



**LIVERPOOL
CITY REGION**
COMBINED AUTHORITY

METROMAYOR
LIVERPOOL CITY REGION

STRATEGIC INVESTMENT FUND

Liverpool City Region Combined Authority

- and -

[]

Grant Funding Agreement

Future Innovation Fund

Liverpool City Region Combined Authority
Jill Coule
Chief Legal Officer and Monitoring Officer
No.1 Mann Island
Liverpool L3 1BP
Ref: RSN20555

THIS AGREEMENT is dated

2020

Parties:

- (1) LIVERPOOL CITY REGION COMBINED AUTHORITY of No.1 Mann Island, Liverpool, L3 1BP ("the Funder"); and
- (2) [] (Company Number []) whose registered office is [] ("the Recipient")

(each a "Party" and together the "Parties").

Background

- (A) The Funder has set up the Future Innovation Fund to support businesses in the Liverpool City Region to adapt to challenges and respond to opportunities presented by the Covid-19 pandemic.
- (B) The Recipient is proposing to undertake an innovative project in the Liverpool City Region, which will respond or adapt to opportunities presented by the pandemic and aligns with the strategic priorities of the Liverpool City Region.
- (C) The Recipient has applied to the Funder for funding to support the project, and the Funder has agreed to provide funding subject to the terms set out in this Agreement.
- (D) The Funder does not require the Recipient to undertake the project, and the Recipient is not obliged to carry it out, but the Funder makes the Grant conditional on the terms and conditions of this Agreement in order to safeguard the funds contained in the Grant and to ensure the appropriate use of the Grant by the Recipient.

Agreed terms

1. Definitions and Interpretation

- 1.1 In this Agreement the following terms shall have the following meanings:

Application: the Recipient's application for funding support for the Project from the Funder's Future Innovation Fund, as set out in Schedule 1.

Claim: an irrevocable application for an instalment of the Grant made by the Recipient in accordance with the terms of this Agreement.

Conditions: the conditions set out in Schedule 3, which the Recipient must meet to the Funder's satisfaction prior to receiving payment of the Grant.

Eligible Costs: costs which are reasonably incurred by the Recipient in carrying out the Project and comply with the Funder's guidelines on eligible costs.

Fund: the Future Innovation Fund set up by the Funder to support businesses in the Liverpool City Region to adapt to challenges and respond to opportunities presented by the Covid-19 pandemic.

Grant: the maximum amount of [] to be paid by the Funder from the Future Innovation Fund to the Recipient in accordance with this Agreement.

Project Activities: the activities in connection with the Project set out in the Project Plan.

Project: the project that the Recipient is proposing to undertake as detailed in the Application.

Project Consultants: the third party or third parties procured by the Recipient to undertake all or part of the Project.

Project Plan: the Recipient's plan for the delivery of the Project which has been agreed by the Funder and is set out in Schedule 2.

Project Update Dashboard: An update on the progress of the Project provided by the Recipient to the Funder on a quarterly basis in the Funder's prescribed format.

State Aid: the law embodied in Articles 107 to 109 of Section 2, Title VII of the Common Rules on Competition, Taxation and Approximation of the Laws – Consolidated Versions of the Treaty on the European Union and the Treaty on the Functioning of the European Union (2008/C 115/01), including but not limited to the General Block Exemption Regulation (EU) No. 651/2014 of 17 June 2014 as amended, and all other applicable EU decisions, notices, and exemptions and all related jurisprudence.

Working Day: means a day, other than a Saturday or Sunday, on which banks are open for general business in the United Kingdom.

- 1.2 In the event of any conflict between the terms of this Agreement and the Application or any other document relating to the subject matter of this Agreement, the terms of this Agreement shall prevail.

2. The Project

2.1 The Recipient must deliver, and ensure that the Project Consultants undertake to deliver, the Project in accordance with the terms of this Agreement and the timescales set out within it.

