

DATED



(1) The Nottinghamshire County Council

and

(2) []

SINGLE PROGRAMME
GRANT AGREEMENT

Project Title:
Project No.:

The Nottinghamshire County Council
Legal Services
Centenary House
1 Wilford Lane
West Bridgford
NG2 7QZ

THIS GRANT AGREEMENT dated.....XXXXXXXXXXXXXXXXXXXXXXXXXXXX
is made between:

- (1) The Nottinghamshire County Council of County Hall, West Bridgford, NG2 7QP (“the Council”) and
- (2) [XXXXXX] of [XXXXXXXX] (“the Grantee”)

(together the “Parties”)

BACKGROUND

- a) The Council has entered into an agreement with emda in relation to the administration of the Single Programme Funding within Nottinghamshire.
- b) In exercise of its statutory powers, the Council has agreed to make the Grant available to the Grantee for the purpose of financially assisting the Grantee to pursue the Project.
- c) The purpose of this Agreement is to set out the arrangements for the payment of the Grant by the Council and the conditions to be attached to the Grant.

(i) DEFINITIONS

- 1.1 For the purpose of this Agreement except where the context otherwise requires:

“Agreement”	this agreement and any schedules or appendices attached hereto
“Application for Grant”	the Grantee’s application for Grant
“Approval” and “Approved”	means the written approval of the Council.
“Authorised Officer”	an officer of the Council notified to the Grantee in writing from time to time.
“Claw-back Period”	the period of xxxxx (x) years from the date of this Agreement
“Commencement Date”	The [xxxx]/The date of this Agreement.
“Community Institution”	Commission of the European Communities (European Commission), European Parliament, Council of Ministers, European Court of Justice, European Investment Bank, Court of Auditors, Economic and Social Committee, Committee of the Regions.
“Condition”	a condition of this Agreement.
“Confidential Information”	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 which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and commercially sensitive

information in accordance with the Freedom of Information Act 2000 but shall not include Excluded Information.

“EMDA”

The East Midlands Development Agency

“Encumbrance”

any mortgage, charge, pledge, lien or other encumbrance over a part of or all of the Project.

“Excluded Information”

(ii) any disclosure of generic and anonymised information required for the purpose of monitoring under this Agreement in accordance with the Law;

(iii) any disclosure of information that is reasonably required by either party in order to perform its obligations under this Agreement;

(iv) any matter which a party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Agreement;

(v) any disclosure to enable termination of the Agreement to be effected;

(vi) any disclosure which is required by law, including by any order of a court of competent jurisdiction or any governmental or regulatory body having the force of law;

(vii) any disclosure which is required in order to enable either party to comply with the requirements of the Freedom of Information Act 2000 and any Code of Practice made pursuant to the Freedom of Information Act 2000, provided always that if the other party considers that any information required to be provided can be regarded as a ‘trade secret’, the other party shall ensure that any such relevant information and claimed exception is clearly identified as such.

“Financial Year”

shall mean any 12 month period beginning on 1st April and ending on 31st March.

“Funding Terms and Conditions”

the terms and conditions supplied by emda to the Council in respect of the Single Programme Funding

“Grant”

the grant in the maximum amount payable to the Grantee by the Council under the Agreement, in the proportions and on the dates as set out in Schedule 2 and the Project Time

	Plan. Such Grant being made from the Single Programme Funding pursuant to the attached schedules contained within this Agreement.
“Grant Claim” and “Monitoring Form”	means the form required by the Council for completion prior to any payment made by the Council.
“Grantee Representative”	an authorised representative of the Grantee notified to the Council in writing from time to time
“Insolvent”	if the Grantee is unable to pay debts as they fall due, or is deemed under Applicable Law to be so, or that it has an excess of liabilities over assets (taking into account contingent and prospective liabilities) and/or the “winding up” of a person including, where such person is or comprises a person other than a company (as defined in the Companies Act 1985), any corresponding process applicable to that person.
“Intellectual Property Rights”	patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
“KPIs”	The key performance indicators the Grantee has to deliver in relation to the Project as further detailed in Schedule 3
“Law”	means any Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Grantee is bound to comply.
“Month”	a calendar month.
“Party”	a party to this Agreement and “Parties” shall be construed accordingly.
“Project”	the project described in Schedule 1 Part A and anything necessary to carry out the Project and the Project Purpose.
“Project Purpose”	the purpose, aims and objectives of the Project as further detailed in Schedule 1 Part B
“Project Time Plan”	The timetable by which the Project has to be

“Quality Standards”	provided and completed as further detailed in Schedule 5. those standards applicable to the Project and/or expected of a person having the resource and experience of the Grantee.
“Single Programme Funding” “Term”	funding from the Council or <i>emda</i> . The period of time from the Commencement Date to xxxxxxx .

1.2 As used in this Agreement:

- 1.2.1** the masculine includes the feminine and the neuter; and
 - 1.2.2** the singular includes the plural and vice versa.
- 1.3** A reference to any Applicable Law, Law, statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 1.4** References to parties and other persons include their successors and permitted assigns, except where the context requires otherwise.
- 1.5** References to a “Clause” or “Schedule” or “Appendix” are references to a clause of, or a schedule to, this Agreement unless otherwise provided. Clause headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 1.6** References to this or any other agreement or document or statute are references to them in force for the time being and as amended, varied, supplemented, consolidated or re-enacted from time to time and include any schedules or annexes to such agreement or document and, in the case of statutes, any delegated legislation.
- 1.7** Where there are two or more persons comprised in the “Grantee” then those persons are jointly and severally responsible and liable for all obligations expressed to be assumed by the Grantee in this agreement, including for any repayment of Grant or other payment obligation;
- 1.8** In this agreement, “including” shall be construed so as not to limit the generality of any words or expressions in connection with which it is used.
- 1.9** If any provision of this Agreement shall be prohibited or adjudged by a court to be unlawful, void or unenforceable, such provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect the validity or enforceability of the remaining provisions of this Agreement.

