

**APPENDIX 6 – Grant Funding Agreement**

**DATED**

**2022**

**(1) THE SHEFFIELD CITY COUNCIL**

**- and -**

**(2) [NAME OF GRANT RECIPIENT]**

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**FUNDING AGREEMENT**  
in relation to:

**Activity Hub at Hillsborough Park**

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Director of Legal Services  
Sheffield City Council

**Ref:**

**[DN: THE AGREEMENT CONTAINS A NUMBER OF AREAS WHICH ARE HIGHLIGHTED IN YELLOW. THOSE PARTS WILL BE UPDATED BY THE**

**COUNCIL AS NECESSARY PRIOR TO ISSUING A FINAL VERSION FOR SIGNATURE]**

**PARTICULARS OF AGREEMENT**

This Deed is dated **2022** “the Agreement Date”

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The Parties: (1) **The Sheffield City Council** of the Town Hall, Pinstone Street, Sheffield, S1 2HH (“the **Council**”) and  
(2) **[NAME OF GRANT RECIPIENT]**, **[ADDRESS]**, (“the **Grant Recipient**”)

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Commencement Date: the date of this Agreement being the date on which funding for the Project will commence.

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Completion Date: **[DATE]**, being the date on which funding for the Project will cease (or such earlier date as this Agreement shall terminate in accordance with Clause 6 below, or such later date as this Agreement shall terminate under the extension provisions in Clause 2.3 below)

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The Premises / Location: Activity Hub at Hillsborough Park

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The Project: **[PROJECT NAME]**

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The Grant: A total grant of up to a maximum amount of **£[183,132.26]** to be paid by the Council to the Grant Recipient in accordance with the terms of this Agreement

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The Project Manager **[NAME/POSITION]** on behalf of the Council or his or her replacement as notified to the Grant Recipient from time to time

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## **DEFINITIONS:**

“Allowable Expenditure”	means expenditure defrayed by the Grant Recipient on the Project as envisaged and included for in the Project, including, but not limited to, recoverable Value Added Tax, depreciation or amortisation of fixed assets;
“Capital Assets”	has the meaning given to it in clause 5.26;
“Change of Control”	means a sale of all or substantially all of 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 50% of the voting capital stock of one Party in one or more related transactions;
“Clawback”	means the requirement for the Grant Recipient to repay some or the entire Grant;
“Commencement Date”	the date of this Agreement;
“Council’s Project Manager”	means an officer of the Council appointed as the Council’s Project Manager for this Agreement and any replacement from time to time;
“Data Protection Legislation”	all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party;
“Financial Year”	means the twelve (12) month period commencing on the 1st April in any year and terminating on the 31st March the following year;
“Governing Body”	means the governing body of the Grant Recipient including its directors or trustees;
“Hillsborough Park”	means the park known as Hillsborough Park located at Middlewood Road, Sheffield, S6 4HD, a registered charity with charity number 523913;
“Intellectual Property”	means any or all of the following: patents, trade marks, service marks, drawings, designs, registered designs, utility models, design right, copyright (including copyright in computer software), database right, inventions, trade secrets and other confidential information, technical information, know-how, business or trade names, rights to prevent passing off, and all other intellectual property rights

and rights of a similar or corresponding nature in any part of the world, whether registered or not or capable of registration or not and including all applications and the right to apply for any of the foregoing rights;

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

“Lease” means a lease in respect of the Premises between the Grant Recipient and the Council dated on **[[DATE] OR [or around the same date as the Commencement Date] [DN: TO BE UPDATED DEPENDING ON WHEN THIS AGREEMENT WILL BE ENTERED INTO];**

“Licence for Alterations” means the licence for alterations permitting the Works at the Premises dated on **[[DATE] OR [or around the same date as the Commencement Date] [DN: TO BE UPDATED DEPENDING ON IF ONE WILL BE GRANTED AND WHEN IT IS ENTERED INTO];**

“Payment Schedule” means the schedule of payments of the Grant as set out in Schedule 3;

“Premises” the existing multi-use game area and tennis court at Hillsborough Park;

“Prohibited Act” means:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:

- i. induce that person to perform improperly a relevant function or activity; or
- ii. reward that person for improper performance of a relevant function or activity;

(b) to 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 this Agreement;

(c) an offence:

	<ul style="list-style-type: none"> <li>i. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);</li> <li>ii. under legislation or common law concerning fraudulent acts; or</li> <li>iii. defrauding, attempting to defraud or conspiring to defraud the Council;</li> </ul>
	(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;
	(e)
“Project Proposals”	means the Grant Recipient’s project proposals reviewed and approved by the Council and as set out in Schedule 1;
“Section 106 Agreement”	means the Section 106 Agreement set out in Schedule 2;
“State Subsidy”	means a financial contribution granted by a public authority or through State resources in any form whatsoever which confers a benefit on the Recipient, and which shall include the definition of subsidy contained in the UK-EU TCA and in the Subsidy Control Act 2022;
“Subsidy Control Law”	means all Laws of the United Kingdom limiting State Subsidy applicable from time to time, including the UK-EU TCA as incorporated into the Law of the United Kingdom by the European union (Future Relationship) Act 2020 and any Law replacing the Subsidy Control Act 2022;
“Quarter”	means a three (3) calendar month period in the Financial Year, the first Quarter commencing on the same date as the Financial Year;
“Term”	means the period commencing on the Commencement Date and ending on the Completion Date;
“UK – EU TCA”	the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, on the one part, and the United Kingdom and Great Britain and Northern Ireland, of the part, signed on 30 December 2020, including such amendments as are agreed between the parties from time to time;
“UK GDPR”	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;
“VAT”	means value added tax chargeable in the UK;
“Works”	means those works to be carried out at the Premises for the

“Working Day”

sole purpose of the Project specified within the Project Proposals at Schedule 1 and any goods and services required to facilitate the carrying out of those works; means any day from Monday to Friday inclusive which is not Christmas Day, Good Friday or a statutory bank holiday in England.

