

## Grant Giving Terms and Conditions

*Clause headings and the use of bold type in these Terms and Conditions are for ease of reference only and do not affect the interpretation of any provision*

### Terms and Conditions

- 1 Pre-conditions and representation**
- 1.1 **We** shall not be under any duty to begin to provide any **funding** to **you** until **we** are satisfied that the **pre-conditions** have been met
- 1.2 If **we** do decide to begin to provide any **funding** before **we** are satisfied that the **pre-conditions** have been met this will not in any way affect our right to refuse to release any further **funding** before **we** are satisfied that the **pre-conditions** have been met
- 1.3 The **pre-conditions** are:-
- 1.3.1 that the **project** has been registered by **ENTRUST**
- 1.3.2 that all **consents** are in place and a copy has been forwarded to **us**
- 1.3.3 that any information reasonably requested by **us** has been provided and is satisfactory
- 1.3.4 where relevant, that **you** shall have produced satisfactory evidence that all **co-funding** for the **project** as set out in **Schedule Three** is in place
- 1.3.5 where relevant, that **you** have identified a **contributing third party** and the donation that they have agreed to make has been received by **us**
- 1.3.6 that **you** shall (if so requested) have granted to **us** a first legal charge over the **project assets**
- 1.3.7 that the **project** is within our charitable objects (as amended from time to time)
- 1.4 **You** represent and warrant to **us** that all information (including the information set out in the Schedules) supplied to **us** in contemplation of this **agreement** was true as at its date and does not omit anything material and that no change has occurred since the date of the information already supplied which renders it untrue or misleading and all projections and statements of belief and/or opinion given by **you** to **us** have been made in good faith and after careful enquiry and further that **you** will inform **us** immediately if there is any relevant change

## **2**                    **Legislation**

2.1                    **We** shall not be under any duty to provide any **funding** to **you** at any time when:-

2.1.1                it would be unlawful to do so for any reason

2.1.2                **we** are no longer enrolled as an **environmental body**

2.1.3                a **default event** has occurred

2.1.4                **we** have insufficient funds available to **us** from amounts received pursuant to the **regulations** to enable **us** to do so having regard to our determination (made at our absolute discretion) of the relative priorities of all applications for **funding**

2.1.5                **you** have failed to comply with all statutory and other legal requirements and in particular the Charity Acts 1992, 1993 and 2006 (as amended or re-enacted) and any guidance issued by the Charity Commission

2.1.6                any of the **pre-conditions** are not continuing to be met

2.2                    It is your responsibility to ensure that your arrangements with any contractors and/or sub-contractors or any relevant third party take into account the provisions of the above

## **3**                    **Procedures for making a claim for funding**

3.1                    When a **milestone** identified in **Schedule One** has been achieved **you** must make a claim for **funding** using the form set out in **Schedule Two**

3.2                    Upon receipt of an application for an amount of **funding** which must be supported by satisfactory evidence that **you** have incurred that expenditure **we** will with reasonable speed make such enquiries and inspections as **we** believe are necessary to satisfy ourselves that the relevant **milestone** has been achieved. When **we** are satisfied **we** will pay to **you** the amount of **funding** applied for

## **4**                    **Your duties until the submission of a completion statement**

**You** accept the following obligations which begin on the date of acceptance of the **offer letter** and which last until a **completion statement** in the form set out in **Schedule Five** has been submitted and accepted by **us**:-

- 4.1 **you** will undertake the **project** in accordance with the **project description** and **Schedule One**
- 4.2 **you** will not grant any right(s) to anyone else over all or any **project assets** without our prior written consent
- 4.3 **you** will not without our prior written consent make or permit any amendment or addition to or variation of any contract for the **project** and shall enforce each such contract in accordance with its terms
- 4.4 **you** will obtain maintain in force and comply with any insurance policy or policies which is/are necessary or advisable to obtain for the purposes of the **project** and in particular ensure that all **project assets** over which **we** have a charge are insured to their full replacement value
- 4.5 **you** will obtain, maintain in force and comply with all **consents**
- 4.6 **you** will give **us** full access to the **project** at all reasonable times
- 4.7 **you** will promptly inform **us** of any **default event** as set out in clause 7 below and of anything which might result in any **default event** occurring
- 4.8 **you** will submit to **us** a report (including photographs of the **project** at its various stages and confirmation of insurance of the **project** and the **project assets**) on the progress of the **project** every three months or at such other intervals as **we** shall require
- 4.9 **you** will provide to **us** prior to our making the final payment set out in **Schedule One** a **completion statement** in the form set out in **Schedule Five** together with any further information which **we** may reasonably request
- 4.10 **you** hereby agree to indemnify **us** in full against all losses claims proceedings damages costs and expenses incurred by **us** in enforcing any terms of this **agreement**
- 5** **Your duties which continue after the submission of a completion statement**