2. CONDITIONS OF GRANT

The Council will make the Grant to the Grantee on condition that the Grantee enters into an Encumbrance (if applicable) in a form acceptable to the Council duly executed by the Grantee under which the freehold land and buildings comprised or to be comprised in the Project is charged to the Council by way of a legal charge and to secure the contingent liabilities due on breach of the terms and conditions of this Agreement AND that the Grantee shall at all times throughout the Claw-back Period:

- 2.1 use the Grant solely towards financing the Project, for the Project Purpose in accordance with the KPIs, the Project Time Plan and in accordance with the terms and conditions contained in this Agreement;
- 2.2 comply at all times with the Funding Terms and Conditions including any additional conditions of grant arising from the appraisal of the Project Application as specified at Schedule 2.10;
- 2.3 not without the Council's Approval, create or permit to subsist any Encumbrance (other than the Council's Encumbrance if applicable) on any of the Grantee's assets or revenues except for liens arising by operation of Law;
- 2.4 not deposit any part of the Grant outside ordinary business accounts of the Grantee within the clearing bank system, without prior written authorisation from the Council;
- 2.5 not without the Council's Approval enter into any sale, transfer, lease or other disposal of any or all of its buildings, assets, other interests including any assets purchased with the Grant;
- 2.6 ensure that the Project is run in accordance with good industry practice and appropriate quality management standards and procedures. For the avoidance of doubt, the Grantee must (without limitation):
 - 2.6.1 implement an equal opportunities policy in relation to employment and service delivery in accordance with standards approved by the Council;
 - 2.6.2 comply with all relevant Law, Law, statutes, regulations, directives, codes of practice, guidance, orders or other legal requirements;
 - 2.6.3 comply with the Quality Standards, and where applicable maintain accreditation with the Quality Standards authorisation body relevant to the Project. To the extent that a standard of work has not been specified in relation to the Project, the Grantee shall use the best applicable techniques and standards and carry out the Project with all reasonable care, skill and diligence.
- 2.7 obtain all necessary consents licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable the Grantee to comply with its obligations under this Agreement;
- 2.8 keep and maintain proper and accurate financial books and accounts and such other records and information as the Council may reasonably require;
- 2.9 provide to the Council monthly accounting statements, performance records and monitoring information in a form acceptable to the Council as soon as reasonably practicable after each month end and in any event within 28 days of each month end;

- 2.10 provide to the Council annual accounts that have been audited or independently examined in accordance with the Grantee's own constitutional and legal requirements, or if no such requirements exist, to the satisfaction of the Council, within 28 days of their preparation or six months of the Grantee's financial year end (whichever is sooner);
- 2.11 allow the Council's authorised officers, to have access and to inspect and take copies of its financial, accounting and other records kept in accordance with clause 2.10, including its books of account, invoices, bills, receipts, bank statements, chequebooks and all other financial documents at any reasonable time;
- 2.12 provide the Council with an annual report setting out progress with the Project and performance and operation of the and containing such further information as the Council may notify to the Grantee from time to time;
- 2.13 comply with all relevant Law and Quality Standards;
- 2.14 promptly supply details to the Council of any funding received from any sources which have not already been supplied to the Council including funding from other Community Institutions or any public authority towards Project costs funded by the Grant;
- 2.15 acknowledge that the Council is not in any way liable for the actions of the Grantee and the Grantee will make this clear to all its clients, suppliers, employees and volunteers, and anyone else with whom it deals; and
- 2.16 allow the Council to have access to and to inspect the operation of the Project at any reasonable time, including the inspection of any relevant documents, employees, agents, premises, facilities subject to the Council complying with all reasonable health and safety and security procedures of the Project and/or the Grantee.
- 2.17 At the end of the Claw-back Period the Council will at the written request and cost of the Grantee duly discharge the legal charge made in favour of the Council (if applicable).

3. PAYMENT OF THE GRANT

- 3.1 The Council shall make the payment of the grant to the Grantee in accordance with this clause 3 and Schedule 2.
- 3.2 The Grant will be paid using Bankers Automated Clearing Services (BACS), or similar method, directly into a valid designated bank account of the Grantee or by cheque made payable to the Grantee.
- 3.3 The Grant shall be paid by the Council to the Grantee subject to clause 3.12 in instalments not later than 30 days from the approval of a Grant Claim.
- 3.4 The Grant Claim shall be submitted by the Grantee and shall be in such form as further detailed in Schedule 2.
- 3.5 The Grant Claim shall be signed by the Grantee Representative or such other person as agreed between the Parties.

- 3.6** The Grantee shall keep in one location the documentation required to verify the accuracy of the Grant Claim and shall permit the Council access to inspect such documentation.
- 3.7** The Grantee shall deliver to the Council such information as the Council may reasonably require in support of the Grant Claim.
- 3.8** The Grantee acknowledges that any delay in delivering the Grant Claim or any information requested by the Council pursuant to this Agreement is likely to delay the payment of Grant to the Grantee.
- 3.9** The Grantee will, if required by the Council, meet with the Council in order to review, verify and discuss the Grant Claim.
- 3.10** Without prejudice to the Council's rights to withhold the payment of Grant under the terms of this Agreement the Council shall be under no obligation whatsoever to make a payment of Grant until it is completely satisfied that it has been presented with a valid Grant Claim and is satisfied with the supporting information supplied by the Grantee.
- 3.11** If the Grantee fails to claim all or any part of the Grant in accordance with this clause 3 within 12 months after the end of the Term the Council shall be entitled to retain all or any part of the Grant not claimed by the Grantee and reduce the amount of the Grant accordingly;
- 3.12** The payments of Grant made by the Council shall be subject to the Grantee achieving the milestones specified by the Council in Schedule 1. In the event that the milestones are not being achieved, the Council reserves the right in its absolute discretion to withhold any payments of Grant and to terminate this Agreement forthwith.
- 3.13** The payment of the Grant by the Council under this Agreement is believed to be outside the scope of Value Added Tax but if any Value Added Tax shall become chargeable all payments of Grant shall be deemed to be inclusive of all Value Added Tax and the Council shall not be obliged to pay any Value Added Tax over and above the Grant agreed in this agreement.

4. BREACH OF STANDARDS

- 4.1** The Grantee undertakes to apply the Grant for the Project in accordance with the terms of this Agreement.
- 4.2** If the Grantee fails to comply with the provisions of clause 4.1, the Council may:
- 4.2.1** suspend all or any or its obligations hereunder by notice in writing upon such terms and for such period as the Council will in its absolute discretion determine or bring this Agreement to an end and require the repayment of all or part of the Grant in accordance with clause 5; or
 - 4.2.2** work with the Grantee to identify the causes of problems, make recommendations to enable the organisation to improve its performance, and monitor progress towards and the effect of any such improvements.

PROVIDED THAT any action described in 4.2.2 above taken by the Council shall not prevent it exercising its rights under 4.2.1 in any way.

