

# Grant Funding Agreement

relating to the Funded Activities of Innovate UK EDGE

UK RESEARCH AND INNOVATION

(1)

and

(2)

PROJECT CODE:

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## AGREEMENT DATED

## PARTIES

- (1) **INNOVATE UK, A COUNCIL OF UK RESEARCH AND INNOVATION** an Executive Non-Departmental Public Body established by the Higher Education and Research Act 2017, whose address is Polaris House, North Star Avenue, Swindon, England, SN2 1FL ("**UKRI-Innovate UK**"); and
- (2) **[INSERT NAME OF RECIPIENT]**, a company incorporated in England and Wales with Company Number [●] and whose registered office address is [●] (the "**Recipient**").

## BACKGROUND

- (A) This grant funding agreement (the "**Agreement**") is between UKRI-Innovate UK and the Recipient and contains the terms and conditions under which UKRI-Innovate UK provides, and the Recipient accepts, grant funding for the establishment of the Funded Activities.
- (B) The purpose of this Agreement is to define and govern the grant funding relationship between UKRI-Innovate UK and the Recipient and to ensure the Grant is used for the purpose for which it is awarded in accordance with the terms and conditions by which it was awarded.
- (C) This agreement should be read in conjunction with the relevant Consortium Agreement currently in force between the partners, and is intended to act as a master GFA, to be updated with additional schedules where additional grant funded activity is required.

## AGREED TERMS

### 1 DEFINITIONS & INTERPRETATION

#### 1.1 The following definitions apply to this Agreement:

"**Advance On Grant**" means that portion of the Grant that UKRI-Innovate UK has agreed to pay to the Recipient to cover part of the anticipated expenditure of the Recipient in the upcoming Quarter or Year;

"**Agreement**" means this agreement between UKRI-Innovate UK and the Recipient, including all schedules;

"**Annual Funding**" means the estimated amount of the funding to be paid by UKRI-Innovate UK to the Recipient in a specified Year as set out in the Delivery Plan;

"**DSIT**" means the Department for Science, Innovation and Technology, a Crown Body;

"**Bribery Act**" means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

"**Business Day**" means a day other than a Saturday, Sunday or bank holiday in England;

"**Business Support Activities**" means other activities managed and funded by UKRI-Innovate UK, such as other Research Organisations, the Knowledge Transfer Network, Knowledge Transfer Partnerships, Small Business Research Initiative, Innovate UK EDGE and International Programmes;

"**Capital Asset**" means a tangible asset with a useful life of more than one Year at its date of purchase and which has been funded, in whole or in part, by UKRI-Innovate UK under this Agreement;

**"Close Out Report"** means a report produced by the Recipient summarising whether the outcomes and outputs set out in the Delivery Plan have been achieved and the future plans of the Recipient in relation to the Funded Activities;

**"Consortium Agreement"** means the collaboration agreement between Innovate UK and the Recipients

**"Commencement Date"** means the date detailed as such in Schedule 1 (Funded Activities Information);

**"Confidential Information"** means all confidential information (however recorded or preserved) and in whatever form whether tangible or intangible, other than IP Information or Third Party Sensitive Information, disclosed by a Party or its Representatives to another Party and that Party's Representatives in connection with this Agreement, including (without limitation):

- (a) the terms of this Agreement;
- (b) any information that is marked as confidential or with a similar legend;
- (c) any other information that would be regarded as confidential by a reasonable business person relating to the business, affairs, finances, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing Party, or any of their business contacts;
- (d) any reports prepared pursuant to Schedule 2 (Quarterly and Monthly Report Template) (except where the Parties agree that all or part of a report may be published); and
- (e) any information or analysis derived or developed from the execution of the Delivery Plan,

but not including any information that:

- (f) is or becomes published and made generally available to the public (other than as a result of its disclosure by the receiving Party, its Representatives or any other Party in breach of this Agreement), (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information);
- (g) was available to the Party on a non-confidential basis prior to disclosure by the disclosing Party;
- (h) was lawfully in the possession of the receiving Party and not subject to a similar confidentiality undertaking elsewhere before the information was disclosed to it by the disclosing Party as evidenced by written records;
- (i) is received by the receiving Party from a third party who is not in any way restricted by a secrecy obligation to the disclosing Party;
- (j) is independently developed by (or on behalf of) the receiving Party without use of any Confidential Information of the disclosing Party; or
- (k) the Parties agree in writing is not confidential;

**"Contracting Authority"** means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2015 other than UKRI-Innovate UK;

**"Control"** means a person holds, directly or indirectly, the power to direct or cause the direction of the management and policies of another person (whether through the ownership of voting shares, control of the board of directors, any powers conferred by the



articles of association or other constitutional documents of that person, by contract or otherwise) and **"Controls"** means and **"Controlled"** shall be interpreted accordingly;

**"Crown Body"** means any department, office or agency of the Crown;

**"Data Controller"** shall have the same meaning as set out in the Data Protection Legislation;

**"Data Protection Legislation"** means the General Data Protection Regulation (EU) 2016/679 as it forms part of the law of the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (the **"UK GDPR"**), the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), in each case as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time;

**"Default"** means any of the following circumstances:

- (a) the Recipient has not paid an invoice due to a third party, within a reasonable period of time and without reasonable justification, for which the Grant has been claimed under this Agreement;
- (b) the Grant funds have been used for purposes unconnected or ineligible under this Agreement;
- (c) the Recipient has materially failed to comply with any condition of this Agreement which has or could have a serious adverse effect on the Funded Activities or UKRI-Innovate UK (other than in relation to failure to meet the Metrics, which shall be governed by the monitoring and performance regime in clause 13);
- (d) any attempt is made by the Recipient to assign or transfer any rights or obligations under this Agreement or to substitute any person in respect of such rights, interests, or obligations in breach of clause 44.1;
- (e) the Recipient or an officer of the Recipient or a member of the Steering Board or the Senior Management Team has committed or is or has been involved in the commission of any act of fraud, dishonesty, malfeasance or any serious financial irregularity in respect of the Recipient which could have a serious adverse effect on the Funded Activities or on UKRI-Innovate UK;
- (f) any information provided in the Delivery Plan or in a claim for payment or in subsequent or supporting correspondence is found to be recklessly, negligently or deliberately misleading or incomplete to an extent which UKRI-Innovate UK reasonably considers material and detrimental;
- (g) either:
  - (i) the Recipient grants a fixed charge over any Capital Asset financed wholly or partly from the Grant in breach of clause 8.1(e); or
  - (ii) a Capital Asset is disposed of without the consent of UKRI-Innovate UK (where such consent is required under this Agreement) or otherwise in breach of this Agreement;
- (h) there is a material failure to keep and maintain records to support the claims for the Grant and the Recipient's compliance with its obligations under this Agreement;

- (i) UKRI-Innovate UK believes that insufficient measures are being taken to investigate or resolve any reported material irregularity or respond to any material query or request for information in accordance with the reporting and auditing rights under this Agreement;
- (j) there is an Insolvency Event;
- (k) the Recipient breaches clause 25 (Anti-Corruption);
- (l) the Recipient breaches clause 24 (Subsidy Law);
- (m) any report or certificate issued by the Recipient's auditor or reporting accountant or Independent Accountant is in the reasonable opinion of UKRI-Innovate UK materially unsatisfactory (e.g. where the report refers to a fundamental uncertainty or disagreement or otherwise contains a material qualification);
- (n) the Recipient breaches clause 9.1(c); or
- (o) the Recipient provides an Independent Accountant's report which, in UKRI's reasonable opinion, does not meet the requirements set out in clause 20.1(b);

**"Delivery Plan"** means the delivery plan more particularly defined in clause 3.1 and as may be amended from time to time in accordance with clause 3.2;

**"EIR"** means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

**"Eligible Cost(s)"** means expenditure in relation to the Funded Activities which: (a) is included in the Delivery Plan approved by UKRI-Innovate UK; (b) complies with the Subsidy Rules (or, where applicable, the State Aid Rules); and (c) is not an Ineligible Cost;

**"End Date"** means the date specified as such in Schedule 1;

**"Innovate UK EDGE"** means Innovate UK's core innovation and growth support, providing wraparound support to innovative businesses to grow, internationalise, scale and develop their investment readiness

**"Financial Forecast"** means the agreed financial forecast more particularly defined in clause 3.1(c);

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

**"Funded Activities"** means the Funded Activities described in Schedule 1;

**"Funded Activities Intellectual Property"** means intellectual property arising out of or in connection to use of the Grant by the Recipient.

**"GBER"** means the General Block Exemption Regulation, Commission Regulation (EU) No 651/2014 (as amended) declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty;

**"Grant"** means the funding requirement of the Recipient specified in the Delivery Plan, being a sum not exceeding the "Grant" sum referred to in Schedule 1 in addition to the breakdown provided by the Recipient as detailed in Schedule 5;

**"IFSPA"** means Innovation Funding Service Post Award UKRI's online Grants claims system;

**"Inadequate Performance"** means where UKRI-Innovate UK, acting reasonably, believes that inadequate progress is being made to achieve one or more Metrics;

**"Independent Accountant"** has the meaning given at clause 20.1(a);

**"Independent Assurance Requirements"** means the templates and guidance (including the templates for the Independent Accountant's terms of engagement and Independent Accountant's reports), issued by UKRI-Innovate UK to the Recipient to assist the Recipient in complying with its obligations under clause 20;

**"Ineligible Cost(s)"** means:

- (a) paid for lobbying, which means using the Grant to fund lobbying (via an external firm or in-house staff) in order to undertake activities intended to influence or attempt to influence Parliament, government or political activity; or attempting to influence legislative or regulatory action;
- (b) using the Grant to directly enable one part of government to challenge another on topics unrelated to the agreed purpose of the Grant;
- (c) using the Grant to petition for additional funding;
- (d) expenses such as for entertaining specifically aimed at exerting undue influence to change government policy;
- (e) input VAT reclaimable by the Recipient from HMRC;
- (f) payments for activities of a political or exclusively religious nature;
- (g) contributions in kind (including, but not limited to, any non-monetary contributions of assets, goods, services or other capital increase not in cash);
- (h) interest payments or service charge payments for finance leases;
- (i) gifts;
- (j) statutory fines, criminal fines or penalties civil penalties, damages or any associated legal costs;
- (k) payments for works or activities which the Recipient has a statutory duty to undertake, or that are fully funded by other sources;
- (l) bad debts to related parties;
- (m) payments for unfair dismissal or other compensation payable by the Recipient to its employees in respect of any breach of employment law by the Recipient;
- (n) depreciation, amortisation or impairment of assets owned by the Recipient; and
- (o) liabilities incurred before the commencement of the Agreement unless agreed in writing by UKRI-Innovate UK.

