

# Terms and conditions of Kent Lane Rental Fund

## 1. Definitions and interpretation

1.1 In these Terms and Conditions and any Special Conditions the following terms shall have the following meanings:

Commencement Date: the date upon which the Council receives the Recipient's acceptance of the Grant Award Offer;

Council: Kent County Council

Grant: the sum awarded to the Recipient under the Grant Award Offer;

Grant Application: the grant application submitted by the Recipient as referred to in the Grant Award Offer;

Grant Award: the legally binding agreement between the Council and the Recipient comprising of the Grant Application, the Grant Award Offer, the Recipient's acceptance, these Terms and Conditions and (if applicable) the Special Conditions;

Grant Award Offer: the offer of Grant award made by the Council to the Recipient;

Grant Period: the period for which the Grant is awarded starting on the Commencement Date and ending on the date specified in the Grant Award Offer;

Losses: claims, demands, actions, proceedings, costs, expenses, losses, damages and all other liabilities

Prohibited Act: means:

(a) offering, giving or agreeing to give to any servant of the Council any gift or consideration of any kind as an inducement or reward for: (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Grant Award or any other contract with the Council; or (ii) showing or not showing favour or disfavour to any person in relation to the Grant Award or any other contract with the Council;

(b) entering into the Grant Award or any other contract with the Council where a commission has been paid or has been agreed to be paid by the Recipient or on its behalf, or to its knowledge;

(c) committing any offence: (i) under the Bribery Act 2010; (ii) under legislation creating offences in respect of fraudulent acts; or (iii) at common law in respect of fraudulent acts in relation to the Grant Award or any other contract with the Council; or

(d) defrauding or attempting to defraud or conspiring to defraud the Council.

Purpose: the purpose for which the Grant has been awarded as stated in the Grant Award Offer;

Recipient: the company, organisation or individual(s) to whom the Grant is awarded;

Special Conditions: the special conditions (if any) applicable to the Grant as referred to in the Grant Award Letter.

1.2 References to singular shall be deemed to include the plural and vice versa and references in either gender shall be deemed to include the other and the neuter.

1.3 References to any provision of a statute or regulation shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.4 Headings are inserted for convenience only and shall not affect the interpretation or construction of these Terms and Conditions or any Special Conditions.

## 2. Payment of grant

2.1 Subject to the provisions of paragraph 2.2 and 10 the Council shall pay the Grant to the Recipient by payment(s) as stated in the Grant Award Offer following receipt of the Recipient's bank details subject to the necessary funds being available when payment is intended to be made. The Recipient agrees and accepts that payments of the Grant can only be made to the extent that the Council has available funds.

2.2 No Grant shall be paid unless and until the Council is satisfied that such payment will be used for proper expenditure in the delivery of the Purpose.

2.3 The amount of the Grant shall not be increased in the event of any overspend by the Recipient in its delivery of the Purpose.

2.4 In the event that the Recipient receives any payments made to it in error or any payments which do not qualify for payment within the terms of the Grant Award it shall promptly repay such sums to the Council.

2.5 The Grant sum is not subject to Value Added Tax (VAT) and no further payments will be made by the Council to cover any VAT costs not identified and included in the Grant Application.

### **3. Use of grant**

3.1 The Recipient shall use the Grant for the Purpose only and in accordance with these Terms and Conditions, any Special Conditions and the statements made by the Recipient in its Grant Application insofar as they are not inconsistent with these Terms and Conditions or any Special Conditions.

3.2 Where the Recipient intends to apply to a third party for other funding for the Purpose, it will notify the Council in advance of its intention to do so and where such funding is obtained, it will provide the Council with details of the amount and purpose of that funding. The Recipient agrees that it shall not apply for duplicate funding in respect of any part of the Purpose that the Council is funding under the Grant Award.

3.3 In the event that the Recipient does not spend the full amount of the Grant within the Grant Period the Recipient shall notify the Council and shall either repay the unexpended Grant to the Council or agree any course of action proposed by the Council to address the underspend.

3.4 The Recipient shall not make any significant changes to the Purpose without having first obtained the Council's written consent.

### **4. Accounts and records**

4.1 The Grant shall be shown in the Recipient's accounts as a restricted fund and shall not be included under general funds.

4.2 The Recipient shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Grant monies received by it including all invoices and receipts relating to the expenditure of the Grant for a period of at least six (6) years following receipt of any Grant monies to which they relate and shall permit the Council upon request to review and take copies of such accounts and records.

4.3 The Recipient shall provide the Council if requested with a copy of its annual accounts (being either its audited accounts or if it does not have audited accounts independently examined accounts) within six months (or such lesser period as the Council may reasonably require) of the end of the relevant financial year in respect of each year in which the Grant is paid.

### **5. Monitoring and reporting**

5.1 The Recipient shall closely monitor the delivery and success of the Purpose throughout the Grant Period to ensure that the aims and objectives of the Purpose are being met and that the Grant Award is being adhered to.