5. REPAYMENT OF THE GRANT AND TERMINATION

Without prejudice to the Council's other rights and remedies, the Council may require the repayment of all or part of the Grant (whether liquidated or unliquidated and whether actual or contingent) during the Claw-back Period immediately or within such timescale as the Council shall direct or withhold payment of all or any part of the Grant that remains unpaid during the Claw-back Period:

- 5.1** in the circumstances set out in clause 4 above;
- 5.2** if the Grantee fails to comply with any of its obligations under this Agreement which materially, adversely or substantially affect the performance of this Agreement, the delivery of the Project including but not limited to the Project being abandoned or failing to fully complete or applying the Grant otherwise than for the Project Purpose;
- 5.3** any material inaccuracy or misstatement is discovered in the application for the Grant or the Grantee fails or has failed to disclose any material fact or information which ought in the opinion of the Council to have been disclosed in connection with the application for the Grant or the Project;
- 5.4** if the Grantee is declared bankrupt or is placed in receivership or liquidation or enters into any arrangement or composition for the benefit of its creditors, or is unable to pay its debts as they fall due, or has judgement for debt entered against it, or is merged with or taken over by any other organisation;
- 5.5** any security created by any Encumbrance executed by the Grantee shall become enforceable and the holder of such security shall take steps to enforce the same;
- 5.6** if the Grantee ceases to operate for any reason;
- 5.7** if the Grantee changes its constitution or governing instrument in any way without the written consent of the Council, such consent not to be unreasonably withheld;
- 5.8** if in the opinion of the Council the Grantee is incapable of or unlikely to be able to carry out its obligations under this Agreement including poor progress by which completion of the Project in accordance with the Project Time Plan becomes in the reasonable opinion of the Council unlikely to occur;
- 5.9** if the Grantee sells or otherwise disposes of the Project (whether in whole or in part) (which for the avoidance of doubt includes the creation or permission of any Encumbrance on an asset financed wholly or partly from Grant monies) without the prior written consent of the Council.
- 5.10** if in the reasonable opinion of the Council the Grantee or any of its employees, servants or agents is in wilful default of this Agreement or has acted fraudulently at any time during the performance of the Project;
- 5.11** if the Grantee is in breach of the terms and conditions of funding applicable to the Funding Terms and Conditions;
- 5.12** if insufficient measures are being taken to investigate and resolve any reported irregularity;

- 5.13** if the Grantee receives funding from other Community Institutions or any public authority towards Project costs funded by this Agreement, unless the funding was explicitly taken into account by the Council;
- 5.14** if the Grant exceeds European Community State Aid limits to the extent that any Grant paid should not have been paid or if a decision of the European Commission or of the European Court of Justice requires payment to be withheld or recovered;
- 5.15** if there is an unsatisfactory report from the Council's auditors indicating fundamental uncertainty, a disagreement or a limitation to their opinion, an inability to form an opinion, or a report that the statement of Grant usage does not give a true and fair view;
- 5.16** if assets wholly or partially funded by the Council are disposed of during the Term unless the market value of such assets has been repaid to the Council;
- 5.17** if any necessary consents, (including without limitation planning permission) have not been obtained in relation to the Project;
- 5.18** The Grantee shall repay to the Council any part of the Grant incorrectly paid to it as a result of an administrative error including (without limitation) where either an incorrect instalment of the Grant has been released or where the Grant has been released in error before all applicable grant terms and conditions have been complied with by the Grantee. The decision of the Council shall be final and conclusive;
- 5.19** The Council shall have the right (without liability) to terminate the Agreement for convenience either:
- 5.19.1** at any time by giving 6 month's written notice to the Grantee; or
- 5.19.2** on 31st March 2011 (or any subsequent anniversary) by giving not less than 3 months written notice.
- 5.20** On termination of this Agreement for any reason, the Grantee shall provide such assistance to the Council or any other specified person as the Council identifies in writing including providing copies of all documents and data in the possession, custody or control of the Grantee relating to the performance of its obligations under this Agreement.

6. REVIEW

- 6.1** Whilst the Council will monitor the annual reports provided pursuant to clause 2.14, the terms of this Agreement shall be reviewed in accordance with the provisions of this clause and Schedule 4. Such reviews shall be carried out by way of a meeting between the Authorised Officer and the Grantee Representative ("the Review Meeting") who shall be obliged to attend such meeting.
- 6.2** Reviews shall be carried out:
- 6.2.1** annually during the Term of the Agreement;
- 6.2.2** at such other times as are required by the Council on giving reasonable written notice to the Grantee.

- 6.3** Each Party must submit to the other details of those matters which it requires to be discussed at the appropriate Review Meeting in writing at least two weeks prior to the date of such meeting. Such meetings shall be minuted by the Grantee and copies of such minutes circulated to the Council. Such minutes shall be subject to written approval by the Council. Any unresolved problems emerging from such meetings shall be referred immediately to a senior executive officer of each Party who shall attempt to resolve the issue.
- 6.4** Notwithstanding the provisions of clause 6.3, each Review Meeting shall specifically consider the Grantee's compliance with clauses 2.1, 2.2, 2.3 and 2.4 of this Agreement.
- 6.5** If, after a Review Meeting has been held, the Council is of the opinion that the Grantee is not complying with the terms of this Agreement (giving particular consideration to clauses 2.1, 2.2, 2.3 and 2.4), the Council may give written notice requiring the Grantee to remedy such defects as may be specified. Failure to remedy the defects within the period set out in such a notice shall entitle the Council to exercise its rights under clause 4 to withhold instalments or require repayment of all or part of the Grant.

7. EXCLUSION OF LIABILITY, INDEMNITY AND INSURANCE

7.1 Exclusion of Liability

The Council and their respective employees, agents and officers shall not at any time be liable:

- 7.1.1** to any person or the Grantee for anything in connection with the development planning construction operation and/or administration of the Project;
- 7.1.2** to the Grantee for any loss or damage arising directly or indirectly as a result of the compliance by the Grantee of this Agreement;
- 7.1.3** to the Grantee for any loss or costs arising from a failure by the Council to pay any part of the Grant within agreed time-scales caused by the failure of the Grantee to supply such supporting information to the satisfaction of the Council in connection with any Grant Claim or by the Council not having access to sufficient funds to meet grant payments at the time the Grantee requests payment;
- 7.1.4** to the Grantee for any deficit in revenue that may occur arising out of or in consequence of the execution of this Agreement;
- 7.1.5** to any actions or obligations or liability assumed or incurred by the Grantee whether under this Agreement, statute or otherwise insofar as permitted by Law.