2.2 The Recipient must deliver the Project in accordance with the Project Plan.

- 2.3 The Recipient will ensure that any Project Consultants instructed to carry out all or any part of the Project are suitably skilled, qualified and experienced to carry out the tasks that they are instructed to perform and hold a sufficient level of professional indemnity insurance to cover any risks or potential losses that may arise in relation to those tasks. The Recipient will provide evidence of the Project Consultants' skills, qualifications, experience and insurance cover to the Funder upon request.

3. Use of the Grant

- 3.1 The Recipient shall use the Grant only to cover Eligible Costs and in accordance with the terms of this Agreement and the Project Plan. The Grant should be used by 31st March 2021 and the Funder may withdraw any part of the Grant that remains unused on that date.
- 3.2 The Grant shall not be used for any other purpose without the prior written agreement of the Funder.
- 3.3 The Funder is under no obligation to provide the Recipient with any further funding in respect of the Project or for any other purpose.
- 3.4 Apart from any third party match funding disclosed during the application process for the Grant, the Recipient may not obtain any funding towards the costs of the Project from any third party without the prior written agreement of the Funder.
- 3.5 The Recipient shall use any assets or materials financed by the Grant for the purposes of the Project and shall not for at least [two years] from the date of payment of the final instalment of the Grant dispose of them or change their use apart from with the Funder's written approval or in accordance with the Project Plan.
- 3.6 The Recipient shall ensure that all use of the Grant is in accordance with the Funder's Strategic Investment Fund Strategy for the Liverpool City Region and any other guidelines or policies that the Funder may specify to the Recipient as being relevant to the Project.
- 3.7 The Recipient shall ensure that its receipt and use of the Grant is in accordance with State Aid. The Recipient agrees to maintain appropriate records of compliance with State Aid and agrees to take all reasonable steps to assist the Funder to make any reports or respond to any investigation(s) in respect of its use of the Grant and the Project as a whole.

4. The Grant payment

- 4.1 Prior to receiving any payment of the Grant, the Recipient must meet the Conditions as listed in Schedule 3 of this Agreement.
- 4.2 The Grant shall be paid by the Funder to the Recipient in instalments in accordance with the Project Plan at Schedule 2 of this Agreement. The Recipient must submit a Claim in the format prescribed by the Funder in order to receive payment of an instalment. Payment of the Grant can be claimed in a maximum of three instalments and no instalment can exceed £35,000, unless otherwise agreed by the Funder. No more than one instalment can be claimed in any calendar month.
- 4.3 Payment of the Grant instalments shall be made within 21 calendar days of receipt by the Funder from the Recipient of a Claim confirming that the Eligible Costs relating to item(s) in the Activity Schedule have been accrued by the Recipient, and that all Eligible Costs funded by previous Grant instalments have been defrayed.

5. Reduction, withdrawal and repayment of the Grant

- 5.1 The Funder may withdraw or reduce, or require the Recipient to repay all, or any proportion of, the Grant on the grounds in Schedule 4.
- 5.2 The Recipient acknowledges that in setting up and operating the Fund, the Funder is seeking to maximise the benefit for eligible businesses throughout the Liverpool City Region. The Recipient will therefore notify the Funder if either of the following occurs:
 - (a) The Recipient obtains or becomes aware of funding which is readily available to it that means it no longer requires the Grant or any part of it to deliver the Project; or
 - (b) Within two years of the date of payment of the final instalment of the Grant, the Recipient generates a profit or surplus as a result of or in connection with the Project that is at least two times the value of the Grant. The Parties will agree the base case scenario (i.e. the 'do nothing' option) to have a comparison point to assess if the repayment is triggered.
- 5.3 The Funder has the right at any time during the two years following payment of the last instalment of the Grant to request such information as it may reasonably require from the Recipient to assess the profitability of the Project

for the Recipient and its outputs, outcomes and wider impacts. Where the Funder reasonably considers that either clause 5.2(a) or (b) applies, the Funder will provide notification to the Recipient that a review of the Recipient's financial position in accordance with clause 5.4 is required.