5.2 The Recipient shall provide the Council with financial reports and operational reports on its use of the Grant and delivery of the Purpose at such times during the Grant Period as stated in the Grant Award Offer and in such format as the Council may reasonably require.

5.3 The Recipient shall provide the Council with such further information, explanations and documents as the Council may reasonably require in order for it to establish that the Grant has been used properly in accordance with the Grant Award.

5.4 The Recipient shall permit any person authorised by the Council such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Recipient's fulfilment of the conditions of the Grant Award.

5.5 The Recipient shall provide the Council with a final report on expiry of the Grant Period which shall confirm whether the Purpose has been successfully and properly completed.

### **6. Undertakings and warranties**

The Recipient warrants, undertakes and agrees that:

6.1 it has all necessary resources and expertise to deliver the Purpose (assuming due receipt of the Grant);

6.2 it has not committed, nor shall it commit, any Prohibited Act;

6.3 it shall at all times comply with all the requirements of any Act of Parliament, statutory instrument or order or any other regulation having the force of law or bye-law, all regulatory requirements, applicable codes of practice and other similar codes or recommendations from time to time in force, which are or may become applicable to it, the Grant or the Purpose;

6.4 it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 if applicable and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Purpose;

6.5 it shall exercise reasonable care, skill and diligence in all matters relating to the Grant and the delivery of the Purpose;

6.6 it shall carry out its own risk assessment in relation to the Purpose and provide a copy to the Council upon request;

6.7 it shall ensure that at all times it complies with the Equality Act 2010 if applicable and shall ensure that it does not discriminate against any person or persons on the basis of race, gender, religion, disability, sexual orientation, age or otherwise;

6.8 it shall take all reasonable steps to secure the observance of clause 6.7 by all servants, employees and volunteers;

6.9 it shall comply with the provisions of the Human Rights Act 1998 in connection with the Grant Award and the performance of the Purpose as if the Recipient were a public body (as defined in the Human Rights Act 1998);

6.10 it shall comply with any notification requirements under the Data Protection Act 1998 (DPA) and will duly observe all its obligations under the DPA which arise in connection with the Grant Award or the Purpose;

6.11 it has and shall keep in place adequate procedures for dealing with any conflicts of interest;

6.12 it has and shall keep in place systems to deal with the prevention of fraud and administrative malfunction;

6.13 all financial and other information concerning the Recipient and the Purpose which has been disclosed to the Council is to the best of its knowledge and belief, true and accurate and may be relied upon by the Council;

6.14 it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Grant;

6.15 it is not aware of anything in its own affairs, which it has not disclosed to the Council, which might reasonably have influenced the decision of the Council to make the Grant on the terms contained in the Grant Award;

6.16 since the date of its last accounts there has been no material change in its financial position or prospects; and

6.17 it will inform the Council immediately if at any time during the Grant Period it is no longer able to provide the above warranties and undertakings.

## **7. Safeguarding**

7.1 If the Purpose or the project, service or activity to which it relates involves or may reasonably involve working or contact with children, young people or vulnerable adults the Recipient shall comply with the Safeguarding of Vulnerable Groups Act 2006 in respect of all staff, volunteers and other persons engaged in the Purpose or the project, service or activity to which it relates.

7.2 The Recipient shall ensure that it has appropriate written safeguarding adults and children policies and shall ensure that all staff, volunteers and other individuals engaged in the provision of the Purpose or the project, service or activity to which it relates are subject to a valid appropriate disclosure check undertaken through the Disclosure and Barring Service ("DBS") including a check against the adults' barred list or the children's barred list, as appropriate, where there is a legal requirement to do so.

## **8. Council information**

8.1 The Recipient agrees that in relation to any information provided by the Council relating to the Grant Award it shall:

(a) not without the prior consent of the Council divulge such information to any person who is not engaged in the performance of the Purpose;

(b) not use or misuse any such information in any way that causes detriment to the Council or brings the Council into disrepute; and

(c) it shall use such information only for the Purpose.

## **9. Freedom of Information**

9.1 The Recipient acknowledges that the Council 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 Council (at the Recipient's expense) to enable the Council to comply with these information disclosure requirements.

9.2 The Recipient shall ensure that all information produced in the Grant Period and relating to the Grant Award is retained for disclosure and shall provide the Council upon request with copies of all information in its possession or power.

## **10. Withholding, suspending and repayment of grant**

Without prejudice to the Council's other rights and remedies, the Council may at its discretion withhold or suspend payment of the Grant and/or require repayment of all or part of the Grant if:

10.1 the Recipient uses the Grant for purposes other than those for which it has been awarded;

10.2 the Council considers that the Recipient has not made satisfactory progress with the delivery or performance of the Purpose or is delivering the Purpose in a negligent manner;

10.3 the Recipient obtains duplicate funding from a third party for the Purpose;

10.4 the Recipient obtains funding from a third party which, in the reasonable opinion of the Council, undertakes activities that are likely to bring the reputation of the Purpose or the Council into disrepute;

10.5 the Recipient provides the Council with any materially misleading or inaccurate information;

10.6 the Recipient commits or committed a Prohibited Act;

10.7 any member of the governing body, employee or volunteer of the Recipient has (i) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Purpose or (ii) taken any actions which, in the reasonable opinion of the Council, bring or are likely to bring the Council's name or reputation into disrepute;

10.8 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);

10.9 the Recipient becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due; or

10.10 the Recipient fails to comply with any of the terms and conditions set out in the Grant Award and fails to rectify any such failure capable of remedy within 30 days of receiving written notice from the Council detailing the failure.

