

DATED

2018



BETWEEN

THE CORNWALL COUNCIL

Acting as the Accountable Body for the Cornwall and Isles of Scilly LEP

and

<< **Recipient** >>

FUNDING AGREEMENT

for << **Project** >>

Legal Services
Cornwall Council
New County Hall
Treyew Road
Truro
TR1 3AY
Ref: SBH/53989

THIS AGREEMENT is made the

day of

20xx

BETWEEN:

- (1) **THE CORNWALL COUNCIL acting as the accountable body for the Cornwall and Isles of Scilly LEP** of New County Hall, Treyew Road, Truro, Cornwall TR1 3AY (**CIOS LEP**); and
- (2) << >> (the **Recipient**)

each a '**Party**' and together the '**Parties**'.

RECITALS

- (A) The Cornwall Council acts as the accountable body for the Cornwall and Isles of Scilly LEP and enters into this Agreement for the purpose of administering funds for and on behalf of the Cornwall and Isles of Scilly LEP.
- (B) The Recipient is intending to deliver the Project at an estimated total cost of £<< >>.
- (C) The sum of £<< >> has been allocated for the Project from the Funding Bodies.
- (D) CIOS LEP has identified the Project as a suitable project to be funded from Cornwall and Isles of Scilly Local Growth Fund allocation.
- (E) CIOS LEP and the Recipient have entered into the Agreement to record the arrangements agreed between CIOS LEP and the Recipient for the provision of the funding for the Project to complete the Works.
- (F) For the avoidance of doubt, the provision of funding will be used as match for the Works only and not for the wider Project.

1. Definitions and Interpretation

- 1.1 The following words and expressions have the following meaning unless inconsistent with the context.

Account means the bank account as specified by the Recipient as set out in Schedule 4;

Agreement means this agreement and any Schedules or Appendices attached hereto;

Application means the Recipient's Growth Deal application and supporting documentation attached as Appendix A;

Claim Form means the claim form to be completed by the Recipient in the format provided by the CIO LEP;

Confidential Information means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property and know-how of either Party and all Personal Data and Sensitive Personal Data within the meaning of the DPA. Confidential Information shall not include information which:

(i) was public knowledge at the time of disclosure (otherwise than by breach of clause 18 (Confidential Information; Disclosure of Information and Freedom of Information));

(ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

(iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or

(iv) is independently developed without access to the Confidential Information;

Data Protection Legislation: (i) the GDPR and any applicable national implementing laws as amended from time to time; (ii) the DPA 2018 (subject to Royal Assent) to the extent that it relates to processing of personal data and privacy; (iii) all applicable law about the processing of personal data and privacy;

Eligible Expenditure means expenditure related to the Works and approved by the CIO LEP;

Event of Default means an event or circumstance as defined by Clause 11;

Facility means the <<>>;

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Authority or relevant government department in relation to such legislation and the Environmental Information

Regulations 2004;

- Fixed Asset** means the Facility and any asset which consists of land and/or buildings, plant, machinery or other thing that is or is to be fixed to any land and which is to be acquired, developed, enhanced, constructed and/or installed as part of the Project;
- Funding** means <<>> payable by CIOS LEP to the Recipient as part payment for the Works the terms and conditions of receipt of which are set out in this Agreement;
- Funding Bodies** means <<>> and others providing funding for the Project;
- Growth Deal** The Cornwall and Isles of Scilly LEP Local Growth Fund allocation from the Ministry of Housing, Communities and Local Government (MHCLG)
- Indirect Losses** means loss of profits, loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis;
- Key Milestone Dates** means the dates set out in Schedule 1;
- Intellectual Property** means patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), semiconductor topography rights, image rights, rights in personality and similar rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.;
- Losses** means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, excluding Indirect Losses;

Material Breach means a breach of this Agreement which is not minimal or trivial in its consequences as further set out in clause 11;

Outcomes and Outputs means the outcomes and outputs set out in Schedule 2;

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

Personal Data means data which relates to a living individual who can be identified from that data, or from that data and other information which are in the possession of or are likely to come into the possession of either Party. They include, without limitation, expressions of opinion or intentions in respect of such a living individual;

Project means <<>> as set out in the Application;

Project Board means the Recipient's project board which oversees and manages the delivery of the Project;

Sensitive Personal Data means Personal Data consisting of information as to the racial or ethnic origin, the political beliefs, religious or similar beliefs, trade union membership, details of physical or mental health, sexual life and alleged commissions of crimes or criminal record of the data subject;

Total Project Cost means the total cost to the Recipient of delivering the Project.

