

**UK COMMISSION FOR EMPLOYMENT AND SKILLS
STANDARD CONDITIONS OF INVESTMENT FUNDING – VERSION 1 DATED
SEPTEMBER 2011**

1 MEANING OF WORDS

- 1.1 For the purposes of the following Conditions, the following expressions shall have the following meanings:
- 1.1.1 **Agreement** refers to the arrangements between the Parties contained in these Standard Conditions of Investment Funding and the Investment Funding Agreement;
- 1.1.2 **Background Intellectual Property** means any Intellectual Property, other than Foreground Intellectual Property, which is used in performing the Project;
- 1.1.3 **Company**, refers to the Person to whom the Investment Funding is made from the UK Commission and which is set out in the Investment Funding Agreement;
- 1.1.4 **Connected Person** has the meaning given in section 1122 of the Corporation Taxes Act 2010;
- 1.1.5 **Day** means a working day when banks in London are open for business;
- 1.1.6 **Event of Default** means an event which entitles the UK Commission to suspend or terminate payment of the Investment Funding and as further defined in Condition 19 (Termination);
- 1.1.7 **Financial Reporting Standards** means the financial reporting standards issued by the Accounting Standards Board from time to time;
- 1.1.8 **Foreground Intellectual Property** is any Intellectual Property that arises or is obtained or developed by, or on behalf of, the Company in respect of the Project;
- 1.1.9 **Investment Funding** is the total amount of Grant funding to deliver the project referred to in the Investment Funding Agreement;
- 1.1.10 **Investment Funding Agreement** is a Grant Funding Agreement and includes attached Schedules between the UK Commission and the Company setting out the terms of the Investment Funding and the Project;
- 1.1.11 **Intellectual Property** is any patent, registered design, copyright, database right, design right, topography right, trade mark, trade name, application to register any of the aforementioned rights, trade secret, inventions, right in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world including:
- 1.1.11.1 any renewals, revisions and extensions created or provided by the laws of any country;
- 1.1.11.2 all rights of action and remedies (including but not limited to an injunction, damages and/or an account of profits) in relation to past infringements; and
- 1.1.11.3 the right to apply for registration of any such rights in any country of the world;
- 1.1.12 **Material Change** means a substantive change in the financial position or prospects of the Company, a change in ownership of the Company, a change to the nature or delivery of the Project Objectives or any of the foregoing which may reasonably lead the UK Commission to conclude that there is, or is likely to be, a material increase or diminution in the organisation's level of financial need;
- 1.1.13 **Project** means the activity, scheme, undertaking or venture for which the particular Investment Funding is being made as described in the Investment Funding Agreement;
- 1.1.14 **Investment Manager** means the respective representative of the UK Commission or the Company as designated in the Investment Funding Agreement who has full authority to act on the respective Party's behalf for all purposes of the Project, unless the organisation has revoked this in writing to the other Party and appointed an alternative;
- 1.1.15 **Project Objectives** are those objectives relating to the Project as set out in the Investment Funding Agreement;
- 1.1.16 **Retention** is the amount of money which the UK Commission will withhold from the Company as set out in the Investment Funding Agreement;

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- 1.1.17 **Term** is the term of the Investment Funding as referred to in the Investment Funding Agreement; and
- 1.1.18 **UK Commission** refers to UK Commission for Employment and Skills (Company registration number 6425800) whose registered office is at 3 Callflex Business Park, Golden Smithies Lane, Wath-Upon-Dearne, S63 7ER.

2 INTERPRETATION

- 2.1 References to a **“Party”** or the **“Parties”** shall mean (as the case may be) the Parties or a Party to the Agreement and, unless the context otherwise requires, include any permitted successors and assignees of the Party or Parties (as appropriate).
- 2.2 References to a **“Person”** shall be construed as a reference to any natural person, firm, company, corporation, government, state or agency of state or any association or partnership (whether or not having separate legal personality) of one or more of the foregoing.
- 2.3 Where the word **“include”** (or any derivative of the word include) is used, any examples that follow shall not be exhaustive or limiting.
- 2.4 References to any enactment, order, regulation or other similar instrument, statute or statutory provisions mean the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted.
- 2.5 The headings and numbering are inserted only for convenience and will not affect the construction of the Agreement.
- 2.6 Where appropriate in the Agreement, sentences written in the singular can be read as though written in the plural (and vice versa). Similarly, references to any gender include all genders.