- 5.4 If the Recipient provides notification under clause 5.2 or the Funder provides notification under clause 5.3, the Funder and the Recipient will explore whether the Recipient is in a financial sustainable position that will enable it to repay all or a proportion of the Grant without a significant adverse impact on its business, staffing or operations. Based on this joint review, the Funder may, acting reasonably, require the Recipient to repay all or a proportion of the Grant which will be recycled by the Funder into this Fund, or another Combined Authority fund targeted at social and/or grassroots innovation/entrepreneurialism within the Liverpool City Region.
- 5.5 Should the Funder require the Recipient to repay all or any proportion of the Grant, it will notify the Recipient in writing. The Recipient must make that repayment within 15 Working Days of the date of that notice or by any later deadline agreed by the Funder in writing.

6. Project Monitoring and Evaluation

- 6.1 The Recipient will be required to co-operate with the provision of information and evidence to support the monitoring and evaluation of the delivery of the Project against outputs and outcomes agreed by the Funder, including participation on a telephone, web or face to face interview to review the impact of the Grant and the Project for the Recipient. The Recipient will report to the Funder on the progress of the Project on a quarterly basis by completing the Project Update Dashboard.
- 6.2 Within 20 Working Days of completion of the Project, the Recipient shall provide the Funder with a closure report (in such form as may reasonably be required by the Funder) setting out the following:
- (a) A breakdown of how the Grant has been utilised;
 - (b) Confirmation that all Project Activities have been delivered;
 - (c) The outputs and outcomes achieved by the Project and any wider social or economic benefits identified;
 - (d) How the Project has supported the Funder's strategic objectives; and

- (e) How the Recipient will continue to utilise and build on the Project's outputs and outcomes.

6.3 The Funder has the right at any time during the two years following payment of the last instalment of the Grant to request such information as it may reasonably require from the Recipient to assess the profitability of the Project for the Recipient and its outputs, outcomes and wider impacts. Where the Funder reasonably considers that either clause 5.2(a) or (b) applies, the Funder will provide notification to the Recipient that a review of the Recipient's financial position in accordance with clause 5.3 is required.

7. Accounts and records

7.1 The Recipient shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Grant.

7.2 The Recipient shall keep all invoices, receipts, and accounts, and any other relevant documents, relating to the expenditure of the Grant for a period of at least six years following the day on which the final Grant payment is made. The Funder shall have the right to review, at the Funder's reasonable request, the Recipient's records that relate to the expenditure of the Grant.

8. Procurement

8.1 In procuring any goods or services in connection with the Project, including the Project Consultants, the Recipient must:

- a) comply with all applicable law, including the Public Contract Regulations 2015; and
- b) upon the Funder's request, demonstrate to the Funder that it has obtained best value through its procurement process and provide documentary evidence to the Funder that it has carried out the procurement exercise in accordance with such contract procedure rules and laws as are applicable to the Recipient.

9. Warranties

9.1 In accepting the Grant and any payment of it, the Recipient represents and warrants that:

- a) it is validly existing and the execution on behalf of the Recipient of this Agreement has been validly authorised and the obligations expressed as

being assumed by the Recipient under this Agreement constitute valid legal and binding obligations of the Recipient enforceable against the Recipient in accordance with their terms;

- b) it has full capacity and authority to deliver the Project;
- c) in relation to the Project and its use of the Grant, it has and will continue to comply with any applicable law, guidance or industry code, rule of court or directives or requirements of any regulatory body;
- d) in its reasonable view, it requires the Grant in order to have sufficient financial resources to deliver the Project and it does not have readily available access to funding from other sources for this purpose;
- e) it has obtained and will continue to have any consents or approvals, and has the resources and expertise necessary to deliver the Project and to comply with the terms of this Agreement;
- f) it has all necessary resources and expertise to deliver the Project and/or will obtain these as part of the Project Activities;
- g) its headquarters and principal place of operations are and will continue to be in the Liverpool City Region;
- h) it will use its best endeavours not to reduce the number of its employees whose work base is in the Liverpool City Region;
- i) it has disclosed in writing to the Funder all information which would or might reasonably be thought to influence the Funder's decision to award the Grant and which might materially and adversely impact on the Recipient's ability to deliver the Project or comply with the terms of this Agreement; and
- j) the information and evidence disclosed to the Funder in relation to the Project, remains true, complete and accurate, and that it will advise the Funder of any fact, matter or circumstance which would render any such information or evidence false or misleading.