**"Insolvency Event"** means any of the following circumstances:

- (a) the Recipient suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts; or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (b) the Recipient commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors (other than for a genuine solvent business restructuring of that debt);



- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Recipient;
- (d) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Recipient;
- (e) a floating charge holder over the assets of the Recipient has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Recipient or a receiver is appointed over the assets of the Recipient;
- (g) a creditor or encumbrancer of the Recipient attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (h) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this clause; or
- (i) the Recipient suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business which is funded wholly or partly by the Grant in order to maintain solvency,

provided always that none of the events listed above shall be deemed to have arisen in circumstances where any winding-up petition is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement or, if earlier, the date on which it is advertised;

**"Intellectual Property Rights"** means patents, trade marks, service marks, processes, rights and/or proprietary rights related to designs, copyrights, database rights, design rights, confidential information, applications for any of the above, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above;

**"Interest"** means the interest to be charged at the rate required from time to time under the Subsidy Rules (or, where applicable, the State Aid Rules);

**"International Programmes"** means international programmes supported by UKRI-Innovate UK, further details of which can be found on the UKRI-Innovate UK website <https://www.ukri.org/research/international/>;

**"Investigative Audit"** means an audit conducted to investigate compliance with this Agreement in accordance with clause 20.4;

**"IP Information"** means information of a commercially sensitive nature belonging:

- (a) to the Recipient and relating to the Funded Activities, its product information, processes, trade secrets, designs, software, Know How or its Intellectual Property Rights;
- (b) to any third party and relating to its product information, processes, trade secrets, data, designs, Know How and/or its Intellectual Property Rights which information has been disclosed to the Recipient in confidence by a third party in relation to the Funded Activities, or
- (c) to the Recipient or a third party and in the possession of the Recipient that has or is being developed in relation to the activities of the Funded Activities relating to either or both of its product information, processes, trade secrets, designs, software, Know How or its Intellectual Property Rights,

which if disclosed by UKRI-Innovate UK, or any other party, could cause the Recipient and/or any such third party commercial disadvantage or financial loss. For the avoidance of doubt, information of a non-technical nature in a suitably aggregate or generic form relating to the Funded Activities is excluded from this definition;

**"Innovate UK Deputy Director EDGE"** means the individual referred to as such in Schedule 1 or as notified to the Recipient by UKRI-Innovate UK from time to time;

**"Key Performance Indicators or KPIs"** means the key performance indicators provided by UKRI-Innovate UK pursuant to clause 3.5, being a part of the measure of success of the Recipient in relation to the Funded Activities, as amended from time to time in accordance with this Agreement;

**"Know How"** means any unpatented technical information (including without limitation information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain;

**"Knowledge Transfer Network"** means UKRI's network partner with the following website address: <https://ktn-uk.co.uk/>;

**"Knowledge Transfer Partnerships"** means UKRI's knowledge transfer platform with the following website address: <http://ktp.innovateuk.org/>;

**"Mark"** means UKRI's registered trade mark and any accompanying logo and descriptor line notified to the Recipient, as well as any future internationally registered trade mark based on the above registered by UKRI-Innovate UK and notified to the Recipient;

**"Material Inadequate Performance"** means Inadequate Performance where UKRI-Innovate UK has serious concerns about the performance or progress of the Recipient in relation to one or more Metrics;

**"Metrics"** means the Milestones and KPIs, against which the Funded Activities and compliance with the Delivery Plan will be monitored and assessed by UKRI-Innovate UK;

**"Milestones"** means the agreed milestones, being a part of the near-term measure of progress of the Recipient in relation to the Funded Activities, more particularly defined in the Delivery Plan, and as amended from time to time in accordance with this Agreement;

**"Monitoring and Insight Manager"** means the individual referred to as such in Schedule 1 or as notified to the Recipient by UKRI-Innovate UK from time to time;

**"Month"** means a calendar month;

**"Partial Inadequate Performance"** means Inadequate Performance which is not Material Inadequate Performance;

**"Party"** an organisation who is a party to this Agreement, and **"Parties"** means is to be construed accordingly;

**"Permitted Purpose"** shall have the meaning given in clause 14.4;

**"Personal Data"** shall have the same meaning as set out in the Data Protection Legislation;

**"Procurement Regulations"** means the Public Contracts Regulations 2015 (SI 2015/102), Utilities Contracts Regulations 2016 (SI 2016/274), Defence and Security Public Contracts Regulations 2011 (SI 2011/1848) and the Public Contracts (Scotland) Regulations 2015 (SSI 20015/446), as applicable, as amended from time to time;

**"Prohibited Act"** means the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by UKRI-Innovate UK a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation creating offences concerning fraudulent acts;
  - (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with UKRI-Innovate UK; or
  - (iv) defrauding, attempting to defraud or conspiring to defraud UKRI-Innovate UK;

**"Public Authority"** means any body wholly or partly supported by public funds, any government department, office or agency, research council, devolved administration, regional development agency, local enterprise partnership, or local authority, or any similar body;

**"Quarter"** means a period of three Months commencing on 1<sup>st</sup> April or its three Monthly anniversary, provided that the first quarter shall commence on the Commencement Date and continue until the next three Month anniversary of the 1<sup>st</sup> April. "Quarterly" should be construed accordingly;

**"R&D&I Framework"** means the European Commission's Framework for State Aid for Research and Development and Innovation (2014C 198/01);

**"Recipient Contact"** means the contact detailed as such in Schedule 1 (Funded Activities Information);

**"Rectification Plan"** means the document submitted by the Recipient to UKRI-Innovate UK detailing the steps required to resolve Project progress and performance issues;

**"Representatives"** means a Party's employees, officers, advisors and agents;

**"Research Organisation"** means a "research and knowledge dissemination organisation" as defined in the R&D&I Framework;

**"Review Committee"** means the committee, consisting of those individuals with the appropriate Sector skills and experience to make informed recommendations, brought together to provide advice to UKRI-Innovate UK on the operation, performance and/or impact of the Funded Activities either at the time of a formal general review or to enable the monitoring status of the Recipient in relation to the Funded Activities to change and which reports to UKRI-Innovate UK as necessary or as requested by UKRI-Innovate UK;

**"Sector"** means the sector/technology domain in which the Funded Activities operates.

**"Senior Management Team"** means the executive management team of the Funded Activities responsible for the day-to-day operation of the Funded Activities and reporting to the Steering Board;



**"Small Business Research Initiative"** means UKRI's business support scheme for connecting the public sector and industry with the following website address: <https://www.gov.uk/government/collections/sbri-the-small-business-research-initiative>;

**"State Aid Rules"** means those provisions set out in Annex 5 of the Protocol on Ireland/Northern Ireland;

**"Strategy"** means the written strategy applicable from time to time providing longer-term context and motivation for the Delivery Plan;

**"Sub-Contract"** means any contract or agreement, or proposed contract or agreement between the Recipient and any third party whereby that third party agrees to provide to the Recipient facilities or services which the Recipient requires to meet its obligations under this Agreement;

**"Sub-Contractor"** means a third party that enters into a Sub-Contract with the Recipient;

**"Subsidy Rules"** means compliance with the Subsidy Control Act 2022, which came into effect on 4th January 2023 and/ or any other relevant rules or laws within UK domestic legislation as applicable and to the extent in force including World Trade Organisation Agreements, UK/EU Trade and Cooperation Agreement and other Free Trade Agreements.

Or, if applicable under the Windsor Framework, Article 10 of the Northern Ireland Protocol State Aid rules embodied in Articles 107-109 of the Treaty on European Union and the Treaty on the Functioning of the European Union (2008/C 115/01) will apply.;

**"Term"** means the term of this Agreement from the Commencement Date to the End Date or termination, whichever is the sooner;

**"Third Party Sensitive Information"** means information (other than any IP Information) which concerns or relates to any existing or proposed contractual relationship between the Recipient and any third party where the Recipient and/or any such third party is under an obligation of confidentiality, howsoever arising, and in circumstances where the disclosure by UKRI-Innovate UK or any other party of any information in relation to any such contract (or proposed contract) including, but not limited to, the identity of the third party in question, the financial terms or the subject matter could cause the Recipient and/or the third party in question commercial disadvantage or financial loss. For the avoidance of doubt, information in a suitably anonymised or aggregate form is excluded from this definition;

**"VAT"** means value added tax chargeable under the Value Added Tax Act 1994 or any similar replacement or additional tax; and

**Year** a period of 12 Months beginning on 1<sup>st</sup> April in each calendar year provided that the first year shall commence on the Commencement Date and continue until the next 31<sup>st</sup> March. **"Yearly"** means should be construed accordingly.

1.2 The following rules of interpretation apply to this Agreement:

- (a) Clause headings shall not affect the interpretation of this Agreement;
- (b) Words importing one gender shall include other genders;
- (c) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (d) A reference to a company shall include any company, corporation, or other body corporate, wherever and however, incorporated or established;
- (e) Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular;



- (f) Any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed so as not to limit the generality of any words or expressions in connection with which it is used;
- (g) Unless otherwise specified, a reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application, or re-enactment, and includes any subordinate laws for the time being in force made under it and all orders, notices, codes of practice and guidance made under it;
- (h) References to any clause, sub-clause, paragraph, sub-paragraph or schedule without further designation are to the clause, sub-clause, paragraph, sub-paragraph or schedule to this Agreement so numbered and any reference to an Appendix is a reference to an Appendix attached to this Agreement. Schedules and Appendices to this Agreement have the same force and effect as if expressly set out in the body of this Agreement and use the same definitions and interpretations;
- (i) Unless otherwise specified, a reference to writing or written excludes faxes and texts but includes email;
- (j) Any obligation in this Agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce to that act or thing being done and to prevent such act or thing being done by a third party; and
- (k) In the event of a conflict between the terms contained in the main body of this Agreement and the Schedules and Appendices, the main body of this Agreement shall prevail over the Schedules and the Appendices.

## **2 CONDITIONS PRECEDENT**

2.1 Subject to clause 2.2, the award and payments of the Grant are subject to the following conditions:

- (a) General arrangements with Recipients will be formalised in a Consortium Agreement, to be completed prior to the start of the Funded Activities;
- (b) the KPIs have been approved in accordance with clause 3.5;
- (c) the Recipient has submitted a Delivery Plan to UKRI-Innovate UK and such Delivery Plan has been approved by UKRI-Innovate UK in accordance with clause 3.1;
- (d) financial due diligence has been completed by UKRI-Innovate UK prior to the signature of this Agreement. The Recipient must provide such assistance and documentation as reasonably requested by UKRI-Innovate UK in order for UKRI-Innovate UK to complete the financial due diligence;
- (e) the Recipient must return the completed Schedule 5 upon return of signed GFA.

2.2 UKRI-Innovate UK may waive in writing any of the conditions listed in clause 2.1. UKRI-Innovate UK shall confirm in writing to the Recipient that the conditions precedent have been satisfied or waived within a reasonable time upon such satisfaction or waiver.