3 USE OF THE INVESTMENT FUNDING

- 3.1 The Investment Funding will be used solely towards funding the Project in accordance with the conditions set out in the Investment Funding Agreement or as may be otherwise agreed in writing with the UK Commission.
- 3.2 The Company will comply fully with the Investment Funding Agreement and these Standard Conditions of Investment Funding when delivering the Project.
- 3.3 The Company will ensure that the Project is politically neutral in intention, use and presentation.
- 3.4 The Company shall not offer or give any part of the Investment Funding as further funds (**“sub-Funding”**) to other parties without the UK Commission’s prior consent.
- 3.5 Subject to Condition 3.4, if the Company elects to use UK Commission Investment Funding given for the Project to offer further sub-Funding, then the Company will ensure that the following Standard Conditions of Investment Funding are applied to agreements with those further sub-Funding recipients (**“sub-Funders”**), Condition 3 (Use Of The Investment), Condition 4 (Company Warranties), Condition 11 (Equal Opportunities), Condition 12 (Confidentiality), Condition 13 (Intellectual Property), Condition 14 (Data Protection), Condition 15 (Freedom Of Information), Condition 17 (Evidence, Records And Audit), Condition 18 (Propriety); and Condition 21 (Exclusion Of Liability, Indemnity And Security).

4 COMPANY WARRANTIES

- 4.1 The Company warrants, undertakes and agrees that:
- 4.1.1 if the Company elects to use UK Commission Investment Funding given for the Project to acquire goods or services, then the Company will ensure that it complies with the Public Contracts Regulations 2006;
- 4.1.2 there are no facts or circumstances subsisting at the date of this Agreement which, upon the commencement of the Agreement, would constitute an Event of Default;

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- 4.1.3 there are no material facts or circumstances in relation to its financial position or operational constitution which have not been fully and fairly disclosed to the UK Commission and which, if disclosed, might reasonably have been expected to affect the UK Commission's decision to enter into the Agreement, including not having any licence or contract revoked in respect of any undertaking similar to that which is the subject of the Investment Funding Agreement; or Funded by any Government Department or Agency; and
- 4.1.4 there has been no Material Change since the date of the previously audited or published annual financial statements.
- 4.2 The Company will take all reasonable steps to satisfy itself that its employees, sub-contractors (or their employees) and sub-funders (and their employees) are appropriately qualified and trained and possess relevant skill, care and diligence not least reflecting good industry practices and are therefore suitable in all respects to be engaged on the Project. The Company will not be relieved of any obligations under the Investment Funding Agreement by entering into a sub-agreement for the performance of any part of it.
- 4.3 If the Company appoints one or more sub-contractors, the Company is responsible for ensuring that each sub-contractor has adequate and appropriate insurance to cover at least the value and nature of the work for which that sub-contractor is responsible to the Company.
- 4.4 The Company will immediately notify the UK Commission if it has any concerns regarding the propriety of any of its sub-contractors, sub-funders, officers or representatives or persons associated with it.
- 4.5 The Company will include within any agreement with sub-contractors a clause indemnifying the Company against any claim for termination of employment of an employee employed by the sub-contractor in delivering the Project.

5 CONDITIONS OF FUNDING

- 5.1 The Company acknowledges and agrees that the Investment Funding is to be paid out of public money and that the UK Commission is accountable for its distribution. Accordingly the Company acknowledges and agrees that the UK Commission in order to secure the obligations of the Company and/or the repayment of the Investment Funding in accordance with these terms and conditions, may require as a condition of Investment Funding inter alia that:
 - 5.1.1 the Company creates a charge over its assets funded by the Investment Funding;
 - 5.1.2 the Company inserts a note into its annual statutory financial statements referring to the Investment Funds; and/or
 - 5.1.3 the Company makes those entries and disclosures necessary within its annual statutory financial statements to recognise a contingent liability in respect of the Investment Funds.
- 5.2 The Company acknowledges and agrees that payment of the Investment Funds is subject to the UK Commission:
 - 5.2.1 remaining entitled to receive and distribute funds thus generated on the same or substantially the same terms as exist at the date of the Investment Funding Agreement; and
 - 5.2.2 having access to sufficient funds to meet Investment Funding payments at the time of the Company requesting payment of the Investment Funds, provided that the UK Commission will notify the Company as soon as it becomes aware of the possibility of a change to any of the above situations.

6 PAYMENT PROVISIONS

- 6.1 The UK Commission shall pay the Investment Funding to the Company in accordance with these Standard Conditions of Investment Funding and, without prejudice to the generality of the foregoing, by reference to the Investment Funding Agreement.
- 6.2 The Company will submit to the UK Commission a request (an "**Investment Request**") for an Investment payment under the terms of Investment Funding Agreement.

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- 6.3 The Claim must include a warranty from the Company that the relevant parts of the Project have been delivered in accordance with the standards and specifications set out in the Investment Funding Agreement.
- 6.4 Investment Requests, progress reports, evidence etc. should be sent electronically to a designated UK Commission email address as notified to the company from time to time, with the Agreement reference number included in the subject line of the e-mail.
- 6.5 Investment requests and evidence will be subject to approval before the UK Commission makes payment. The UK Commission will notify the Company of any matters that prevent it from approving an investment request for payment within 20 days of receiving the request and evidence.
- 6.6 The UK Commission will make all payments to the Company by BACS within 30 Days of receipt of a valid investment request and subject to the UK Commission's satisfaction and approval of all evidence and progress in line with the Company's Investment Plan.
- 6.7 The UK Commission will not be responsible to the Company for any delay in payment to the extent that such delay is caused by incomplete or illegible Investment requests or evidence, or failure of the Company to respond in a timely manner to the UK Commission enquiries about the Investment request or evidence.
- 6.8 When the Project is completed, expired or if the Agreement is terminated other than through the default of the Company, the Company will promptly draw up a final investment request, the value of which will be proportional to the level of delivery previously not claimed for. Where the Agreement is terminated through the default of the Company, it will not be entitled to any further payment. The final investment request will be submitted not later than one month after the completion of the particular Project or the termination notice.
- 6.9 The Company must immediately inform the UK Commission if it receives, or becomes entitled to receive, additional income which is being applied towards the Project. The UK Commission reserves the right to re-evaluate the investment funding offer in the event that the additional income is directed at activities funded by the UK Commission.