**You** accept the following obligations which begin on the date of acceptance of the offer and which continue to apply after the submission of a **completion statement** in the form of **Schedule Five** during the **period of time** set out in your **offer letter**:-

- 5.1 **you** shall not disclose to any third party any **confidential information** without our written consent
- 5.2 **you** will not grant any right(s) to anyone else over all or any **project assets** without our prior written consent
- 5.3 **you** shall maintain in reasonable condition (fair wear and tear excepted) all **project assets** for the **period of time** specified in your **offer letter**
- 5.4 **you** shall procure that any **project asset** purchased using **funding** and intended for use by the public remains open for use by the public for the **period of time** specified in your **offer letter**
- 5.5 if the **project asset** having been purchased using **funding** ceases to be available for use by the public before the expiry of the **period of time** specified in the **offer letter** then this will constitute a **default event** and will be dealt with under clause 7.4 below
- 5.6 **you** shall ensure that all **pre- conditions** continue to be met
- 5.7 **you** shall ensure that **you** comply with all statutory and other legal requirements and in particular the Charities Acts 1992, 1993 and 2006 (as amended or re-enacted) and any guidance issued by the Charity Commission
- 5.8 **you** shall on the service by **us** upon **you** of a notice under clause 7.4.4 either (at your option):-
  - 5.8.1 procure as soon as reasonably practicable the sale of any **project asset** which is not intended for use by the public following completion of the **project** at the best price reasonably obtainable including taking into account any value attributable to goodwill attaching to the **project asset** Before selling any **project asset** **we** shall reach agreement with **you** as to the proposed selling price If **we** cannot agree on the

proposed selling price either party may have the selling price determined by an independent valuer appointed by agreement or by the Chairman of the Royal Institution of Chartered Surveyors on the application of either of **us** **You** will upon sale of any **project asset** remit to **us** the proceeds of such sale (or in the case of a **project asset** partly funded by **us** a fair proportion calculated by reference to the proportion which the **funding** bears to the **total project funding**) net of any reasonable sale costs or

5.8.2 deliver up to **us** (free of charge) possession and ownership of any **project asset** wholly funded by **us** free of any rights granted to any third party **You** shall if and when called upon to do so execute any document or take all such action as may be necessary to vest ownership of the **project asset** in **us**

5.9 **you shall** provide to **us** within two months of the anniversary of our making the final payment set out in **Schedule One** an **evaluation of project outcomes** in the form of **Schedule Six**

## **6 Intellectual Property Rights**

6.1 All **background intellectual property** will belong to the party who owned it prior to the date of this **agreement**

6.2 Each party grants to the other a royalty free non-exclusive licence to use that party's **background intellectual property** for the purposes of the **project** only

6.3 Except to the extent otherwise required by the **regulations** all **intellectual property** rights (other than **background intellectual property** rights) shall vest in **us** **We** shall grant a royalty free non-exclusive licence to **you** to use such **intellectual property** for the purposes of the **project** only **You** shall if and when called upon to do so execute all deeds documents or take all other actions as may be necessary to vest such **intellectual property** rights in **us**

6.4 **We** shall not unreasonably withhold our consent to the grant of a licence to **you** to use and exploit the **intellectual property** rights for commercial purposes subject to such terms (including the payment of licence fees and/or royalties) and conditions as may be agreed

between the parties acting reasonably or in default by an independent valuer appointed by agreement or by the Chairman of the Royal Institution of Chartered Surveyors on the application of either of **us**

6.5 **You** shall ensure that work on the **project** shall only be undertaken by persons who are either employed by **you** under a contract of service or are contractors under a contract for services which provides in either case for the assignment to **you** by such persons of all rights in **intellectual property** created by them during the course of their duties

6.6 Information and findings resulting from the **project** will be published in the manner and at the times specified in **Schedule One**

## **7 Default Events**

7.1 The following are **default events** entitling **us** to demand immediate repayment (or at our discretion part repayment) of the **funding**:-

7.1.1 a material breach of any duty representation warranty or undertaking by **you** in this **agreement** unless remedied to our complete satisfaction within 10 working days of notification by **us** to **you** or such other period as shall be agreed between ourselves acting reasonably and taking account of the seriousness of the **default event**

7.1.2 the issue of a statutory demand against **you** and **you** are unable to pay your debts under Section 123 (1) Insolvency Act 1986

7.1.3 the appointment of a receiver administrative receiver or manager of **you** or of a material part of your assets undertakings rights or revenues

7.1.4 the execution of a distress sequestration or other legal process upon the whole or a material part of your assets undertakings rights or revenues

7.1.5 the presentation of an application or petition to a court for an administration order liquidation winding up or dissolution of **you**

7.1.6 the **project** stops or in our opinion becomes incapable of delivering its original objectives throughout the **period of time**

7.1.7 a failure to achieve a milestone (as set out in Schedule One of the offer letter) within the agreed timescale

7.2 **You** must notify **us** immediately if a **default event** occurs or appears likely to occur

- 7.3 If a **default event** occurs **we** will usually want to discuss with **you** its seriousness and whether it may be remedied. However there is no obligation on **us** to do so.
- 7.4 If a **default event** occurs at any point during the **period of time we** will be entitled to:-
- 7.4.1 make all further provisions of **funding** subject to such conditions as **we** may reasonably specify or
- 7.4.2 suspend all further provision of **funding** or
- 7.4.3 demand immediate repayment of all or any part of the **funding** or
- 7.4.4 send to **you** a written request requiring **you** to procure as soon as reasonably practicable the sale of the **project assets** as the case may be to account to **us** for the net proceeds of the sale in accordance with clause 5.8 or
- 7.4.5 any combination of these up to the maximum value of any **funding** previously provided.

## **8 Publicity**

- 8.1 **We** have no objection to **you** publicising the **project**.
- 8.2 If **you** do publicise the **project you** may use our logo in accordance with the approved protocol for its use a copy of which will be made available to **you** at your request.
- 8.3 **We** may make reasonable requests for information from **you** for our own publicity and/or statistical purposes.

## **9 Offer Period**

Unless previously signed by **you** and returned to **us** the offer constituted by our signing of the **offer letter** remains in force until the expiry of one month from the date on which it is sent to **you** provided it has not been withdrawn before then.

## **10 General**

- 10.1 The **agreement** is governed by the Law of England and Wales.
- 10.2 Nothing in this **agreement** shall have the effect of creating a relationship of contractor and customer between **us** and in particular

**we** shall not be involved in the execution of the **project** in any way whatsoever except for the provision of any **funding**

- 10.3 Nothing in this **agreement**:-
- 10.3.1 will act to impose any obligation or liability on **us** with respect to any actions obligations or liabilities of **you** or
- 10.3.2 creates a partnership between **you** and **us**
- 10.4 The parties acknowledge that no person who is not a party to this **agreement** is intended to benefit from it or to use any right to enforce its terms
- 10.5 Force Majeure:-
- 10.5.1 If any force majeure delays or prevents the performance of the duties of either party for a continuous period in excess of one month the parties not so affected may give notice to the affected party to terminate this **agreement** specifying the date (which shall not be less than 7 days after the date on which notice is given) on which termination will take effect Such a termination notice shall be irrevocable except with the consent of both parties
- 10.6 **We** may but **you** may not assign the benefit of this **agreement**
- 10.7 Notices required to be given under this **agreement** shall be sent by first class post to the relevant address at the foot of the **offer letter** and shall be deemed to have been delivered two days after first class posting

## 11 Definitions

- agreement** Is the **agreement** constituted by the **offer letter** and your acceptance of that letter and these terms and conditions
- background intellectual property** means any **intellectual property** which is in the possession of any party to this **agreement** prior to the date hereof
- co-funding** means the other funds for the **project** which are to be provided to **you** by other funders as set out in **Schedule Three**
- confidential information** is any information of whatever nature relating to the **project** which is either (a) obtained by **you** your partners employees agents or

advisers in written pictorial or oral form from or pursuant to discussions with any of the partners employees agents or advisers of **us** or (b) prepared by **you** your partners employees agents or advisers and which contains or otherwise reflects or is generated from the information specified in paragraph (a) above but no information which:-

- (i) at the time of disclosure is within the public domain or
- (ii) after disclosure comes into the public domain other than by reason of breach of any of the undertakings below or
- (iii) is already lawfully in your possession

**completion statement** a statement of completion of the **project** to be submitted to **us** as set out at clause 4.9 and in **Schedule Five**

**consents** means all **consents** required without limitation whether under statute any lease contract or charge or otherwise in order to achieve successful completion of the **project**

**contributing third party (CTP)** someone who makes a payment or undertakes to make a payment to a landfill operator to encourage the operator to contribute to an Environmental Body A CTP may not benefit uniquely from the Landfill Communities Fund

**default event** events of default as set out at clause 7

**ENTRUST** means the regulator of **environmental bodies** under the **regulations** approved by HM Revenue and Customs or any successor

**environmental body** means an organisation which is enrolled with **ENTRUST** under the provisions of Regulation 33 of the **regulations**

**evaluation of project outcomes** means an evaluation of the outcomes of the **project** to be submitted to us as set out at clause 5.9 and in **Schedule Six**

**funding** means any interim payment made by **us** not exceeding the **funding offer**

**funding offer** means the maximum sum defined in the **offer letter**

**intellectual property** means any rights (whether registered or not) to technical information engineering data and samples biological data and samples chemical

data and samples material data and samples computer software oral and written instructions diagrams patents copyrights and similar information arising directly from the **project** owned developed or acquired by any party to this **agreement** after the date hereof

<b>milestone</b>	means the details of a stage of the <b>project</b> set out in <b>Schedule One</b>
<b>offer letter</b>	the <b>offer letter</b> to which these Terms and Conditions are attached
<b>period of time</b>	the number of years specified in the <b>offer letter</b> and as described in clause 5
<b>pre-conditions</b>	means the matters about which <b>we</b> must be satisfied before <b>we</b> will be under any obligation to provide any <b>funding</b> as set out in clause 1.3
<b>project</b>	means the details as defined in the <b>offer letter</b>
<b>project assets</b>	means all assets (including land and buildings) purchased wholly or in part using <b>funding</b> or monies derived directly or indirectly from <b>funding</b>
<b>regulations</b>	means the Landfill Tax Regulations 1996 and any subsequent amendment or re-enactment thereof
<b>Schedule One</b>	means the <b>Schedule One</b> attached to the <b>offer letter</b> and setting out the <b>milestones</b> for staged <b>funding</b> payments
<b>Schedule Two</b>	means the <b>Schedule Two</b> attached to the <b>offer letter</b> containing information for making claims for <b>funding</b>
<b>Schedule Three</b>	means the <b>Schedule Three</b> attached to the <b>offer letter</b> identifying co-funders
<b>Schedule Four</b>	means the <b>Schedule Four</b> attached to the <b>offer letter</b> seeking an evaluation of our grant-making service
<b>Schedule Five</b>	means the <b>Schedule Five</b> attached to the <b>offer letter</b> requiring the submission of a <b>completion statement</b>
<b>Schedule Six</b>	means the <b>Schedule Six</b> attached to the <b>offer letter</b> requiring the submission of an <b>evaluation of project outcomes</b>

**total project funding** means the total of the **funding** and any **co-funding** and any other amount received by **you** needed for the **project**

**you** as defined in the **offer letter**

**we/us** as defined in the **offer letter**

**Statutory references include reference to any subsequent amending legislation**