## **3 DELIVERY PLAN**

### **Content**

3.1 The Recipient shall submit a delivery plan within three Months following the Commencement Date. Any delivery plan submitted by the Recipient shall include the following details as set out in Schedule 4 and as a minimum:

- (a) the Strategy developed by the Recipient in accordance with guidance issued by UKRI-Innovate UK to the Recipient; setting out how the funded activities will create outputs and impacts in relation to the Innovate UK EDGE Impact Management Framework as provided by the Innovate UK EDGE Team;
- (b) the activities which the Recipient plans to undertake with the Grant for the duration of the Term;
- (c) the KPIs agreed with UKRI-Innovate UK pursuant to clause 3.5;
- (d) the Milestones;
- (e) the Financial Forecast which shall:
  - (i) detail the Grant (including any Advance On Grant required by the Recipient for the first Year) and other contributions that will be received for the Funded Activities and how they will be expended in delivering the delivery plan;
  - (ii) be a best estimate forecast made in good faith of what the Recipient believes the actual expenditure will be for any Quarter; and
  - (iii) be split into Quarterly instalments for the remainder of the Funded Activities; and
- (f) any other information reasonably requested by UKRI-Innovate UK.

Once UKRI-Innovate UK has approved such delivery plan in writing it shall become the agreed delivery plan (the “**Delivery Plan**”).

3.2 The Recipient shall submit any proposed change to the Delivery Plan to UKRI-Innovate UK for prior written approval. Once UKRI-Innovate UK confirms in writing that the revised Delivery Plan is approved, the revised Delivery Plan shall replace the Delivery Plan previously agreed. For the avoidance of doubt, acceptance of the revised Delivery Plan does not extend the Term or increase the Grant available under this Agreement.

#### **KPIs**

3.3 The Recipient shall work with UKRI-Innovate UK, to provide a proposed set of KPIs within one Month following the Commencement Date.

3.4 The Recipient may submit any suggested amendments to the proposed KPIs to UKRI-Innovate UK within 10 Business Days of receipt of the proposed KPIs under clause 3.3. UKRI-Innovate UK may take any such reasonable suggested amendments into account when approving the final set of KPIs.

3.5 UKRI-Innovate UK shall agree and approved with the Recipient with the final approved set of KPIs within two Months following the Commencement Date and such final set of KPIs shall be recorded in the approved Delivery Plan referred to in clause 3.1. Any change to the KPIs must be approved in writing by UKRI-Innovate UK.

#### **4 TERM**

4.1 This Agreement shall commence on the Commencement Date and continue for the Term, unless otherwise terminated in accordance with this Agreement.

4.2 There is no funding commitment by UKRI-Innovate UK in relation to the Funded Activities beyond this date, regardless of whether or not the Funded Activities is ongoing.

## **5 GRANT PAYMENT**

- 5.1 UKRI-Innovate UK shall pay the Grant to the Recipient each Quarter subject to:
- (a) clause 2.1 (Conditions Precedent);
  - (b) the Recipient making a valid claim for the Grant in accordance with clause 6 (Grant Claims);
  - (c) clause 11 (Suspension, Withdrawal and Claw back);
  - (d) the Agreement not having expired pursuant to clause 4 provided that claims for Eligible Costs for the period up to the date of such expiry shall be permitted after the date of expiry and shall be payable by UKRI-Innovate UK; and
  - (e) clause 12 (Termination).
- 5.2 Once a valid Grant claim has been submitted by the Recipient and approved by the Monitoring and Insight Manager in accordance with clause 6 (Grant Claims), the corresponding amount will be paid to the Recipient within 30 days of approval.
- 5.3 The Recipient shall use its reasonable endeavours to minimise the unrecoverable VAT claimed under this Agreement.
- 5.4 The payment of the Grant in accordance with this Agreement is believed to be outside the scope of VAT, but if VAT is chargeable, all payments of the Grant will be deemed to be inclusive of all VAT and UKRI-Innovate UK shall not be obliged to pay any amount over and above the amount of the Grant.
- 5.5 UKRI-Innovate UK will retain 15% of the Grant until the Funded Activities are complete and UKRI-Innovate UK has received:
- (a) all outstanding claims, in accordance with Clause 6;
  - (b) Close Out Report;
  - (c) the final Independent Accountant's report;
  - (d) Payment of the retained value 15% of the Grant is subject to the contents of the final Independent Accountant's report. UKRI-Innovate UK may adjust the Grant amount based on the final Independent Accountant's report.]

## **6 GRANT CLAIMS**

- 6.1 With the exception of any Advance On Grant, the Recipient shall make claims for Quarterly instalments of the Grant for Eligible Costs expended by the Recipient. The term "expended" in this clause 6 shall mean costs incurred by the Recipient, which in the case of payments to third parties, costs that are invoiced to the Recipient and are defrayed
- 6.2 The Recipient, or a Representative of the Recipient who has been authorised in accordance with the IFSPA terms of use, shall make any claim for Eligible Costs via IFSPA;
- 6.3 The Recipient is entitled to claim 25% of Overheads during the Term in accordance with Clause 6.2
- 6.4 Claims include Eligible Costs associated with client and stakeholder communications;
- 6.5 A claim under clause 6.1 shall be made using the Claim Report Template, as detailed in the Monitoring Framework provided by the Monitoring and Insight Manager, an outline example is detailed at Schedule 3 (Claim Report Template), and shall include:
- (a) the relevant management accounts for the Funded Activities;



- (b) an explanation of any variances between the claim, the management accounts and/or the Financial Forecast;
  - (c) accurate BACS detail for payment;
  - (d) an independent accountant's report if required pursuant to clause 20.1; and
  - (e) any other information that UKRI-Innovate UK may reasonably require to support the claim.
- 6.6 The Recipient shall notify the Monitoring and Insight Manager as soon as reasonably practicable and in any event within 20 days after the end of the Quarter to which a claim relates of:
  - (a) any variance between its proposed claim and the forecasted claim; and
  - (b) the reasons for any such variation.
- 6.7 Unless otherwise approved in writing by the Monitoring and Insight Manager following a notification under clause 6.5, the Recipient shall not:
  - (a) submit a claim in excess of the Financial Forecast claim; or
  - (b) vary the approved heads of expenditure contained within the claim.
- 6.8 In the event that there is any change to the agreed Financial Forecast by more than 10% the Recipient shall submit a revised Financial Forecast for the remainder of the Year to UKRI-Innovate UK for its approval. Following such approval, the revised Financial Forecast shall replace the existing Financial Forecast.
- 6.9 UKRI-Innovate UK shall be under no obligation to pay any claim received by it more than 30 days after the end of the Quarter in which the expenditure specified in the claim was expended, unless the failure to submit any claim in accordance with this clause 6.9 is outside of the reasonable control of the Recipient and the Recipient has notified UKRI-Innovate UK of the reason for the anticipated failure and UKRI-Innovate UK has agreed in writing to pay such claim.
- 6.10 Notwithstanding clause 6.1, the Recipient shall submit all claims for Eligible Costs within a Year within 30 days after the end of that Year in which such costs were expended. Where there are Eligible Costs that cannot be expended by such date, the Recipient shall notify the Monitoring and Insight Manager. Any accruals shall be at the sole discretion of UKRI-Innovate UK.
- 6.11 If the aggregate claim for Eligible Costs in any Year is less than the Annual Funding for that Year, the Recipient will not be able to claim the unclaimed allocated funds for the Year in a different Year, unless UKRI-Innovate UK gives its explicit consent in writing making reference to this clause 6.11.

## **7 ADVANCE ON GRANT**

- 7.1 Where duly justified and subject to written agreement with UKRI-Innovate UK providing consent the Recipient may submit to UKRI-Innovate UK its Advance On Grant requirements for the Year as part of the Financial Forecast to be provided pursuant to clause 3.1(e).
- 7.2 The Advance On Grant requirements shall be reviewed by the Parties each Year, or more frequently as may be required, and determined in UKRI's reasonable discretion, with a reconciliation payment being made by or to UKRI-Innovate UK to reflect the changing Advance On Grant requirement.



- 7.3 Except where otherwise specified, any reconciliation payment by the Recipient under this clause 7 shall be made within 90 days of UKRI-Innovate UK making and communicating its decision or when such reconciliation payment is scheduled to take place if later.
- 7.4 The Advance On Grant shall be terminable pursuant to the termination provisions in clause 12. Upon termination or expiry of the Term, (in each case only in circumstances where UKRI-Innovate UK or UKRI-Innovate UK ceases to fund the Recipient) whichever the sooner, a reconciliation payment shall become payable by the Recipient to UKRI-Innovate UK for that part of the Advance On Grant that is unspent and uncommitted by the Recipient at the time of termination or expiry, subject to agreement of a repayment schedule.
- 7.5 The Recipient shall operate an imprest system for the use of Advance On Grant.
- 7.6 The Recipient shall keep a clear record in its accounts of the Advance On Grant.

## **8 CAPITAL ASSETS**

- 8.1 If agreed as part of the Delivery Plan and subject to compliance with clause 24, the Grant may be used for purchasing Capital Assets, provided that the Recipient ensures:
- (a) the Capital Assets are used solely in pursuit of the objectives of this Agreement;
  - (b) an up-to-date registry of all Capital Assets purchased at a price of more than £20,000 is maintained, which shall be reported, or otherwise made available to UKRI-Innovate UK and its representatives at all reasonable times, and include the following details:
    - (i) date of acquisition;
    - (ii) description of Capital Asset;
    - (iii) price paid net of recoverable VAT;
    - (iv) location of the Capital Asset;
    - (v) date and proceeds (net of VAT) of any disposals; and
    - (vi) details of the recipient of any Capital Asset disposal.
  - (c) the Capital Assets are maintained and kept in good repair and condition, save for fair wear and tear;
  - (d) where reasonable, the Capital Assets are insured and kept insured with a reputable insurer against loss or damage against their full replacement value, subject to the Recipient self-insuring such Capital Assets as the Recipient deems appropriate and notifies and agrees with UKRI-Innovate UK in writing;
  - (e) no charge, legal mortgage, debenture or lien over any Capital Asset is created without the prior written consent of UKRI-Innovate UK;
  - (f) capital expenditure of more than £50,000 using the Grant is not incurred without the prior written approval of UKRI-Innovate UK, unless the expenditure is included in the Delivery Plan.
  - (g) any Capital Asset with an open market value at the date of disposal above £50,000 is not disposed of without the consent of UKRI-Innovate UK, such consent not to be unreasonably withheld or delayed. If UKRI-Innovate UK grants such consent, it may attach such conditions as it deems appropriate, including a requirement for a deed of covenant from the purchaser and/or to provide UKRI-Innovate UK with a proper proportion of the value of the Capital Asset based on open market value of the asset and such amount as reflects the contribution by UKRI-Innovate UK to that asset; and

- (h) subject to clause 8.1(f), in the event of a disposal of any Capital Asset on the registry maintained in accordance with clause 8.1(b), an open market value for the asset is obtained and the proceeds of sale are used to further the objectives of the Funded Activities pursuant to the Delivery Plan and in accordance with this Agreement.
- 8.2 Clauses 8.1(f) and 8.1(h) shall not apply in respect of the disposal of a Capital Asset by the Recipient to a wholly owned subsidiary within the Recipient's group, provided that such disposal is made solely in pursuit of the Recipient's objectives for the Funded Activities pursuant to the Delivery Plan and in accordance with this Agreement, the Recipient procures that the transferee complies with the provisions of clause 8.1 in respect of that Capital Asset, and that the wholly owned subsidiary remains wholly owned and within the Recipient's group.
- 8.3 For the avoidance of doubt, in the event of any loss or damage to any Capital Asset, UKRI-Innovate UK shall not be obliged to pay for its repair or replacement.
- 8.4 For the avoidance of doubt and notwithstanding any other provision in this Agreement, this clause 8 shall survive the termination or expiry of this Agreement for a period of five Years save in respect of those Capital Assets which, in the Recipient's reasonable judgement, are at the end of their useful life or have no market for their use, after which period the Recipient shall own the Capital Assets and shall be entitled to deal with them without restriction.