Working Day means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday in England.

Works means the <<>> as set out in the Application.

1.2 This Agreement includes any variations hereto made from time to time and any agreement expressed to be supplemental hereto.

1.3 Unless otherwise specified a reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under it and all orders, notices, codes of practice and guidance made under it.

1.4 A reference to laws in general is to all local, national and directly applicable supra-national laws in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them.

- 1.5 A "person" includes a corporate or unincorporated body.
- 1.6 The singular includes the plural and neuter and vice versa and any gender includes any other gender.
- 1.7 Clause, Schedule and Paragraph headings do not affect the interpretation of this Agreement.
- 1.8 Reference to any statute, enactment, regulation, code, official guidance or other similar instruments shall be 'construed as reference to the statute, enactment, regulation, code, official guidance or other instrument as amended or replaced from time to time by any subsequent enactment, modification, order, regulation, code, official guidance or instrument.

2. NOT USED

3. PAYMENT OF THE FUNDING

- 3.1 Subject to the provisions of this Agreement the maximum amount of Funding which will be provided by CIOS LEP to the Recipient for the Works will be <<>>.
- 3.2 For the avoidance of doubt, the Funding will be used as match to specifically support the development and the outcomes/outputs of the Works only based on the intervention rates in Schedule 3
- 3.2 The availability of the Funding is at all times subject to the Recipient's compliance with the terms of this Agreement and any rules, regulations or restrictions of any other relevant regulatory authority or grant funds.
- 3.3 The amount of Funding shall not be increased in the event of any overspend by the Recipient in its completion and delivery of the Works.
- 3.4 Any part payment of the Funding under this Agreement is without prejudice to the CIOS LEP's rights to refuse to pay any further part of the Funding or to exercise its rights to require repayment in accordance with the provisions of this Agreement of the whole or any part of the Funding previously paid to the Recipient.
- 3.5 Subject to the provisions of this Agreement CIOS LEP shall pay the instalments of Funding into the Account details of which are to be supplied to CIOS LEP by the Recipient in accordance with the terms of the Payment Schedule.
- 3.6 If at any time CIOS LEP has paid more than it is liable to pay under any provision of this Agreement, the Recipient shall forthwith on demand in writing pay to CIOS LEP the amount stipulated by CIOS LEP as having been overpaid.
- 3.7 The obligations of the CIOS LEP to pay the Funding do not extend to payment to the Recipient of any amounts in respect of VAT in addition to the Funding and the Funding payments are made inclusive of VAT, if relevant.
- 3.8 Time shall not be of the essence in respect of the payment of the Funding.