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## SPECIAL CONDITIONS

1. The Grant Recipient shall appoint in accordance with Clause 10 a competent, qualified contractor to carry out the design, supervision and post installation inspection of the Works.
2. The Grant Recipient shall ensure that the design, supervision, post installation and ongoing inspection and maintenance shall be in accordance with the [BS EN 15312:2007 Free access multi-sports equipment].
3. The Grant Recipient shall submit to the Council prior to tendering of the Works the final design details and specifications and any further documents requested by the Council for approval.
4. The Grant Recipient shall, on completion of the Works, obtain [a post installation inspection certificate which conforms to the European Design Standards] including the referred to in Special Condition 2 above and provide a copy of the certificate to the Project Manager.
5. The Grant Recipient shall procure the design and construction of the Works and thereby assume the full duties and responsibilities of ‘client’ for the Works including those duties imposed by the Construction (Design and Management) Regulations 2007 (CDM Regulations).
6. The Grant Recipient shall be responsible for the ongoing maintenance of the Premises and the associated costs of this.

**THIS DEED** is made on the Agreement Date between (1) the Council and (2) the Grant Recipient whereby it is agreed as follows:

**1. INTERPRETATION**

- 1.1 This Agreement shall be interpreted by reference to the Project Proposals contained at Schedule 1 of this document, both the Special Conditions and Definitions set out above form part of this Agreement.
- 1.2 The expressions "the Council" and "the Grant Recipient" shall include their respective successors in title.
- 1.3 Any reference to the title of an officer of the Council shall include any person holding such office from time to time by the same or any title substituted therefore or such other officer of the Council as the Council may from time to time appoint to carry out the duties of the officer referred to.
- 1.4 Any powers, discretions, rights or obligations of the Council within this Agreement may be exercised or discharged by the Council or any duly authorised Committee or any duly authorised officer of the Council.
- 1.5 Reference to any statute shall be deemed to refer to any statutory modification or re-enactment thereof and any reference to any rules or regulations made thereunder shall include reference to any rules or regulations from time to time in force.
- 1.6 Words importing any gender shall include all genders.
- 1.7 Words importing the singular shall be deemed to include the plural and vice versa.
- 1.8 The clause headings and numbering shall not affect the construction of this Agreement.
- 1.9 References to clauses, schedules and appendices are, unless otherwise provided, references to the clauses of and schedules and appendices to this Agreement.
- 1.10 The Project Proposals, the Definitions, the Special Conditions and the Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement and any reference to this Agreement shall include the Project Proposals, the Definitions, the Special Conditions and the Schedules and Appendices.
- 1.11 Where the Grant Recipient is more than one person, each shall be jointly and severally bound by the terms of this Agreement.
- 1.12 Any phrase introduced with the words "including", "includes", "in particular", "for example" or similar shall be construed as illustrative and without limitation to the generality of the related general words.



- 1.13 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time.
- 1.14 any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

## **2. PURPOSE OF THE GRANT**

- 2.1 The Grant Recipient shall use the Grant only for the delivery of the Project and in accordance with the terms and conditions set out in this Agreement. The Grant shall not be used for any other purpose without the prior written agreement of the Council.
- 2.2 The Recipient shall not make any significant change to the Project without the Council's prior written agreement.
- 2.3 Throughout the Term, where the Grant Recipient intends to apply to a third party for other funding for the Project, it will notify the Council in advance of its intention to do so and, where such funding is obtained, it will provide to the Council with details of the amount and purpose of that funding. The Grant Recipient agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Project or any related administration costs that the Council is funding in full under this Agreement.

## **3. PAYMENT OF THE GRANT**

- 3.1 Subject to the compliance by the Grant Recipient with its obligations hereunder and to the other terms of this Agreement, the Council (subject to the necessary funds being available when payment falls due) agrees to pay the Grant to the Grant Recipient in accordance with the following procedures and conditions:
  - 3.1.1 The Council shall (subject to the necessary funds being available when payment falls due) pay the Grant in accordance with the Payment Schedule, and the terms of this Agreement, which shall be deemed to apply from the Commencement Date for the Term.
  - 3.1.2 Payment of the Grant shall be made in line with the Payment Schedule attached to this Agreement.
  - 3.1.3 No Grant shall be paid unless and until the Council is satisfied that such payment will be used for proper expenditure in the delivery of the Project.
  - 3.1.4 The Council shall not pay more than the maximum Grant amount allocated to the Project.
  - 3.1.5 The amount of the Grant shall not be increased in the event of any overspend by the Grant Recipient in its delivery of the Project.