10. Duration

- 10.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until the date on which all obligations under this Agreement are fulfilled to the satisfaction of the Funder.
- 10.2 Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

11. Intellectual property

- 11.1 The Funder and the 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 rights ("the Intellectual Property Rights") owned by either Party before the start of the Project or developed by either Party for or as part of the Project shall remain the property of that Party.

12. Termination

- 12.1 The Funder may terminate this Agreement and any obligation to make any further payment of Grant on giving the Recipient one month's written notice should it be required to do so by financial restraints or a change in legislation or Government policy, or if in the reasonable view of the Funder it is no longer necessary or appropriate to support the Project to achieve the Funder's objectives.
- 12.2 The Funder may terminate this Agreement and any Grant payment immediately and without notice following the occurrence of any of the grounds listed in Schedule 4.

13. Limitation of liability

- 13.1 The Funder's liability under this Agreement is limited to payment of the Grant.
- 13.2 The Recipient remains entirely responsible for its risks and liabilities in delivering the Project and the Funder accepts no liability for any consequences, whether direct or indirect, that may arise from the Recipient delivering the Project, the Recipient's use of the Grant or any reduction, withdrawal or repayment of the Grant.
- 13.3 The Recipient shall indemnify and hold harmless the Funder, 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 Recipient in relation to the Project or the Recipient's use of the Grant, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties. The Recipient shall hold sufficient insurance to cover its potential liabilities under this clause 13 and shall provide evidence of such insurance to the Funder on request.

14. Assignment etc.

14.1 The Recipient may not, without the prior written consent of the Funder, assign, novate, sub-contract or otherwise transfer the benefit and/or the burden of this Agreement or, except as contemplated as part of the Project, transfer or pay to any other person any part of the Grant.

15. Variation

15.1 Any variation to the terms of this Agreement shall be agreed in writing between the Parties.

15.2 Any variation to the Project Plan must be agreed by the Funder in writing. A revised version of the Project Plan should be provided by the Recipient to the Funder to document the variation.

16. Freedom of information

16.1 The Recipient acknowledges that the Funder is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, and shall assist and co-operate with the Funder to enable the Funder to comply with these requirements.

17. Data protection

17.1 The Recipient shall (and shall procure that any of its staff or contractors involved in connection with the activities under this Agreement shall) comply with all applicable requirements and all of its obligations under the Data Protection Act 2018, General Data Protection Regulation (EU 2016/679) and any other national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK, and any successor legislation, which arise in connection with this Agreement.

18. Publicity

18.1 The Recipient shall acknowledge the support of the Funder in any materials that refer to the Project. In using the Funder's name and/or logo, the Recipient

shall comply with all reasonable branding guidelines issued by the Funder from time to time.

- 18.2 The Recipient agrees in so far as reasonably practicable to participate in and co-operate with promotional activities relating to the Project or the Fund that may be instigated and/or organised by the Funder including participation in implementation of the Funder's communications and publicity requirements, and to provide reports, statistics, photographs and case studies that will assist the Funder in communications and publicity activities relating to the Fund.

19. Confidentiality

- 19.1 Each Party shall during the term of this Agreement and thereafter keep secret and confidential all business, technical or commercial information disclosed to it by the other Party as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement, to meet any legal or regulatory requirements or as expressly authorised in writing by the other party.

20. Equality and Diversity

- 19.1 The Recipient shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment or otherwise.

21. Human rights

- 21.1 The Recipient shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement as if the Recipient were a public body (as defined in the Human Rights Act 1998).