4. AVAILABILITY OF THE FUNDING

- 4.1 Subject to clause 2, the Funding will be made available to the Recipient once the CIOS LEP is in receipt of a completed Claim Form and satisfactory evidence of spend and defrayal. The Funding will only be paid in respect of Eligible Expenditure and will comprise of all bona fide costs as evidenced by defrayal. The Recipient shall promptly provide any other documentation reasonably requested by the CIOS LEP from time to time in a form and content reasonably satisfactory to it.
- 4.2 Claims for Funding should be submitted by the Recipient to the CIOS LEP on a quarterly basis. Claims shall include receipted invoices including full defrayal evidence (such as BACS Listing and Bank Statements), certified payments by the Project Quantity Surveyor (QS) and any supporting accounting documents which clearly demonstrates claim against Eligible Expenditure.
- 4.3 The Recipient shall undertake its own independent assessment of the compatibility of its Application with State Aid Law and shall maintain appropriate records of compliance with State Aid Law. The Recipient agrees to take all reasonable steps to respond to any investigation instigated by the European Commission relating to the Application.
- 4.4 The Recipient acknowledges that a finding of State Aid non-compliance in respect of the Application and/or this Agreement by the European Commission or a Court of competent jurisdiction may lead to the Recipient being ordered to repay any monies received with interest in accordance with the European Commission's rates.
- 4.5 The Funding will be paid on a quarterly basis and will be paid in respect of Eligible Expenditure only. Prior to submitting quarterly claims to the CIOS LEP, the Recipient is to ensure that all claims are accompanied by receipted invoices or accounting documents of equivalent verifiable value. All claims must be countersigned by the CIOS LEP's Accountable Body representative certifying that the claim relates solely to project Eligible Expenditure.
- 4.6 Interim claims may be made if a compelling case is made to support project cash flow, but will need to be communicated at least ten (10) Working Days in advance of any interim claim being submitted. CIOS LEP has the right to refuse interim claims without explanation.
- 4.7 The Funding will be paid direct to the Recipient's bank account details of which are set out in Schedule 4 (usually via BACS), subject to the terms of this Agreement being met. CIOS LEP will endeavour to pay the Funding within thirty (30) Working Days of receiving your accurately completed Claim Form evidencing Eligible Expenditure by way of certified receipted invoices to the full satisfaction of CIOS LEP.
- 4.8 CIOS LEP may delay payment of the Funding, following receipt of the Claim Form if it is incomplete or inaccurate. In these circumstances, CIOS LEP will contact the Recipient within ten (10) Working Days setting out what further information it requires and the time period within which that information must be provided.

- 4.9 If spend on the Works is more than planned, the Funding will not be increased beyond the sum approved.
- 4.10 A Progress Report and supporting documentation (if appropriate) in respect of the Works must be submitted with the Claim Form, and at such other times as CIOS LEP may notify to the Recipient.
- 4.11 The Progress Report shall include all relevant information to the Works and its progress against the information presented in the Application approved by CIOS LEP and include inter alia the following:
- i. whether the Works are ahead or behind programme;
 - ii. the measures to be taken if the Works are behind programme;
 - iii. the actual cash flow of the Works measured against the forecast;
 - iv. whether there is any future event of which the Recipient may be aware that may influence the completion of the Works as forecast and the risk management actions being applied to rectify the situation;
 - v. track progress on achieving the agreed Outputs identified in Schedule 2
- 4.11.1 Funding will not be released unless the Recipient has provided the following documents to the CIOS LEP:
- 4.11.1 a certified true copy of the resolution of the Recipient's Board or delegated individual authorising:
- (a) acceptance of the Funding on the terms and conditions set out in this Agreement; and
 - (b) the name or names of the representative who is/are to operate the Funding and liaise with the CIOS LEP in respect of the Works on behalf of the Recipient in accordance with clause 5.1.9 below;
- 4.11.2 where appropriate a certified true copy of the resolution of the Recipient's Board or other decision making body of the Recipient to enter into this Agreement and any other documentation reasonably required by the CIOS LEP to evidence that the Recipient has the necessary power to enter into this Agreement.
- 4.12 The availability of the Funding is at all times subject to the Recipient's compliance with the terms of this Agreement and all or any reasonable rules and regulations of the CIOS LEP and the Funding Bodies in place from time to time, and with all and any rules, regulations or restrictions from time to time in force which have been subsequently communicated to the Recipient or any rules, regulations or restrictions of any other relevant regulatory authority or grant funds.
- 4.13 The Recipient shall use the Funding only in respect of Eligible Expenditure incurred in delivering the Works and in accordance with the terms and conditions set out in this

Agreement. The Funding shall not be used for any other purpose without the prior written agreement of the CIOS LEP.