7 DELIVERY AND PERFORMANCE

- 7.1 The Company shall carry out and complete the Project to the timescale and delivery requirements as set out in the Investment Funding Agreement. The Company must immediately notify the UK Commission Funding Senior Investment Manager in writing if the Company finds itself noticeably falling behind on delivering or requesting an investment payment in respect of any part of the Project.
- 7.2 The Company must report to the UK Commission any material matters including financial concern, potential redundancies or significant organisational restructure in relation to the business of the Company or its agents or sub-contractors that are likely to materially and adversely affect the capacity, capability or ability of the Company to deliver the Project in accordance with the Agreement.
- 7.3 Without prejudice to any other remedy, if any part of the Project is not performed in accordance with the quality and timescales required by the Investment Funding Agreement then the UK Commission will be entitled, where appropriate to:
 - 7.3.1 require the Company promptly to re-perform or replace the relevant part of the Project without additional Investment funding from the UK Commission; or
 - 7.3.2 assess the reasonable cost of remedying the failure and deduct from the Company any sums due to the Company for the period that such failure continues; or
 - 7.3.3 agree a remedial action plan with clear targets and increased frequency of reporting; or
 - 7.3.4 withhold all or part of any amount due to the Company under this Investment Funding Agreement until the failure is remedied; or
 - 7.3.5 require a change in staffing and management of the Company's Project Team; or

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7.3.6 terminate the Agreement, see Condition 19.

8 MONITORING AND EVALUATION

8.1 The Company shall report to the UK Commission in accordance with the Investment Funding Agreement (in such format as the UK Commission may reasonably require). The UK Commission shall use progress reports to assess whether:

8.1.1 the Company is delivering the Project satisfactorily;

8.1.2 the financial controls and management of the Investment Funding by the Company are adequate;

8.1.3 the Project Objectives are being met;

8.1.4 the Company continues to comply with the terms and conditions of the Agreement.

8.2 The Company shall establish clear lines of communication with the UK Commission's representatives to enable the UK Commission to carry out the monitoring arrangements to its satisfaction. The Company agrees to respond promptly to any questions raised by the UK Commission during the monitoring process.

8.3 It is the Company's responsibility to ensure that any report or document that the UK Commission requires reaches the person named as the UK Commission Senior Investment Manager within the specified timescale, and that information is in a legible format and in a manner reasonably required by the UK Commission.

8.4 The UK Commission will not be responsible or liable if the Company takes instruction from any other party. The period for which the Impact/Return on Investment will be monitored will be agreed with the UK Commission and may extend beyond the period of funding if applicable.

8.5 Within 20 Days of receiving a request from the other Party, each Party's senior management must meet to review progress and achievements against the Agreement.

8.6 If the Company has set up a management group/project board to run the Project, the UK Commission reserves the right to send a representative to its meetings, unless the Parties agree otherwise. The Company must let the UK Commission know 10 days in advance when and where any such meeting is to be held. The Company must also let the UK Commission have any previous minutes or agenda 5 days beforehand.

9 UK COMMISSION CHANGES TO THE PROJECT/DELIVERABLES/INVESTMENT PLAN

9.1 Where the UK Commission requires a change to any deliverables, outputs or outcomes as specified in the Investment Funding Agreement, the UK Commission will request such changes from the Company in writing at least 15 days before the due date for completing the delivery of such activity, output or outcome as is set out against the relevant activity in the Investment Funding Agreement.

9.2 The Company will use reasonable endeavours to accommodate the requests for changes and mitigate any additional costs. The Company will be entitled to receive payment for reasonable additional costs incurred.

9.3 If the Parties agree the proposed amendments, the Investment Funding Agreement shall be amended and duly authorised, and the agreed changes will formally become part of the Agreement and therefore eligible for payment.

9.4 In the event that the Parties cannot agree to proposed amendments then the dispute will be decided using the dispute resolution procedure (Condition 25 Dispute Resolution).