22. Bribery Act 2010

- 22.1 The Recipient shall conduct its business in compliance with applicable anti-corruption laws and shall not, directly or indirectly, use the Grant for any purpose that would breach the Bribery Act 2010.

23. Notices

- 23.1 All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given personally delivered or mailed (first class postage prepaid), to the address of the relevant Party, as referred to above or otherwise notified in writing, or sent by email to the specified address in []. If personally delivered all such communications shall be deemed to have been given when received (except that if received on a non-Working Day or after 5.00 pm on any Working Day they shall be deemed received on the next Working Day) and if mailed all such communications shall be deemed to have been given and received on the second Working Day following such mailing. If sent by email all such communications shall be deemed to have been given at 9.00am on the Working Day following transmission, unless the Party giving notice receives a delivery failure notification.
- 23.2 Service by email under clause 23.1 does not apply in relation to notification of the termination of this Agreement, the service of any formal legal proceedings, or the service of other documents in any legal action.

24. No partnership or agency

- 24.1 This Agreement shall not create any partnership or joint venture between the Funder and the Recipient, nor any relationship of principal and agent, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party.

25. Waiver

- 25.1 No failure or delay by either Party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

26. Third Party rights

- 26.1 This Agreement does not and is not intended to confer any contractual rights or benefits on any person for the purposes of the Contracts (Rights of Third Parties) Act 1999.

27. Law and jurisdiction

27.1 This Agreement shall be governed by and construed in accordance with the law of England, and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

28. Entire Agreement

28.1 This Agreement constitutes the entire agreement between the Parties, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

This document takes effect on the date stated at the beginning of it.

SIGNED on behalf of

LIVERPOOL CITY REGION

COMBINED AUTHORITY

by:

.....
Authorised Signatory

SIGNED on behalf of
the **RECIPIENT** by:

Signature

Name (print)

Director

Schedule 1

The Application

DRAFT

Schedule 2

Project Plan

DRAFT

Schedule 3

The Conditions

1. State Aid declaration
2. Know Your Customer checks
3. A Project Plan including the structure, contents and amounts of anticipated Grant claims for the Project
4. Completed Claim form
5. [Project Specific Conditions]

Schedule 4

Grounds for reduction, withdrawal and repayment of the Grant

In accordance with clause 5.1, the Funder may withdraw or reduce, or require the Recipient to repay all, or any proportion, of the Grant, on any of the following grounds.

1. The Recipient fails to comply with the terms of this Agreement or the Project Plan and the non-compliance is not remedied within a reasonable period or is not capable of remedy;
2. The Funder has reasonable grounds to consider that the Recipient has used the Grant other than in accordance with the terms of this Agreement;
3. The Funder has reasonable grounds to consider that the information and evidence provided by the Recipient in relation to the Project or the Grant has not been complete and accurate or supplied honestly and in good faith;
4. There is a change to the Project which the Funder reasonably considers to be material and has not agreed to in writing;
5. The Grant or any proportion of the Grant remain unspent or uncommitted to the delivery of the Project by 31st March 2021;
6. The Recipient fails to comply with the monitoring and evaluation requirements set out in clause 6;
7. There has been a change to the Recipient's circumstances which the Funder reasonably considers makes (or would have made) a material difference to the Recipient's eligibility for the Grant or the conditions on which it is appropriate to award the Grant;
8. There is a finding of State Aid non-compliance by the European Commission or a Court or other agency of competent jurisdiction which leads to the Recipient being ordered to repay the Grant or any part of it;
9. The Recipient becomes insolvent or goes into liquidation whether voluntary or otherwise or shall have a receiver or administrator appointed by the Court, any debenture holder or any other party;
10. The Recipient is convicted of a criminal offence relating to its business or profession;
11. The Recipient ceases or threatens to cease to carry on its business, or ceases to retain its principal operations within the Liverpool City Region; or
12. There is a risk or a genuine belief that there is a risk that reputational damage to the Funder will occur as a result of this Agreement continuing.