## **9 RECIPIENT OBLIGATIONS**

- 9.1 The Recipient shall during the Term:
  - (a) ensure that UKRI-Innovate UK is as informed as is reasonably possible, without breaching the Recipient's obligations to third parties, and in accordance with the terms of this Agreement, and at all times seek to maintain a constructive and well informed relationship between the two Parties such that UKRI-Innovate UK is able to satisfy itself that the Recipient is complying with its obligations under this Agreement;
  - (b) operate and deliver the Funded Activities in accordance with the Delivery Plan;
  - (c) not apply for funding for activities which have been paid for using the Grant. For the avoidance of doubt, any match or pool funding, where declared to UKRI-Innovate UK prior to the date of this Agreement or subsequently approved by UKRI-Innovate UK in writing, shall not be considered to breach this clause or the warranty in clause 10.1(a);
  - (d) comply with the terms and conditions of this Agreement;
  - (e) where specified by UKRI-Innovate UK, work with other Business Support Activities to ensure best use of existing resources, avoiding overlap with its own activities and promoting collaborative efforts;
  - (f) recruit via an open and transparent process for any appointment to a senior position within the Recipient that is to be funded, in whole or in part by the Grant;
  - (g) take out and maintain insurance cover against all such risks and liabilities of the relating to the Funded Activities in such manner and in such amounts as shall accord with good commercial practice;
  - (h) generally act cooperatively and in the utmost good faith without undue delay towards UKRI-Innovate UK in relation to this Agreement at all times; and
  - (i) comply with all relevant and applicable laws and regulations in carrying out its activities under this Agreement.

- (j) comply with Subsidy Rules (or, where applicable, the State Aid Rules) and not provide any secondary or indirect grant funding without obtaining prior written consent from UKRI-Innovate UK. Any subsequently approved funding shall only be permitted to be through UKRI's Innovation Funding Service (IFSPA), unless otherwise agreed with UKRI-Innovate UK in writing.
- (k) Provide UKRI-Innovate UK, and any data-sharing partner we appoint, any information we need to create an evaluation report during the Term of the Agreement and for a further period as specified in 9.1 (l)
- (l) provide UKRI-Innovate UK, BEIS, any independent evaluation partner we appoint, with data which will include, but is not limited to, information needed for benefit realisation and evaluation when requested within 30 days relating to your project organisations and Funded Activities throughout the Term and for up to five years from the End Date. UKRI-Innovate UK, or any independent evaluator UKRI-Innovate UK appoint can also contact individuals to gather data through primary data collection methods for evaluating the impact of your project activity.

The Recipient's data will not be published or referred to in a way which identifies any individual or business without the Recipient's consent. UKRI-Innovate UK may develop case studies to promote the technologies and systems being developed and demonstrated through this funding. UKRI-Innovate UK will develop the case study jointly with the Recipient and will obtain the Recipient's written consent before publishing.

9.2 The Recipient shall after the Term comply with the terms and conditions of this Agreement insofar and for so long as they endure.

## 10 WARRANTIES

10.1 As of the date of the Agreement, and upon any renewal, the Recipient warrants to UKRI-Innovate UK that to its reasonable knowledge and belief:

- (a) that acceptance of the Grant shall not result in duplicate funding for the same activities pursuant to clause 9.1(c);
- (b) it shall, in reliance of the Grant and subsequent payment thereof, have all necessary resources and expertise to deliver the Delivery Plan;
- (c) it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Grant;
- (d) it has not committed any Prohibited Act;
- (e) it has in place adequate procedures for dealing with any conflicts of interest;
- (f) it is acting in compliance with its constitution;
- (g) all financial and other information concerning the Recipient which has been disclosed to UKRI-Innovate UK is to its reasonable knowledge and belief, true and accurate it being acknowledged by UKRI-Innovate UK that the Financial Forecasts are best estimates made in good faith;
- (h) it is not aware of anything in its own affairs, which it has not disclosed to UKRI-Innovate UK, which might reasonably have influenced the decision of UKRI-Innovate UK to make the Grant, or approve the Delivery Plan, on the terms contained in this Agreement;



- (i) since the date of its last accounts (if any) there has been no material change in its financial position or prospects which has not been notified to UKRI-Innovate UK;
- (j) it is not subject to an outstanding order for the recovery of aid which has been declared by the Commission to be illegal and incompatible with the common market;
- (k) it is: (i) not subject to collective insolvency proceedings nor does it fulfil the criteria under English law for being placed in collective insolvency proceedings at the request of its creditors; and (ii) where the Grant is subject to the State Aid Rules, it is not an undertaking in difficulty as defined in accordance with the State Aid Rules; and

## **11 SUSPENSION, WITHDRAWAL AND CLAW BACK OF GRANT**

11.1 UKRI-Innovate UK shall be entitled upon written notice to immediately:

- (a) suspend payment(s) of the Grant in the event of the reasonable suspicion of the occurrence of a Default;
- (b) withdraw and/or recover payment(s) of the Grant in accordance with clause 24.4 (Subsidy Law); and
- (c) require that the part of the Grant which has been misapplied to be repaid, or require Capital Assets wholly funded by the misapplied proportion of the Grant to be transferred to it, where a Default has occurred resulting in a material element of the Grant being used for a purpose that is not materially in accordance with the Delivery Plan.

### **Rectification of Default**

11.2 Where the Recipient commits a Default it shall immediately notify UKRI-Innovate UK and, subject to clause 11.1 and clause 12.2, the following provisions shall apply:

- (a) UKRI-Innovate UK shall notify the Recipient in writing to acknowledge the Default;
- (b) following notification under clause 11.2(a) the Parties shall meet promptly, and in any event within 14 days of such notification and, acting in good faith, seek to agree upon the appropriate and proportionate action(s) required, to remedy the Default, together with a reasonable time frame for such action(s) to be commenced and/or completed;
- (c) once 30 days has passed following notification under clause 11.2(a) and, in the reasonable opinion of UKRI-Innovate UK, the Recipient is not carrying out the actions agreed upon in clause 11.2(b) or where actions could not be agreed upon, UKRI-Innovate UK may at any time suspend such proportion of the Grant as is directly affected by the Default until such time as the Default has been rectified; and
- (d) where the Default cannot reasonably be remedied by the Recipient, upon giving written notice, UKRI-Innovate UK may immediately suspend, withdraw or claw back such proportion of the Grant as is directly affected by the Default.

11.3 Following any suspension, withdrawal or clawback under this clause 11, the Parties shall promptly meet and, acting in good faith, seek to agree upon the appropriate and proportionate action(s) to ensure that the Default (and the suspension, withdrawal and clawback) does not unduly prejudice the Funded Activities. Where the Parties cannot agree upon such actions within 30 days following any suspension, withdrawal or clawback, UKRI-Innovate UK may terminate this Agreement by giving three Months' notice in writing to the Recipient.



## **12 TERMINATION**

12.1 UKRI-Innovate UK may terminate this Agreement:

- (a) by giving three Months' notice in accordance with:
  - (i) clause 11.3 (Suspension, Withdrawal and Claw Back);
  - (ii) clause 12.2 (Termination);
  - (iii) clause 13.4 (Monitoring and Performance); and
  - (iv) clause 28.2 (Government Policy);
- (b) by giving 10 Business Days' notice in accordance with clause 31.4 (Force Majeure); and
- (c) with immediate effect in accordance with:
  - (i) clause 25.6 (Anti-Corruption); and
  - (ii) clause 27.3 (Insolvency).

12.2 Notwithstanding clause 11.1 and clause 11.2, where the Recipient commits limb (c), (e), (f), (g)(ii), (l) or (m) of Default, UKRI-Innovate UK may give written notice to the Recipient detailing the Default and where reasonably possible the actions required to remedy the Default. If the Recipient fails to remedy the Default within 30 days of the notification under this clause 12.2, or in the event that the Default is not reasonably remediable, UKRI-Innovate UK may terminate this Agreement by giving three Months' notice in writing to the Recipient.

12.3 In the event of termination pursuant to clause 12.2, 13.4 or 28.2, UKRI-Innovate UK shall pay valid claims for expenditure incurred by the Recipient on or before the date of termination in connection with this Agreement, provided always that the obligations of UKRI-Innovate UK under this clause shall be limited to those sums that would, but for the termination of this Agreement, have been an Eligible Cost, subject to the Recipient using reasonable endeavours to mitigate such costs.

12.4 Save as otherwise provided within this Agreement, termination of this Agreement shall not affect any accrued rights or remedies to which either Party is entitled.

## **13 MONITORING AND PERFORMANCE**

13.1 During the Term, the Recipient's progress against the Delivery Plan shall be principally monitored by UKRI-Innovate UK through the Monitoring and Insight Manager. Accordingly, the Monitoring and Insight Manager must be the first point of contact for official notifications, queries and correspondence with UKRI-Innovate UK, unless otherwise required by this Agreement. If it is not possible to engage with the Monitoring and Insight Manager, any concerns relating to the Monitoring and Insight Manager should be raised in writing to the Innovate UK EDGE central mailbox, as detailed in Schedule 1. The Recipient must comply with any reasonable request for information by the Monitoring and Insight Manager within a reasonable timescale. The Recipient may at its discretion (but shall not be required to) disclose Third Party Sensitive Information or IP Information in response to any such request, but such information will not be routinely disclosed.

