

SECRETARY OF STATE FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY ("BEIS")

**and**

DERRY CITY AND STRABANE DISTRICT COUNCIL

**GRANT FUNDING AGREEMENT TO BUILD CAPACITY AND CAPABILITY FOR MARKET  
SURVEILLANCE BY LOCAL AUTHORITIES IN NORTHERN IRELAND 2020/21**

1.	INTRODUCTION.....	4
2.	DEFINITIONS AND INTERPRETATION .....	4
3.	DURATION AND PURPOSE OF THE GRANT .....	9
4.	PAYMENT OF GRANT .....	9
5.	ELIGIBLE AND INELIGIBLE EXPENDITURE .....	11
6.	MONITORING AND REPORTING.....	12
7.	AUDITING AND ASSURANCE.....	13
8.	FINANCIAL MANAGEMENT AND PREVENTION OF BRIBERY, CORRUPTION, FRAUD AND OTHER IRREGULARITY .....	14
9.	CONFLICTS OF INTEREST .....	15
10.	CONFIDENTIALITY .....	15
11.	TRANSPARENCY .....	15
12.	STATUTORY DUTIES .....	16
13.	DATA PROTECTION, PUBLIC PROCUREMENT AND STATE AID .....	16
14.	INTELLECTUAL PROPERTY RIGHTS .....	17
15.	ENVIRONMENTAL REQUIREMENTS .....	17
16.	INSURANCE.....	18
17.	ASSIGNMENT .....	18
18.	SPENDING CONTROLS – MARKETING, ADVERTISING, COMMUNICATIONS AND CONSULTANCY ..	18
19.	LOSSES, GIFTS AND SPECIAL PAYMENTS .....	18
20.	BORROWING .....	18
21.	PUBLICITY .....	19
22.	CHANGES TO THE AUTHORITY’S REQUIREMENTS.....	19
23.	CLAWBACK, EVENTS OF DEFAULT, TERMINATION AND RIGHTS RESERVED FOR BREACH AND TERMINATION.....	19
24.	EXIT PLAN.....	23
25.	DISPUTE RESOLUTION .....	23
26.	LIMITATION OF LIABILITY .....	23
27.	VAT .....	23
28.	CODE OF CONDUCT FOR GRANT RECIPIENTS.....	24
29.	NOTICES.....	24
30.	GOVERNING LAW .....	24
	ANNEX 1 – GRANT Funding LETTER and grant application .....	26
	ANNEX 2 –THE FUNDED ACTIVITIES .....	28
	ANNEX 3 – PAYMENT SCHEDULE .....	31
	ANNEX 4 – GRANT RECIPIENT’S BANK DETAILS .....	32
	ANNEX 5 – ELIGIBLE EXPENDITURE SCHEDULE.....	34
	ANNEX 6 – CONTACT DETAILS.....	35

**This Grant Funding Agreement** is made on 23<sup>rd</sup> October 2020.

**Between:**

- (1) SECRETARY OF STATE FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY ("BEIS"), whose principal address is at 1 VICTORIA STREET, LONDON, SW1H 0ET (the "**Authority**")
- (2) DERRY CITY AND STRABANE DISTRICT COUNCIL whose principal address is at 98 STRAND RD, LONDONDERRY BT48 7NN (the "**Grant Recipient**").

**In relation to:**

**Project Name: TO BUILD CAPACITY AND CAPABILITY FOR MARKET SURVEILLANCE BY LOCAL AUTHORITIES IN NORTHERN IRELAND DURING THE FINANCIAL YEAR 2020/21**

**BACKGROUND**

- (A) The Grant is made pursuant to the Supply and Appropriation (Main Estimates) Act 2020 as it relates to expenditure arising from:

- *Inspections and compliance in accordance with EU regulatory requirements*

As national regulator for product safety across the whole of the United Kingdom, the Office for Product Safety and Standards (OPSS), part of the Authority, is responsible for:

- building national capacity for product safety
- removing unsafe products from entering the UK market
- providing practical and financial support to front line enforcement

Thus, providing resources to Local Authorities involved in product safety work in accordance with EU regulatory requirements.

- *Funding organisations supporting departmental objectives*

To increase support through grant funding of local authority teams to build capacity and capability for market surveillance and ensure access to enforcement equipment and facilities as outlined in OPSS Strategy 2018-2020 – Strengthening National Capacity for Product Safety. This will ensure that unsafe and non-compliant consumer non-food goods are removed from the market and there is a robust UK wide product safety system. The overarching aim of our work is to make improvements to the UK's approach to market-surveillance in relation to non-food consumer products.

- *Expenditure arising from the UK's departure from the European Union*

To ensure market surveillance activity is enhanced in NI to enable the UK to meet the provisions of the EU Withdrawal Agreement and Northern Ireland Protocol (NIP). This will also enable UK to ensure there are adequate arrangements in place for EU oversight and reporting requirements.

- (B) The Authority will provide the Grant to the Grant Recipient as provided for in this Grant Funding Agreement.
- (C) The Grant Recipient will use the Grant solely for the Funded Activities.

The conditions collectively (the **Conditions**) are as follows:

## 1. INTRODUCTION

- 1.1. This Grant Funding Agreement sets out the conditions which apply to the Grant Recipient receiving the Grant from the Authority up to the Maximum Sum.
- 1.2. The Authority and the Grant Recipient have agreed that the Authority will provide the Grant up to the Maximum Sum as long as the Grant Recipient uses the Grant in accordance with this Grant Funding Agreement.
- 1.3. The Authority makes this Grant to the Grant Recipient to build capacity and capability for market surveillance. to ensure there is a robust product safety system UK wide.

## 2. DEFINITIONS AND INTERPRETATION

- 2.1. Where they appear in these Conditions:

**Annex** means the annexes attached to these Conditions which form part of the Grant Funding Agreement;

**Asset** means any assets that are to be purchased or developed using the Grant including equipment or any other assets which may be a Fixed Asset appropriate in the relevant context, and **Assets** will be construed accordingly;

**Asset Owning Period** means the period during which the Assets are recorded as Assets in the Grant Recipient's accounts;

**Authority Personal Data** means any Personal Data supplied for the purposes of, or in connection with, the Grant Funding Agreement by the Authority to the Grant Recipient;

**Bribery Act** means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning this legislation;

**Code of Conduct** means the Code of Conduct for Recipients of Government General Grants published by the Cabinet Office in November 2018 which is available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/754555/2018-11-06\\_Code\\_of\\_Conduct\\_for\\_Grant\\_Recipients.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/754555/2018-11-06_Code_of_Conduct_for_Grant_Recipients.pdf), including any subsequent updates from time to time;

**Commencement Date** means the date on which the Grant Funding Agreement comes into effect, being the 23<sup>rd</sup> October 2020.

**Confidential Information** means any information (however conveyed, recorded or preserved) disclosed by a Party or its personnel to another Party (and/or that Party's personnel) whether before or after the date of the Grant Funding Agreement, including but not limited to:

- (a) any information that ought reasonably to be considered to be confidential (whether or not it is so marked) relating to:
  - (i) the business, affairs, customers, clients, suppliers or plans of the disclosing Party; and
  - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party; and

- (b) any information developed by the Parties in the course of delivering the Funded Activities;
- (c) the Authority Personal Data;
- (d) any information derived from any of the above.

Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure (otherwise than by breach of paragraph 10 of these Conditions);
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a Third Party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

**Contracting Authority** means any contracting authority (other than the Authority) as defined in regulation 2 of the Public Contracts Regulations 2015 (as amended);

**Controller and Processor** take the meaning given in the GDPR;

**Change of Control** means the sale of all or substantially all the assets of a Party; any merger, consolidation or acquisition of a Party with, by or into another corporation, entity or person, or any change in the ownership of more than fifty percent (50%) of the voting capital stock of a Party in one or more related transaction;

**Crown Body** means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

**Data Protection Legislation** means (i) the GDPR, and any applicable implementing Law as amended from time to time; (ii) the Data Protection Act 2018 to the extent that it relates to the processing of Personal Data and privacy; and (iii) all applicable Law relating to the processing of Personal Data and privacy;

**Disposal** means the disposal, sale, transfer of an Asset or any interest in any Asset and includes any contract for disposal;

**Domestic Law** means an applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation which replaces EU law as a consequence of the UK leaving the European Union;

**Domestic Successor** means, as the context requires, either:

- (a) a body that takes over the functions of the European Commission in the United Kingdom on the date it withdraws from the European Union; or
- (b) the relevant court in England & Wales which takes over the functions of the Court of Justice of the European Union in England & Wales on the date the United Kingdom withdraws from the European Union;

**Duplicate Funding** means funding provided by a Third Party to the Grant Recipient, which is for the same purpose for which the Grant was made, but has not been declared to the Authority;

**Eligibility Criteria** mean the Authority's selection criteria used to determine who should be grant recipients including the Grant Recipient;

**Eligible Expenditure** means the expenditure incurred by the Grant Recipient during the Funding Period for the purposes of delivering the Funded Activities which comply in all respects with the eligibility rules set out in paragraph 5 of these Conditions;

**EIR** means the Environmental Information Regulations 2004;

**Event of Default** means an event or circumstance set out in paragraph 23.1;

**Financial Year** means from 1 April to 31 March;

**Fixed Assets** means any Asset which consists of land, buildings, plant and equipment acquired, developed, enhanced, constructed in connection with the Funded Activities;

**FOIA** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

**Funded Activities** means the activities set out in Annex 2;

**Funding Period** means the period for which the Grant is awarded starting on the Commencement Date and ending on 31<sup>st</sup> March 2021;

**General Data Protection Regulation** and **GDPR** means (the General Data Protection Regulation (EU) 2016/679);

**Grant** means the sum or sums the Authority will pay to the Grant Recipient in accordance with paragraph 4 and subject to the provisions set out at paragraph 18.

**Grant Claim** means the payment request submitted by the Grant Recipient to the Authority for payment of the Grant;

**Grant Funding Agreement** means these Conditions together with its annexes and schedules including but not limited to the Annex 1 Grant Offer Letter;

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

**Grant Offer Letter** means the letter the Authority issued to the Grant Recipient dated 23<sup>rd</sup> October 2020, a copy of which is set out in Annex 1;

**HRA** means the Human Rights Act 1998 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

**Ineligible Expenditure** means expenditure incurred by the Grant Recipient which is not Eligible Expenditure and as set out in paragraph 5 of these Conditions;

**Information Acts** means the Data Protection Legislation, FOIA and the EIR, as amended from time to time;

**Intellectual Property Rights or IPRs** means copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and any modifications, amendments, updates and new releases of the same and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**IPR Material** means all material produced by the Grant Recipient or its Representatives in relation to the Funded Activities during the Funding Period (including but not limited to, materials expressed in any form of report, database, design, document, technology, information, know how, system or process);

**Instalment Period** means the intervals set out in Annex 3 when the Authority will release payment of the Grant to the Grant Recipient during the Funding Period;

**Joint Controllers** means where two or more Controllers jointly determine the purposes and means of processing;

**Law** mean any applicable law, statute, byelaw, regulation, order, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation;

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

**Match Funding** means any contribution to the Funded Activities from a Third Party to the Grant Recipient to meet the balance of the Eligible Expenditure not supported by the Grant;

**Maximum Sum** means the maximum amount of the Grant the Authority will provide to the Grant Recipient for the Funded Activities subject to paragraph 18;

**Party** means the Authority or Grant Recipient and **Parties** shall be each Party together;

**Personal Data** has the meaning given to it in the Data Protection Legislation as amended from time to time;

**Procurement Regulations** means the Public Contracts Regulations 2015, Concession Contracts Regulations 2016, Defence Security Public Contracts Regulations 2011 and the Utilities and Contracts Regulations 2016 together with their amendments, updates and replacements from time to time;

**Prohibited Act** means:

- (a) directly or indirectly offering, giving or agreeing to give to any servant of the Authority or the Crown any gift or consideration of any kind as an inducement or reward for:
  - (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Funding Agreement; or
  - (ii) showing or not showing favour or disfavour to any person in relation to the Funding Agreement;
- (b) committing any offence:
  - (iii) under the Bribery Act;
  - (iv) under legislation creating offences in respect of fraudulent acts; or

- (v) at common law in respect of fraudulent acts in relation to the Funding Agreement; or
- (c) defrauding or attempting to defraud or conspiring to defraud the Authority or the Crown;

**Publication** means any announcement, comment or publication of any publicity material by the Grant Recipient concerning the Funded Activities or the Authority;

**Remedial Action Plan** means the plan of action submitted by the Grant Recipient to the Authority following an Event of Default pursuant to the Rectification Plan process set out in paragraphs 23.4;

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

**Special Payments** means ex gratia expenditure by the Grant Recipient to a third party where no legal obligations exists for the payment and/or other extra-contractual expenditure. Special Payments may include, but is not limited to, out-of-court settlements, compensation or additional severance payments to the Grant Recipient's employees;

**State Aid Law** means the law embodied in Articles 107- 109 of section 2, Title VII of the Common Rules on Competition, Taxation and Approximation of Laws – Consolidated Versions of the Treaty on European Union and the Treaty for the Functioning of the European Union or any Domestic Law which replaces such State Aid Law following the UK's exit from the European Union;

**Third Party** means any person or organisation other than the Grant Recipient or the Authority;

**Unspent Monies** means any monies paid to the Grant Recipient in advance of its Eligible Expenditure, which remains unspent and uncommitted at the end of the Financial Year, the Funding Period or because of termination or breach of these Conditions;

**VAT** means value added tax chargeable in the UK;

**Working Day** means any day from Monday to Friday (inclusive) which is not specified or proclaimed as a bank holiday in England and Wales pursuant to section 1 of the Banking and Financial Dealings Act 1971 including Christmas Day and Good Friday or means any day from Monday to Friday (inclusive) which is not a statutory bank holiday in Scotland.

2.2. In these Conditions, unless the context otherwise requires:

- (i) the singular includes the plural and vice versa;
- (ii) reference to a gender includes the other gender and the neuter;
- (iii) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
- (iv) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (v) the words "including", "other", "in particular", "for example" and similar words will not limit the generality of the preceding words and will be construed as if they were immediately followed by the words "without limitation";

- (vi) references to “writing” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing will be construed accordingly;
- (vii) references to “representations” will be construed as references to present facts, to “warranties” as references to present and future facts and to “undertakings” as references to obligations under the Grant Funding Agreement;
- (viii) references to “paragraphs” and “Annexes” are, unless otherwise provided, references to the paragraphs and annexes of these Conditions and references in any Annex to parts, paragraphs and tables are, unless otherwise provided, references to the parts, paragraphs and tables of the Annex in which these references appear; and
- (ix) the headings in these Conditions are for ease of reference only and will not affect the interpretation or construction of these Conditions.

2.3. Where there is any conflict between the documents that make up this Grant Funding Agreement the conflict shall be resolved in accordance with the following order of precedence:

- 2.3.1. the Conditions set out within this Grant Funding Agreement;
- 2.3.2. Schedule 1 – The Authority’s Grant Funding Letter;

## CONDITIONS

### 3. DURATION AND PURPOSE OF THE GRANT

- 3.1. The Funding Period starts on 23<sup>rd</sup> October 2020 (the **Commencement Date**) and ends on 31<sup>st</sup> March 2021 unless terminated earlier in accordance with this Grant Funding Agreement.
- 3.2. The Grant Recipient will ensure that the Funded Activities start on 23<sup>rd</sup> October 2020 but where this has not been possible, that they start no later than one month after the Commencement Date.
- 3.3. The Grant Recipient shall use the Grant solely for the delivery of the Funded Activities. The Grant Recipient may not make any changes to the Funded Activities.