7.2 Grantee Indemnity

The Grantee shall indemnify and keep indemnified the Council and its respective Councillors, employees, agents, officers or sub-contractors against all losses and claims for all injuries (including death, illness and disease) or damage of any type to any persons or property whatsoever or any other claim or loss suffered by the Council caused by any activity of the Grantee which may arise out of or in consequence of the execution of this Agreement, the Project and/or any activities

carried out in relation to the Project and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto. Provided always that the Grantee's liability to indemnify the Council as aforesaid shall be reduced proportionately to the extent that the act or neglect of the Council may have contributed to the said loss, injury or damage. In this latter connection, the Grantee agrees to provide prompt notice to the Council of any such claim, and the Council shall have the sole right to control the defence of any such claim

7.3 Insurance

7.3.1 The Grantee shall (but without limiting its obligations and responsibilities under the indemnity given by the Grantee in sub-clause 7.2) for the duration of this Agreement effect and maintain public liability insurance, to a minimum of five million pounds (£5,000,000) and employer's liability insurance to a minimum of ten million pounds (£10,000,000) in respect of any one act or occurrence or a series of acts or occurrences arising from one event but with no aggregate limit during any one period of cover and any other insurances as may be required by law.

7.3.2 The Grantee shall obtain and keep in effect at its own expense buildings insurance in respect of any buildings upon which there is an Encumbrance against all risks and in such amounts as it considers reasonably necessary but not less than full reinstatement value and insurance against loss or damage by fire, water and theft in respect of any contents, furniture, equipment and effects to their full replacement or repairing value

7.3.3 The insurance shall be effected with a reputable insurer and the interests of the Council shall be noted on the insurance policy. The Grantee shall upon reasonable request provide to the Council copies of all insurance policies, cover notes and premium receipts. Failure to provide this information may lead to immediate suspension or termination of the Agreement.

7.4 If any insurance money is payable to the Grantee in respect of the policies referred to in Clause 7.3, the Grantee shall cause all such insurance money to be laid out as soon as possible to rebuild and reinstate the buildings or any part of the buildings and to make up any deficiency at the Grantee's own expense.

7.5 The Grantee shall ensure that at all material times it or any person or body authorised to perform any work in connection with the Project maintains in force policies of insurance with an insurance company of long-standing and good repute in respect of:-

7.5.1 public liability to a minimum of indemnity of £ 5 million in respect of any one claim, and

7.5.2 such other insurance as may be required in order to cover its liabilities.

8. EQUAL OPPORTUNITIES

8.1 The Grantee will discharge its obligations under this Agreement and warrants that it shall use all reasonable endeavours to procure that any person or body authorised to perform any work in connection with the Project shall discharge their functions in accordance with all statutory provisions rules and guidance relating to equal opportunities and non-discrimination including (but not limited to) the provisions of the Sex Discrimination Act 1975, Race Relations Act 1976 and the

Disability Discrimination Act 1998 and Codes of Practice issued by the Equal Opportunities Commission. The Grantee will be required to have an Equal Opportunities Policy; this will need to be evidenced to the Council on request.

The Grantee shall not discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of colour, race nationally, or ethnic or national origins contrary to Parts II and III ((Discrimination in the field of Employment) and (Discrimination in other fields)) of the Race Relations Act 1976.

8.2 The Grantee shall monitor the representation among Grantee staff or persons of different racial groups (which shall mean groups of persons classified as 'ethnic groups' in the most recent official census by the Office of National Statistics or successor body), having regard to the authority's procedures for monitoring representation among its own employees;

8.3 where it appears to the Grantee in relation to particular work of the Grantee's staff, either that the Grantee's staff includes no members of a particular racial group doing that work or that members of that racial group are under-represented among Grantee staff doing that work compared to their representation in the Grantee staff as a whole or in the population from which Grantee Staff are normally recruited, undertake the following actions as may be appropriate and reasonably practicable:

8.3.1 the placing and use of job advertisements to reach members of such racial groups and to encourage their applications;

8.3.2 the use of employment agencies and careers offices in areas where members of such racial groups live and work;

8.3.3 the promotion of recruitment and training schemes for school-leavers and/or unemployed persons intended to reach members of such racial groups; and

8.3.4 the provision of appropriate training and the encouragement of members of Grantee staff from such racial groups to apply for promotion or transfer to do work in which such racial groups are under represented.

9. CONTACTS

9.1 The Grantee shall contact the Council through the Authorised Officer and any other person notified to the Grantee by the Council in writing at the address and by the telephone and fax numbers notified.

9.2 The Council shall contact the Grantee through the Trustee Representative and any other person notified to the Council by the Grantee in writing at the address and by the telephone and fax numbers notified.

10. PARTNERSHIP

This Agreement does not constitute a Partnership in the terms of the Partnership Act 1890, a contract of employment or a joint venture arrangement between the parties and each of the parties undertakes to make this clear in all its dealings with third parties.

11. AGENCY

11.1 In carrying out its obligations under this Agreement the Grantee agrees that it shall be acting as principal and not as agent of the Council and the Grantee shall not

say or do anything that may lead any other person to believe that the Grantee is acting as the agent of the Council.

- 11.2** Nothing in this Agreement shall render the Council liable to indemnify the Grantee in respect of any liability of any kind incurred by the Grantee to any other person but this shall not be taken to exclude or limit any liability of the Council to the Grantee that may arise by virtue of either any term of this Agreement or any negligence on the part of the Council, its staff or agents.

12. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

- 12.1** The Grantee shall neither:

12.1.1 offer or give or agree to give any person engaged by the Council 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 act in relation to the obtaining or performance of this Agreement or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement;

12.1.2 enter into this Agreement or any contract arising under this Agreement if in connection with its commission has been paid or agreed to be paid to any of the Council's officers or employees by the Grantee or on the Grantee's behalf, or to the Grantee's knowledge, unless before this Agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Council.

- 12.2** In the event of any breach of this clause 12 or the commission of any offence under the Prevention of Corruption Acts in relation to this Agreement or a contract arising under this Agreement, by the Grantee or by anyone employed by the Grantee or acting on the Grantee's behalf (whether with or without the knowledge of the Grantee) the Council may summarily terminate this Agreement by notice in writing to the Grantee. Provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council and provided always that the Council may recover from the Grantee the amount or value of any such gift, consideration or commission.

- 12.3** The decision of the Council shall be final and conclusive in any dispute, difference or question arising in respect of:

12.3.1 the interpretation of this clause (except so far as the same may relate to the amount recoverable from the Grantee in respect of any loss resulting from such termination of this Agreement or any contract arising under the Agreement); or

12.3.2 the right of the Council under clause 12.1 to terminate this Agreement or any contract arising under this Agreement; or

12.3.3 the amount or value of any such gift, consideration or commission.