10 COMPANY CHANGES TO THE PROJECT/DELIVERABLES/INVESTMENT PLAN

10.1 Where the Company wishes to make a formal change to deliverables, outputs or outcomes as specified in the

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- 10.2 Investment Funding Agreement, the Company will request such changes at least 30 days before the due date for delivery of such activity, output or outcome as is set out against the relevant activity in the Investment Funding Agreement.
- 10.3 The Company will specify the reason for needing the change, together with financial and delivery implications, to the UK Commission in writing.
- 10.4 The UK Commission will consider any requests for changes and notify the Company in writing of whether or not it approves the change.
- 10.5 If the Parties agree the proposed amendments, the Investment Funding Agreement shall be amended and duly authorised, and the agreed changes will formally become part of the Agreement and therefore eligible for payment.
- 10.6 In the event that the Parties cannot agree to proposed amendments then the dispute will be decided using the dispute resolution procedure (Condition 25 Dispute Resolution).

11 EQUAL OPPORTUNITIES

- 11.1 The Company will not:
 - 11.1.1 unlawfully discriminate against any person, directly or indirectly, or by way of victimisation or harassment, on grounds of:
 - 11.1.1.1 sex, gender reassignment, married or civil partner status, pregnancy or maternity leave;
 - 11.1.1.2 colour, race, nationality, or ethnic or national origins;
 - 11.1.1.3 religion or belief;
 - 11.1.1.4 sexual orientation; and/or
 - 11.1.1.5 age;
 - 11.1.2 unlawfully discriminate against any person, on the grounds of or for a reason related to disability, or victimise or harass any person on the grounds of disability or fail to make reasonable adjustments.
- 11.2 The Company will observe as far as possible the provisions of any Code of Practice on discrimination issued by the Commission for Racial Equality, the Equal Opportunities Commission, the Disability Rights Commission or the Equality and Human Rights Commission.
- 11.3 The Company will in performing its obligations under the Agreement comply with the provisions of any discrimination legislation which imposes upon the UK Commission general or specific duties in respect of the promotion of equality as if the Company were itself a public authority bound by the terms of that legislation.

12 CONFIDENTIALITY

- 12.1 The Company agrees, and will procure that the Company's employees, agents, representatives and sub-contractors agree, to not make any reference to the Agreement in any advertising or promotional material without the UK Commission's prior written consent and keep the following strictly confidential during the term of the Agreement and afterwards:
 - 12.1.1 all information supplied by the UK Commission to the Company or any of its employees, agents, sub-contractors and representatives in relation to the subject matter of the Agreement;
 - 12.1.2 all information which may otherwise come into its possession or of which the Company may become aware with respect to the business or financial affairs of the UK Commission; and
 - 12.1.3 the terms of the Agreement.

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- 12.2 The provisions of Condition 12.1 shall not apply to information which is in the public domain unless it is as a result of a breach of this condition by the Company or any of its employees, agents or sub-contractors or is trivial or cannot reasonably be considered to be confidential, or is otherwise required by law. The Company will ensure that all employees, agents, representatives and sub-contractors are subject to the same obligations of confidentiality as the Company is under the Agreement.
- 12.3 The UK Commission reserves the right to publicly disclose in full or part, any or all details of the Project, other than those restricted by law, from the commencement of the activities specified in the Investment Funding Agreement.

13 INTELLECTUAL PROPERTY

- 13.1 The Company will disclose to the UK Commission all Background Intellectual Property owned or licensed by it which is relevant to the Project. All of the Company's Background Intellectual Property will remain the exclusive property of the Company (or, where applicable, the third party from whom its right to use the Background Intellectual property has derived).
- 13.2 The Company will disclose to the UK Commission all Foreground Intellectual Property. The Foreground Intellectual Property will remain the exclusive property of the Company. However in the event that:
- 13.2.1 the agreement is terminated as a result of a material breach of the agreement;
 - 13.2.2 the Company falls into disrepute, there is evidence of material financial mismanagement, breakdown of budgetary control or any other financial irregularity, within the Company;
 - 13.2.3 the Company passes a resolution to be wound-up or make an application for an administration order or it applies to enter into a voluntary arrangement with its creditors;
 - 13.2.4 the Company becomes insolvent and a receiver, liquidator, administrator, supervisor or administrative receiver is appointed in respect of the Company's property, assets or any part of them;
 - 13.2.5 the Company does not use the Investment funding for the purposes for which it was provided
 - 13.2.6 the UK Commission has reasonable grounds to believe that the Company is encountering financial difficulties;
 - 13.2.7 the Project is operated and/or promoted in a manner which and/or the Foreground Intellectual Property is used in a manner which and/or the Company acts in a manner which brings reputational damage to the UK Commission or in its absence, Her Majesty's Government;
- in order to permit the UK Commission, should it wish, to withdraw or continue the Project, the rights in the Foreground Intellectual Property will be assigned, with full title guarantee, to the UK Commission, its successor body or, in its absence, Her Majesty's Government. The Company will take any steps necessary to give effect to this assignment immediately upon being requested to do so by the UK Commission. This condition will survive termination of this Agreement.
- 13.3 The Company hereby grants (and will procure from any necessary third parties the grant) to the UK Commission and its successors and assigns free of charge (and agrees to take whatever action is necessary to perfect) a non-exclusive, perpetual, irrevocable, worldwide royalty-free and transferable licence (carrying the right to grant sub-licences) to use, exploit and/or adapt the Foreground Intellectual Property for any purposes whatsoever and the Company's Background Intellectual Property for the exclusive purpose of being able fully to exploit, develop and commercialise the Foreground Intellectual Property.
- 13.4 The Company warrants that:
- 13.4.1 it has full power, authority and capability to carry out the actions contemplated under the Agreement and that its entry into and performance under the terms of the Agreement will not infringe the rights of any third party or cause it to be in breach of any obligations to a third party;