- 3.1.6 The Grant Recipient agrees and accepts that payments of the Grant can only be made to the extent that the Council has available funds.
- 3.1.7 The Grant Recipient shall promptly repay to the Council any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situation where either an incorrect sum of money has been paid or where Grant monies have been paid in error or before all conditions attaching to the Grant have been complied with by the Grant Recipient.
- 3.1.8 The Grant will be paid into a verified bank or building society account in the name of the Grant Recipient in the UK. The Grant Recipient must provide bank account details in writing to the Council that must be verified for means of electronic payment.
- 3.1.9 The Grant Recipient shall not transfer any part of the Grant to bank accounts which are not ordinary business accounts within the clearing bank system, without the prior written consent of the Council.
- 3.1.10 A sum equivalent to 10% of the Grant will be deducted from the amount of the final Grant claim submitted by the Grant Recipient under this Agreement and retained by the Council until such time as the Council has received, and is satisfied with, the final financial statement as specified in Clause 7.4 and the Project has been completed in accordance with this Agreement, to the satisfaction of the Council.
- 3.2 The Council accepts no liability whatsoever for any losses attributable to delays in payment of the Grant to the Grant Recipient, nor for any repayment, reduction, cancellation, termination or withdrawal of the Grant, or for any Clawback enforced under the terms of this Agreement.
- 3.3 The Council may, at its sole discretion, extend the Term of this Agreement by amending the Completion Date to such later date as the Council determines in accordance with all relevant funding rules and guidance, in order to allow the Grant Recipient to completely defray the entire Grant. Such extension shall be notified to the Grant Recipient in writing, and the terms of this Agreement shall continue for such extended period. Any such extension shall not result in an increase to the Grant unless the Council notifies the Grant Recipient in writing at its sole discretion.

#### **4. USE OF THE GRANT**

- 4.1 The Grant Recipient shall only use the Grant for the Allowable Expenditure and for the delivery of the Project.
- 4.2 The Grant Recipient shall not use the Grant to:
- 4.2.1 make any payment to members of its Governing Body;
  - 4.2.2 purchase buildings or land; or

4.2.3 pay for any expenditure commitments of the Grant Recipient entered into before the Commencement Date,

unless this has been approved in writing by the Council.

4.3 The Grant Recipient shall not spend any part of the Grant on the delivery of the Project after termination of this Agreement or expiry of the Term.

4.4 Should any part of the Grant remain unspent at the expiry of the Term, the Grant recipient shall ensure that any unspent monies are returned to the Council unless agreed otherwise in writing with the Council.

4.5 Any liabilities arising at the end of the Project including any redundancy liabilities for staff employed by the Grant Recipient to deliver the Project must be managed and paid for by the Grant recipient using the Grant (provided it constitutes Allowable Expenditure) or other resources of the Grant Recipient. There will be no additional funding available to the Council for this purpose.

## **5. THE GRANT RECIPIENT'S OBLIGATIONS**

The Grant Recipient shall:

5.1 carry out the Project and to procure the carrying out of the Works, and promptly to meet any outputs or milestones or completion dates;

5.2 ensure that the Project to be funded by the Grant is completed by the Completion Date unless otherwise agreed in accordance with Clause 3.3 of this Agreement;

5.3 comply with all Law, applicable Government rules and guidance, and any guidance issued by the Council;

5.4 comply with the terms of the Section 106 Agreement as it relates to the Project;

5.5 notify the Council promptly of any matter which may affect the Grant Recipient's ability to continue to meet any of the terms of this Agreement;

5.6 notify the Council's Project Manager immediately if any of the events referred to in Clause 8.1 below shall take place;

5.7 notwithstanding any other provisions of this Agreement, if the Government and/or the Council shall require repayment for any reason of the whole or any part of the Grant to that body or another body, to immediately make any such repayment to the relevant body as required upon demand;

5.8 ensure that the delivery of the Project does not result in it being in receipt of an unlawful State Subsidy;

5.9 not take any action or fail to take any action, or (insofar as it is reasonably within its power) permit anything to occur that will cause the Council to be in breach of Subsidy Control Law;

- 5.10 maintain appropriate records of compliance with the relevant Subsidy Control Law and will take all reasonable steps to assist the Council or any other UK governmental, regional or other authority respond to any proceedings or investigations(s) into the Project by any relevant court or tribunal of relevant jurisdiction or regulatory body, including any body appointed to oversee the granting of State Subsidies in the United Kingdom;
- 5.11 acknowledge and accept that the Grant is awarded on the basis [REASON]

**[DN: ADDITIONAL DRAFTING REQUIRED BASED ON THE GRANT RECIPIENT'S CIRCUMSTANCES AND THE BASIS FOR MAKING THE GRANT. POSSIBLE OPTIONS (ALTHOUGH DEPENDANT ON CIRCUMSTANCES WHICH MUST BE ASSESSED AT THE TIME AND PRIOR TO ENTERING INTO GRANT AGREEMENT):**

- **SMALL AMOUNTS OF FINANCIAL ASSISTANCE UNDER THE EU – UK TCA<sup>1</sup>**
- **MINIMAL FINANCIAL ASSISTANCE<sup>2</sup>**
- **ANY OTHER EXEMPTION?**
- **COMPLIANCE WITH THE PRINCIPLES?**

- 5.12 If the Council is of the reasonable opinion that variation and/or repayment of some or all of the Grant and/or payment of interest should be made because there has been an unlawful State Subsidy or it is required under Subsidy Control Law and/or if the Council is otherwise required to procure variation, repayment and/or payment of interest by the determination of a court or decision of the Secretary of State or a regulatory body or any body appointed to oversee the granting of State subsidies in the United Kingdom, the Council may vary or withhold any or all payments and/or require repayment of the Grant already paid, together with interest at an appropriate rate, within 20 Working Days of receipt of the Council's invoice.
- 5.13 ensure that an acceptable quality assurance standard is in place and adhered to by all personnel, agents, sub-contractors, involved in delivery of the Project if requested by the Council;
- 5.14 comply and ensure that contractors and sub-contractors involved in undertaking the Works comply with all applicable requirements of the Law;
- 5.15 maintain, and ensure that any contractors and sub-contractors involved in undertaking the Works maintain, with a reputable insurance office adequate insurance against:
- 5.15.1 any losses, damages, suits, actions, claims or demands arising from fault, negligence or otherwise in the performance of this Agreement and generally in the carrying out of the Project including, but not