- 4.14 The Recipient shall not make any significant changes to the Works without CIOS LEP's prior written agreement.
- 4.15 The CIOS LEP may terminate this Agreement by giving not less than three (3) months' notice in writing to the Recipient in the event that for whatever reason the provision of the Funding ceases or there is a material adverse change in the amount or nature of the Funding.

5. THE RECIPIENT'S OBLIGATIONS

- 5.1 In consideration of the payment of the Funding the Recipient shall:
 - 5.1.1 deliver the Works in accordance with the terms of this Agreement and the Funding Bodies;
 - 5.1.2 deliver the Works in accordance with the timescales set out in the Key Milestone Dates in Schedule 1;
 - 5.1.3 ensure that all legal and regulatory requirements are complied with in the delivery of the Works;
 - 5.1.4 comply with all statutory registration requirements and exercise proper skill and diligence in the setting up and delivery of the Works;
 - 5.1.5 use the Funding only in respect of Eligible Expenditure incurred in connection with the Works in accordance with the terms of this Agreement and for no other purpose;
 - 5.1.6 at all times during the period of this Agreement and for a minimum period of six (6) years thereafter:
 - i) keep secure and give to the CIOS LEP or make available for inspection at any reasonable hour by the CIOS LEP, the internal auditors of the Cornwall Council, the Commissioner for Local Administration (Ombudsman), the District Auditor, or any of their representatives:
 - a. all original and copy records, documents, information, statements and papers which may be acquired or produced by the Recipient or by any sub-contractor in the performance of the Project;
 - b. such information and documentation as the CIOS LEP may reasonably require in connection with the Project
 - ii) ensure the maintenance of a clear and unambiguous audit trail at all times in accordance with good practice
 - iii) meet any request by the CIOS LEP for particulars about the Eligible Expenditure.

- 5.1.7 ensure that it appoints a nominated representative whose details will be notified in writing to CIOS LEP within ten (10) Working Days of completion of the Agreement who will act as its representative and who will be responsible for ensuring the proper control and management of the Works and the supervision and submission of all information required by the Recipient. If the representative changes from time to time the Recipient shall notify CIOS LEP in writing within ten (10) Working Days of such replacement;
- 5.1.8 ensure that the representative of the Recipient will liaise with or meet with the CIOS LEP on a regular basis at such times as the CIOS LEP shall specify (acting reasonably);
- 5.1.9 provide quarterly highlight reports on progress of the Project including reporting on the overall funding package including third parties or fundraising via private donations;
- 5.1.10 invite a representative of the CIOS LEP to the Project Board meetings and to be included in the distribution list of the Project Board documentation;
- 5.1.11 ensure that in entering into any legally enforceable agreement with any sub-contractors or other party carrying out the Works or part of the Works that the aforementioned organisations are obliged to permit CIOS LEP representatives to examine the economy, efficiency and effectiveness of expenditure of the Funding;
- 5.1.12 comply with any current or known European procurement law as required in connection with the Works; and
- 5.1.13 immediately notify CIOS LEP if the Recipient is in breach of the terms of any of the Funding Bodies' funding conditions.

5.2 In connection with the Works the Recipient shall provide (at reasonable times and on reasonable notice) CIOS LEP (and such third parties as are notified by CIOS LEP) with access to the Works.

6. OBLIGATIONS OF CIOS LEP

- 6.1 In consideration of the Works to be delivered by the Recipient under this Agreement and the terms and conditions of this Agreement being complied with by the Recipient, CIOS LEP agrees to make available the Funding in accordance with Clause 4 subject to the terms and conditions set out in this Agreement.
- 6.2 CIOS LEP shall appoint a nominated representative whose details will be notified to the Recipient within ten (10) Working Days of completion of the Agreement. If the representative changes from time to time CIOS LEP shall notify the Recipient in writing within ten (10) Working Days of such replacement.

7. ASSIGNMENT AND VARIATION

- 7.1 This Agreement is personal to the Parties and may not be transferred or assigned in whole or in part by either Party without the other's prior written consent such consent not to be unreasonably withheld or delayed.
- 7.2 Any variation of this Agreement shall be binding only if it is recorded in a document signed by or on behalf of the Parties to this Agreement or by exchange of correspondence between the said Parties.