13. DISPUTE RESOLUTION

- 13.1** The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within thirty (30)

days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the Chief Executive (or equivalent) of each Party.

- 13.2** Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 13.3** If the dispute cannot be resolved by the Parties the dispute shall be referred to mediation pursuant to the procedure set out in this clause unless (a) the Council considers that the dispute is not suitable for resolution by mediation; or (b) the Grantee does not agree to mediation.
- 13.4** The performance of the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Grantee (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of this Agreement at all times.
- 13.5** The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 14 days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator.
 - (b) The Parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
 - (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties.
 - (f) if the Parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration.
- 13.6** In the event that any arbitration proceedings are commenced pursuant to this Agreement, the following provisions shall apply:

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- (b) the Council shall give a written notice of arbitration to the Grantee (“the Arbitration Notice”) stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
- (c) the London Court of International Arbitration (“LCIA”) procedural rules in force at the date that the dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference to this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (e) if the Parties fail to agree the appointment of the arbitrator within 10 (ten) days of the Arbitration Notice being issued, the arbitrator shall be appointed by the LCIA;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the arbitration proceedings shall be governed by, and interpretations made in accordance with, English law.

14. CONFIDENTIALITY

14.1 All documents and information received by the Grantee during or in connection with the performance of this Agreement from the Council or any person employed by the Council shall be held in confidence. Such documents and information shall not be disclosed by the Grantee, its staff or agents to any other person without the permission of the Council unless a duty to disclose to that person is imposed under statute or by court order or under the Freedom of Information Act 2000. The Grantee shall take all reasonable steps to ensure that their staff are aware of and comply with this obligation of confidence. The Council may disclose such information concerning the Project and the Grantee to third parties as it thinks fit except for Confidential Information.

14.2 FREEDOM OF INFORMATION ACT (FOIA)

14.2.1 The Grantee acknowledges that the Council is subject to the requirements of the FOIA and The Environmental Information Regulations and shall assist and cooperate with the Council (at the Grantee’s expense) to enable the Council to comply with any information disclosure requirements.

14.2.2 The Grantee shall ensure that its sub-contractors shall:

14.2.2.1 transfer the request for information to the Council as soon as practicable after receipt;

14.2.2.2 provide the Council with a copy of all information in its possession or power in the form that the Council requires within five working days (or such other period as the Council may specify) of the Council requesting that information;

14.2.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a request for information within the time for compliance set out in section 10 of the FOIA or regulation five of the Environmental Information Regulations.

14.2.3 The Council shall at its sole discretion and without liability determine whether information considered to be by the Grantee as commercially sensitive information and/or any other information:

14.2.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;

14.2.3.2 is to be disclosed in response to a request for information, and in no event shall the Grantee respond directly to a request for information unless expressly authorised to do so by the Council.

14.2.4 The Grantee acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part I of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

14.2.4.1 without consulting with the Grantee; or

14.2.4.2 Following consultation with the Grantee and having taken its views into account.

14.2.5 The Grantee shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for a period of up to seven (7) years following the end of the agreement for disclosure and shall permit the Council to inspect such records as necessary.

14.2.6 The Grantee acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information.

14.3 DATA PROTECTION ACT

14.3.1 The Grantee shall at all times (and shall procure that any of its Staff involved in the provision of this Agreement) be registered under the Data Protection Act 1998 ("DPA") and both Parties will duly observe all their obligations under the Act which arise in connection with the Agreement.

14.3.2 Notwithstanding the general obligation in Clause 21.1 above, where the Grantee is processing personal data (as defined by the DPA) as a data processor for the Council (as defined by the DPA) the Grantee shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

14.3.2.1 provide the Council with such information as the Council may reasonably require to satisfy itself that the Grantee is complying with its obligations under the DPA;

- 14.3.2.2** promptly notify the Council of any breach of the security measures required to be put in place;
- 14.3.2.3** ensure that it does nothing knowingly or negligently which places the Council in breach of its obligations under the DPA.

15. REGISTRATION AT HM LAND REGISTRY

The Council shall in respect of any land and buildings comprising the Project be entitled to enter such Encumbrance on the Grantee's registered title at HM Land Registry as the Council considers appropriate and the Grantee shall execute upon request such further documents as the Council may require to effect such entry.

16. NOTICES

Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party at the address set out in this Agreement. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) working days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

17. RIGHTS OF THIRD PARTIES

Notwithstanding any other provisions of this Agreement nothing in this Agreement confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

18. PUBLICITY

- 18.1 The Grantee shall not make or consent to the making of any public statement or announcement or engage in any promotional activity concerning this Agreement or any involvement of the Council concerning the Project without the Council's Approval.
- 18.2 The Council and EMDA may promote their association with the Project as they think fit and the Grantee shall allow the Council and EMDA free access to all assets information and documentation held by the Grantee to which the Council and EMDA may request access in pursuance of this objective.
- 18.3 The Grantee shall install and maintain at each location where the Project is based or operates such signs, commemorative material and other promotional material indicating the involvement of the Council and EMDA with the Project as they may require and shall comply with the most recent design guidelines issued from time to time
- 18.4 all marketing publications and signs relating to the Project must bear the Council's and EMDA's logo in a form, size and position approved by the Council and EMDA respectively;

18.5 the Project should maximise all possible publicity subject to the Council's approval.

19. ENTIRE AGREEMENT

19.1 This Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement. This Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause shall not exclude liability in respect of any fraudulent misrepresentation.

19.2 In the event of any conflict between this Agreement and the Application for Grant, this Agreement shall prevail, the conflict shall be resolved in accordance with the following order of precedence:

- (a) These Conditions of the Agreement shall prevail over;
- (b) The Schedules and Appendices
- (c) The Grantee's Application for Grant
- (d) Any other document referred to in this Agreement.

20. ASSIGNMENT AND SUB CONTRACTING

20.1 The Grantee may not assign the whole or any part of its rights nor sub-contract the whole or any part of its obligations under this Agreement without the prior written consent of the Council.

20.2 This Agreement shall benefit and be binding on the parties, their respective successors and assigns or other body which may become the successor of the Council.

21. WAIVER

21.1 The failure of either Party to insist upon strict performance of any provision of this Agreement or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Agreement.

21.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.

21.3 A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the of this Agreement.

22. VARIATION

22.1 The Council reserves the right on giving reasonable written notice from time to time to require changes to the Project or Project Purpose (whether by way of the removal of activity, the addition of new activity, or increasing or decreasing the activity or specifying the order in which the activities are to be performed or the locations where the activities are to be provided) for any reasons whatsoever.