13.2 During the Term:

- (a) the Recipient shall provide a report to UKRI-Innovate UK once a Quarter, in the form set out in Schedule 2, detailing the Recipient's progress in delivering the Funded Activities, through undertaking the Delivery Plan in the Quarter just ended; and

- (b) the UKRI-Innovate UK Deputy Director Innovate UK EDGE (or his or her delegate) and the Monitoring and Insight Manager shall meet with the Recipient and relevant members of the Senior Management Team of the Recipient once a Quarter to review the report referred to in clause 13.2(a). The report must be delivered to the Monitoring and Insight Manager up to 20 days after the quarter end. The meeting must be held no later than 30 – 40 days after the end of the quarter covered by the report. Where appropriate, other UKRI-Innovate UK staff and representatives may attend the quarterly meetings.
- 13.3 In addition to the report under clause 13.2(a), within 40 business days following the end of each Year, the Recipient shall submit an annual report to UKRI-Innovate UK including the details set out in Schedule 2, updated to be given on an annual basis, which shall include:
- (a) the progress of the Funded Activities during the preceding Year;
  - (b) a summary of publicity and communications engagement and impact during the preceding Year; and
  - (c) the forecast activities and progress for the forthcoming Year.
- 13.4 The following provisions shall apply where there is Inadequate Performance:
- (a) UKRI-Innovate UK shall notify the Recipient in writing in relation to the Inadequate Performance, with any such notice to include:
    - (i) the Metric(s) that the Inadequate Performance relates to, including whether the Inadequate Performance is being treated as Partial Inadequate Performance or Material Inadequate Performance;
    - (ii) UKRI's issue(s) or concern(s) in as much detail as reasonably possible to enable the Recipient to produce a Rectification Plan to address the Inadequate Performance; and
    - (iii) a requirement for the Recipient to submit a Rectification Plan within 30 days of receipt of UKRI's notice to address the Inadequate Performance.
  - (b) UKRI-Innovate UK shall notify the Recipient in writing of its approval (which may or may not be subject to conditions) or rejection (with reasons) of the Rectification Plan within 30 days of receipt of the Rectification Plan. The decision to approve or reject shall rest with the UKRI-Innovate UK Deputy Director Innovate UK EDGE or with his or her delegate as notified to the Recipient from time to time. Where the Rectification Plan has been rejected, the Parties shall use their reasonable endeavours to agree a Rectification Plan within a period of 30 days following UKRI's notice of rejection. The Parties shall act reasonably and in good faith in order to reach agreement on a Rectification Plan. If the Parties fail to agree a Rectification Plan within this period, UKRI-Innovate UK may provide the Recipient with 3 Months' written notice ("**3 Month Notice**") of its intention to:
    - (i) for Partial Inadequate Performance, reduce the Grant and adjust the Annual Funding to remove future funding that is attributable to the underperforming Metric(s); or
    - (ii) for Material Inadequate Performance, reduce the Grant and adjust the Annual Funding to remove future funding that is attributable to the underperforming Metric(s) and/or terminate this Agreement.

- (c) Without prejudice to UKRI's right to give notice to reduce the Grant or terminate the Agreement pursuant to clause 13.4(b), the Parties shall continue to use reasonable endeavours to agree a Rectification Plan. In the event that:
  - (i) a Rectification Plan is agreed within a period of 30 days following UKRI's notice under clause 13.4(b); or
  - (ii) a Rectification Plan is not agreed but the Recipient is able to demonstrate to UKRI's satisfaction (acting reasonably) the Inadequate Performance has been resolved and that Inadequate Performance will not arise in relation to the same Metric(s) during the remainder of the Term,

UKRI-Innovate UK shall withdraw the 3 Month Notice given under clause 13.4(b).
- (d) The Recipient shall implement any approved Rectification Plan immediately and, in addition to its obligations in clause 13.2, provide monthly reports (and attend monthly meetings if requested by UKRI-Innovate UK) on its progress in implementing the Rectification Plan.
- (e) After a period of 6 Months, UKRI-Innovate UK shall review the Recipient's progress against the Rectification Plan, and shall notify the Recipient that:
  - (i) it no longer has any concerns in relation to the Metric(s) that were subject to the Inadequate Performance, and that the Recipient is no longer required to report (and meet with UKRI-Innovate UK) on a monthly basis to discuss progress in implementing the Rectification Plan; or
  - (ii) it continues to have concerns and will give the Recipient a further 3 Months to improve its performance. If, after the 3 Months, UKRI-Innovate UK is not satisfied that the Recipient has rectified the Inadequate Performance, it shall, provide the Recipient with 3 Months' written notice (which it may extend in its absolute discretion) of its intention to:
    - (A) for Partial Inadequate Performance, reduce the Grant and adjust the Annual Funding to remove future funding that is attributable to the underperforming Metric(s); or
    - (B) for Material Inadequate Performance, reduce the Grant and adjust the Annual Funding Profile to remove future funding that is attributable to the underperforming Metric(s) and/or terminate this Agreement.

## **14 CONFIDENTIALITY**

### **Third Party Sensitive Information and IP Information**

- 14.1 Notwithstanding any term of this Agreement which imposes a reporting obligation on the Recipient and subject to any express right of UKRI-Innovate UK (or an appointed third party) to undertake an audit of IP information and/or Third Party Sensitive Information, the Recipient shall not be obliged to include in any report (or other documentation) to UKRI-Innovate UK (or an appointed third party) any IP Information and/or Third Party Sensitive Information.
- 14.2 The Recipient may at its discretion and with the agreement of the relevant third parties disclose Third Party Sensitive Information and IP Information to UKRI-Innovate UK at which point it will be treated as Confidential Information, provided that UKRI-Innovate UK shall not disclose any such IP Information or Third Party Sensitive Information pursuant to its rights under clause 14.9.
- 14.3 During any Investigative Audit UKRI-Innovate UK and/or any third party entitled to conduct the Investigative Audit shall be entitled to audit Third Party Sensitive Information



and IP Information as reasonably necessary for the purposes of such audit, provided that UKRI-Innovate UK and/or such auditor (as applicable):

- (a) shall only be permitted to physically view Third Party Sensitive Information or IP Information at the Recipient's premises;
- (b) shall not be permitted to make copies, take any documents away from the premises nor to record in any medium any Third Party Sensitive Information or IP Information;
- (c) in the case of a third party auditor, shall enter a confidentiality agreement with the Recipient on terms which are equivalent to the protections provided by this clause 14;
- (d) shall only include in any report of any audit such details of the Third Party Sensitive Information or IP Information to the extent reasonably required to report a summary of the Recipient's compliance under this Agreement;
- (e) Shall only view IP Information where there is a reasonable and unavoidable need to view IP Information, which shall be limited to those circumstances where:
  - (i) UKRI-Innovate UK has reasonable suspicion that the Recipient is:
    - (A) committing (or has committed) limb (b) of Default;
    - (B) committing (or has committed) limb (c) of Default;
    - (C) committing (or has committed) limb (l) of Default; or
    - (D) undertaking (or has undertaken) an unlawful act which could have a serious adverse effect on UKRI-Innovate UK, the Recipient or both, and
  - (ii) access to the IP Information is necessary and unavoidable for the purpose of investigating and verifying the reasonable suspicion of UKRI-Innovate UK.

14.4 Each Party shall keep the other Party's Confidential Information confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement (the "**Permitted Purpose**"); or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 14.
- (c) The Recipient shall not be entitled to use any Confidential Information or data relating to this Grant except for the purpose of carrying out Funded Activities provided in Schedule 1, any use of Confidential Information or data arising out of the Funded Activities for commercial gain for profit shall be considered a breach of this Agreement.

14.5 Subject to clause 14.6 and clause 14.9, a Party may only disclose the other Party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause 14.



- 14.6 A Party may disclose Confidential Information, Third Party Sensitive Information and/or IP Information in its possession or under its control to the extent required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible to enable such other Party to seek appropriate protective relief and/or take steps to resist or narrow the scope of any required disclosure.
- 14.7 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Agreement (or otherwise agreed in writing between the Parties) are granted to the other Party, or to be implied from this Agreement.
- 14.8 Except as expressly stated in this Agreement or otherwise agreed between the Parties, no Party makes any express or implied warranty or representation concerning its Confidential Information.
- 14.9 Save in the case where statutory obligation exists to the contrary, nothing in this Agreement shall prevent UKRI-Innovate UK disclosing the Recipient Confidential Information:
- (a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not a Crown Body or Contracting Authority;
  - (b) for the purpose of any audit under this Agreement;
  - (c) in accordance with clause 15;
  - (d) to enable UKRI-Innovate UK or UK Government to meet its reporting obligations and other obligations under the Subsidy Rules (or, where applicable, the State Aid Rules);
  - (e) for the purpose of the examination and certification of UKRI's accounts; or
  - (f) for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which UKRI-Innovate UK has used its resources,
- provided that UKRI-Innovate UK shall use all reasonable endeavours to ensure that any Crown Body, Contracting Authority, external auditor, employee, third party or sub-contractor to whom the Recipient's Confidential Information is disclosed pursuant to this clause 14.9 is made aware of UKRI's obligations of confidentiality.
- 14.10 Without prejudice to any other rights and remedies that the disclosing Party may have, each Party acknowledges and agrees that damages may not be an adequate remedy for any breach of obligations set out in this clause 14 and that the remedy of an injunction, specific performance and other equitable relief may be appropriate for any threatened or actual breach.
- 14.11 This clause 14 shall survive any termination or expiration of the Agreement and continue in force for a period of six Years from the date of termination or expiry.

## **15 INFORMATION**

- 15.1 It is acknowledged that UKRI-Innovate UK is subject to the requirements of the FOIA and the EIR and the Recipient and UKRI-Innovate UK shall reasonably consult and cooperate to enable UKRI's compliance with the Information disclosure requirements, subject always to the terms of this Agreement.

- 15.2 Without prejudice to clause 15.3 and clause 15.4, all your information disclosed deliberately or otherwise will be treated by Innovate UK as confidential information and commercially sensitive as exempted under the Freedom of Information Act 2000 or any related legislation, unless otherwise marked or agreed in writing. For the avoidance of doubt, it is at your discretion and must be with the agreement of the relevant third parties, if you choose to disclose confidential information of third parties to Innovate UK, at which point it will be treated as confidential information by Innovate UK unless marked otherwise
- 15.3 The Recipient acknowledges that UKRI-Innovate UK may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of FOIA, November 2004), be obliged under FOIA or the EIR to disclose Information in its possession or control:
- (a) without consulting with the Recipient, or
  - (b) following consultation with the Recipient and having taken its views into account,
- provided always that where clause 15.3(a) applies UKRI-Innovate UK shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Recipient advanced notice, or failing that, to draw the disclosure to the Recipient's attention after any such disclosure.
- 15.4 Notwithstanding any duty of confidentiality that may exist between the Parties, all information and communications exchanged between the Parties may be subject to public disclosure under the FOIA or EIR (if such information is decided or held not to be protected by exemptions or exceptions), and that, in such a case, provided that UKRI-Innovate UK has made all reasonable efforts to avoid the disclosure of commercially sensitive information, including Confidential Information, Third Party Sensitive Information and IP Information, UKRI-Innovate UK shall have no liability whatsoever to the Recipient arising from any disclosure of Information UKRI-Innovate UK is required to make.
- ## 16 DATA PROTECTION
- 16.1 The Parties agree that in order for them to carry out their respective obligations under this Agreement, they will each be required to share business contact information (limited to names and contact details of organisations they have engaged) relevant to this project and Agreement ("**Business Contact Information**").
- 16.2 The Parties shall each be Data Controllers in respect of the Business Contact Information held in relation to the Funded Activities and this Agreement.
- 16.3 The Parties agree to comply, and shall procure that their subcontractors shall comply, with the applicable Data Protection Legislation in relation to the Funded Activities and this Agreement.
- 16.4 Each Party shall provide reasonable cooperation and assistance to the other in complying with all applicable requirements of the Data Protection Legislation in the context of the Funded Activities and this Agreement.
- 16.5 The Recipient may make use of IFSPA to access and contribute to the platform information and shall comply with the IFSPA terms of use.
- 16.6 When transferring any Personal Data under this Agreement the Recipient shall comply with UKRI's [Information Management Policy](#), as amended from time to time.
- 16.7 If at any stage the Recipient is to act as a data processor on behalf of UKRI-Innovate UK or if the Recipient is to receive Personal Data from UKRI-Innovate UK other than Business Contact Information, the Recipient shall enter into a data sharing agreement with UKRI-Innovate UK in the form notified by UKRI-Innovate UK from time to time.