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- 13.4.2 it has not done nor will hereafter do or omit to do any act or thing whereby any Foreground Intellectual Property may be invalidated, encumbered or otherwise prejudicially affected
- 13.5 The Company shall indemnify the UK Commission and its employees, servants, agents and sub-licensees from and against all claims, demands, actions, costs, expenses (including, without limitation, legal costs and disbursements on a solicitor and own client basis), losses and damages incurred by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) of any Intellectual Property right of any third party arising out of or in connection with the use by the UK Commission or its employees, servants, agents and sub-licensees of any of the Company's Background Intellectual Property or the Foreground Intellectual Property
- 13.6 If the Company submits any information, which is not its copyright, and which the Company has reason to believe may not be used or reproduced, the Company must tell the UK Commission at the time the information is submitted.
- 13.7 If the Project in whole or in part consists of a study or report that makes a recommendation which the UK Commission is the subject of, the UK Commission is under no obligation to act upon the recommendations or to publish or make public the report or its findings. If the Company wishes to publish any such report, either in whole or in part, the Company must obtain the UK Commission's permission first.

14 DATA PROTECTION

- 14.1 In relation to all personal data, the Company will ensure that at all times it complies with the Data Protection Act 1998 (the "DPA") as a data controller, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the Agreement.
- 14.1.1 The Company will only undertake processing of personal data reasonably required in connection with the Agreement and the Project.
- 14.1.2 The Company will not disclose personal data to any third parties other than to the extent required for the proper delivery of the Project in accordance with the requirements of the DPA or to the extent required by law or under a court order.
- 14.2 The provisions of this Condition 14 shall survive termination of the Agreement insofar as they remain relevant.
- 14.3 The words "**personal data**", "**processing**" and "**data controller**" shall have the meanings set out in the DPA.

15 FREEDOM OF INFORMATION

- 15.1 The Company acknowledges and agrees that The UK Commission is subject to legal duties under the Freedom of Information Act 2000 ("**FOIA**") and the Environmental Information Regulations 2004 ("**EIR**"), which may require the UK Commission to disclose on request information relating to the Agreement or otherwise relating to the Company.
- 15.2 The Company agrees to provide all necessary assistance as reasonably requested to enable the UK Commission to respond to a request for information within the time for compliance set out in the FOIA or the EIR and acknowledges that The UK Commission shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Agreement whether any information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.

16 INSURANCE

- 16.1 The Company will take all reasonable steps at its disposal to insure against any risks which may arise in connection with any property of the Company or any activity undertaken by the Company which is funded in whole or in part by the Investment Funds. This includes any loss or personal injury to persons undertaking those activities.
- 16.2 The UK Commission reserves the right to require that the Company submits to the UK Commission for inspection any relevant documents relating to insurance policies.

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- 16.3 The UK Commission is not in any way liable for any contingency involving property or activities for which an Investment Fund in whole or in part has been provided.

17 EVIDENCE, RECORDS AND AUDIT

- 17.1 The Company must keep a satisfactory record of all of its activities and expenditure incurred on the Project including any fees, costs or other payments made to staff, consultants or other workers.
- 17.2 All records supporting the expenditure and the delivery of this Project must be retained by the Company and shall not be forwarded to the UK Commission unless those records are expressly required by the UK Commission.
- 17.3 The Company will need to be sure that it can demonstrate to the UK Commission that it has properly spent the Investment Funds delivering the particular Project. The Company will permit duly authorised staff or agents of the UK Commission and Her Majesty's Government, including the Welsh Assembly Government, the Scottish Executive and the Northern Ireland Assembly to examine the records at any reasonable time and the Company will provide oral or written explanations of the records if required.
- 17.4 The UK Commission reserves the right to have such staff or agents carry out examinations into the economy, efficiency, and effectiveness with which the Company has used the UK Commission's funding in the performance of the Project.
- 17.5 The Company must comply with the Government's Code of Practice on access to official information as published from time to time and any Legislation issued by the UK Commission's Sponsor Department relating to the Code

18 PROPRIETY

- 18.1 There must be no impropriety or irregularity concerning the Company or other person concerned in the management and delivery of the Project. All dealings and transactions must be transparent. Any interest that the Company, its agents or sub-contractors have in the Project (either directly or through a Connected Person) must immediately be declared to the UK Commission irrespective of value. In particular the Company, its agents or sub-contractors must:
- 18.1.1 observe the highest standards of propriety involving impartiality, integrity and objectivity in relation to the stewardship of the Investment funds provided by UK Commission; and
- 18.1.2 maximise the value for money through ensuring that the Project is delivered in the most efficient and economical way, within available resources, be able to demonstrate the best combination of price and delivery with independent validation of performance achieved wherever practicable.