8. ACKNOWLEDGMENT AND PUBLICITY

- 8.1 The Recipient shall acknowledge the Funding in its annual report and accounts, including an acknowledgement of CIOS LEP as the source of the Funding.
- 8.2 The Recipient shall acknowledge the support of CIOS LEP in any materials that refer to the Project and in any written or spoken public presentations about the Project. Such acknowledgements (where appropriate or as requested by CIOS LEP) shall include the name and logo of CIOS LEP (or any future name or logo adopted by CIOS LEP) using the templates provided by CIOS LEP from time to time and will adhere to the Local Growth Fund publicity requirements.
- 8.3 In using the name and logo of CIOS LEP, the Recipient shall comply with all reasonable branding guidelines issued by CIOS LEP from time to time.
- 8.4 The Recipient agrees to participate in and co-operate with reasonable promotional activities relating to the Project that may be instigated and/or organised by CIOS LEP and/or Funding Bodies.
- 8.5 The Recipient shall comply with all reasonable requests from CIOS LEP to facilitate visits, provide reports, statistics, photographs and case studies that will assist the CIOS LEP in their promotional activities relating to the Project.
- 8.6 The Recipient shall liaise with the CIOS LEP's media consultant (DCA Public Relations) when preparing any press or media announcements relating to the Project and seek prior approval from the CIOS LEP.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 All Background Intellectual Property is and shall remain the exclusive property of the party owning it (or, where applicable, the third party from whom the right to use the Background Intellectual Property has derived).
- 9.2 Foreground Intellectual Property shall vest in and be owned absolutely by the party performing that element of the Works in respect of which it arises. To the extent that either

party sub-contracts performance of any part of the Works, that party shall ensure that any Foreground Intellectual Property arising from the work of its sub-contractor shall be assigned to it absolutely.

9.3 The Recipient grants to CIOS LEP an irrevocable, royalty-free, worldwide licence under the Recipient's rights in the Recipient's Background Intellectual Property and Foreground Intellectual Property to use, distribute and exploit such intellectual property in connection with projects which are of a similar nature to the Project and to sub-license any third party to do the same.

9.4 CIOS LEP grants to the Recipient an irrevocable, royalty-free, worldwide licence under the rights of CIOS LEP in the Background Intellectual Property and Foreground Intellectual Property of CIOS LEP to use, distribute and exploit such intellectual property in connection with projects which are of a similar nature to the Project and to sub-license any third party to do the same.

10. EVENT OF DEFAULT

10.1 An Event of Default is the occurrence of any of the following:

10.1.1 if any of the information provided in any Funding claims or subsequent correspondence is found to be materially incorrect or incomplete;

10.1.2 the Recipient uses the Funding for purposes other than those for which it has been provided;

10.1.3 if the Recipient is in breach of its obligations under this Agreement, provided that the Recipient shall have been given reasonable written notice of such breach and shall have been given the opportunity to remedy such breach if capable of remedy within a reasonable period of time (being not less than one month but no more than three months from the date of the written notice) but shall have failed to do so;

10.1.4 if following a review of the Outcomes and Outputs and objectives in the reasonable opinion of CIOS LEP (which shall be final) the Works are failing to progress and/or meet its Outputs;

10.1.5 the Recipient is, in the reasonable opinion of CIOS LEP, delivering the Works in a negligent manner;

10.1.6 any employee or volunteer of the 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 CIOS LEP, bring or are likely to bring the name or reputation of CIOS LEP into disrepute;

- 10.1.7 the Recipient ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- 10.1.8 the Recipient becomes insolvent, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due;
- 10.1.9 if the Recipient shall have offered or given or agreed to give to any person (whether an employee of the CIOS LEP or otherwise) any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Agreement or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Recipient) or if in relation to any contract with the CIOS LEP or any person employed by it or acting on its behalf shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972;