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<sup>1</sup> Will not be available if the Subsidy Control Act 2022 comes into force

<sup>2</sup> Will only be available if the Subsidy Control Act 2022 comes into force

limited to, employers' liability, public liability and professional indemnity insurances; and

- 5.15.2 theft, loss or damage to any asset purchased or improved with the Grant including but not limited to damage to or destruction of the Premises for its full replacement value; and
- 5.15.3 any loss or damage occurring during the course of the Works including but not limited to insurance of the Works against fire and all other relevant risks;
- 5.16 produce on written demand evidence of the policies of insurance referred to in Clause 5.15 above and the receipt for the last premium paid, and to give to the Council at least thirty (30) days notice in writing of the cancellation of any such policies;
- 5.17 comply with all the publicity requirements in relation to the Project and any further rules or guidance specified by the Council and/or the Government regarding publicity of the contribution to the Project from the Council and/or the Government;
- 5.18 operate an open and competitive procedure when recruiting members of staff that have all or part of their salaries paid for by funding under this Agreement;
- 5.19 comply with all applicable Council and Government rules or guidance relating to procurement, and the Council's requirements in relation to appointment of contractors and consultants as detailed in Clause 12 below;
- 5.20 maintain accounts for the Project from the Commencement Date and throughout the Term which shall show and explain:
  - 5.20.1 the Grant Recipient's transactions being processed through the company accounting system of the Grant Recipient;
  - 5.20.2 the Grant Recipient's financial positions with accuracy at any time;
  - 5.20.3 records of the daily money received, interest earned and money spent;
  - 5.20.4 where money was spent by the Grant Recipient and what it was spent on;
  - 5.20.5 records of the Grant Recipient's assets and liabilities.
- 5.21 ensure that the Grant shall be shown in the Grant Recipient's account as a restricted fund and shall not be included under general funds;
- 5.22 keep full, complete and accurate original books, records and documentation, including the accounts referred to in Clause 5.20 above, relating to the Project for a period of fifteen (15) years from the Completion Date;

- 5.23 permit any authorised officer or representative of the Council to review and make copies of any accounts, books, records and documentation kept by the Grant Recipient relating to the Grant and the Project pursuant to Clauses 5.17 and 5.18, upon reasonable request by the Council throughout the Term;
- 5.24 comply and facilitate the Council's compliance with all statutory requirements as regards, accounts, audit, or examination of accounts, annual reports and annual returns applicable to itself and the Council;
- 5.25 indemnify and to keep the Council fully indemnified against all losses, costs, claims, expenses, demands and/or liabilities whatsoever which the Council may incur, receive or suffer as a result of:
- 5.25.1 any act or omission by the Grant Recipient or its employees, agents, successors, assigns and/or contractors or sub-contractors in connection with or in consequence of the undertaking of any activities connected with the Project; or
- 5.25.2 any breach of this Agreement by the Grant Recipient or by any such person;
- 5.26 establish and maintain an asset register detailing any assets or items of equipment having a useful life of more than one year ("**Capital Assets**") acquired, built or improved with the Grant (including but not limited to the Premises) having a net value of £2,500 or more, such register to show:
- 5.26.1 the date of purchase;
- 5.26.2 description of the Capital Asset;
- 5.26.3 the price paid (identifying any VAT paid);
- 5.26.4 location of any title deeds to the Capital Asset;
- 5.26.5 any serial number or other distinguishing marks;
- 5.26.6 where the Capital Asset is located or stored and subject to clause 5.27 where the Capital Asset is disposed of by way of sale, lease, charge, loan, gift or otherwise:
- (a) the date of disposal;
- (b) the details of any consideration for the disposal (identifying any VAT);
- (c) any other information the Council may reasonably require and to allow the Council access to inspect the register as required;
- 5.27 not dispose of or agree to the disposal of any Capital Assets referred to in Clause 5.2 above (by way of sale, lease, charge, gift, loan or otherwise) without notifying the Council in writing of such intention and receiving the Council's prior written consent (which may at the Council's absolute

discretion be conditional on the payment of Clawback to the Council of some or all of the Grant);

- 5.28 work together with any other body as dictated by the nature of the Project or as reasonably requested by the Council in cooperation and good faith;
- 5.29 ensure that appropriate contractual arrangements on an arm's length basis and on market rates are entered into with any project or business receiving any funding from the Grant or other benefit funded by the Grant or any contractors appointed to carry out the Works or otherwise assist with the delivery of the Project;
- 5.30 carry out the Works or procure that the Works are carried out in a good and workmanlike manner with sound and good materials and to the satisfaction of the Council, and in a manner which conforms with all applicable requirements of Law, including but not limited to planning permissions, building regulations, and legislation relating to listed buildings and ancient monuments;
- 5.31 obtain any necessary permissions consents or approvals required for the Grant Recipient to lawfully undertake the Works including where appropriate consents required under planning, listed buildings and ancient monuments legislation and buildings regulations, and any landlord's or mortgagees consents required prior to the commencement of the Works, and where applicable to ensure that the consent of any funding body funding any prior works to the Premises has been obtained;
- 5.32 without prejudice to any other term of this Agreement, ensure that the Council is able to comply with the terms of the Section 106 Agreement by fulfilling all of the Council's obligations under the Section 106 Agreement insofar as they apply to the Project as if they were set out fully in this Agreement as obligations and requirements on the Grant Recipient.