19 TERMINATION

- 19.1 The Agreement may be terminated by the UK Commission with immediate effect and without prior notice being given by notice in writing if at any time one or more of the following Events of Default transpire:
- 19.1.1 in the reasonable opinion of the UK Commission the Company fails to comply with its obligations within the Investment Funding Agreement and specifically the Investment Plan;
- 19.1.2 where the Company fails to complete the Project (unless such failure was due to factors beyond the Company's reasonable control);
- 19.1.3 the Company fails to comply with or breaches any term or condition of the Agreement;
- 19.1.4 The UK Commission no longer remains entitled to receive and distribute funds thus generated on the same or substantially the same terms as exist at the date of the Investment Funding Agreement;
- 19.1.5 The UK Commission no longer has access to sufficient funds to meet Investment Funding payments at the time of the Company requesting payment of the Investment Funding;

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- 19.1.6 The Company does not use the Investment Funding for the purpose for which it was provided;
- 19.1.7 in the reasonable opinion of the UK Commission any assurance given or information contained within the Agreement or other documents submitted by the Company to the UK Commission were completed fraudulently, incorrectly or misleadingly in any material particular;
- 19.1.8 the Company or any of its employees or persons acting under the control or authority of the Company has acted fraudulently or negligently so as to have a material effect the completion, development or management of the Project generally;
- 19.1.9 the Company makes a sub-fund to a third party using the funding afforded by the Investment Funding without the UK Commission's prior written consent;
- 19.1.10 the Company passes a resolution to be wound-up or make an application for an administration order or it applies to enter into a voluntary arrangement with its creditors;
- 19.1.11 a receiver, liquidator, administrator, supervisor or administrative receiver is appointed in respect of the Company's property, assets or any part of them;
- 19.1.12 the court orders that the Company is to be wound-up;
- 19.1.13 there is evidence of financial mismanagement, breakdown of budgetary control or any other financial irregularity, within the Company;
- 19.1.14 the Company is unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986 where it is incorporated in England and Wales or Scotland or in accordance with article 103 of the Insolvency Act (Northern Ireland) Order 1989 where the Company is incorporated in Northern Ireland;
- 19.1.15 there is a change in the legal or beneficial ownership or membership; or there is a change in the Memorandum or Articles of Association of the Company; or there is a change in control, unless the Company has previously notified the UK Commission in writing. For the purpose of this Sub-Condition "**control**" means the power to direct its strategic and operational activities by means of the holding of shares, the possession of voting power or through managerial responsibility;
- 19.1.16 the Company is convicted (or any officers or representatives of the Company are convicted) of a criminal offence related to the business or professional conduct;
- 19.1.17 the Company commits (or any officers or representatives of the Company commit) an act of grave misconduct in the course of the business;
- 19.1.18 The UK Commission reasonably considers that the Company has failed (or that any sub-contractors, sub-Funders, officers or representatives of, or persons associated with, the Company have failed) to comply with any applicable law, regulation or guidance relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- 19.1.19 the Company fails (or any officers or representatives of the Company fail) to fulfil his/their obligations relating to the payment of taxes or social security contributions;
- 19.2 In the event of any material breach of the Agreement by either Party:
 - 19.2.1 the Party not in default may serve a notice on the Party in default requiring the breach to be remedied, if the breach is capable of being remedied, (see Condition 7.3). The notice will specify a timeframe to rectify the breach, which will be reasonable in all the circumstances.
 - 19.2.2 If the breach has not been remedied in the timeframe specified in the notice, or if the breach is not capable of being remedied the Party not in default may terminate this Agreement with immediate effect by notice in writing.
- 19.3 The Agreement may be terminated at any time by the UK Commission giving the Company at least 90 days' notice in writing.

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- 19.4 If Project does not achieve some or all of its stated aims or the Investment funding is not used for the purpose for which it was provided, the UK Commission may, at its discretion, recover from the Company all or some of the Investment Funds already paid for the Project and will make no further payment against the Project. The Agreement will then be deemed to have been terminated.
- 19.5 Nothing in this Condition 19 will affect the coming into, or continuance in force of any provision of the Agreement which is expressly or by implication intended to come into, or continue in force upon termination of the Agreement.
- 19.6 On expiry or termination of this Agreement for any reason, the Company will not have any claim for damages or compensation of any nature against the UK Commission.