11. RIGHTS RESERVED BY CIOS LEP IN THE EVENT OF DEFAULT OR MATERIAL BREACH

- 11.1 Where CIOS LEP determines that an Event of Default or a Material Breach has occurred, the CIOS LEP may, by written notice to the Recipient take one or more of the following actions:
- 11.1.1 withhold or suspend payment of the Funding for such period as the CIOS LEP shall determine;
- 11.1.2 require the Recipient to repay to CIOS LEP the whole or any part of the Funding previously paid to the Recipient, in which case the liability to meet such a demand shall be enforceable as a contractual debt;
- 11.1.3 terminate this Agreement.
- 11.2 Any termination of this Agreement shall be without prejudice to any right of action or remedy of either Party hereto which may have accrued prior to the said termination.
- 11.3 Wherever under the Agreement any sum of money is recoverable from or payable by the Recipient (including any sum that the Recipient is liable to pay to CIOS LEP in respect of any breach of the Agreement), CIOS LEP may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Recipient under the Agreement or under any other agreement or contract with CIOS LEP.

- 11.4 The Recipient shall make any payments due to CIOS LEP without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 11.5 Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Project or compliance with this Agreement it will notify CIOS LEP as soon as possible so that, if possible, and without creating any legal obligation, CIOS LEP will have an opportunity to provide assistance in resolving the problem or to take action to protect CIOS LEP and the Funding.

12. CONFIDENTIALITY; DATA PROTECTION AND FREEDOM OF INFORMATION -

12.1 CONFIDENTIALITY

12.1.1 Except where otherwise provided for in this Agreement, Confidential Information is owned by the Party that discloses it (the 'Disclosing Party') and the Party that receives it (the 'Receiving Party') has no right to use it.

12.1.2 Subject to Clauses 12.1.3 and 12.1.4, the Receiving Party agrees:

- (a) to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Agreement;
- (b) not to disclose the Disclosing Party's Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
- (c) to maintain the confidentiality of the Disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.

12.1.3 The Receiving Party may disclose the Disclosing Party's Confidential Information:

- (a) in connection with any dispute resolution under Clause 16 (Dispute Resolution);
- (b) in connection with any litigation between the Parties;
- (c) to comply with the law;
- (d) to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in clause 12.1.2;
- (e) to comply with a regulatory bodies request.

12.1.4 The obligations in clause 12.1.1 and clause 12.1.2 will not apply to any Confidential Information which:

- (a) is in or comes into the public domain other than by breach of this Agreement;
- (b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or

(c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.

12.1.5 The obligations in clause 12.1 and clause 12.2 shall not apply where the Confidential Information is related to an item of business at a board meeting of the Council or of any committee, sub-committee or joint committee of the CIOS LEP or is related to an executive decision of CIOS LEP and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), CIOS LEP shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Recipient and where reasonably practicable shall consider any representations made by the Recipient.

12.2 DATA PROTECTION

12.2.1 The Parties acknowledge their respective duties under the Data Protection Legislation and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

12.2.2 To the extent that the Recipient is acting as a Data Processor on behalf of the CIOS LEP, the Recipient shall, in particular, but without limitation:

- (a) only process such Personal Data and/or Sensitive Personal Data as is necessary to perform its obligations under this Agreement, and only in accordance with any instruction given by CIOS LEP under this Agreement;
- (b) put in place appropriate technical and organisational measures against any unauthorised or unlawful processing of such Personal Data and/or Sensitive Personal Data, and against the accidental loss or destruction of or damage to such Personal Data and/or Sensitive Personal Data having regard to the specific requirements in this Agreement, the state of technical development and the level of harm that may be suffered by a Data Subject whose Personal Data and/or Sensitive Personal Data is affected by such unauthorised or unlawful processing or by its loss, damage or destruction;
- (c) take reasonable steps to ensure the reliability of staff who will have access to such Personal Data and/or Sensitive Personal Data, and ensure that such staff are properly trained in protecting Personal Data and Sensitive Data;
- (d) provide CIOS LEP with such information as CIOS LEP may reasonably require to satisfy itself that the Recipient is complying with its obligations under the Data Protection Legislation ;