## **6. WARRANTIES**

- 6.1 The Grant Recipient warrants and represents to the Council as follows:
  - 6.1.1 that the information given in connection with this Agreement, the Project or the Council's evaluation of the Grant Recipient or the Project is at the date of this Agreement true, complete and accurate in all respects and not misleading in any respect;
  - 6.1.2 that where at any time any information of any nature whatsoever is provided by the Grant Recipient to the Council regarding this Agreement, the Project or in response to a specific request by the Council relating to this Agreement or the Project it will at the time(s) when given be true, complete and accurate and not misleading in any respect;
  - 6.1.3 that it will promptly notify in writing the Council if, and to the extent that, any information provided by it to the Council becomes untrue, incomplete, or misleading in any respect;

- 6.1.4 that it has the necessary power and authority to enter into this Agreement with the Council;
- 6.1.5 all actions necessary on the part of the Grant Recipient to authorise the execution of and the performance of its obligations under this Agreement have been taken;
- 6.1.6 the obligations expressed to be assumed by the Grant Recipient under this Agreement will be legal, valid, binding and enforceable to the extent permitted by Law and this Agreement will be in the proper form for enforcement in England;
- 6.1.7 the execution, deliver and performance by it of this Agreement does not contravene any provision of:
- (a) any Law either in force, or enacted but not yet in force and binding on the Grant Recipient;
  - (b) the memorandum and articles of association of the Grant Recipient;
  - (c) any order or decree of any court or arbitrator which is binding on the Grant Recipient;
  - (d) any obligation which is binding upon the Grant Recipient or upon any of its assets or revenues;
- 6.1.8 no claim is presently being assessed and no litigation, arbitration, administrative or mediation proceedings are presently in progress or, to the best of the knowledge of the Grant Recipient, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Grant Recipient to perform its obligations under this Agreement;
- 6.1.9 it is not subject to any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Grant Recipient to perform its obligations under this Agreement;
- 6.1.10 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Grant Recipient, threatened) for its winding up, or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer or in relation to any of its assets or revenues;
- 6.1.11 this Agreement will be in full force and effect and constitutes the valid, binding and enforceable obligations of the parties; and

the Council relies upon such warranties and representations.

- 6.2 All warranties, representations, undertaking, indemnities and other obligations made, given or undertaken by the Grant Recipient in this



Agreement are cumulative and none shall be given a limited construction by reference to any other.

6.3 The Grant Recipient warrants and represents that by entering into this Agreement it has not committed any Prohibited Act.

## **7. MONITORING AND REPORTING**

7.1 The Grant Recipient shall closely monitor the delivery and success of the Project throughout the Term to ensure that the aims and objectives of the Project are being met and that this Agreement is being adhered to.

7.2 The Grant Recipient shall comply with any Project monitoring and reporting requirements as required by the Council. This may include a financial and operational report on its use of the Grant and delivery of the Project annually or as notified by the Council throughout the Term and in such formats as the Council may reasonably require.

7.3 Subject to Clause 2.3, where the Grant Recipient has obtained funding from a third party for its delivery of part of the Project, the Grant Recipient shall include the amount of such funding in its financial reports together with details of what that funding has been used for.

7.4 The Council shall have the sole discretion, in the event that in its reasonable opinion that sufficient progress has not been made by the Grant Recipient, to withhold payment of the Grant payments as set out in the Payment Schedule until such sufficient progress has been made.

7.5 The Grant Recipient shall, if requested, submit to the Council such other information as is reasonably required by the Council in order to verify incurred costs and expenses.

7.6 The Grant Recipient shall allow representatives of the Council, and any Government representatives, to visit the Premises on request in order to examine, inspect and photograph:

7.6.1 the Works and all other operations carried out by the Grant Recipient and/or its contractors;

7.6.2 the Grant Recipient's records; and

7.6.3 the Grant Recipient's administrative and financial systems.

The Grant Recipient shall provide all reasonable assistance to any representatives visiting pursuant to this Clause including provision via original or certified copy of any documents required.

7.7 The Grant Recipient shall provide all information reasonably required by the Council and/or the Government in order to monitor the Project and ensure compliance with this Agreement.

7.8 The Grant Recipient shall on request provide to the Council with such information, explanation and documents as the Council may reasonably

require in order to establish that the Grant has been used properly and in accordance with this Agreement.

- 7.9 The Grant Recipient shall permit any person authorised by the Council such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Grant Recipient's fulfilment of the conditions of this Agreement and shall, if so required, provide appropriate oral or written explanations from them.
- 7.10 The Grant Recipient shall permit any person authorised by the Council for the purpose to visit the Grant Recipient, the Premises and/or the Works every quarter (if required) to monitor the delivery of the Project. Where, in the reasonable opinion, the Council considers that additional visits are necessary to monitor the Project, it shall be entitled to authorise any person to make such visits on its behalf.
- 7.11 If requested by the Council, the Recipient shall provide to the Council with a final report on completion of the Term which shall complete whether the Project has been successfully and properly completed.

