SCHEDULE 7

### FORM OF LEGAL CHARGE [NOT USED]

Land Registry  
Legal charge of a registered estate

# CH1

This form should be accompanied by either Form AP1 or Form FR1

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

'Conveyancer' is a term used in this form. It is defined in rule 217(1) of the Land Registration Rules 2003 and includes, among others, solicitor, licensed conveyancer and fellow of the Institute of Legal Executives.

Leave blank if not yet registered.	1 Title number(s) of the property:
Insert address including postcode (if any) or other description of the property, for example 'land adjoining 2 Acacia Avenue'.	2 Property:
	3 Date:
Give full name(s).	4 Borrower:  <i>For UK incorporated companies/LLPs</i> Registered number of company or limited liability partnership including any prefix: <u>For overseas companies</u> (a) Territory of incorporation:  (b) Registered number in the United Kingdom including any prefix:
Complete as appropriate where the borrower is a company.	
Give full name(s).	5 Lender for entry in the register:  Walsall Metropolitan Borough Council  <i>For UK incorporated companies/LLPs</i> Registered number of company or limited liability partnership including any prefix:
Complete as appropriate where the lender is a company. Also, for an overseas company, unless an arrangement with Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land	

Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

Each proprietor may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

Place 'X' in any box that applies.

Add any modifications.

Place 'X' in the appropriate box(es).

You must set out the wording of the restriction in full.

Standard forms of restriction are set out in Schedule 4 to the Land Registration Rules 2003.

Insert details of the sums to be paid (amount and dates) and so on.

The borrower must execute this charge as a deed using the space opposite. If there is more than one borrower, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If a note of an obligation to make further advances has been applied for in panel 8 this document must be signed by the lender or its conveyancer.

WARNING

For overseas companies

(a) Territory of incorporation:

(b) Registered number in the United Kingdom including any prefix:

6 Lender's intended address(es) for service for entry in the register:  
Civic Centre, Darwall Street, Walsall, WS1 1TP

7 The borrower with  
 full title guarantee  
 limited title guarantee

charges the property by way of legal mortgage as security for the payment of the sums detailed in panel 9

8  The lender is under an obligation to make further advances and applies for the obligation to be entered in the register  
 The borrower applies to enter the following standard form of restriction in the proprietorship register of the registered estate:  
***No disposition of the registered estate by the proprietor of any registered estate or by the proprietor of any registered charge is to be registered without a written consent signed on behalf of Walsall Metropolitan Borough Council.***

9 Additional provisions  
***In accordance with a Grant Agreement of [even date] [date of grant agreement for any further Legal Charges] between the Lender and the Borrower, the Lender may demand repayment of the Grant (as defined in the Grant Agreement) and repossession of the Property in the event that the Outcomes (as defined in the Grant Agreement) are not achieved within the Agreed Payment Period (as defined in the Grant Agreement)***

10

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

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**SCHEDULE 8**

**SITE PLAN**



**SCHEDULE 9**

**GRANTEE'S [FULL BUSINESS CASE] or [INITIAL PROPOSAL]**

**SCHEDULE 10**  
**IDENTITY GUIDELINES**

[pdf to be inserted]

**SCHEDULE 11**

**DEED OF PRIORITY**

*[To be prepared by the prior chargee and agreed by the Council pre-grant, or  
state **'NOT USED'**]*

**SCHEDULE 12**

**CLAW BACK AGREEMENT**

*[Add relevant parts of HoTs, or state 'NOT USED']*

**SCHEDULE 13**  
**OTHER SECURITY**

*[Add terms of agreed other security or state 'NOT USED']*