- (e) promptly notify CIOS LEP of any requests for disclosure of or access to the Personal Data and/or Sensitive Personal Data;
- (f) promptly notify CIOS LEP of any breach of the security measures required to be put in place pursuant to this clause 12.2.2;
- (g) ensure it does not knowingly or negligently do or omit to do anything which places CIOS LEP in breach of the obligations of CIOS LEP under the Data Protection Legislation;
- (h) to the extent that any CIOS LEP data is held and/or processed by the Recipient, the Recipient shall supply the CIOS LEP data to CIOS LEP as requested by CIOS LEP;
- (i) ensure that it is registered under the Data Protection Legislation and the registration covers any processing required under this Agreement.

12.2.3 The Recipient and CIOS LEP shall ensure that Personal Data and Sensitive Personal Data is safeguarded at all times in accordance with the law.

12.3 FREEDOM OF INFORMATION AND TRANSPARENCY

12.3.1 The Parties acknowledge their respective duties under the FOIA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

12.3.2 If the Recipient is not a public authority, the Recipient acknowledges that CIOS LEP is subject to the requirements of the FOIA and will assist and co-operate with CIOS LEP to enable CIOS LEP to comply with its disclosure obligations under the FOIA. Accordingly the Recipient agrees:

- (a) that this Agreement and any other recorded information held by the Recipient on behalf of CIOS LEP for the purposes of this Agreement are subject to the obligations and commitments of CIOS LEP under the FOIA;
- (b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for CIOS LEP;
- (c) that if the Recipient receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by CIOS LEP) and will promptly (and in any event within 2 working days) transfer the request to CIOS LEP;
- (d) that CIOS LEP, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Recipient and this Agreement either without consulting with the Recipient, or following consultation with the Recipient and having taken its views into account; and

(e) to assist CIOS LEP in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by an authority within 5 working days of such request and without charge.

12.3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information.

12.3.4 Notwithstanding any other provision of this Agreement, the Recipient hereby consents to the publication of this Agreement in its entirety including from time to time agreed changes to this Agreement subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.

12.3.5 In preparing a copy of this Agreement for publication pursuant to clause 12.1.4 CIOS LEP may consult with the Recipient to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the absolute discretion of CIOS LEP.

12.3.6 The Recipient shall assist and co-operate with CIOS LEP to enable CIOS LEP to publish this Agreement.

12.3.7 In order to comply with the Government's policy on transparency in the areas of agreements and procurement CIOS LEP will be disclosing information on its website in relation to expenditure over £500 (five hundred pounds) in relation to this Agreement. The information will include the Recipient's name and the amount paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.

12.3.8 The Recipient shall comply with any requirements (including compliance with any appropriate information assurance scheme and the Computer Misuse Act 1990) in relation to its security policies, procedures and control of Confidential Information, Personal Data and Sensitive Personal Data.

12.3.9 The Recipient shall be responsible for any costs associated with compliance with the provisions of this clause 12.

12.4 The Recipient shall indemnify CIOS LEP and shall keep CIOS LEP indemnified against Losses and Indirect Losses suffered or incurred by CIOS LEP as a result of any breach of this clause 12.

12.5 The Parties acknowledge that damages may not be an adequate remedy for any breach of this clause 12, and in addition to any right to damages CIOS LEP shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause 12. This clause 12 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

13. INDEMNITY

- 13.1 The Recipient shall indemnify the CIOS LEP in respect of any liability or claim made against CIOS LEP by any third party which arises in anyway from the Recipient undertaking the Works.
- 13.2 The Recipient shall indemnify and keep CIOS LEP indemnified from and against all loss, damage, or liabilities suffered by CIOS LEP arising from the Recipient's breach of this Agreement including:
- 13.2.1 any act of neglect or default of the Recipient or its employees or agents;
- 13.2.2 any breach in respect of any matter arising from the delivery of the Project resulting in any successful claim by any third party.
- 13.3 The Recipient shall indemnify CIOS LEP in respect of any liability which arises as a result of any act or omission on the part of the Recipient with respect to any health and safety legislation or any other relevant legislation except to the extent that such liability arises through any act or omission of CIOS LEP or any of its employees, contractors or agents.
- 13.4 The Recipient agrees to indemnify CIOS LEP in respect of any liability whatsoever which arises as a result of the Recipients failure to provide evidence of the Outcomes and Outputs.