22.2 Any such Variation shall be communicated in writing by the Council to the Grantee's Representative in accordance with the notice provisions of Clause 16. All Variations shall be in the form of an addendum to the Agreement.

- 22.3 In the event of a Variation the Grant may also be varied. Such Variation in the Grant shall be calculated by the Council and agreed in writing with the Grantee and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. The Grantee shall provide such information as may be reasonably required to enable such varied price to be calculated.

23. SEVERABILITY

If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

24. CONFLICT OF INTEREST

- 24.1 The Grantee shall take appropriate steps to ensure that neither the Grantee nor any employee, servant, agent, supplier or sub-contractor is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Grantee or such persons and the duties owed to the Council under the provisions of the Agreement. The Grantee will disclose to the Council full particulars of any such conflict of interest which may arise.
- 24.2 The provisions of this Condition shall apply during the continuance of this Agreement and indefinitely after its termination.

25. FORCE MAJEURE

Neither Party shall be liable for failure to perform its obligations under this Agreement if such failure results from national war, emergency regulation or any other circumstances beyond the party's reasonable control (with the specific exception of industrial action) and in such event no further Grant payments shall be made for the duration of the Force Majeure event.

26. INTELLECTUAL PROPERTY RIGHTS

- 26.1 If during this Agreement the Grantee (whether alone or with any other person) in the course of the provision of the Project makes or discovers, or participates in the making or discovery of any invention, development, discovery, improvement or process ("an Invention") it shall treat the Invention and all information relating to it as confidential to the Council and shall promptly disclose to the Council full details, including drawings and models (if any) of the Invention. The Grantee agrees to assign to the Council all right, title and interest in and to any Inventions so that the property, including all intellectual property rights in the Inventions shall vest in the Council absolutely.
- 26.2 The Grantee agrees that the Council will have unlimited access to data collected as a result of the Project including access to databases and associated software

26.3 Any Software developed by the Grantee during the Agreement or as a result of the Agreement shall remain the property of the Council.

27. STATE AID

All Grant funding is subject to European Community State Aid rules and the Grantee confirms that although the Council has used its best endeavours in this regard, the Council accepts no liability and makes no assurance that the Grant is compliant with State Aid Rules. In the event that the Grant is adjudged to constitute illegal State Aid the Grantee agrees to make any necessary repayment.

28. PUBLIC PROCUREMENT

28.1 The Council as a public body is subject to the Public Contracts Regulations 2006 in respect of the way in which it purchases goods, services and works. As a non-departmental public body it is also keen to promote good practice in purchasing, and follows fair purchasing procedures where the amounts expended are below the thresholds for the Public Contracts Regulations 2006 to apply. The Council is also keen for the organisations it funds to act fairly when spending the Grant the Council has provided

28.2 Accordingly when spending money on the Project the Grantee will adopt the following procedures according to the estimated value (inc. VAT) of the contract:

A. Contracts for supplies and services

Estimated total contract value	Minimum requirements
£1,001 to £10,000	Quotations must be obtained from more than one supplier. (Details of the suppliers approached and prices quoted to be kept on file.)
£10,001 to £25,000	Three written competitive quotations must be obtained. (Details of all quotations sought and received to be kept on file.)
£25,001 to £50,000	Three tenders must be invited. (Details of all tenders sought and received to be kept on file.)
£50,001 to EU threshold* for Supplies and Services (£156,442 as at January 2010)	Five tenders must be invited. (Details of all tenders sought and received to be kept on file.)

Above EU threshold* for Supplies and Services	EU procurement rules must be complied with. (Details of all tenders sought and received to be kept on file.)
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B. Contracts for works

Estimated total contract value	Minimum requirements
Up to £10,000	Prices must be obtained from more than one supplier. (Details of the suppliers approached and prices quoted to be kept on file.)
£10,001 to £25,000	Three written competitive quotations must be obtained. (Details of all quotations sought and received to be kept on file.)
£25,001 to £250,000	Three tenders must be invited. (Details of the suppliers approached and prices quoted to be kept on file.)
£250,001 to EU threshold* for Works (£3,927,260 as at January 2010)	Five tenders must be invited. (Details of the suppliers approached and prices quoted to be kept on file.)
Above EU threshold* for Works	EU procurement rules must be complied with. (Details of the suppliers approached and prices quoted to be kept on file.)

28.3 The Grantee must then make a decision to purchase on the basis of best value (the optimum combination of whole life costs and the quality to meet the Grantee's requirements). The Grantee will also keep records of its decision and make these available to the Council.

29. ENVIRONMENTAL REQUIREMENTS

The Grantee shall, wherever feasible and practical perform, carry out the Project in accordance with the Council's environmental policy which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases,

volatile organic compounds and other substances damaging to health and the environment. In certain circumstances as defined by the Council the Grantee will be required to provide information on how environmental improvements are being achieved within the Project.

30. HEALTH AND SAFETY

- 30.1 The Grantee shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of the Project. The Council shall promptly notify the Grantee of any health and safety hazards which may exist or arise at the Council's Premises and which may affect the Grantee in the performance of the Project.
- 30.2 The Grantee shall notify the Council as soon as is reasonably practicable in the event of any incident occurring in the performance of the Agreement on the Council's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 30.3 The Grantee shall take all necessary measures to comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working at the Council premises in the performance of the Agreement.
- 30.4 The Grantee shall ensure that its health and safety policy statement (as required by the Health and Safety at Work Act 1974) is made available to the Council on written request.

31. GOVERNING LAW

This Agreement shall be governed by the laws of England and Wales.

AGREED by the Parties through their authorised signatories:-

For and on behalf of the Council

For and on behalf of the Grantee

Authorised Signatory

Authorised Signatories

SCHEDULE 1
“The Project”

PART A – Project Description

<<<insert description>>>

PART B – Project Purpose, aims and objectives

<<<<<insert project aims, objectives, milestones – including any special conditions
>>>>>

The Project cannot be varied in any way without the prior written consent of Council under Clause 22 of the Agreement.