## **11. Insurance**

11.1 The Recipient shall effect and maintain with a reputable insurance company policies in respect of all risks which may be incurred by the Recipient, arising in connection with the Grant Award or out of the Recipient's performance of the Purpose or the project, service or activity to which it relates including the risk of death or personal injury, loss of or damage to property or any other loss ("the Required Insurances").

11.2 The Required Insurances referred to above include (but are not limited to) the policies for the minimum amounts of cover stated to be held by the Recipient in the Grant Application or such other insurances or levels of cover as specified in the Special Conditions.

11.3 The Recipient shall (on request) supply to the Council a copy of such insurance policies and evidence that the relevant premiums have been paid.

## **12. Indemnity**

The Recipient is responsible for and must indemnify the Council, its employees and agents against any Losses in respect of the death of or injury to any person, loss of or damage to any property (including property belonging to the Council or for which it is responsible) and in respect of any other Losses which may arise out of or in the course of or by reason of any breach of contract, tort, breach of statutory duty, misrepresentation, misstatement, act, omission or default of the Recipient, its employees, agents, volunteers or contractors in the performance, non-performance or part-performance of the activities related to the Purpose.

## **13. Limitation on liability**

The Council accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient delivering or performing the Purpose, the use of the Grant or from withdrawal of the Grant. The Recipient shall indemnify and hold harmless the Council, its employees, agents, officers and contractors with respect to all Losses arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the Purpose, the non-fulfilment of obligations of the Recipient under the Grant Award or its obligations to third parties.

## **14. Publicity**

14.1 The Recipient shall use all reasonable endeavours to ensure that the public is aware that the Purpose is supported by the Council.

14.2 The Recipient shall include the use of the Kent County Council logo on publicity material followed by the words "SUPPORTED BY KENT LANE RENTAL FUND" and shall do so in accordance with the appropriate section of the Council's Corporate Identity Logos and Branding guidelines which are on the website <https://shareweb.kent.gov.uk/Documents/business/business-support-centre/branding-guidelines.pdf>. For this purpose only the Council grants to the Recipient a non-assignable non-exclusive licence to use the Council's logo.

## 15. Termination

The Council may terminate the Grant Award on giving notice to the Recipient should the Recipient be in breach of the Grant Award or the Council is required to do so by financial restraints or for any other reason. Termination of the Grant Award will not prejudice any requirement to repay to the Council unexpended Grant or any right or remedy which has already accrued or subsequently accrues to the Council.

## 16. Intellectual property

The Council and the Grant Recipient agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either the Council or the Grant Recipient before the Commencement Date or developed by either party during the Grant Period, shall remain the property of that party.

## 17. Change of Recipient

If the Recipient leaves their position with, or move departments within, their organisation or circumstances mean they cannot continue with the project they must give the Council 2 weeks' notice; unless extenuating circumstances apply, in which case the Recipient must inform the Council as soon as reasonably possible. The Council will then arrange a new agreement to be signed by the Recipient's successor.

## 18. General

16.1 The Council in line with the Government's on-going drive to open up activities of the public sector to greater scrutiny has prepared its transparency agenda and the Recipient hereby agrees that nothing in the Grant Award shall prevent the Council from publishing any payments made by the Council to the Recipient under the terms of the Grant Award.

16.2 The Recipient may not, without the prior written consent of the Council, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of the Grant Award or, except as contemplated as part of the Purpose, transfer or pay to any person any part of the Grant.

16.3 Where the Recipient is not a company nor an incorporated entity with a distinct legal personality of its own, the individuals who comprise the Recipient shall be jointly and severally liable for the Recipient's obligations and liabilities arising under the Grant Award.

16.4 The Grant Award shall not create any partnership or joint venture between the Council 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.

16.5 No variations, waivers or additions to the Grant Award may be made without the written consent of the Council and the Recipient.

16.6 All notices and other communications in relation to the Grant Award shall be in writing.

16.7 No failure or delay by the Council or the Recipient to exercise any right or remedy under the Grant Award shall be construed as a waiver of any other right or remedy.

16.8 The Grant Award contains the entire agreement and understanding between the Council and the Recipient in relation to the Grant.

16.9 The Recipient shall not hold itself out or do anything to imply that it is an agent of the Council in performance of any part of the Grant Award or the Purpose.

16.10 The Grant Award does not and is not intended to confer any contractual benefit on any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

16.11 The Grant Award is made in England and according to English Law and shall be subject to the exclusive jurisdiction of the English Courts to which both the Recipient and the Council hereby submit.