If the Authority wants to make a change to the Funded Activities (including for example reducing the Grant or removing some of the Funded Activities from the Grant) it may do so on one month’s written notice to the Grant Recipient.

### 4. PAYMENT OF GRANT

- 4.1. Subject to the remainder of this paragraph 4 the Authority shall pay the Grant Recipient an amount not exceeding **£55,000 (fifty five thousand pounds)**. The Authority shall pay the Grant in pound sterling (GBP) and into a bank located in the UK.
- 4.2. The Grant Recipient must complete and sign the Confirmation of Bank Details and Signatories (Annex 4) as part of their acceptance of the Grant. No payment can be made in advance of receipt of a correctly completed and signed form.
- 4.3. The signatory must be the chief finance officer or someone with proper delegated authority. Any change of bank details must be notified immediately on the same form and signed by an

approved signatory. Any change of signatory must be notified to the Authority for approval, as soon as known.

- 4.4. The Grant represents the Maximum Sum the Authority will pay to the Grant Recipient under the Funding Agreement. The Maximum Sum will not be increased in the event of any overspend by the Grant Recipient in its delivery of the Funded Activities.
- 4.5. The Authority will only pay the Grant to the Grant Recipient in respect of Eligible Expenditure incurred by the Grant Recipient to deliver the Funded Activities. The Authority will not pay the Grant until it is satisfied that the Grant Recipient has paid for the Funded Activities in full and the Funded Activities have been delivered during the Funding Period.
- 4.6. The Grant Recipient will provide the Authority with evidence of the costs/payments, which are classified as Eligible Expenditure in paragraph 5.2, which may include (but will not be limited to) receipts and invoices or any other documentary evidence specified by the Authority.
- 4.7. The Grant Recipient shall declare to the Authority any Match Funding which been approved or received, before the Commencement Date. If the Grant Recipient intends to apply for, is offered or receives any further Match Funding during the Funding Period, the Grant Recipient shall notify the Authority before accepting or using any such Match Funding. On notifying the Authority of the Match Funding the Grant Recipient shall confirm the amount, purpose and source of the Match Funding and the Authority shall confirm whether it is agreeable to the Grant Recipient accepting the Match Funding. If the Authority does not agree to the use of Match Funding the Authority shall be entitled to terminate the Grant Funding Agreement in accordance with paragraph 23.1.9 and where applicable, require all or part of the Grant to be repaid.
- 4.8. Where the use of Match Funding is permitted the Grant Recipient shall set out any Match Funding it receives in the format required by Annex 3 and send that to the Authority. This is so the Authority knows the total funding the Grant Recipient has received for the Funded Activities.
- 4.9. The Grant Recipient agrees that:
  - 4.9.1. it will not apply for, or obtain, Duplicate Funding in respect of any part of the Funded Activities which have been paid for in full using the Grant;
  - 4.9.2. the Authority may refer the Grant Recipient to the police should it dishonestly and intentionally obtain Duplicate Funding for the Funded Activities;
  - 4.9.3. The Authority will not make the first payment of the Grant and/or any subsequent payments of the Grant unless or until, the Authority is satisfied that:
    - (i) the Grant will be used for Eligible Expenditure only; and
    - (ii) if applicable, any previous Grant payments have been used for the Funded Activities or, where there are Unspent Monies, have been repaid to the Authority.
- 4.10. The Grant Recipient shall submit by the **31<sup>st</sup> May 2021** the Grant Claim together with a copy of Annex 5 of these Conditions (Eligible Expenditure) and any other documentation as prescribed by the Authority, from time to time.
- 4.11. Unless otherwise stated in these Conditions, payment of the Grant will be made within 30 days of the Authority approving the Grant Recipient's Grant Claim.
- 4.12. The Authority will have no liability to the Grant Recipient for any Losses caused by a delay in the payment of a Grant Claim howsoever arising.

- 4.13. The Authority reserves the right not to pay any Grant Claims, which are not submitted within the period set out in paragraph 4.10 or Grant Claims, which are incomplete, incorrect or submitted without the full supporting documentation.
- 4.14. The Grant Recipient shall promptly notify and repay immediately to the Authority any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where the Grant Recipient is paid in error before it has complied with its obligations under the Grant Funding Agreement. Any sum, which falls due under this paragraph 4.14, shall fall due immediately. If the Grant Recipient fails to repay the due sum immediately the sum will be recoverable summarily as a civil debt.
- 4.15. The Grant will be paid into a separate bank account in the name of the Grant Recipient which must be an ordinary business bank account. All cheques from the bank account must be signed by at least two individual Representatives of the Grant Recipient.
- 4.16. Where the Grant Recipient enters into a contract with a Third Party in connection with the Funded Activities, the Grant Recipient will remain responsible for paying that Third Party. The Authority has no responsibility for paying Third Party invoices.
- 4.17. Onward payment of the Grant and the use of sub-contractors shall not relieve the Grant Recipient of any of its obligations under the Grant Funding Agreement, including any obligation to repay the Grant.
- 4.18. The Grant Recipient may not retain any Unspent Monies without the Authority's prior written permission.
- 4.19. If at the end of the relevant Financial Year there are Unspent Monies, the Grant Recipient shall repay such Unspent Monies to the Authority no later than 30 days of the Authority's request for repayment.

## **5. ELIGIBLE AND INELIGIBLE EXPENDITURE**

- 5.1. The Authority will only pay to the Grant in respect of Eligible Expenditure incurred by the Grant Recipient to deliver the Funded Activities and the Grant Recipient will use the Grant solely for delivery of the Funded Activities (as set out in Annex 2 of these Conditions).
- 5.2. The following costs/payments will be classified as Eligible Expenditure if incurred for the purposes of the Funded Activities:
  - 5.2.1. Fees charged or to be charged to the Grant Recipient by the external auditors/accountants for reporting/certifying that the grant paid was applied for its intended purposes.
  - 5.2.2. giving evidence to Parliamentary Select Committees;
  - 5.2.3. attending meetings with government ministers or civil servants to discuss the progress of a taxpayer funded grant scheme;
  - 5.2.4. responding to public consultations, where the topic is relevant to the objectives of the Funded Activities. To avoid doubt, Eligible Expenditure does not include the Grant Recipient spending the Grant on lobbying other people to respond to any such consultation (unless explicitly permitted in the Grant Funding Agreement);

- 5.2.5. providing independent, evidence based policy recommendations to local government, departments or government ministers, where that is the objective of a taxpayer funded grant scheme, for example, 'What Works Centres'; and
  - 5.2.6. providing independent evidence based advice to local or national government as part of the general policy debate, where that is in line with the objectives of the Grant.
- 5.3. The Grant Recipient may not in any circumstance claim the following non-exhaustive list as Eligible Expenditure: The list below does not override activities which are deemed eligible in these Conditions:
- 5.3.1. Paid for lobbying, which means using the Grant to fund lobbying (via an external firm or in-house staff) in order to undertake activities intended to influence or attempt to influence Parliament, government or political activity; or attempting to influence legislative or regulatory action;
  - 5.3.2. using the Grant to directly enable one part of government to challenge another on topics unrelated to the agreed purpose of the grant;
  - 5.3.3. using the Grant to petition for additional funding;
  - 5.3.4. expenses such as for entertaining, specifically aimed at exerting undue influence to change government policy;
  - 5.3.5. input VAT reclaimable by the grant recipient from HMRC;
  - 5.3.6. payments for activities of a political or exclusively religious nature;
- 5.4. Other examples of expenditure, which are prohibited, include the following:
- 5.4.1. contributions in kind;
  - 5.4.2. interest payments or service charge payments for finance leases;
  - 5.4.3. gifts;
  - 5.4.4. statutory fines, criminal fines or penalties civil penalties, damages or any associated legal costs;
  - 5.4.5. payments for works or activities which the grant recipient, or any member of their Partnership has a statutory duty to undertake, or that are fully funded by other sources;
  - 5.4.6. bad debts to related parties;
  - 5.4.7. payments for unfair dismissal or other compensation;
  - 5.4.8. depreciation, amortisation or impairment of assets owned by the Grant Recipient;
  - 5.4.9. the acquisition or improvement of Assets by the Grant Recipient (unless the Grant is explicitly for capital use – this will be stipulated in the Grant Funding Letter); and
  - 5.4.10. liabilities incurred before the commencement of the Grant Funding Agreement unless agreed in writing by the Authority.