Specimen Contract

SCHEDULE 2 Payment

1. Total Grant Funding

- 1.1 The total sum payable under this Agreement is **£XXXX**. This cannot be varied without the written consent of Council under Clause 22.
- 1.2 The total maximum sum payable for this project is available for the period until 31st March 2013 but is subject to:
- 1.2.1 availability of funding
 - 1.2.2 annual review
 - 1.2.3 annual break clauses under the provisions of Clause 5.19
 - 1.2.4 any special conditions of this Agreement as set out at 1.10 below
- 1.2 The total sum payable under this Agreement as referenced at 1.1 above equates to **XXX%** of the total project cost. This percentage will apply to all claims submitted over the lifetime of the project but may vary from year to year as indicated in the table below. Payments made under the Agreement and against these percentages will not be deviated from by the Grantee without the written consent of the Council.
- 1.3 The total amount of Single Programme payable under this Agreement shall comprise the following elements:-

Year	Previous Years	2010/11	2011/12	2012/13	Total
Capital	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX
Revenue (Current)	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX
Intervention Rate (max)	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX
Total	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX

- 1.4. Grant Claims will only be considered by EMDA and the Council in line with the spreadsheet included at 1.11 (entitled "Grant Expenditure Profile"). The Grantee shall adhere to the forecast provided at 1.11 unless a re-profile has been agreed by the Council.
- 1.5 Grant Claims will only be considered by the Council if the Grantee delivers a fully compiled Grant Claim and Monitoring Form (electronic and signed hard copy format) together with all accompanying evidence required by the Council and EMDA and to EMDA in accordance with paragraph 4 below.
- 1.6 If a special condition shown at 1.10 requires the Grantee to secure match funding from other sources these must be secured before any matching Grants are claimed from the Council. Evidence of such funding shall be submitted by the Grantee with

the first Grant Claim and Monitoring Form and evidence of payment of match finding will be given with each subsequent Grant Claim and Monitoring Form. This will be recorded by EMDA and verified during the monitoring and/or evaluation phases of the Project.

- 1.7 The Grant Spend will detail what part of the Grant is to be utilised for Capital and what may be utilised for revenue payments and the Financial Year in which the Grant shall be utilised.
- 1.8 No variance of Grant between capital and revenue, or between Financial Years is allowed by the Grantee, unless agreed in advance and confirmed in writing by The Council.
- 1.9 The Grantee will report immediately any suspicions that Grant has been overpaid or that any financial mismanagement of the Grant or fraud may have taken place.
- 1.10 Special conditions of Grant as arising from appraisal of the Grantee's Project application shall also be observed and implemented by the Grantee in addition to those stated at Clause 2. They are as follows:
 - a) Evidence of match funding from other sources must be secured and provided to the Council before any matching Grants are claimed from the Council (e.g. grant letters, funding agreements).
 - b) <<<<<<insert other conditions as arising from the appraisal of the project Application>>>>>>>>

1.11 - Grant Expenditure Profile

<<<<<<Insert Grant Spend Spreadsheet >>>>>>

Specimen Contract

2. Eligible Expenditure

The Grantee may claim reimbursement of all eligible expenditure on the Project detailed in the Application for Grant but for the avoidance of doubt the following items are not eligible for reimbursement:

- expenditure incurred before the date of this Agreement
- overheads allocated or apportioned at rates materially in excess of those used for any similar work carried out by the Grantee;
- costs incurred prior to the date of the offer letter of Grant from the Council;
- notional expenditure;
- payments for activity of a political nature;
- depreciation, amortisation and impairment of assets purchased with the help of the Grant;
- provisions;
- contingent liabilities;
- contingencies;
- profit made by the Grantee;
- dividends;
- interest charges unless under an approved State Aid scheme;
- service charges arising on finance leases, hire purchase and credit arrangements;
- costs resulting from the deferral of payments to creditors;
- costs involved in winding up a company;
- payments for unfair dismissal;
- payments into private pension schemes;
- payments for un-funded pensions;
- compensation for loss of office;
- bad debts arising from loans to employees, proprietors, partners, directors, guarantors, shareholders or a person connected with any of these;
- payments for gifts and donations;
- entertainment or hospitality of any sort;
- reclaimable VAT;
- statutory fines and penalties;
- criminal fines and damages;
- legal expenses in respect of litigation;
- expenditure on activities of a political or exclusively religious nature;
- expenditure supported from other government sources, local authority grants, charges paid by leaseholders, or EC structural funds, to the extent that the combined grants and other support total more than 100% of the Project or scheme costs;
- expenditure on works or activities which any person has a statutory duty to undertake, except where there is strong justification in terms of the regeneration outputs or impacts that will result, e.g. in the case of beneficial activity brought forward, or carried out in a way which best promotes sustainable regeneration as a result of Grant support;
- any liability arising out of negligence;
- payments made in advance of need.

3. Output Profile

- 3.1 Reimbursement of expenditure is also subject to the Grantee having delivered the Outputs specified (if any) in accordance with the Output Profile set out in Schedule 3 below.

- 3.2** On each occasion when the Grantee claims reimbursement of eligible expenditure, the Grantee will also complete a return of Outputs delivered to date.
- 3.3** In the event that the Grantee is unable to achieve the Grant Spend and Output targets then the Grantee will notify the Council as soon as possible and will use its best endeavours to reschedule delivery with the Council's agreement but the Council reserves the right to consider such an occurrence to be a Breach of Standards under Clause 4.

4. Making a Grant Claim

4.1 The Grantee will make claims for reimbursement of expenditure by:

- using the EMDA Grant Claim and Monitoring Form available from <http://www.emda.org.uk/src/download/default.asp>
- submitting accurate and complete invoices to support the claim with a signed hardcopy of the Grant claim and monitoring form to
SRC Claims
East Midlands Development Agency
Apex Court
City Links
Nottingham,
NG2 4LA

Marking the top left hand corner of the envelope CLAIMS

- submitting an electronic version of the Grant claim and monitoring form to srcclaims@emd.org.uk cc being sent to the Council's nominated Economic Regeneration Support Officer either Jayne Huffen or Craig Edson email: singleprogramme@nottscc.gov.uk
 - will submit fully completed Grant Claim & Monitoring forms on a monthly basis in relation to the previous month's activity accordingly to the scheduled below
 - claim to be submitted by 10th XXXX , for defrayed spend XXXX – XXXX) then on the 10th of each following month
 - Separate arrangement for year end claims i.e. March expenditure will be issued nearer the time
 - will provide an up to date monitoring report when required in accordance with Clause 3 above
- 4.2** Following receipt of the above and provided that the Grantee is complying in all respects with the terms and conditions contained within this Agreement the Council will endeavour to make payments within 30 days of receipt.
- 4.3** The Council reserves the right not to pay the final claim until independent auditors have approved any final claim for payment of the Grant.