## **8. TERMINATION, WITHHOLDING, SUSPENDING AND REPAYMENT OF GRANT AND REMEDIES AND CONSEQUENCES OF TERMINATION**

- 8.1 The Council may at its absolute discretion and without prejudice to its other rights and remedies terminate, reduce, withhold or suspend the whole or part of the Grant, and/or rely on its right to Clawback the Grant in part or in full to the Council, and/or terminate this Agreement immediately upon service of written notice to that effect, in the event that:
- 8.1.1 the Grant Recipient does not achieve the Project's outputs to the reasonable satisfaction of the Council;
  - 8.1.2 the Grant Recipient does not otherwise deliver the Project in accordance with this Agreement;
  - 8.1.3 The Grant Recipient uses the Grant for purposes other than those for which it has been awarded;
  - 8.1.4 the delivery of the Project does not start within one month of the Commencement Date and the Grant Recipient has failed to provide the Council with a reasonable explanation for the delay;
  - 8.1.5 the Council considers that the Grant Recipient has not made satisfactory progress with the delivery of the Project;
  - 8.1.6 the Recipient, is in the reasonable opinion of the Council delivering the Project in a negligent manner;
  - 8.1.7 the Grant Recipient obtains duplicate funding from a third party for the Project;

- 8.1.8 the Grant Recipient obtains funding from a third party which, in the reasonable opinion of the Council, undertakes activities that are likely to bring the reputation of the Project or the Council into disrepute or where the Grant Recipient has not sought the Council's prior consent;
- 8.1.9 the Grant Recipient provides the Council with any materially misleading or inaccurate information;
- 8.1.10 the Grant Recipient commits or committed a Prohibited Act or fails to report a Prohibited Act to the Council;
- 8.1.11 subject to Clause 10, the Grant Recipient undergoes a Change of Control which the Council, acting reasonably, considers:
- (a) will be materially detrimental to the Project;
  - (b) the new body corporate cannot continue to receive the Grant because in the Council's opinion (acting reasonably) they do not meet the Council's criteria to receive the Grant or have the experience to successfully deliver the Project; or
  - (c) the new body corporate intends to make fundamental change(s) to the purpose for which the Grant was given;
- 8.1.12 any member of the Governing Body, employee or volunteer of the Grant Recipient has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project or (b) taken any actions which, in the reasonable opinion of the Council, bring or are likely to bring the Council's name or reputation into disrepute;
- 8.1.13 the Grant Recipient becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay for its debts as they fall due;
- 8.1.14 the Grant Recipient fails to comply with the terms and conditions set out in this Agreement and fails to rectify any such failure within 30 days of receiving written notice detailing the failure;
- 8.1.15 the Council determines the Lease or [the Licence for Alterations] in respect of the Premises in accordance with its terms;
- 8.1.16 The European Commission or the Court of Justice of the European Union requires any Grant paid to be recovered by reason of a breach of State Aid Law through its application under Article 10 of the Northern Ireland Protocol; or
- 8.1.17 a court or tribunal or independent body or authority of competent jurisdiction require any Grant paid to be recovered;
- 8.1.18 Clawback is enforced under Clause 16 below;

8.1.19 the Grant Recipient ceasing to carry on its business or being or becoming unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;

8.1.20 possession is taken over any of the Grant Recipient's property under the terms of a fixed or floating charge.

## **9. Termination for convenience**

9.1 The Council may terminate this Agreement in whole or in part and any Grant payments on giving the Grant Recipient 1 month's written notice should it be required to do so by financial restraints or for any other reason.

9.2 If the Council terminates the Agreement in accordance with Clause 9.1, the Grant Recipient shall return to the Council all unspent monies of the Grant that it has received within 30 days of the date of receipt of a written notice of termination from the Council unless agreed otherwise with the Council.

## **10. Change of Control**

10.1 The Grant Recipient shall notify the Council immediately in writing and as soon as the Grant Recipient is aware (or ought to reasonably be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control, provided such notification does not contravene any Law.

10.2 The Recipient shall ensure that any notification made pursuant to Clause 10.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

10.3 The Council may, at its sole discretion:

10.3.1 agree to a Change of Control; or

10.3.2 terminate the Agreement pursuant to Clause 8.1.11.

10.4 The Council shall not be entitled to terminate where a written approval was granted prior to the Change of Control.

## **11. Exit Management**

The Council may require the Grant Recipient to prepare an exit plan. Where this is required, the Council shall inform the Grant Recipient in writing.

## **12. Limitation of Liability**

The Council accepts no liability for any consequences, whether direct or indirect, that may come about from the Grant Recipient running the Project or providing the Works, the use of the Grant or from withdrawal of the Grant. The Grant Recipient shall indemnify and hold harmless the Council, its employees, agents, officers or sub-contractors with respect to all claims,

demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Grant Recipient in relation to the Project, the Works, the non-fulfilment of obligations of the Grant Recipient under this Agreement or its obligations to third parties.

### **13. VAT**

- 13.1 If VAT is held to be chargeable in respect of the Agreement, all payments shall be deemed to be inclusive of VAT and the Council shall not be obliged to pay any additional amount by way of VAT.
- 13.2 All sums and other consideration payable to or provided by the Grant Recipient to the Council at any time shall be deemed to be exclusive of all VAT payable and where 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 payable upon the receipt of a valid VAT invoice.

### **14. Consequences of expiry or termination**

- 14.1 Notwithstanding anything contained elsewhere in this Agreement, the provisions of Clauses 1, 3.2, 5.6, 5.16, 5.20, 5.22, 7.5, 7.7, 8.1.18, 8.1.16, 14, 16, 18, 19, 24, 27, 31, 33, 35 and the Special Conditions shall survive the termination or expiry of this Agreement howsoever caused and shall continue thereafter in full force and effect together with any other provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 14.2 If this Agreement is terminated or expires then any rights or liabilities that arose under this Agreement before such termination or expiry shall not be affected.

### **15. CHANGE TO PROJECT AND REPROFILING**

- 15.1 Where the Grant Recipient becomes aware that the costs, outputs, or any other aspect of the Project have changed the Grant Recipient must notify the Council in writing.
- 15.2 Where it becomes apparent that amendments to the Project are required to be made or a reprofile of Grant undertaken then a variation to contract letter may be issued by the Council. The Grant Recipient acknowledges that any action under this Clause may result in the reduction of the Grant under this Agreement.
- 15.3 Such reprofiling of the Grant Recipient's Grant amount as detailed in Clause 15.2 above shall not affect any of the other provisions of this Agreement.