20 RECOVERY OF SUMS PAID

- 20.1 The UK Commission may reduce or reclaim funding if payments have been made which the Company is not entitled to under the terms of the Agreement.
- 20.2 The UK Commission has the right to immediately recover from the Company any money paid for which evidence supporting expenditure or delivery is lacking, or where the absence of an audit trail makes the location of evidence impossible. The Company will need to retain evidence for a period of 6 years from the date of the final claim of the particular Project Schedule. Evidence must be retained irrespective of whether it has previously been presented to the UK Commission.
- 20.3 Whenever any sum of money is recoverable from the Company, or payable by the Company to the UK Commission, the UK Commission may deduct that amount from any sum that is due to the Company or becomes due to the Company. This deduction may occur either under this Agreement or under any other agreement with the UK Commission or any other Agency of Her Majesty's Government.
- 20.4 If this Agreement is terminated for any reason, then:
- 20.4.1 Any initial working capital paid by the UK Commission to the Company as set out in the Investment Funding Agreement that has not already been recovered in accordance with the Investment Funding Agreement may be repayable by the Company to the UK Commission; and
- 20.4.2 the UK Commission will not pay the Retention to the Company.

21 EXCLUSION OF LIABILITY, INDEMNITY AND SECURITY

- 21.1 The Company indemnifies and will keep the UK Commission, its employees, agents, officers or sub-contractors indemnified against any liability, expense, loss, claim or proceedings arising under any statute or common law in respect of:
- 21.1.1 (otherwise than is prohibited by law) personal injury to or the death of any person arising out of, in the course of, or caused by the development, planning, construction, operation, management and/or administration of the Project, or by any act or omission of the Company or any of its employees, servants or agents;
- 21.1.2 (otherwise than is prohibited by law) any injury or damage to any property real or personal or other loss or damage in so far as the injury, loss or damage arises out of, in the course of, or because of the development, planning, construction, operation, management and/or administration of the Project, or by any act or omission of the Company or any of its employees, servants or agents;
- 21.1.3 the termination of employment of any employee of the Company who is employed in delivering the Project; and
- 21.1.4 any expenses incurred in relation to the Project caused by the change in identity of any sub-contractor employed in providing the Project, whether or not the change constitutes an assignment or novation;

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21.1.5 any infringement or alleged infringement (including the defence of the alleged infringement) of any Intellectual Property of any third party arising out of or in connection with the use of any materials by the UK Commission, the Sponsor Department and each of their officers, employees, sub-contractors and sub-licensees.

21.2 The Company shall provide prompt notice to the UK Commission of any claim arising from the above events and the UK Commission shall have the sole right to control the defence of any such claim.

22 ENTIRE AGREEMENT

22.1 The Agreement contains the entire Agreement between the Parties in relation to the Project and supersedes all proposals, or previous Agreements, undertakings, understandings and all other communications between the Parties, whether written or oral relating to this matter.

22.2 Each Party acknowledges and confirms that it does not enter into the Agreement on the basis of any representation, warranty or other undertaking not expressly set out or referred to in the Agreement provided that nothing in this condition shall exclude any liability which either Party would otherwise have in respect of any statements made fraudulently prior to the date of the Agreement.

23 NO PARTNERSHIP AND NO AGENCY

23.1 In carrying out the Project the Company is acting as principal and not as the UK Commission's agent and the Company will ensure that it will not do or say anything that may lead others to believe otherwise.

23.2 The Company is an independent body and nothing in the Agreement shall be deemed to constitute a partnership, joint venture, relationship of agency or any employment relationship between the Parties.

24 REFERENCE NUMBER

24.1 The UK Commission's reference number for the Agreement with the Company is quoted on the cover page and in the footer of each page of the Investment Funding Agreement. This reference number must be quoted on all documentation passing between the Parties in connection with the Agreement.

25 DISPUTE RESOLUTION

25.1 Any dispute arising out of or in connection with the Agreement must be resolved in accordance with this Condition 25.

25.2 If such a dispute arises either party may serve on the other a notice of dispute ("Notice of Dispute") and the UK Commission and the Company must first consult in good faith to try to reach agreement on the disputed matter.

25.3 If the UK Commission and the Company fail to resolve the dispute through such consultation within 20 Days following service of a Notice of Dispute either Party may refer the matter to adjudication pursuant to the Rules for Adjudication of the Centre for Effective Dispute Resolution ("CEDR") then in force. The Rules for Adjudication are available at www.cedr.co.uk. On such referral and on receipt of the Adjudicator's decision, the UK Commission must serve notice of the referral or decision on its Sponsor Department.

25.4 The Adjudicator will be deemed not to be an arbitrator but will make his decision as an expert. The Arbitration Act 1996 and the law relating to arbitration will not apply to the Adjudicator or his decision or the procedure by which he reached his decision. If the Company is incorporated in Scotland, section 3 of the Administration of Justice (Scotland) Act 1972 is expressly excluded.