14. LIMITATION OF LIABILITY

CIOS LEP accepts no liability for any consequences, whether direct or indirect, that may arise from the delivery of the Works, the use of the Funding or from withdrawal of the Funding. The Recipient shall indemnify and hold harmless CIOS LEP, 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 Works, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties.

15. FORCE MAJEURE

Both Parties shall be released from their respective obligations in the event of any national emergency, war, prohibitive government regulations or in the case of cessation of funding to the CIOS LEP or for any other cause beyond the reasonable control of the Parties or either of them which renders the performance of this Agreement impossible whereupon all monies not used in the provision of the Works and paid in advance by CIOS LEP to the Recipient shall be returned to CIOS LEP.

16. DISPUTE RESOLUTION

In the event of a dispute between CIOS LEP and the Recipient arising in connection with the Agreement CIOS LEP and the Recipient shall use all reasonable endeavours to resolve the matter on an amicable basis. If CIOS LEP and the Recipient fail to resolve such disputes, the dispute shall be referred to the Chief Executive of CIOS LEP and the Chief Executive

Officer(or Senior Official)_ of the Recipient. The submission of either Party to this clause shall not limit their right to commence any proceedings in any court of competent jurisdiction in England.

17. SEVERANCE

If any term or provision in this Agreement shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this Agreement but the validity and enforcement of the remainder of this Agreement shall not be affected.

18. AGENCY AND JOINT VENTURE ARE EXCLUDED

Nothing contained in this Agreement shall be so construed as to constitute either Party to be the agent of the other nor shall this Agreement operate so as to create a legal partnership, company or joint venture of any kind between the Parties.

19. AUTHORITY

Each Party warrants and represents to the other that it has the full authority, power and capacity to enter into this Agreement, and that all necessary actions have been taken to enable it lawfully to enter into this Agreement.

20. ENTIRE AGREEMENT

Each party acknowledges that this Agreement and any Schedules and/or Appendices contain the whole Agreement between the Parties and supersedes any previous agreement between the Parties whether written or oral.

21. NOTICE

Any demand, notice, or other communication required to be given under this Agreement shall be sufficiently served if served personally on the addressee, or if sent by prepaid first class or recorded delivery post to the registered office or last known address of the Party to be served and if so sent shall, subject to proof to the contrary, be deemed to have been received by the addressee on the second business day after the date of posting or on successful transmission, as the case may be.

22. RIGHTS OF THIRD PARTIES

No person other than a Party may enforce the provisions of this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists or is available apart from the Act.

23. WAIVER

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

24. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by English law and the courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement.

IN WITNESS WHEREOF this Agreement has been executed by the Parties as a deed on the date first above written.

EXECUTED AS A DEED by
THE CORNWALL COUNCIL
whose Common Seal was hereunto affixed
in the presence of:

Authorised Officer:

EXECUTED AS A DEED by)
<<>>)
acting by two directors/a director and its secretary)

.....
Director

.....
Director/Secretary

Schedule 1

The Project

<<>>

Key Milestone Dates

Activity	Date
Start date	
Construction end date	
Spend end date	
Achievement of Outcomes and Outputs	

DRAFT

Schedule 2
Outcomes and Outputs

The Recipient is required to deliver the following Outcomes by <<>>:

<<>>
<<>>
<<>>

DRAFT

Schedule 3
Payment Schedule

<<>>

DRAFT

Schedule 4

Bank Account Details

Payments will be made to the following bank account:

Bank name: <<>>

Account number: <<>>

Account name: <<>>

Sort Code: <<>>

IBAN:

BIC/SWIFT:

DRAFT

DRAFT