## **17 INTELLECTUAL PROPERTY**

- 17.1 All Funded Activities Intellectual Property shall be proprietary to and owned by UKRI-Innovate UK. To the extent that any Funded Activities Intellectual Property is capable of prospective assignment, each recipient now assigns such Intellectual Property to UKRI-Innovate UK. To the extent that any Funded Activities Intellectual Property cannot be prospectively assigned, each recipient will assign such Intellectual Property to UKRI-Innovate UK upon its coming into existence.
- 17.2 To the extent that the recipient subcontracts performance of the Funded Activities, it shall ensure that any Funded Activities Intellectual Property emanating from the work of its sub-contractor shall be assigned to it absolutely so as to enable it to give effect to this Clause 17
- 17.3 Notwithstanding termination of this Agreement for any reason whatsoever, each Party shall at its expense do and execute, and shall procure that its employees and any sub-contractor engaged in the performance of the Funded Activities do and execute any further thing or document as may be required to give effect this Clause 17
- 17.4 UKRI-Innovate UK shall grant each recipient upon request a non-exclusive, royalty-free, worldwide, non-transferable (save to its affiliates) licence to all Funded Activities Intellectual Property for use by such recipient for delivery of Funded Activities and after termination of this Agreement for internal research purposes only.
- 17.5 UKRI-Innovate UK shall grant each recipient upon request a non-exclusive, royalty-free, worldwide, non-transferable (save to its affiliates) licence to all Funded Activities Intellectual Property created by the recipient or its subcontractors for use by such recipient for delivery of Funded Activities and after termination of this Agreement for any purpose whatsoever.

## **18 BRANDING**

- 18.1 The Recipient shall display the Mark on all publicity material and published work undertaken as part of the Delivery Plan (including electronic outputs) in accordance with established branding guidelines maintained by UKRI-Innovate UK and made available to the Recipient. By default, the Recipient shall avoid promotion of its own branding mark on work undertaken as part of the Delivery Plan
- 18.2 In all publicity material and published work undertaken as part of the Delivery Plan, the Recipient shall indicate that it is a UKRI-Innovate UK service by displaying the branding device notified to the Recipient by UKRI-Innovate UK.
- 18.3 UKRI-Innovate UK grants to the Recipient a non-exclusive royalty free worldwide licence to use the Mark in relation to the Recipient's business anywhere in the world on condition that:
- (a) the Recipient's use is pursuant to the Delivery Plan;
  - (b) any goodwill in the Mark derived from the use by the Recipient of the Mark shall accrue to UKRI-Innovate UK. UKRI-Innovate UK may, at any time, call for a confirmatory assignment of that goodwill and the Recipient shall immediately execute it;
  - (c) the Recipient shall not do, or omit to do, or permit to be done, any act that will or may weaken, damage or be detrimental to the Mark or the reputation or goodwill associated with the Mark or UKRI-Innovate UK, or that may invalidate or jeopardise any registration of the Mark;
  - (d) the Recipient shall not apply for, or obtain, registration of the Mark, or any mark confusingly similar or which comprises the Mark, for any goods or services in any country or territory;



- (e) the Recipient shall immediately notify UKRI-Innovate UK in writing giving full particulars if any of the following matters come to its attention:
    - (i) any actual, suspected or threatened infringement of the Mark;
    - (ii) any actual or threatened claim that the Mark is invalid;
    - (iii) any actual or threatened opposition to the Mark;
    - (iv) any claim made or threatened that use of the Mark infringes the rights of any third party;
    - (v) any person applies for, or is granted, a registered trade mark by reason of which that person may be, or has been, granted rights which conflict with any of the rights granted to the Licensee under this agreement; or
    - (vi) any other form of attack, charge or claim to which the Mark may be subject; and
  - (f) the Recipient shall not sub-licence use of the Mark other than to any wholly-owned subsidiary of the Recipient.
- 18.4 Pursuant to clause 18.3, the Recipient may also use the Mark in relation to other activities it undertakes outside of the Delivery Plan on condition that:
- (a) the Recipient otherwise complies with this clause 18.4;
  - (b) the activities are consistent with promoting the goals and objectives of the Delivery Plan; and
  - (c) UKRI-Innovate UK does not object, such objection being in writing, effective upon deemed receipt by the Recipient, and made at UKRI's reasonable discretion.
- 18.5 UKRI-Innovate UK acknowledges the interests of other stakeholders in the Funded Activities and shall make reasonable allowance or agree reasonable adjustments of its own branding requirements in order to accommodate the reasonable branding requirements of other key stakeholders.
- 19 PUBLICITY AND COMMUNICATIONS**
- 19.1 Without prejudice to clause 14, the Recipient shall not make any press announcements or publicise:
- (a) any decision by UKRI-Innovate UK or UK Government to provide funding to the Recipient for the Funded Activities; or
  - (b) this Agreement in any way,
- without the prior written consent of UKRI-Innovate UK until such time as UKRI-Innovate UK or UK Government announce or otherwise publicise any such decision or the existence of this Agreement.
- 19.2 Subject to clause 19.1, the Recipient must ensure that UKRI's prior written approval is sought for any press release or public announcement concerning the Funded Activities. Unless otherwise notified by UKRI-Innovate UK, once the text of a press release or public announcement is approved by UKRI-Innovate UK, the same or substantially similar text may be used in one or more further occasions.
- 19.3 UKRI-Innovate UK agrees to consult with the Recipient and, where reasonably possible, to agree in advance any promotional activities or publicity relating to the Funded Activities that UKRI-Innovate UK may conduct. Where practicable, the Recipient shall participate in and cooperate with such proposed activities.

- 19.4 The Recipient shall use its reasonable endeavours to keep UKRI-Innovate UK notified of any events, achievements, collaborations or matters otherwise concerning the Funded Activities which may reasonably be considered noteworthy.
- 19.5 The Recipient shall notify UKRI-Innovate UK immediately in writing via the Innovate UK EDGE central mailbox, as detailed in Schedule 1, of any matter or incident of which it becomes aware which may damage or otherwise adversely affect the reputation of the Funded Activities and/or UKRI-Innovate UK.
- 19.6 Subject always to the confidentiality provisions contained in clause 14, the Recipient shall use its reasonable endeavours to comply with all reasonable requests from UKRI-Innovate UK to facilitate visits, provide reports, statistics, photographs and case studies that will assist UKRI-Innovate UK with its promotional activities relating to the Funded Activities.
- 19.7 If either Party requires further information for any publication it shall make a request in writing to the other Party for such further information. Following the receipt of such a request, subject to the confidentiality provisions contained in clause 14, the Party receiving the request shall not unreasonably withhold or delay the provision of the requested information to the other Party.

## **20 FINANCIAL AND INVESTIGATIVE AUDITING**

### **20.1 The Recipient shall:**

- (a) appoint a qualified independent accountant ("**Independent Accountant**") in accordance with the Terms of Engagement;
- (b) require the Independent Accountant to inspect the Recipient's financial statements and records relating to the Grant and report on a Yearly basis in the form as set out in the Independent Assurance Requirements issued to the Recipient by UKRI-Innovate UK. Subject to providing the Recipient with 30 days notice UKRI-Innovate UK may require the Recipient to provide an alternate report in a form to be confirmed by UKRI-Innovate UK. The report must contain an opinion that:
  - (i) the financial information and level of the Grant claimed are fairly stated;
  - (ii) expenditure has been properly expended in accordance with this Agreement; and
  - (iii) satisfactory explanations have been received for any queries raised.
- (c) the Recipient shall keep its accounts up to date and open to inspection by UKRI-Innovate UK, or its nominated representatives, at all reasonable times. This will require the maintenance of a comprehensive set of management accounts which are readily comprehensible by third party that is not familiar with the Recipient's accounting practices; and
- (d) the Recipient shall fully respond to any reasonable requests for information from UKRI-Innovate UK or its nominated representatives without undue delay provided that, other than in accordance with any Investigative Audit, the Recipient shall not be obliged to disclose any Third Party Sensitive Information or IP Information when responding to such requests.

### **20.2 In addition and without prejudice to other rights and remedies available to UKRI-Innovate UK, UKRI-Innovate UK may require the Recipient to, and the Recipient shall, submit an Independent Accountant's report if any of the following occur:**

- (a) the Recipient withdraws from the Funded Activities;
- (b) the Funded Activities or this Agreement is terminated;

- (c) the Recipient submits a claim disclosing expenditure substantially greater than forecast in the opinion of the Monitoring and Insight Manager ; and
  - (d) the Recipient is suspected of breaching the terms and conditions of this Agreement.
- 20.3 UKRI's right pursuant to this sub-clause 21.3 includes a right to:
- (a) appoint a suitably qualified third party to conduct an audit on its own or in conjunction with UKRI-Innovate UK subject to clause 15.2, audit Third Party Sensitive Information and IP Information; and
  - (b) have access to such staff and facilities of the Recipient as may reasonably be required for the purpose of the audit.
- 20.4 Upon giving reasonable notice and at a reasonable time, UKRI-Innovate UK may at its reasonable discretion undertake, and the Recipient shall use all reasonable endeavours to facilitate, an Investigative Audit of any Confidential Information and other information, held or otherwise under the control of the Recipient which effects or otherwise concerns this Agreement. UKRI's right pursuant to this clause 20.4 includes a right to:
- (a) appoint a suitably qualified third party to conduct an audit on its own or in conjunction with UKRI-Innovate UK;
  - (b) subject to clause 14.3, audit Third Party Sensitive Information and IP Information; and
  - (c) have access to such staff and facilities of the Recipient as may reasonably be required for the purpose of the audit.