SCHEDULE 3

Key Performance Indicators – Targets and Outputs

1.1 The Grantee will deliver the Outputs (if any) as shown in the Output Profile 1.6 below.

1.2 Where the Output Profile specifies Outputs, these are defined as follows

E1 -Job Creation:	Number of jobs created or safeguarded
E2 - Employment Support:	Number of people assisted to get a job
E3 Business Creation:	Number of new businesses created and demonstrating growth after 12 months and businesses attracted to the region
E4 - Business Support:	Number of businesses assisted to improve their performance
E4a - Business Support:	Numbers of businesses within the region engaged in new collaborations with the UK knowledge base (knowledge base/business collaboration)
E5 – Regeneration	Hectares of land brought into beneficial use
E6a – Skills	Number of adults in work undertaking vocational skills development equivalent to Level 3 or above as a result of RDA programmes
E6b – Skills	Number of people undertaking an additional 12 hours of STEM or Enterprise Capability based learning as a result of RDA programmes
E7 – Financial Leverage	Public and private investment levered (£m)

1.3 The Grantee must maintain relevant evidence records to support output achievement. Details of the minimum evidence required is contained in the definitions of key performance indicators guidance note available from <http://www.emda.org.uk/srps/default.asp>

1.4 The Grantee will deliver the Outcomes (if any) as detailed at 1.7 below

1.5 Where the Outcome Profile specifies Outcomes these are defined as those detailed by the Grantee in the Project Application.

1.6 Output Profile

<<<<<<Insert Output Profile spreadsheet here>>>>>>

Specimen Contract

1.7 Outcomes Profile

<<<<<<Insert Outcomes Profile spreadsheet here>>>>>>

Specimen Contract

SCHEDULE 4

Monitoring and Evaluation Requirements

1. Monitoring

The Project will be monitored by *emda* during its lifetime through evidence set out in each Grant Claim and Monitoring Form submitted by the Grantee and such other evidence as *emda* may request of the Grantee.

As part of the implementation of the Project, the grantee must establish effective monitoring and financial control systems so that as the Project proceeds its progress and costs can be clearly identified.

- 1.1 If the Grant Spend set out in Schedule 2 or Output Profile in Schedule 3 identifies outputs after the Project has been completed financially then the Grantee will continue to provide returns of Outputs delivered against the grant provided until all procured targets have been achieved and evidenced.
- 1.2 For certain Projects (as the Council acting reasonably determines) the Grantee may also be required to collect and provide information to the Council in respect of:
 - a) 'Beneficiary Data' about beneficiaries of the Project, being either individuals or companies, including names and addresses, contact details, nature of business undertaken, products and services they provide, organisation size (number of staff and turnover), geographical location, diversity information on individuals and organisations
 - b) Confirmation from any beneficiaries who the Grantee assists that they are aware of any rules that affect their funding or eligibility and will comply with them
- 1.3 Grantees of Projects identified under 1.2 above will make their beneficiaries aware that Beneficiary Data is being collected, and will comply at all times with Data Protection requirements.
- 1.4 Grantees acknowledge that the Council will use Beneficiary Data for its own purposes and may share it with other partner organisations for the purpose of research and improving services.
- 1.5 The Project may be subject to monitoring visits by the Council on a routine basis and in the event of any queries arising.
- 1.6 The Grantee will keep a record of all capital assets purchased using the Project funding and will retain the record for a period of seven years after the final payment or closure of the project.
- 1.7 The Grantee shall permit people (who have been duly authorised by the Council in writing) such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Grantee's (and any consultant or sub-contractors') performance of their obligations under this Agreement and shall, if so required, provide appropriate oral or written explanations of them.

- 1.8 The Grantee will promptly provide all reasonable assistance required by the Council, Government Office for East Midlands, the National Audit Office or the European Court of Auditors to monitor, review and verify compliance by the Grantee with its obligations in this Agreement, including reasonable access to its premises, documents and records for this purpose.
- 1.9 Any changes to the Project must be notified in writing by the Grantee to the Council and emda and approval obtained from the Council prior to implementation.
- 1.10 The Grantee must respond to all requests from the Council and/or emda for information about the Project within 5 working days.
- 1.11 Projects will be subject to monitoring visits throughout the year at dates to be agreed by the Council and/or emda. Where remedial action has been agreed the Project may be subject to additional monitoring and review.

2. Evaluation

The Council has contractual and statutory duties and operational requirements which make it necessary for Projects to be evaluated once they have come to an end. For this reason the Grantee will:

- 2.1 retain all original documents relating to the implementation of the Project and its costs for seven years after payment of the final amount of funding.
- 2.2 co-operate in respect of evaluation visits by the Council during the time in which Outputs are required and for a period of two years thereafter (or for a period of two years from the date of this Agreement if there are no Outputs identified as being required).
- 2.3 will complete and return post-Project Evaluation Reports and submit them to EMDA providing a copy to the Council * <<<< delete if independent evaluation is part of the project application and approval >>>>
- 2.4 make staff available for interview if requested
- 2.5 ensure the Evaluation Plan contains the following elements as a minimum:
 - review of key project documentation (e.g. appraisal and approval documentation, funding Agreement, exit/succession strategies);
 - analysis of financial, output and outcome monitoring data and other key project management documentation;
 - interviews with key project staff;
 - key stakeholder consultations - including strategic and delivery partners as well as other key stakeholders (e.g. via workshops, focus groups, individual consultations or surveys);
 - analysis of secondary trend data - relating to the Project activities and comparator scenarios;
 - beneficiary surveys (actual, potential and unintended beneficiaries);
 - 'control group' surveys;
 - qualitative assessments of impact (e.g. for physical development projects design quality and visual impact);
 - comparative analysis against similar project activities;

- scenario testing of different delivery options;
- benchmarks with similar projects;
- negative impacts of the Project;
- socio environmental impacts;
- Equal Opportunity and Race Relations impacts.

2.6 include all costs associated for evaluation within the Project and adhere to the agreed planned evaluation dates contained in the Project Time plan.

2.7 be aware of latest guidelines for evaluation as available from the Council.

2.8 permit the Council to exercise its right to be involved in compiling or reviewing any tender specification for Project evaluation activity and to approve the final document before it is released by the Grantee.

Specimen Contract

SCHEDULE 5

Project Time Plan

- 5.1 The Grantee will commence work on the Project on the Commencement Date
- 5.2 The Grantee will provide an up-to-date Project time plan including key milestones to the Council within one month of the date of the Agreement
- 5.3 Funding will be in the time period from xx/xx/xxxx until xx/xx/xxxx
- 5.4 Key Performance Indicators (Targets, Outputs, Outcomes) will be in the time period from xx/xx/xxxx until xx/xx/xxxx
- 5.5 No variation to the stated time period will be permitted unless agreed in writing by the Council

Specimen Contract