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- 25.5 All information, data or documents disclosed or delivered to the Adjudicator because of or connected with his appointment as Adjudicator must be treated as confidential. The Adjudicator may not, except as permitted by Condition 12 (Confidentiality) disclose to any person or company any such information, data or documentation, which will remain the property of the Party disclosing or delivering it. All copies must be returned to the disclosing Party when the Adjudicator's work is finished.
- 25.6 If a Party is dissatisfied with the Adjudicator's decision, that Party may within 20 days after receiving notice of the Adjudicator's decision give to the other Party notice that it intends to resolve the dispute by commencement of court proceedings in the High Court of Justice in London. Nothing in this Condition 25 shall prevent either party from:
- 25.6.1 applying to the English courts for an order restraining a Party from doing any act or compelling a party to do an act; and/or
- 25.6.2 issuing proceedings in the High Court of Justice in London so as to prevent the expiry of any applicable limitation period.

26 ASSIGNMENT AND TRANSFER OF RESPONSIBILITY

- 26.1 The Company shall not assign, mortgage or charge or in any other way dispose of the Agreement or any of its rights (including the right to any sums payable) hereunder, nor shall the Company sub-contract any of its obligations under the Agreement (unless specifically provided for hereunder) without the prior written consent of the UK Commission.
- 26.2 The UK Commission shall be entitled, on prior written notice, to assign the benefit and burden of the Agreement to any body under the control of the Crown or any statutory body assuming substantially all of the functions previously carried out by the UK Commission.
- 26.3 Where the Project has expired, been novated, assigned, or terminated, the Company will provide the necessary assistance as the UK Commission may reasonably require to enable the UK Commission to transfer responsibility for the Project in an orderly manner. This will be at no cost to the UK Commission and this facility will be available for a reasonable time after the expiration, novation, assignment or termination.
- 26.4 The Company agrees that it will not knowingly do or omit to do anything that may adversely affect the UK Commission's ability to ensure an orderly transfer of responsibility.

27 NOTICES

- 27.1 Unless otherwise specified, where either Party makes reasonable requests or needs to give notices in connection with specific conditions of the Agreement, it is agreed that the relevant Party will notify the other within 5 Days and respond to the notification or request within a further 5 Days.
- 27.2 If the Company fails to respond in the agreed time, without prejudice any other remedy, the UK Commission reserves the right to suspend paying any amounts outstanding to the Company. If the UK Commission fails to respond in the agreed time the Company reserves the right to suspend delivery against the Investment Funding Agreement - Schedule 1 (Investment Plan). In the event of the latter two actions any dispute will be resolved through the dispute resolution procedure (Condition 25).
- 27.3 Any notices to be given under the Agreement shall be delivered personally or sent by pre-paid first class post or by facsimile transmission to the UK Commission Investment Manager or the UK Commission Funding and Contracting Team (in the case of the UK Commission) or to the address set out in the Investment Funding Agreement (in the case of the Company) or to such other address as may be notified in writing from time to time.
- 27.3.1 If the notice is delivered personally it will be deemed to be served at the time of delivery.
- 27.3.2 If the notice is sent by facsimile transmission it will be deemed to be served 12 hours after proper transmission.
- 27.3.3 If the notice is sent by post it will be deemed to be served 48 hours after posting.

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28 THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

- 28.1 A person who is not a party to the Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement but this shall not affect any right or remedy of any third party which exists or is available apart from that Act.

29 VALUE ADDED TAX

- 29.1 It is the Company's responsibility to assess its liability for Value Added Tax (VAT). The UK Commission is not responsible for the Company's unpaid VAT. The amounts quoted in the Investment Funding Agreement by way of payments of Investment Funds are deemed to be inclusive of VAT (if any).
- 29.2 Nothing in the Agreement is intended to constitute a taxable supply to the UK Commission for VAT purposes. The UK Commission receives no direct or indirect benefit from the project funded under the terms of the Agreement.

30 VARIATION, WAIVER, SEVERABILITY AND SURVIVAL

- 30.1 The Agreement may only be modified by written agreement duly signed by both Parties.
- 30.2 Any failure, relaxation, forbearance, delay or indulgence by either Party in enforcing any of the terms or conditions of the Agreement shall not be deemed a waiver of future enforcement of that or any other provision, and nor shall the granting of any time by the either Party prejudice or affect or restrict any of the Party's rights arising under the Agreement or be deemed a waiver by either Party of any breach or subsequent or continuing breach.
- 30.3 If a court judges any condition in the Agreement to be unlawful, void or unenforceable then that condition will be excluded from the Agreement to the extent directed by the court. As far as possible the exclusion of the condition will not amend the remaining conditions of the Agreement and will not affect their validity or enforceability.
- 30.4 The provisions of the Agreement will continue to have their full effect after the expiry or termination to the extent that they are capable of surviving and that they need such survival to be effective.

31 GOVERNING LAW AND JURISDICTION

- 31.1 The construction, performance and validity of the Agreement shall be governed by and construed in all respects in accordance with the laws of England and, subject to Condition 25 (Dispute Resolution) the Parties submit to the non-exclusive jurisdiction of the English courts.

32 MARKETING AND PUBLICITY

- 32.1 The Company shall ensure that it adheres to UK Commission publicity requirements (available at info@ukces.org.uk) when producing all marketing and promotional materials (both print and digital) relating to the project.