## **21 RECORDS**

- 21.1 The Recipient shall retain accounting records and associated documents sufficient to support the submission of timely and accurate claims and to enable the proper performance of any required audit for at least eight Years from the date of receipt of the Grant associated with it. The Recipient shall provide this documentation to auditors in accordance with clause 20 (Financial and Investigative Auditing).
- 21.2 Subject to the confidentiality provisions contained in clause 14, UKRI-Innovate UK reserves the right to request copies of any supporting documentation and access to any relevant records or employees in connection with this Agreement upon reasonable notice and at reasonable times, for UKRI-Innovate UK or its authorised Representatives, and the Recipient shall provide such documentation to UKRI-Innovate UK within 10 days of a request from UKRI-Innovate UK, ensuring compliance with clause 16 at all times. For the avoidance of doubt, such requests for information may include any information required in order to demonstrate the economic benefit which has been provided by the Funded Activities, including for example data relating to job creation and any commercial impact of the results of the Funded Activities.
- 21.3 This clause 21 shall survive any termination or expiration of the Agreement and continue in force for a period of eight Years from the date of termination or expiry.

## **22 PROCUREMENT**

- 22.1 The Recipient shall comply with the Procurement Regulations in respect of any procurement utilising the Grant and insofar as they are applicable from time to time including in relation to any contract which would fall within the scope of Regulation 13 of the Public Contracts Regulations 2015 (SI 2015/102) or an equivalent provision in the other Procurement Regulations.



- 22.2 The Recipient shall ensure that prior to the commencement of any procurement utilising the Grant that it considers obtaining value for money and shall ensure that it documents the reasoning behind any significant procurement.

## **23 HEALTH AND SAFETY**

- 23.1 The Recipient shall ensure the Funded Activities is undertaken in accordance with an appropriate health and safety policies and good health and safety at work practices.
- 23.2 The Recipient shall notify the UKRI-Innovate UK Director of Major Programmes Governance immediately, and in writing as soon as practicable, of any health and safety incident arising out of the Recipient's establishment or operation of the Funded Activities which is reportable to the Health and Safety Executive and/or is likely to cause damage to the reputation of either the Recipient, the Funded Activities or UKRI-Innovate UK.

## **24 SUBSIDY LAW**

- 24.1 The Recipient shall ensure the Grant is used in accordance with the Subsidy Rules (or, where applicable, the State Aid Rules).
- 24.2 The Grant provided to the Recipient under this agreement, is provided on a non subsidy basis on the provision that there is no benefit to the Recipient. Where the Recipient is required by an order of the European Commission to repay any Grant to Innovate UK that is found to be unlawful under the Subsidy Rules, interest will be charged on the amount being reclaimed from the date of payment at the applicable legislated rate.
- 24.3 If a Party has reasonable grounds to believe that the Grant breaches the Subsidy Rules (or, where applicable, the State Aid Rules), it shall notify the other Party and the Recipient shall immediately provide UKRI-Innovate UK with all information which UKRI-Innovate UK reasonably requires to enable a full assessment to be undertaken.
- 24.4 In the event that that there has been a breach of the Subsidy Rules and/or the State Aid Rules as reasonably determined by UKRI-Innovate UK, UKRI-Innovate UK shall be entitled to recover and/or withhold from the Recipient such sums as will enable the Recipient and UKRI-Innovate UK to comply with the Subsidy Rules and the State Aid Rules, being:
- (a) such proportion of the Grant already paid to the Recipient that UKRI-Innovate UK is entitled to reclaim under clause 24.5, together with any additional Interest accrued thereon under clause 24.6; and/or
- (b) such proportion of the unpaid Grant that UKRI-Innovate UK is entitled to withhold to ensure the Subsidy Rules and State Aid Rules are complied with.
- 24.5 The total amount of the Grant subject to repayment under clause 24.4(a) is the amount to which the Recipient has received from (and not repaid for whatever reason) any grant or payments from UKRI-Innovate UK in respect of the Project which, when aggregated with any additional amounts received from any Public Authority in respect of the Project (if any), exceeds the combined value of grants and funds allowed for the execution of the Delivery Plan under the Subsidy Rules (or, where applicable, the State Aid Rules) or other applicable legislation to the extent that it has not already been recovered under other agreements.
- 24.6 Interest to be paid by the Recipient pursuant to clause 24.4(a) shall be charged on all such sums from the date of breach by the Recipient and accrue until such date that it is repaid to UKRI-Innovate UK.
- 24.7 Where the State Aid Rules apply, the Recipient acknowledges that UKRI-Innovate UK may be required to provide the European Commission and relevant Public Authorities with information about the financial assistance given to it by UKRI-Innovate UK and shall provide such assistance as UKRI-Innovate UK shall reasonably request.

## **25 ANTI-CORRUPTION**

### **25.1 The Recipient:**

- (a) shall not, and shall use reasonable endeavours to procure that any Representatives and Sub-Contractors shall not, in connection with this Agreement commit a Prohibited Act;
- (b) to its reasonable knowledge and belief warrants, represents and undertakes that as of the date of this Agreement it is not aware of any financial or other advantage being given to any person working for or engaged by UKRI-Innovate UK, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which details have been disclosed in writing to UKRI-Innovate UK before execution of this Agreement.

### **25.2 The Recipient shall:**

- (a) if requested, provide UKRI-Innovate UK with any reasonable assistance, at UKRI's reasonable cost, to enable UKRI-Innovate UK to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act; and
- (b) at the start of each Year, certify to UKRI-Innovate UK in writing (such certification to be signed by an officer of the Recipient) compliance with this clause 25 by the Recipient and all persons associated with it or other persons who are materially involved in supplying goods or services in connection with this Agreement. The Recipient shall provide such supporting evidence of compliance as UKRI-Innovate UK may reasonably request.

25.3 The Recipient shall use reasonable endeavours to enforce an anti-corruption policy (which shall be disclosed to UKRI-Innovate UK upon request) to help prevent any Recipient Representative or Recipient Sub-Contractor from committing a Prohibited Act.

25.4 If any breach of clause 25.1 is suspected or known, the Recipient must notify UKRI-Innovate UK immediately.

25.5 If the Recipient notifies UKRI-Innovate UK that it suspects or knows that there may be a breach of clause 25.1, the Recipient must respond promptly to UKRI's enquiries, co-operate with any investigation, and allow UKRI-Innovate UK to audit books, records and any other relevant documentation. This obligation shall continue for six Years following the expiry or termination of this Agreement, whichever is the sooner.

25.6 UKRI-Innovate UK may terminate this Agreement by written notice with immediate effect if the Recipient or its Representatives (in all cases whether or not acting with the Recipient's knowledge) is in breach of clause 25.1. In determining whether to exercise the right of termination under this clause 25, UKRI-Innovate UK shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Recipient or an officer or member of the Steering Board or the Senior Management Team.

25.7 Any notice of termination under clause 25 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom UKRI-Innovate UK believes has committed the Prohibited Act; and
- (c) the date on which this Agreement will terminate.

25.8 Any termination under clause 25 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to UKRI-Innovate UK.

## **26 COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS**

26.1 In performing its obligations under this Agreement and operating its business, the Recipient shall:

- (a) at all times comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
- (b) not engage in any activity, practice or conduct anywhere in the world that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
- (c) develop and implement a written policy which incorporates the obligations of 26.1(a) and 26.1(b).

## **27 INSOLVENCY**

27.1 If there is an Insolvency Event, the Recipient must give notice in writing to UKRI-Innovate UK as soon as possible.

27.2 In the event of any shortfall in funding caused by an Insolvency Event, UKRI-Innovate UK shall not be liable to the Recipient for such shortfall.

27.3 If there is an Insolvency Event, then at any time thereafter, UKRI-Innovate UK may treat the Agreement as terminated with immediate effect, provided that UKRI-Innovate UK shall send written notice to the Recipient promptly but within five Business Days of such termination.

## **28 GOVERNMENT POLICY**

28.1 From time to time the prevailing Government policy to which UKRI-Innovate UK is subject may change. In the event that a fundamental change of policy at the ministerial level of Government causes a material conflict with the current Agreement, UKRI-Innovate UK shall notify the Recipient in writing of such change of policy and the Parties shall in good faith attempt to renegotiate the terms of this Agreement, provided that any amendments so negotiated are as minor or as few as possible so as to give effect to such change in Government policy.

28.2 In the event of a renegotiation under this clause 28, if mutually acceptable terms cannot be agreed within a reasonable period, UKRI-Innovate UK will have the right to terminate the Agreement by giving three Months' notice in writing to the Recipient.

28.3 In exercising its discretion under this clause 28, UKRI-Innovate UK shall at all times act reasonably.

28.4 If UKRI-Innovate UK takes action under this clause, it will use its reasonable endeavours to give as much notice to the Recipient as reasonably practicable before commencing action, such notice not being less than 28 days.

28.5 Nothing contained in or done under this Agreement and no consents given by UKRI-Innovate UK shall prejudice UKRI's rights, powers or duties and/or obligations in the exercise of its functions or under any statutes, bye-laws, instruments, orders or regulations.

## **29 FURTHER ASSURANCE**

29.1 Each Party shall and shall use reasonable endeavours to procure that any necessary third party shall promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.



### 30 LIMITATION

- 30.1 Nothing in this Agreement shall limit either party's liability to the other for:
- (a) death or injury resulting from that party's negligence;
  - (b) fraud or fraudulent misrepresentation; or
  - (c) anything for which that party cannot legally limit or exclude or attempt to limit or exclude its liability.
- 30.2 Subject to clause 30.1, UKRI-Innovate UK accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient's involvement in the Funded Activities, the use of the Grant or from withdrawal, withholding or suspension of the Grant or a requirement to repay the Grant, or UKRI-Innovate UK's incorrect assessment of the compliance of the Grant with the Subsidy Rules and/or State Aid Rules. The Recipient shall indemnify and hold harmless UKRI-Innovate UK and its Representatives with respect to all actions, claims, charges, demands, losses and proceedings arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the Funded Activities, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to Third Parties.
- 30.3 Subject to clause 30.1 and clause 30.2, UKRI's liability under this Agreement is limited to the payment of the outstanding Grant available, such sums recoverable in accordance with the agreed Annual Funding profile.
- 30.4 Subject to clause 30.1 and clause 24.7, the Recipient's liability under this Agreement is limited to repayment of an amount equal to the Annual Funding in the Year in which the liability arises.