## **6. MONITORING AND REPORTING**

- 6.1 The Grant Recipient shall closely monitor the delivery and success of the Funded Activities throughout the Funding Period to ensure that the aims and objectives of the Funded Activities are achieved.
- 6.2 The Grant Recipient shall provide the Authority with all reasonable assistance and co-operation in relation to any ad-hoc information, explanations and documents as the Authority may require, from time to time, so the Authority may establish if the Grant Recipient has used the Grant in accordance with the Grant Funding Agreement.

- 6.3. Provide details of any Assets either acquired or improved using the Grant.
- 6.4. The Grant Recipient will permit any person authorised by the Authority reasonable access, with or without notice, to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Grant Recipient's fulfilment of its obligations under the Grant Funding Agreement and will, if so required, provide appropriate oral or written explanations to such authorised persons as required during the Funding Period.
- 6.5. The Grant Recipient will record in its financial reports the amount of Match Funding it receives together with details of what it has used that Match Funding for.
- 6.6. The Grant Recipient will notify the Authority as soon as reasonably practicable of:
- 6.7. Any actual or potential failure to comply with any of its obligations under the Grant Funding Agreement, which includes those caused by any administrative, financial or managerial difficulties; and
- 6.8. Actual or potential variations to the Eligible Expenditure set out in Annex 5 of these Conditions and/or any event which materially affects the continued accuracy of such information.
- 6.9. The Grant Recipient represents and undertakes (and shall repeat such representations on delivery of its report:
  - 6.9.1. that the reports and information it gives pursuant to this paragraph 6. are accurate;
  - 6.9.2. that it has diligently made full and proper enquiry of the matter pertaining to the reports and information given; and
  - 6.9.3 that any data it provided pursuant to an application for the Grant may be shared within the powers conferred by legislation with other organisations for the purpose of preventing or detecting crime.

## **7. AUDITING AND ASSURANCE**

- 7.1. The Authority may, at any time during and up to 1 years after the end of the Grant Funding Agreement, conduct additional audits or ascertain additional information where the Authority considers it necessary. The Grant Recipient agrees to grant the Authority or its Representatives access, as required, to all Funded Activities sites and relevant records. The Grant Recipient will ensure that necessary information and access rights are explicitly included within all arrangements with sub-contractors.
- 7.2. If the Authority requires further information, explanations and documents, in order for the Authority to establish that the Grant has been used properly in accordance with the Grant Funding Agreement, the Grant Recipient will, within 5 Working Days of a request by the Authority, provide the Authority, free of charge, with the requested information.
- 7.3. The Grant Recipient shall:
  - 7.3.1. if applicable nominate an independent auditor to verify the final statement of expenditure and income submitted to the Authority;
  - 7.3.2. identify separately the value and purpose of the Grant Funding in its audited accounts and its annual report; and
  - 7.3.3. maintain a record of internal financial controls and procedures and provide the Authority with a copy if requested.

## **Retention of documents**

- 7.4. The Grant Recipient shall retain all invoices, receipts, accounting records and any other documentation (including but not limited to, correspondence) relating to the Eligible Expenditure; income generated by the Funded Activities during the Funding Period for a period of 1 year from the date on which the Funding Period ends.
- 7.5. The Grant Recipient shall ensure that all its sub-contractors retain each record, item of data and document relating to the Funded Activities for a period of 1 year from the date on which the Funding Period ends.
- 7.6. The Grant Recipient will promptly provide revised forecasts of income and expenditure:
  - 7.6.1. when these forecasts increase or decrease by more than 5 % of the original expenditure forecasts; and/or
  - 7.6.2. at the request of the Authority.
- 7.7. Where the Grant Recipient is a registered charity, the Grant Recipient must file their charity annual return by the date specified by the Charity Commissioner.
- 7.8. The Grant Recipient shall provide the Authority with copies of their annual return, accounts and charity annual return (as applicable) within five days of filing them at Companies House and/or the Charity Commissioner. If a Grant Recipient fails to comply with this paragraph the Authority may suspend funding or terminate the Grant Funding Agreement in accordance with paragraph 23.1.1 of these Conditions.

## **8. FINANCIAL MANAGEMENT AND PREVENTION OF BRIBERY, CORRUPTION, FRAUD AND OTHER IRREGULARITY**

- 8.1. The Grant Recipient will at all times comply with all applicable Laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act.
- 8.2. The Grant Recipient must have a sound administration and audit process, including internal financial controls to safeguard against fraud, theft, money laundering, counter terrorist financing or any other impropriety, or mismanagement in connection with the administration of the Grant. The Grant Recipient shall require that the internal/external auditors report on the adequacy or otherwise of that system.
- 8.3. All cases of fraud or theft (whether proven or suspected) relating to the Funded Activities must be notified to the Authority as soon as they are identified. The Grant Recipient shall explain to the Authority what steps are being taken to investigate the irregularity and shall keep the Authority informed about the progress of any such investigation. The Authority may however request that the matter referred (which the Grant Recipient is obliged to carry out) to external auditors or other Third Party as required.
- 8.4. The Authority will have the right, at its absolute discretion, to insist that the Grant Recipient address any actual or suspected fraud, theft or other financial irregularity and/or to suspend future payment of the Grant to the Grant Recipient. Any grounds for suspecting financial irregularity includes what the Grant Recipient, acting with due care, should have suspected as well as what it actually proven.
- 8.5. The Grant Recipient agrees and accepts that it may become ineligible for Grant support and may be required to repay all or part of the Grant if it engages in tax evasion or aggressive tax avoidance in the opinion of Her Majesty's Revenue and Customs.

- 8.6. For the purposes of paragraph 8.4 “financial irregularity” includes (but is not limited to) potential fraud or other impropriety, mismanagement, and the use of the Grant for any purpose other than those stipulated in the Grant Funding Agreement. The Grant Recipient may be required to provide statements and evidence to the Authority or the appropriate organisation as part of pursuing sanctions, criminal or civil proceedings.

## **9. CONFLICTS OF INTEREST**

- 9.1. Neither the Grant Recipient nor its Representatives shall engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to the Grant Funding Agreement.
- 9.2. The Grant Recipient must have and will keep in place adequate procedures to manage and monitor any actual or perceived bias or conflicts of interest.

## **10. CONFIDENTIALITY**

- 10.1. Except to the extent set out in this paragraph 10 or where disclosure is expressly permitted, the Grant Recipient shall treat all Confidential Information belonging to the Authority as confidential and shall not disclose any Confidential Information belonging to the Authority to any other person without the prior written consent of the Authority, except to such persons who are directly involved in the provision of the Funded Activities and who need to know the information.
- 10.2. The Grant Recipient gives its consent for the Authority to publish the Grant Funding Agreement in any medium in its entirety (but with any information which is Confidential Information belonging to the Authority or the Grant Recipient redacted), including from time to time agreed changes to the Grant Funding Agreement.
- 10.3. Nothing in this paragraph 10 shall prevent the Authority disclosing any Confidential Information obtained from the Grant Recipient:
- 10.3.1. for the purpose of the examination and certification of the Authority’s accounts; or pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
  - 10.3.2. to any government department, consultant, contractor or other person engaged by the Authority, provided that in disclosing information under the Authority only discloses the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate;
  - 10.3.3. where disclosure is required by Law, including under the Information Acts.
- 10.4. Nothing in this paragraph 10 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under the Grant Funding Agreement in the course of its normal business, to the extent that this does not result in a disclosure of the other Party’s Confidential Information or an infringement of the other Party’s Intellectual Property Rights.

## **11. TRANSPARENCY**

- 11.1. The Authority and the Grant Recipient acknowledge that, except for any information, which is exempt from disclosure in accordance with the provisions of the Information Acts, the content of the Grant Funding Agreement is not confidential.

## **12. STATUTORY DUTIES**

- 12.1. The Grant Recipient agrees to adhere to its obligations under the Law including but not limited to the Information Acts and the HRA.
- 12.2. Where requested by the Authority, the Grant Recipient will provide reasonable assistance and cooperation to enable the Authority to comply with its information disclosure obligations under the Information Acts.
- 12.3. On request from the Authority, the Grant Recipient will provide the Authority with all such relevant documents and information relating to the Grant Recipient's data protection policies and procedures as the Authority may reasonably require.
- 12.4. The Grant Recipient acknowledges that the Authority, acting in accordance with the codes of practice issued and revised from time to time under the Information Acts, may disclose information concerning the Grant Recipient and the Grant Funding Agreement without consulting the Grant Recipient.
- 12.5. The Authority will take reasonable steps to notify the Grant Recipient of a request for information to the extent that it is permissible and reasonably practical for it to do so. Notwithstanding any other provision in the Grant Funding Agreement, the Authority will be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Acts.

## **13. DATA PROTECTION, PUBLIC PROCUREMENT AND STATE AID**

### **Data Protection**

- 13.1. The Grant Recipient and the Authority will comply at all times with its respective obligations under Data Protection Legislation.
- 13.2. To the extent that the Grant Recipient and the Authority share any Personal Data for the purposes of this Grant Funding Agreement, the Parties accept that they are each a separate independent Controller in respect of such Personal Data. Each Party:
  - (i) shall comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data;
  - (ii) will be individually and separately responsible for its own compliance; and
  - (iii) do not and will not Process any Personal Data as Joint Controllers.
- 13.3. Each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.

### **Public Procurement**

- 13.4. The Grant Recipient will ensure that any of its Representatives involved in the Funded Activities will, adopt such policies and procedures that are required in order to ensure that value for money has been obtained in the procurement of goods or services funded by the Grant.

- 13.5. Where the Grant Recipient is a Contracting Authority within the meaning of the Procurement Regulations the Grant Recipient will comply, as necessary, with the Procurement Regulations when procuring goods and services in connection with the Grant Funding Agreement and the Authority shall not be liable for the Grant Recipient's failure to comply with its obligations under the Procurement Regulations.

#### **State Aid**

- 13.6. The Grant Recipient will ensure the Funded Activities are compatible with State Aid Law.
- 13.7. The Grant Recipient will maintain appropriate records of compliance with the State Aid Law and will take all reasonable steps to assist the Authority to comply with State Aid Law requirements and respond to any investigation(s) instigated by the European Commission (or its Domestic Successor) into the Funded Activities or any equivalent regulatory body as the case may be.
- 13.8. The Grant Recipient acknowledges and accepts that the Grant is awarded on the basis that the Grant Recipient is a public body that does not undertake economic activities and that the purpose of the Grant is to fund non-economic activities. As such the Grant is not a State Aid.

#### **14. INTELLECTUAL PROPERTY RIGHTS**

- 14.1. Intellectual Property in all IPR Material will be the property of the Grant Recipient. Other than as expressly set out in these Conditions, neither Party will have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 14.2. The Grant Recipient grants to the Authority a non-exclusive irrevocable and royalty-free, sub-licensable, worldwide licence to use all the IPR Material for the purpose of supporting other projects.
- 14.3. Ownership of Third Party software or other IPR necessary to deliver Funded Activities will remain with the relevant Third Party.
- 14.4. The Grant Recipient must ensure that they have obtained the relevant agreement from the Third Party proprietor before any additions or variations are made to the standard 'off-the-shelf' versions of any Third Party software and other IPR. The Grant Recipient will be responsible for obtaining and maintaining all appropriate licences to use the Third Party software.

#### **15. ENVIRONMENTAL REQUIREMENTS**

- 15.1. The Grant Recipient shall perform the Funded Activities in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 15.2. The Grant Recipient shall pay due regard to the use of recycled products, so long as they are not detrimental to the provision of the Funded Activities or the environment, to include the use of all packaging, which should be capable of recovery for re-use or recycling.
- 15.3. The Grant Recipient shall take all possible precautions to ensure that any equipment and materials used in the provision of the Funded Activities do not contain chlorofluorocarbons, halons or any other damaging substances, unless unavoidable, in which case the Authority shall

be notified in advance of their use. The Grant Recipient shall endeavour to reduce fuel emissions wherever possible.

## **16. INSURANCE**

- 16.1. The Grant Recipient will during the term of the Funding Period and for 3 years after termination or expiry of these Conditions, ensure that it has and maintains, at all times adequate insurance with an insurer of good repute to cover claims under the Grant Funding Agreement or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with the Funded Activities or the Grant Funding Agreement.
- 16.2. The Grant Recipient will upon request produce to the Authority its policy or policies of insurance or where this is not possible, a certificate of insurance issued by the Grant Recipient's insurance brokers confirming the insurances are in full force and effect together with confirmation that the relevant premiums have been paid.

## **17. ASSIGNMENT**

- 17.1. The Grant Recipient will not transfer, assign, novate or otherwise dispose of the whole or any part of the Grant Funding Agreement or any rights under it, to another organisation or individual, without the Authority's prior approval.
- 17.2. Any approval given by the Authority will be subject to a condition that the Grant Recipient has first entered into a Grant Funding Agreement, authorised by the Authority, requiring the Grant Recipient to work with another organisation in delivering the Funded Activities.

## **18. SPENDING CONTROLS – MARKETING, ADVERTISING, COMMUNICATIONS AND CONSULTANCY**

- 18.1. The Grant Recipient must seek permission from the Authority prior to any proposed expenditure on advertising, communications, consultancy or marketing either in connection with, or using the Grant.
- 18.2. The Grant Recipient should provide evidence that any marketing, advertising, communications and consultancy expenditure carried out in connection with, or using the Grant will deliver measurable outcomes that meet government objective to secure value for money.

## **19. LOSSES, GIFTS AND SPECIAL PAYMENTS**

- 19.1. The Grant Recipient must obtain prior written consent from the Authority before:

- 19.1.1. writing off any debts or liabilities;
- 19.1.2. offering to make any Special Payments; and
- 19.1.3. giving any gifts.

in connection with this Grant Funding Agreement.

- 19.2. The Grant Recipient will keep a record of all gifts, both given and received, in connection with the Grant or any Funded Activities.

## **20. BORROWING**

- 20.1. The Grant Recipient must obtain prior written consent from the Authority before:

- 20.1.1. borrowing or lending money from any source in connection with the Grant Funding Agreement; and
- 20.1.2. giving any guarantee, indemnities or letters of comfort that relate to the Grant Funding Agreement or have any impact on the Grant Recipient's ability to deliver the Funded Activities set out in the Grant Funding Agreement.

## **21. PUBLICITY**

- 21.1. The Grant Recipient gives consents to the Authority to publicise in the press or any other medium the Grant and details of the Funded Activities using any information gathered from the Grant Recipient's initial Grant application or any monitoring reports submitted to the Authority in accordance with paragraph 6.2 of these Conditions.
- 21.2. The Grant Recipient will comply with all reasonable requests from the Authority to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Authority in its promotional and fundraising activities relating to the Funded Activities.

## **22. CHANGES TO THE AUTHORITY'S REQUIREMENTS**

- 22.1. The Authority will notify the Grant Recipient of any changes to their activities, which are supported by the Grant.
- 22.2. The Grant Recipient will accommodate any changes to the Authority's needs and requirements under these Conditions.

## **23. CLAWBACK, EVENTS OF DEFAULT, TERMINATION AND RIGHTS RESERVED FOR BREACH AND TERMINATION**

### **Events of Default**

- 23.1. The Authority may exercise its rights set out in paragraph 23.2 if any of the following events occur:
  - 23.1.1. the Grant Recipient uses the Grant for a purpose other than the Funded Activities;
  - 23.1.2. the Grant Recipient fails to comply with its obligations under the Grant Funding Agreement, which is material in the opinion of the Authority;
  - 23.1.3. where delivery of the Funded Activities do not start within three (3) months of the Commencement Date and the Grant Recipient fails to provide the Authority with a satisfactory explanation for the delay, or failed to agree a new date on which the Funded Activities shall start with the Authority;
  - 23.1.4. the Grant Recipient uses the Grant for Ineligible Expenditure;
  - 23.1.5. the Grant Recipient fails, in the Authority's opinion, to make satisfactory progress with the Funded Activities and in particular, with meeting the Agreed Outputs set out in Annex 2 of these Conditions;
  - 23.1.6. the Grant Recipient fails to:
    - (i) submit an adequate Remedial Action Plan to the Authority following a request by the Authority pursuant to paragraph 23.3.4
    - (ii) improve delivery of the Funded Activities in accordance with the Remedial Action Plan approved by the Authority;

- 23.1.7. the Grant Recipient is, in the opinion of the Authority, delivering the Funded Activities in a negligent manner (in this context negligence includes but is not limited to failing to prevent or report actual or anticipated fraud or corruption);
- 23.1.8. the Grant Recipient fails to declare Duplicate Funding;
- 23.1.9. the Grant Recipient fails to declare any Match Funding in accordance with paragraph 4.7;
- 23.1.10. the Grant Recipient receives funding from a Third Party which, in the opinion of the Authority, undertakes activities that are likely to bring the reputation of the Funded Activities or the Authority into disrepute;
- 23.1.11. the Grant Recipient provides the Authority with any materially misleading or inaccurate information and/or any of the information provided in their grant application or in any subsequent supporting correspondence is found to be incorrect or incomplete to an extent which the Authority considers to be significant;
- 23.1.12. the Grant Recipient commits or has committed a Prohibited Act or fails to report a Prohibited Act to the Authority, whether committed by the Grant Recipient, its Representatives or a Third Party, as soon as they become aware of it;
- 23.1.13. the Authority determines (acting reasonably) that the Grant Recipient or any of its Representatives has:
- (iii) acted dishonestly or negligently at any time during the term of the Grant Funding Agreement and to the detriment of the Authority; or
  - (iv) taken any actions which unfairly bring or are likely to unfairly bring the Authority's name or reputation and/or the Authority into disrepute. Actions include omissions in this context;
  - (v) transferred, assigns or novates the Grant to any Third Party without the Authority's consent;
  - (vi) failed to act in accordance with the Law; howsoever arising, including incurring expenditure on unlawful activities;
- 23.1.14. the Grant Recipient ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- 23.1.15. the Grant Recipient becomes insolvent as defined by section 123 of the Insolvency Act 1986, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due;
- 23.1.16. the European Commission (or a Domestic Successor) or the Court of Justice of the European Union (or Domestic Successor) requires any Grant paid to be recovered by reason of a breach of State Aid Law or the Grant Recipient fails to comply with the provisions of the exemption or scheme under State Aid Law that applies to the Funded Activities and the Grant, as set out in paragraph 13;
- 23.1.17. The Grant Recipient breaches the Code of Conduct and/or fails to report an actual or suspected breach of the Code of Conduct by the Grant Recipient or its Representatives in accordance with paragraph 28.2;

23.1.18. The Grant Recipient undergoes a Change of Control which the Authority, acting reasonably, considers:

- (i) will be materially detrimental to the Funded Activities and/or;
- (ii) the new body corporate cannot continue to receive the Grant because they do not meet the Eligibility Criteria used to award the Grant to the Grant Recipient;
- (iii) the Authority believes that the Change of Control would raise national security concerns and/or;
- (iv) the new body corporate intends to make fundamental change(s) to the purpose for which the Grant was given.

23.2. Where the Authority determines that an Event of Default has or may have occurred, the Authority shall notify the Grant Recipient to that effect in writing, setting out any relevant details, of the failure to comply with these Conditions or pertaining the Event of Default, and details of any action that the Authority intends to take or has taken.

#### **Rights reserved for the Authority in relation to an Event of Default**

23.3. Where, the Authority determines that an Event of Default has or may have occurred, the Authority shall take any one or more of the following actions:

- 23.3.1. suspend or terminate the payment of Grant for such period as the Authority shall determine; and/or
- 23.3.2. reduce the Maximum Sum in which case the payment of Grant shall thereafter be made in accordance with the reduction and notified to the Grant Recipient; and/or
- 23.3.3. require the Grant Recipient to repay the Authority the whole or any part of the amount of Grant previously paid to the Grant Recipient. Such sums shall be recovered as a civil debt; and/or
- 23.3.4. give the Grant Recipient an opportunity to remedy the Event of Default (if remediable) in accordance with the procedure set out in paragraph 23.3;
- 23.3.5. terminate the Grant Funding Agreement.

#### **Opportunity for the Grant Recipient to remedy an Event of Default**

23.4. Where the Grant Recipient is provided with an opportunity to submit a draft Remedial Action Plan in accordance with paragraph 23.3.4, the draft Remedial Action Plan shall be submitted to the Authority for approval, within 5 Working Days of the Grant Recipient receiving notice from the Authority.

23.5. The draft Remedial Action Plan shall set out:

- 23.5.1. full details of the Event of Default; and
- 23.5.2. the steps which the Grant Recipient proposes to take to rectify the Event of Default including timescales.

23.6. On receipt of the draft Remedial Action Plan and as soon as reasonably practicable, the Authority will submit its comments on the draft Remedial Action Plan to the Grant Recipient.

23.7. The Authority shall have the right to accept or reject the draft Remedial Action Plan. If the Authority rejects the draft Remedial Action Plan, the Authority shall confirm, in writing, the reasons why they have rejected the draft Remedial Action Plan and will confirm whether the Grant Recipient is required to submit an amended Remedial Action Plan to the Authority.

- 23.8. If the Authority directs the Grant Recipient to submit an amended draft Remedial Action Plan, the Parties shall agree a timescale for the Grant Recipient to amend the draft Remedial Action Plan to take into account the Authority's comments.
- 23.9. If the Authority does not approve the draft Remedial Action Plan the Authority may, at its absolute discretion, terminate the Grant Funding Agreement.
- 23.10. The Authority shall not by reason of the occurrence of an Event of Default which is, in the opinion of the Authority, capable of remedy, exercise its rights under either paragraph 23.3.3 or 23.3.4 unless the Grant Recipient has failed to rectify the default to the reasonable satisfaction of the Authority.

#### **General Termination rights – Termination for Convenience**

- 23.11. Notwithstanding the Authority's right to terminate the Grant Funding Agreement pursuant to paragraph 23.3.4 above, either Party may terminate the Grant Funding Agreement at any time by giving at least 3 months (or a timescale proportionate to the Funding Period; whichever is the shorter ) written notice to the other Party.
- 23.12. If applicable, all Unspent Monies (other than those irrevocably committed in good faith before the date of termination, in line with the Grant Funding Agreement and approved by the Authority as being required to finalise the Funded Activities) shall be returned to the Authority within 30 days of the date of receipt of a written notice of termination from the Authority.
- 23.13. If the Authority terminates the Grant Funding Agreement in accordance with paragraph 23.11 the Authority may choose to pay the Grant Recipient's reasonable costs in respect of the delivery of the Funded Activities performed up to the termination date. Reasonable costs will be identified by the Grant Recipient and will be subject to the Grant Recipient demonstrating that they have taken adequate steps to mitigate their costs. For the avoidance of doubt, the amount of reasonable costs payable will be determined solely by the Authority.
- 23.14. The Authority will not be liable to pay any of the Grant Recipient's costs or those of any contractor/supplier of the Grant Recipient related to any transfer or termination of employment of any employees engaged in the provision of the Funded Activities.

#### **Change of Control**

- 23.15. The Grant Recipient shall notify the Authority immediately in writing and as soon as the Grant Recipient is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control, provided such notification does not contravene any Law.
- 23.16. The Grant Recipient shall ensure that any notification made pursuant to paragraph 23.15 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
- 23.17. Where the Grant Recipient has been awarded to a consortium and the Grant Recipient has entered into a collaboration agreement, the notification required under paragraph 23.15 shall include any changes to the consortium members as well as the lead Grant Recipient.
- 23.18. Following notification of a Change of Control the Authority shall be entitled to exercise its rights under paragraph 23.1 of these Conditions providing the Grant Recipient with notification of its proposed action in writing within three (3) months of:

- (i) being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or
- (ii) where no notification has been made, the date that the Authority becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

23.19. The Authority shall not be entitled to terminate where an approval was granted prior to the Change of Control.

## **24. EXIT PLAN**

24.1. Where the Authority requires the Grant Recipient to prepare an Exit Plan to allow the cessation or seamless transfer of the Funded Activities, the Grant Recipient shall prepare the Exit Plan within three (3) months of the signing of the Grant Funding Agreement.

## **25. DISPUTE RESOLUTION**

25.1. The Parties will use all reasonable endeavours to negotiate in good faith, and settle amicably, any dispute that arises during the continuance of the Grant Funding Agreement.

25.2. All disputes and complaints (except for those which relate to the Authority's right to withhold funds or terminates the Grant Funding Agreement) shall be referred in the first instance to the Parties Representatives.

25.3. If the dispute cannot be resolved between the Parties Representatives within a maximum of 30 days, then the matter will be escalated to formal meeting between the Grant Manager and the Grant Recipient's chief executive (or equivalent).

## **26. LIMITATION OF LIABILITY**

26.1. The Authority accepts no liability for any consequences, whether direct or indirect, that may come about from the Grant Recipient delivering/running the Funded Activities, the use of the Grant or from withdrawal, withholding or suspension of the Grant. The Recipient shall indemnify and hold harmless the Authority, its Representatives with respect to all actions, claims, charges, demands Losses and proceedings arising from or incurred by reason of the actions and/or omissions of the Grant Recipient in relation to the Funded Activities, the non-fulfilment of obligations of the Grant Recipient under this Grant Funding Agreement or its obligations to Third Parties.

26.2. Subject to this paragraph 26, the Authority's liability under this Grant Funding Agreement is limited to the amount of Grant outstanding.

## **27. VAT**

27.1. If VAT is held to be chargeable in respect of the Grant Funding Agreement, all payments shall be deemed to be inclusive of all VAT and the Authority shall not be obliged to pay any additional amount by way of VAT.

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

## **28. CODE OF CONDUCT FOR GRANT RECIPIENTS**

- 28.1. The Grant Recipients acknowledges that by signing the Grant Funding Agreement it agrees to take account of the Code of Conduct, which includes ensuring that its Representatives undertake their duties in a manner consistent with the principles set out in the Code of Conduct.
- 28.2. The Grant Recipient shall immediately notify the Authority if it becomes aware of any actual or suspected breaches of the principles outlined in the Code of Conduct.
- 28.3. The Grant Recipient acknowledges that a failure to notify the Authority of an actual or suspected breach of the Code of Conduct may result in the Authority immediately suspending the Grant funding, terminating the Grant Funding Agreement and taking action to recover some or all of the funds paid to the Grant Recipient as a civil debt in accordance with paragraph 23.1.17.

## **29. NOTICES**

- 29.1. All notices and other communications in relation to this Grant Funding Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, e-mailed, or mailed (first class postage prepaid) to the address of the relevant party, as referred to in Annex 6 or otherwise notified in writing. All notices and other communications must be marked for the attention of the contact specified in Annex 6 (Contact Details). If personally delivered or if e-mailed all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any Working Day they shall be deemed received on the next Working Day) and if mailed all such communications shall be deemed to have been given and received on the second Working Day following such mailing.

## **30. GOVERNING LAW**

- 30.1. These Conditions will be governed by and construed in accordance with the law of England and Wales and the Parties irrevocably submit to the exclusive jurisdiction of the English and Welsh courts.

**SIGNED by:**



**Sarah Smith,**

**Deputy Chief Executive**

**for and on behalf of the  
Office for Product Safety &  
Standards,  
Department for Business,  
Energy & Industrial Strategy**

**23<sup>rd</sup> October 2020**

**SIGNED by**

.....  
**Signature**

**for and on behalf of  
Derry City and Strabane  
District Council**

.....  
**Title**

.....  
**Date**

**ANNEX 1 – GRANT FUNDING LETTER AND GRANT APPLICATION  
PART A - GRANT FUNDING LETTER**

Seamus Donaghy  
Derry City and Strabane District Council  
98 Strand Rd,  
Londonderry,  
BT48 7NN

23<sup>rd</sup> October 2020

Dear Seamus

**PROJECT TITLE: Grant Funding to Build Capacity and Capability for Market Surveillance in Northern Ireland 2020/21**

I am pleased to inform you that subject to the terms and conditions of this Grant Offer Letter the Secretary of State for Business, Energy and Industrial Strategy ("BEIS") is prepared to pay Derry City and Strabane District Council a grant not exceeding **£55,000 (fifty five thousand pounds)** under the **Supply and Appropriation (Main Estimates) Act 2020** to improve product safety through the supply chain (the "Project") in accordance with the project outline in Annex 2.

**Purpose and Use of the Grant**

This Grant is provided to Derry City and Strabane District Council to build capacity and capability for market surveillance to meet the obligations under the EU Withdrawal Agreement and operationalise the Northern Ireland Protocol (NIP) as set out in Annex 2, including the outcomes for the Grant Period where these apply.

Acceptance of this offer constitutes agreement in full to the terms and conditions set out in this Grant Offer Letter. This Grant Offer Letter and the schedules to it constitute the entire agreement and the understanding between BEIS and Derry City and Strabane District Council with respect to all matters which are referred to and shall supersede any previous arrangement(s) between Derry City and Strabane District Council and BEIS in relation to the matters referred to in this Grant Offer Letter.

The offer should be accepted by the Chief Officer/Head of Service of Derry City and Strabane District Council by signing the duplicate copy of the offer letter on behalf of Derry City and Strabane District Council and returning it to me.

This offer letter shall be governed by and construed in accordance with the law of England and Wales, Derry City and Strabane District Council irrevocably submits to the exclusive jurisdiction of England and Wales and your address for service is 98 Strand Rd, Londonderry, BT48 7NN.

If this offer is accepted, the Project will be monitored on behalf of BEIS by Amanda Farrell, BEIS, Office for Product Safety and Standards, 4<sup>th</sup> Floor, Cannon House, 18 Priory Queensway, Birmingham, B4 8BS. Contact: [Amanda.farrell@beis.gov.uk](mailto:Amanda.farrell@beis.gov.uk) . Telephone: 0121 345 1284

Please acknowledge receipt of this letter.

Yours sincerely,

A handwritten signature in black ink that reads "Sarah A. Smith". The signature is written in a cursive style.

**SARAH SMITH**

Deputy Chief Executive

Office for Product Safety & Standards

Department for Business, Energy and Industrial Strategy

## ANNEX 2 –THE FUNDED ACTIVITIES

### Purpose of the Grant

The purpose of the grant programme is to support the 11 district councils in Northern Ireland to build capacity and capability for market surveillance in Northern Ireland. This is part of a UK wide approach to ensure only safe and compliant, non-food, consumer goods enter the UK market and to meet the provisions of the EU Withdrawal Agreement and NIP.

### Background

The Office for Product Safety and Standards (OPSS) is the national regulator for product safety. It was established to lead and co-ordinate the UK product safety system to deliver improved protections for consumers and better support for industry across the UK. The aims are set out in the 2018-2020 Strategy – Strengthening National Capacity for Product Safety which references the OPSS role leading engagement and collaboration with local authorities, increasing support for local authority led teams at points of entry (e.g. seaports and airports) and co-ordination of market surveillance activities across different industry sectors.

Market Surveillance Authorities, including Northern Ireland's district councils, have a range of obligations; these are set out in the Regulation 765/2008 for Accreditation & Market Surveillance (RAMS) and other sector specific legislation.

OPSS already provides a package of support to district council environmental health services, including a programme of training to increase competency of front line officers, funding to enable testing for products manufactured or imported by Northern Ireland businesses and provision for additional screen-testing equipment.

As the end of the transition period approaches and implementation of the NIP progresses, OPSS has developed an additional support package that will enable all the district councils to enhance their provision to operationalise the NIP. This will ensure the UK has a co-ordinated and cohesive approach to market surveillance that recognises the particular requirements in Northern Ireland.

### Aims and Objectives of the Funded Activities

The Grant is provided to Derry City and Strabane District Council in Northern Ireland to establish a **flexible resource with the capacity and capability** to:

- Undertake risk-based market surveillance interventions on goods throughout the supply chain;
- Manage and act on intelligence to drive a risk-based approach;
- Provide advice and support to local businesses to meet their obligations under product safety legislation for importing and appropriate labelling/marketing of goods;
- Co-operate and coordinate market surveillance activity across NI to ensure compliance with EU regulatory requirements; *and*
- Monitor and report on interventions.

**Funding of up to £55,000 is available which is the equivalent of one full time officer per council including overheads and on costs.**

The purpose of the funding is to effectively implement the NIP with the aim of supporting a successful, thriving and compliant business sector across NI. Business should have the confidence to trade within NI, GB and the EU, while ensuring that unsafe/non-compliant goods do not enter the UK market including NI.

## Funded Activities

The range of funded activities is expected to include:

- Providing advice and guidance to NI manufacturers and importers about placing goods on NI and GB market, with a particular focus on those businesses that are currently distributors and will become importers following the end of transition;
- Implementing co-ordinated business support programmes e.g. linking to economic development work if appropriate;
- Sampling products from NI manufacturers and importers for safety testing and effectively following up any non-compliance detected;
- Participating in market surveillance projects
- Identifying locations in the District Council area where goods are released from customs control into free circulation, for example External Temporary Storage Facilities and Fast Parcel Operator distribution centres:
  - putting in place arrangements to inspect goods for regulatory compliance at these locations, and;
  - informing OPSS of your capacity to make inspections at these locations, should OPSS' risk profiling activity identify relevant consignments being released from customs control at this location (posing a high risk to consumers).
- Working with OPSS on developing product safety intelligence-gathering and prioritisation within NI;
- Building relationships with Competition & Consumer Protection Commission in the Republic of Ireland; and
- Undertake any other associated market surveillance activities to support any agreed UK/EU reporting requirements.

Officers will need to be able to operate flexibly across districts as workloads require and be accordingly authorised.

## Deliverables to be reported

These are expected to include:

- Details of all market surveillance activity, including sampling and screen testing to be recorded on the OPSS national product safety database
- Monthly report of activities to include
  - Summary of market surveillance activity
  - Number of businesses advised on importing and appropriate labelling/marketing of goods
  - Number of locations identified where goods are released from customs control into free circulation
  - Activity undertaken to build relationships with other MSAs in NI and
  - Details of training and development opportunities taken up including number of officers trained on end of transition
  - Number of officers completed the Certificate of Competency in Product Safety
  - Other activities e.g. building intelligence capability, relationships with other MSAs in NI and the Consumer Protection Commission in ROI

**OPSS will provide a monthly return template to facilitate the monthly returns information.**

## Additional OPSS Support

1. **Training and guidance** to increase officer capability to advise local businesses on their obligations for importing and appropriate labelling/marketing of goods. Specific training on using RAMS at points of entry. The UK-wide training plan for 2020/21 includes sessions to cover the impact of the end of the Transition Period (tailored to the needs of NI and GB).

2. **Funding for the testing of products** to inform effective market surveillance, through an extension of the current programme to enable testing of samples taken at NI distributors of GB produced products.
3. **Intelligence gathering and border profiling** to enable risk based targeted interventions for product safety legislation covered by market surveillance requirements in NI. Facilitate intelligence sharing with and between EHNI services and other MSAs in NI. OPSS will provide a data sharing agreement template which will outline relevant data sharing legal gateways for market surveillance activities where appropriate and relevant to do so.
4. **Facilitate relationship building** with other Market Surveillance Authorities with a view to exploring collaboration and sharing resources.
5. **Monitoring and reporting system to meet EU reporting requirements**, supporting the use by EHNI of the Product Safety Database (PSD) to report, track and share product safety information. Access to EU Databases is currently subject to negotiations and OPSS will help implement the outcome in a timely manner.
6. **Facilitation of cooperation and coordination of relevant bodies in NI** and with Competition & Consumer Protection Commission in Republic of Ireland.

### **Proposed funding Mechanism**

The resource will be offered in the form of a grant funding agreement outlining the anticipated market surveillance activities and agreed deliverables for the grant period. This resource is offered from 23<sup>rd</sup> October 2020 to 31<sup>st</sup> March 2021 initially and is planned to continue for subsequent years, subject to normal funding cycles. The range of activities that are covered by the grants are outlined above and form a balance of work across the pool of resource to provide NI-wide outcomes. Funding will be paid in arrears on receipt of a record of work conducted (reporting requirements to be confirmed).

### **Project costs and funding requested:**

Funding calculations are based on the following:

Officer hourly rate: £70.00 hour

Mileage rate: 45p/mile

### **ANNEX 3 – PAYMENT SCHEDULE**

The Authority will pay the grant on receipt of eligible expenditure claims. Payment will be made in arrears on a quarterly basis, dates being 31<sup>st</sup> December 2020 and 31<sup>st</sup> March 2021

All claims should be submitted **by 31<sup>st</sup> May 2021** covering the project deliverables outlined in Annex 2.



**Part 4: Authorised signatories**

The names and specimen signatures of people authorised to sign claim forms on behalf of the person who signed the Grant Funding Agreement are shown below. These signatures are binding on this organisation in respect of the Agreement.

Name	Name
<input type="text"/>	<input type="text"/>
Position in the organisation	Position in the organisation
<input type="text"/>	<input type="text"/>
Signature	Signature
<input type="text"/>	<input type="text"/>
Date	Date
<input type="text"/>	<input type="text"/>

**Part 5: Grant recipient declaration**

To be completed by the person who signed the Grant Letter/ Grant Funding Agreement

- I certify that the information given on this form is correct.
- I agree that following discussions, any overpayments can be automatically recovered from future payments.

Name	Signature <i>(the person who signed the agreement)</i>
<input type="text"/>	<input type="text"/>
Date	
<input type="text"/>	

Return this form to the address indicated in the Grant Letter, alongside a signed Grant Funding Agreement.

**General Data Protection Regulation (2018):** The information on this form will be recorded on the Authority's computer system. The information provided will be used for paying your fees and will not be passed to anyone outside of the Authority without the permission of the Grant Recipient.



## ANNEX 6 – CONTACT DETAILS

The main departmental contact in connection with the Grant is:

Name of contact	Amanda Farrell
Position in organisation	Head of Trading Standards Co-ordination
Email address	Amanda.farrell@beis.gov.uk
Telephone number	0121 345 1284
Fax number	N/A
Postal address	Office for Product Safety & Standards, Department for Business Energy & Industrial Strategy, 4 <sup>th</sup> Floor, Cannon House, 18 Priory Queensway Birmingham, B4 8BS

This information is correct at the date of the Grant Funding Agreement. The Authority will send you a revised contact sheet if any of the details change.

The Grant Recipient's main contact in connection with the Grant Funding Agreement is:

Reference	
Organisation	Derry City and Strabane District Council
Name of contact	Seamus Donaghy
Position in organisation	Head of Service
Email address	seamus.donaghy@derrystrabane.com
Telephone number	
Postal address	98 Strand Rd, Londonderry, BT48 7NN

Please inform the Authority if the Grant Recipient's main contact changes.