**16. CLAWBACK**

The Council may in accordance with the terms of this Agreement enforce Clawback of the Grant. Where the Council relies on the Clawback provisions of this Agreement, the Grant Recipient shall repay the Grant to the Council in whole or in part within 30 days.

**17. APPOINTMENT OF CONSULTANTS AND CONTRACTORS**

17.1 The Grant Recipient must be able to demonstrate that for each and every purchase and contract for Works, the most economically advantageous tender is accepted.

17.2 For the purposes of Clause 17.1 above the Grant Recipient shall ensure that a minimum of three competitive tenders are sought on each occasion.

17.3 Where the Grant Recipient believes this is not possible and/or believes that an alternative way of procurement would achieve the requirements of Clause 17.1, the Grant Recipient shall:

17.3.1 set out in writing the reasons why a minimum of three competitive tenders cannot be sought; and/or

17.3.2 set out in writing their alternative proposals for best achieving the requirements of Clause 17.1; and

17.3.3 provide such further information as requested by the Council within five (5) Working Days of such request being received from the Council.

16.4 No contract for Works shall be tendered or placed before such alternative proposals have been approved by the Council in writing following any requirement of the Council to amend such alternative proposals.

**18. SUBSIDY CONTROL REPAYMENT**

18.1 If the Council is of the reasonable opinion that variation and/or repayment of some or all of the Grant and/or payment of interest should be made because there has been an unlawful State Subsidy or it is required under Subsidy Control Law and/or if the Funder is otherwise required to procure variation, repayment and/or payment of interest by the determination of a court or decision of the Secretary of State or regulatory body or any body appointed to oversee the granting of State Subsidies in the United Kingdom, the Council may vary or withhold any or all of the payments and/or require repayment of Grant already paid, together with interest at an appropriate rate, within 20 Working Days of receipt of the Council's invoice.

## **19. INTELLECTUAL PROPERTY**

- 19.1 The Council and the Grant Recipient agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, know-how and any other Intellectual Property whatsoever owned by either the Council or the Grant Recipient before the Commencement Date or developed by either Party during the Term, shall remain the property of that Party.
- 19.2 Where the Council has provided the Grant Recipient with any of its Intellectual Property for use in connection with the Project (including without limitation its name and logo), the Grant Recipient shall, on expiry or termination of this Agreement, cease to use such Intellectual Property immediately and shall either return or destroy such Intellectual Property as requested by the Council.
- 19.3 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Grant Recipient:
- 19.3.1 in using the Grant; or
- 19.3.2 in delivering the Project and/or the Works,
- shall vest in the Council on creation.
- 19.4 The Grant Recipient shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

## **20. NO PARTNERSHIP**

Nothing contained in this Agreement shall or shall be deemed to create any partnership or joint venture between the Parties hereto, and nothing in this Agreement shall be deemed to constitute either of the Parties hereto as the agent of the other Party. Neither Party shall hold itself out as acting as the agent or partner of the other Party or as being associated with that other Party.

## **21. VARIATIONS**

No variation of this Agreement shall be valid or effective unless in writing and signed by the Grant Recipient or a duly authorised officer of the Grant Recipient and a duly authorised officer of the Council and specified to be for such purpose.

## **22. ASSIGNMENT**

The Grant Recipient shall not without the prior written consent of the Council assign, sub-let, transfer, charge, or deal in any other manner in this

Agreement or its rights hereunder or any part thereof, nor purport to do any of the same. Should the Council consent to the same in writing, the Council may first require amendments to be made to this Agreement.

**23. COUNCIL'S STATUTORY ROLE**

Nothing contained in this Agreement or done hereunder shall affect the rights and/or powers of the Council as local authority, local planning authority or in any other capacity whatsoever under or by virtue of any Law from time to time in force, or shall (where applicable) affect the rights and powers of the Council in its capacity as landlord, or shall relieve the Grant Recipient from the necessity of obtaining all such approvals or consents as from time to time shall be required from the Council in any of its aforementioned capacities.

**24. FAILURE TO ENFORCE IS NOT A WAIVER**

Failure by either Party at any time to enforce the provisions of this Agreement or to require performance by the other Party of any of the provisions of this Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of the right of the first mentioned Party to enforce any provision in accordance with its terms.

**24. NOTICES**

- 24.1 Notices to be given under this Agreement shall be given in writing and sent by letter sent by first class prepaid post or delivered by hand to the address of the Party to be served.
- 24.2 Notices sent by first class post shall be deemed to have been served 48 hours after the time of posting and notices delivered by hand shall be deemed to have been served at the time of delivery.
- 24.3 Proof of service of notices shall be by proof of posting by first class or by proof of actual delivery.

**25. SEVERABILITY**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions. If a provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held to any extent to be invalid, the Council and the Grant Recipient shall immediately commence good faith negotiations to remedy that invalidity.

**26. CORRUPT GIFTS OR PAYMENTS AND THE BRIBERY ACT 2010**

- 26.1 The Grant Recipient shall not:
  - 26.1.1 offer or give, or agree to give, to any member, employee or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, or refraining from doing, or for



having done, or refrained from doing, any act in relation to the obtaining or execution of this or any other agreement with the Council, or for showing, or refraining from showing favour, or disfavour to any person in relation to this or any other agreement. The attention of the Grant Recipient is drawn, without limitation, to the criminal offence provisions of the Prevention of Corruption Acts 1889 to 1916;

26.1.2 commit a Prohibited Act.

- 26.2 The Grant Recipient warrants and undertakes to the Council that it will, throughout the duration of this Agreement, use all reasonable endeavours to have in place adequate procedures (as referred to in section 7(2) of the Bribery Act 2010) designed to prevent persons associated with the Grant Recipient from bribing any person with the intention of obtaining or retaining business for the Grant Recipient or with the intention of obtaining or retaining an advantage in the conduct of business for the Grant Recipient.
- 26.3 The Grant Recipient shall notify the Council (in writing) if it becomes aware of any breach of this Clause 26, or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage.

## **27. INTEREST**

The Grant Recipient agrees that in the event of any payment being due from the Grant Recipient to the Council under the terms of this Agreement but unpaid, interest shall be added to the sum due at the rate of 2% per annum above the base rate from time to time of the Natwest Bank plc, such interest to accrue from the date payment becomes due until the date of payment and to be compounded on 31<sup>st</sup> March, 30<sup>th</sup> June, 30<sup>th</sup> September and 31<sup>st</sup> December each year as well after as before any demand and/ or judgment obtained hereunder.

## **28. RIGHTS OF THIRD PARTIES**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement. For the avoidance of doubt, nothing in this Agreement shall confer on any third party any benefit or the right to enforce any term of this Agreement.

## **29. PROHIBITED ACTIVITIES**

The Grant Recipient shall not use the Grant for the purpose of supporting, directly or indirectly, any political party, organisation or activities, or any organisation or activity which is likely to bring the Government or the Council into disrepute, or for any religious purposes. The Grant Recipient shall not use the Grant to fund any religious organisation unless it is shown to the satisfaction of the Council that the activities funded pursuant to that agreement will not promote a particular religious view.

### **30. DATA PROTECTION**

- 30.1 The Grant Recipient shall comply with all relevant provisions of the Data Protection Legislation and do nothing which causes, or may cause, the Council to be in breach of its obligations under the Data Protection Legislation.
- 30.2 The Grant Recipient shall:
- 30.2.1 implement technical and organisational measures to protect any personal data (as defined under the Data Protection Legislation) it is processing against any unauthorised or unlawful processing and against any accidental loss, destruction, damage, alteration or disclosure and undertakes to maintain such measures during the course of this Agreement;
  - 30.2.2 take all reasonable steps to ensure the reliability of its staff having access to any such personal data;
  - 30.2.3 monitor and maintain the integrity of all personal data in full accordance with the Data Protection Legislation;
  - 30.2.4 notify the Council within 10 Working Days if it receives any complaint, enquiry or request from any person whatsoever relating to the Council's or the Grant Recipient's obligations (as applicable) under the Data Protection Legislation.

### **31. CONFIDENTIALITY**

- 31.1 Subject to Clause 32 (Freedom of Information), each Party shall during the term of this Agreement and thereafter keep secret and confidential all Intellectual Property or know-how or other business, technical or commercial information disclosed to it as a result of this Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other Party.
- 31.2 The obligation of confidentiality contained in this Clause shall not apply or shall cease to apply to any Intellectual Property, know-how or other business, technical or commercial information which:
- 31.2.1 at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;
  - 31.2.2 is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence;

- 31.2.3 is disclosed for the purpose of the examination and certification of the Council's accounts; or pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency, and effectiveness with which the Council has used its resources;
- 31.2.4 is disclosed on a confidential basis to a Party's insurer, legal adviser(s) or auditor(s); or
- 31.2.5 is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.

## **32. FREEDOM OF INFORMATION**

- 32.1 The Grant Recipient acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs).
- 32.2 The Recipient shall:
  - 32.2.1 provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
  - 32.2.2 transfer to the Council all requests for information relating to this Agreement that it receives as soon as practicable and in any event within two working days of receipt;
  - 32.2.3 provide the Council with a copy of all information belonging to the Council requested in the request for information which is in its possession or control in the form that the Council requires within five working days (or such other period as the Council may reasonably specify) of the Council's request for such information; and
  - 32.2.4 not respond directly to a request for information unless authorised in writing to do so by the Council.
- 32.3 The Grant Recipient acknowledges that the Council may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the Grant Recipient. The Council shall take reasonable steps to notify the Grant Recipient of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practicable for it to do so but (notwithstanding any other provision in this Agreement) the Council shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

**33. ENTIRE AGREEMENT**

This Agreement and the schedules and appendices to it shall constitute the entire Agreement and understanding between the Parties with respect to all matters which are referred to and shall supersede any previous agreement(s) between the Parties in relation to the matters referred to in this Agreement.

**34. COUNTERPART**

This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original of this Agreement, but all the counterparts shall together constitute the one agreement.

**35. GOVERNING LAW**

This Agreement shall be governed and construed in accordance with English law and the parties submit to the jurisdiction of the English courts.

This Agreement is executed as a deed and delivered on the date stated at the beginning of it.

**THE COMMON SEAL of SHEFFIELD CITY COUNCIL** was affixed

in the presence of:

.....

Authorised Signatory

**EXECUTED as a DEED**

by [**NAME OF GRANT RECIPIENT**]

acting by and under the signatures of:

.....

Signature of Director

.....

Name of Director

]

.....

Signature of Director or Secretary

.....

Name of Director or Secretary

**Schedule 1**

**Project Proposals**

**[TO BE INSERTED ONCE AGREED AND BEFORE SIGNATURE]**

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**Schedule 2**

**Section 106 Agreement**

**[TO BE INSERTED BEFORE SIGNATURE]**

**Schedule 3**

**Payment Schedule**

**[TO BE INSERTED BEFORE SIGNATURE]**