### 31 FORCE MAJEURE

- 31.1 A Party, provided that it has complied with the provisions of this clause, shall not be in breach of this Agreement, nor liable for any failure or delay in performance of any obligations under this Agreement (and the time for performance of the obligations shall be extended, accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (a "**Force Majeure Event**"), including but not limited to any of the following:
- (a) Acts of God, flood, earthquake, windstorm or other natural disaster;
  - (b) epidemic or pandemic;
  - (c) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
  - (d) terrorist attack, civil war, civil commotion or riots;
  - (e) nuclear, chemical or biological contamination or sonic boom;
  - (f) compliance with any law or governmental order, rule, regulation or direction, or any action taken by a government or public authority (including, without limitation, Public Authority) including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary licence or consent;
  - (g) fire, explosion (other than in each case one caused by a breach of contract by, or assistance of, the Party seeking to rely on this clause or companies in the same group as such Party) or accidental damage;
  - (h) strike, lock-out, or any industrial action.

- 31.2 The corresponding obligations of the other Party will be suspended to the same extent as those of the party first affected by the Force Majeure Event.
- 31.3 Any Party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:
- (a) it promptly notifies the other Party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
  - (b) it could not have avoided the effect of the Force Majeure Event by taking reasonable precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
  - (c) it has used reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 31.4 If the Force Majeure Event prevails for a continuous period of more than one Month, any Party may terminate this Agreement by giving 10 Business Days' written notice to the other Party. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without prejudice to the rights of the Parties in respect of any breach of this Agreement occurring prior to such termination.
- 31.5 For the avoidance of doubt, if the Recipient exercises its right of termination in accordance with clause 31.4 it shall not be liable to repay the Grant funding properly paid to the Recipient.

## **32 SURVIVORSHIP**

- 32.1 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after expiry or termination of this Agreement, regardless as to how or why this Agreement terminated, shall remain in full force and effect for the stated period, or otherwise for a period of 10 Years, from such expiry or termination.
- 32.2 For the avoidance of doubt, clause 32.1 includes clauses: 8 (Capital Assets); 9.2 (the Recipient Obligations), 11 (Suspension, Withdrawal and Claw Back), 14 (Confidentiality), 15 (Information), 20 (Financial and Investigative Auditing), 21 (Records), 24 (Subsidy Law), 27 (Insolvency), 44 (Assignment), and 45 (Dispute Resolution).

## **33 NOTICES**

- 33.1 Any notice or other communication required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier or, subject to clause 33.4, by e-mail, to each party required to receive the notice or communication at its address as set out at the start of this Agreement or as otherwise specified by the relevant Party by notice in writing to the other Party.
- 33.2 Any notice or other communication shall be deemed to have been duly received:
- (a) if delivered personally, when left at the address and for the contact referred to in this clause 33; or
  - (b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting;
  - (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
  - (d) if delivered by e-mail, on the first Business Day after transmission.

- 33.3 Any notices shall be made for the attention of:
- (a) Monitoring and Insight Manager, unless otherwise required by the terms of this Agreement to be sent to the UKRI-Innovate UK Head of Governance and Information Assurance, if sent to UKRI-Innovate UK, and
  - (b) the Recipient Contact, if sent to the Recipient, as detailed in Schedule 1 (Funded Activities Information) or as amended by notice in writing with express reference to this clause and Agreement from time to time.
- 33.4 A notice or other communication required to be given under this Agreement shall not be validly given if sent by e-mail, unless otherwise confirmed by the receiving Party on a case by case basis.

#### **34 NON-DISCRIMINATION**

- 34.1 The Recipient shall not unlawfully discriminate within the meaning and scope of any applicable law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.
- 34.2 The Recipient shall take reasonable steps to secure the observance of clause 34.1 by all Representatives of the Recipient and all suppliers and Sub-Contractors engaged using the Grant funds.

#### **35 NO WAIVER**

- 35.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 35.2 No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of that or any other right or remedy.
- 35.3 A Party that waives a right or remedy provided under this Agreement or by law in relation to another party, or takes or fails to take any action against that party, does not affect its rights in relation to any other Party.

#### **36 THIRD PARTY RIGHTS**

- 36.1 This Agreement is made solely for the benefit of the Parties and their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else. Accordingly, a person who is not a Party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

#### **37 NO PARTNERSHIP, AGENCY OR AUTHORITY**

- 37.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party the agent of another Party, nor authorise either Party to make or enter into any commitments for or on behalf of the other Party.

#### **38 SEVERANCE**

- 38.1 Notwithstanding clause 39 (Variation), if any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 38.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.



### **39 VARIATION**

- 39.1 No variation of this Agreement shall be effective unless it is in writing and signed by each of the Parties (or their authorised representatives).

### **40 APPROVALS**

- 40.1 Any reference to the "approval" or "consent" of UKRI-Innovate UK means a prior approval or consent which is in writing. Unless otherwise expressly stated in this Agreement, the Monitoring and Insights Manager shall not have the right to give "approval" or "consent" under this Agreement on behalf of UKRI-Innovate UK.
- 40.2 Any approval by UKRI-Innovate UK or any person on behalf of UKRI-Innovate UK pursuant to this Agreement of any matter submitted by the Recipient for approval shall not be deemed either to imply that UKRI-Innovate UK agrees with the content of that which has been approved or to be an acknowledgement by UKRI-Innovate UK of the correctness or suitability of the contents of the subject of the approval, but rather that the approved document or material is fit for the purpose for which it has been submitted.
- 40.3 The fact that UKRI-Innovate UK or its Representatives have supplied or received any documents or information or attended any meeting shall not in itself imply approval of any matters raised in any such document, information or meeting or relieve the Recipient of any obligation or liability in respect of this Agreement. A clear, unambiguous, notice or confirmation in writing from an authorised person at UKRI-Innovate UK is required.

### **41 REMEDIES**

- 41.1 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

### **42 COUNTERPARTS**

- 42.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts shall together constitute the one agreement.
- 42.2 Delivery by electronic means is specifically permitted under this Agreement, be it by pdf. attachment to an email or by the delivery of an accessible web link to an executed counterpart.

### **43 ENTIRE AGREEMENT**

- 43.1 This Agreement constitutes the whole agreement between the Parties in relation to the Funded Activities and supersedes all previous Agreements between the Parties relating to its subject matter. Each Party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement. Nothing in this clause 43 shall limit or exclude any liability for fraud or for fraudulent misrepresentation.

### **44 ASSIGNMENT**

- 44.1 Except as otherwise provided in this Agreement or with the prior written consent of UKRI-Innovate UK, the Recipient may not assign, mortgage or charge any of its rights or obligations under this Agreement. For the avoidance of doubt, the foregoing does not restrict in any way the ability of the Recipient to transfer, licence, assign or otherwise dispose of any Intellectual Property Rights or Know How which it possesses, save to the extent such transfer, assignment or disposal would result in the failure by the Recipient to perform its obligations under the Agreement.

- 44.2 For the avoidance of doubt, nothing in this Agreement prevents the Recipient from engaging with Sub-contractors or otherwise utilising any wholly owned subsidiary or any other entity in which the Recipient is a shareholder, member or partner in seeking to achieve its objectives under the Delivery Plan or comply with its obligations under this Agreement.

#### **45 DISPUTE RESOLUTION**

- 45.1 In the event that any dispute arises between the Parties out of or in connection with this Agreement, including any question regarding its existence, validity or termination, such dispute shall attempt to be resolved in the first instance by referring the matter to each Party's Chief Executive Officers (or other senior officer) who will promptly meet to try and negotiate a settlement in good faith.
- 45.2 In the event that the Chief Executive Officers (or other senior officers) are unable to resolve the matter to the satisfaction of the Parties pursuant to clause 45.1, then the Parties hereby agree to submit to arbitration by the London Court of International Arbitration ("LCIA"), the decision of which shall be final and binding on all of them.
- 45.3 Any arbitration pursuant to clause 45.2 shall be conducted in accordance with LCIA Rules, which are deemed to be incorporated by reference into this clause, in front of one arbitrator seated in London.

#### **46 GOVERNING LAW AND JURISDICTION**

- 46.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This agreement has been duly entered into by the Parties on the date stated at the beginning of it.

Executed by <b>UK RESEARCH and INNOVATION</b> , acting by a director, in the presence of:	..... Director ..... Name of Director
Witness signature Name of Witness Address of Witness Occupation	..... ..... ..... ..... .....

Executed by <b>[RECIPIENT]</b> , acting by a director, in the presence of:	..... Director ..... Name of Director
Witness signature Name of Witness Address of Witness Occupation	..... ..... ..... ..... .....



**Schedule 1**

**Funded Activities Information**

<b>Funded Activities:</b>	Innovate UK EDGE (for 202xxx-20xxx)
<b>Funded Activities Reference:</b>	
<b>Commencement Date:</b>	
<b>End Date:</b>	
<b>Grant:</b>	
<b>Description of Funded Activities:</b>	

## Quarterly and Monthly Report Template

*Please refer to the Innovate UK EDGE monitoring framework guidelines for detailed guidance regarding the documentation you will be required to submit as part of your quarterly reporting.*

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## **Schedule 2**

### **Claims Report Template**

*Please refer to the Monitoring Framework for required up to date templates*

#### **Section 1 – Delivery**

*Please detail progress against the Delivery Plan for each initiative supported during the Review Period. The details should include engagement, priorities, challenges and achievements.*

#### **Section 1B – Specialist Delivery**

*NB Those partners responsible for overseeing delivery of initiatives will have section 1B inserted into their report and will need to detail progress against the Delivery Plan for these initiatives.*

#### **Section 2 – Cost**

*Please complete the table below. Further, please provide reasons for any under/overspend during the Quarter and anticipated under/overspend.*

<b>Total grant funding</b>	
<b>Total expenditure to date</b>	
<b>Actual expenditure for this Quarter</b>	
<b>Forecasted expenditure for next Quarter</b>	
<b>Forecasted expenditure for full duration of delivery</b>	

#### **Section 3 – Case Studies and Success Stories**

*Please complete the table below*

<b>Number of case studies submitted during Quarter</b>	
<b>Number of success stories submitted during Quarter</b>	

#### **Section 4 – Innovate UK EDGE Partner questions/comments**

*Please detail any questions or comments you wish to raise*



### **Schedule 3**

#### **Delivery Plan Template**

*A Delivery Plan template will be issued with the final version of the GFA and you will be required to complete and return it within three months following the commencement date (as referred to in clause 3.1).*

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#### **Schedule 4**

##### **Eligible Cost and Grant Allocations Template**

*Please completed the below information and return with your signed GFA (as referred to in clause 2.1)*

<b>Cost Category</b>	<b>Innovate UK EDGE Partner costs (£)</b>
Labour	£
Overheads	£
Materials	£
Capital Usage	£
Subcontracting	£
Travel and subsistence	£
Other costs 1	£
Other costs 2	£
Other costs 3	£
<b>Total Grant</b>	<b>£</b>

#### **IFSPA Roles:**

Monitoring and Insight Manager Officer name:

Monitoring and Insight Manager email address:

Innovation Lead name:

Innovation Lead email address:

Project (Partner) Manager name:

Project (Partner) Manager email address:

Finance (Partner) Contact name:

Finance (Partner) Contact email address: