

Waste Prevention Community Fund

Terms and Conditions

Standard terms and conditions for funding relating to the Waste Prevention Community Fund

These terms and conditions will apply to all offers for funding made pursuant to the Waste Prevention Community Fund for the 2018 -2019 financial year.

It sets out the legal terms of the offer for Funding by NLWA to the Recipient and it is the responsibility of the Recipient to read and fully understand these terms and conditions including responsibilities of the Recipient before accepting the Funding.

If you have any general questions about this document, please contact NLWA at wastepreventionteam@nlwa.gov.uk

CONTENT

1	Definitions	4
2	The Funding.....	6
3	Payment and use of the Funding	7
4	The Project	9
5	Accounts and records	10
6	Monitoring and reporting	11
7	Acknowledgement and publicity	12
8	Intellectual Property	12
9	Confidentiality	12
10	Freedom of Information	13
11	Data Protection.....	14
12	Withholding, suspending and repayment of the Funding	14
13	Termination	16
14	Anti-discrimination	16
15	Human Rights.....	16
16	Limitation of Liability	16
17	Warranties.....	17
18	Dispute resolution.....	18
19	General	18

1 Definitions

1.1 The following terms shall have the following meanings:

Additional Conditions: the conditions precedent documents set out in the Guidance Document and the Provisional Approval Letter which the Recipient must meet before NLWA can approve the Funding and issue the Award Letter;

Application Form: the application form for the Funding in the form specified by NLWA;

Authorised Representative: The NLWA officer responsible for the day to day administration of the Funding as set out in the Provisional Approval Letter;

Award Letter: the letter from NLWA to the Recipient confirming that the Additional Conditions have been met and confirming the award of the Funding to the Recipient;

Bribery Act: 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;

Commencement Date: the date of the Award Letter;

Conditions: these terms and conditions for the Funding;

Governing Body: the governing body of the Recipient including its directors or trustees;

Funding: the sum set out in the Provisional Approval Letter payable by NLWA to the Recipient subject to the Additional Conditions being met by the Recipient and these terms and conditions;

Funding Agreement: includes and incorporates:

- (a) These Conditions;
- (b) The Provisional Approval Letter;
- (c) The documents set out in the Provisional Approval Letter as Additional Conditions;
- (d) The Project Proposal;
- (e) The Application Form completed and submitted by the Recipient; and
- (f) The Award Letter;

Funding Period: the period for which the Funding is awarded starting on the Commencement Date and ending six (6) months from the Commencement Date;

Guidance Document: the document issued by NLWA dated March 2018 and containing information on the application process for a grant relating to the North London Community Fund;

Intellectual Property Rights: all patents, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and Know-How however arising for their full term and any renewals and extensions;

Know-How: information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale;

NLWA: North London Waste Authority and includes the authorised representative of NLWA;

Prohibited Act: means:

1.1.1 offering, giving or agreeing to give to any servant of NLWA any gift or consideration of any kind as an inducement or reward for:

1.1.1.1 doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Funding Agreement or any other contract with NLWA; or

1.1.1.2 showing or not showing favour or disfavour to any person in relation to these Conditions or any other contract with NLWA;

1.1.2 entering into the Funding Agreement or any other contract with NLWA where a commission has been paid or has been agreed to be paid by the Recipient or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to NLWA;

1.1.3 committing any offence:

1.1.3.1 under the Bribery Act 2010;

1.1.3.2 under legislation creating offences in respect of fraudulent acts; or

1.1.3.3 at common law in respect of fraudulent acts in relation to the Funding Agreement or any other contract with NLWA; or

1.1.4 defrauding or attempting to defraud or conspiring to defraud NLWA;

Project: the project or activity to be delivered in north London by the Recipient as described in the completed Application Form and the Project Proposal which meets the conditions in the Guidance Document, Provisional Approval Letter, Award Letter and the Funding Agreement;

Project Proposal: the proposal for the Project received by NLWA from the Recipient together with the Application Form for the Funding and any supporting documents such as budget information, a timetable and any other documents that set out how the Project will be managed;

Project Manager: the individual who has been nominated to represent NLWA for the purposes of the Funding Agreement;

Provisional Approval Letter: the letter from NLWA to the Recipient advising the Recipient of the provisional approval for Funding to the Recipient subject to the Recipient meeting the Additional Conditions;

Recipient: the charitable organisation that is awarded a Funding for the delivery of the Project as set out in the Provisional Approval Letter and the Award Letter;

The Fund: the North London Waste Prevention Community Fund established by NLWA;

Third Party Funder: a funder or prospective funder for the Project other than NLWA as detailed in the Project Proposal; and

Vulnerable Persons: children and vulnerable adults within the meaning of the Safeguarding and Vulnerable Groups Act 2006.

1.2 If there is a conflict between these Conditions and other documents comprising the Funding Agreement, the conflict shall be resolved in accordance with the following order of precedence:

1.2.1 These Conditions;

1.2.2 Award Letter;

1.2.3 Provisional Approval Letter;

1.2.4 Documents submitted pursuant to the Additional Conditions; and

1.2.5 Project Proposal and Application Form.

2 The Funding

2.1 The Funding amount is set out in the the Award Letter. The amount may be different from the amount the Recipient applied for in the Application Form or Project Proposal.

2.2 Once a decision is taken by NLWA on the Project Proposal, NLWA shall issue the Provisional Approval Letter to the Recipient. The Recipient has seven (7) working days to send the documents relating to the Additional Conditions set out in the Provisional Approval Letter to NLWA. Provided that NLWA, at its sole discretion, is of the opinion that the documents meet the Additional Conditions, NLWA shall award the Funding to the Recipient and issue the Award Letter to the Recipient. The Award Letter, the Funding Agreement and all documents required to be executed by the Recipient must be signed by authorised representatives of the Recipient in accordance with its written constitution and the written authorisation of its members.

2.3 If the Recipient fails to return the the documents that meet the Additional Conditions within the period specified, the Provisional Approval Letter will lapse and the Recipient shall not be entitled to the payment of the Funding or any payment or reimbursement of expenses or costs.

- 2.4 Subject to condition 2.2, the Funding Agreement shall come into force on the Commencement Date and shall continue (subject to earlier termination in whole or in part in accordance with these Conditions or extension of the Funding Period at the sole discretion of NLWA) until the expiry of the Funding Period. Any obligations under the Funding Agreement that remain unfulfilled following the expiry or termination of the Funding Agreement shall survive the expiry or termination and continue in full force and effect until they have been fulfilled.
- 2.5 The Recipient shall use the Funding only for the delivery of the Project and in accordance with these Conditions and the Funding Agreement. The Funding shall not be used for any other purpose without the prior written agreement of NLWA.
- 2.6 The Recipient shall not make any significant change to the Project without NLWA's prior written agreement. The Recipient must ensure that the information held by NLWA relating to the Recipient is always true and up to date and shall promptly inform NLWA about any changes to the information the Recipient has given to NLWA.
- 2.7 Where the Recipient intends to apply to a Third Party for other funding for the Project, it will notify NLWA in advance of its intention to do so and, where such funding is obtained, it will provide NLWA with details of the amount, purpose of that funding and evidence of the funding from the Third Party Funder in the completed Application Form or within such time as may be specified by NLWA in the Provisional Approval Letter. If no time is specified by NLWA, evidence of Third Party funding must be provided not later than one (1) month from the Commencement Date. The Recipient agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Project or any related administration costs that NLWA is funding in full under the Funding Agreement. If receiving any other funding from a third party means that the Recipient no longer needs the funding from NLWA, the Recipient shall be required to promptly on demand repay the amount of the Funding.
- 2.8 The Recipient acknowledges that the Funding is limited to the amount and for the Funding Period and does not imply any commitment or agreement to fund more than the amount specified or for a further period.
- 2.9 The Recipient shall not be, or deemed to be, an agent of NLWA and shall not hold itself out to any third party as such.

3 Payment and use of the Funding

- 3.1 Subject to conditions 2 and 12, NLWA shall pay the Funding in three (3) instalments set out in this condition 3, subject to the necessary funds being available when payment falls due. The Recipient agrees and accepts that payments of the Funding can only be made to the extent that NLWA has available funds.
- 3.2 NLWA will pay the Recipient 50% of the Funding in advance upon the following:

- 3.2.1 Receipt by NLWA of the documents set out in section 5.1 of the Guidance Document and Additional Conditions;
 - 3.2.2 Execution of the Funding Agreement by both Parties;
 - 3.2.3 Successful completion of the Project inception meeting; and
 - 3.2.4 If applicable to the Project, receipt by NLWA of evidence of Third Party funding for the Project.
- 3.3 The second instalment of 25% of the Funding will be due to the Recipient upon receipt of the interim financial and operational reports and confirmation by NLWA that the reports are agreed. For the avoidance of doubt, where the reports are not in conformity with the agreed template for financial and operational report, the Recipient shall not be entitled to the second instalment of 25% of the Funding. NLWA reserves its rights under condition 12 for withholding, suspension or repayment of the Funding or under condition 13 for termination of the Funding Agreement;
- 3.4 The payment of the balance of 25% of the Funding will be due to the Recipient after successful completion of the Project, receipt of the final financial and operational reports by NLWA and acceptance of the reports by NLWA. For the avoidance of doubt, where the reports are not in conformity with the agreed form for the final financial and operational report or are not in a satisfactory form, the Recipient shall not be entitled to the balance of 25% of the Funding. NLWA reserves its rights under condition 12 for withholding, suspension or repayment of the Funding or under condition 13 for termination of the Funding Agreement;
- 3.5 No Funding or instalments for the Funding shall be paid unless and until NLWA is satisfied that such payment will be used for proper expenditure in the delivery of the Project.
- 3.6 The amount of the Funding shall not be increased in the event of any overspend by the Recipient in its delivery of the Project.
- 3.7 The Recipient acknowledge that the Funding is not consideration for any taxable supply for VAT purposes and agrees that NLWA's obligation to pay the Funding does not extend to paying any amounts in respect of VAT in addition to the grant. If the Recipient is registered for VAT, or subsequently becomes liable to register for VAT, the Recipient shall keep proper and up to date records and shall make those records available to NLWA when requested. If NLWA agreed to fund any or all of the VAT costs associated with the Project and the Recipient subsequently recovers the VAT, the Recipient shall promptly repay any of the VAT that has been paid for with the Funding.
- 3.8 The Funding shall be paid into a separate bank account in the name of the Recipient which must be an ordinary business bank account. All cheques from the bank account must be signed by at least two individual representatives of the Recipient.

- 3.9 The Recipient shall not transfer any part of the Funding to bank accounts which are not ordinary business accounts within the clearing bank system, without the prior written consent of NLWA.
- 3.10 The Recipient shall promptly repay to NLWA any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Funding monies have been paid in error before all conditions attaching to the Funding have been complied with by the Recipient.
- 3.11 Where amounts of the Funding is indicated against specific items of expenditure, the Recipient shall ensure that the amount spent on any item of expenditure shall not exceed the corresponding amount of the Funding relating to the expenditure as specified by NLWA without the prior written agreement of NLWA. NLWA reserves the right to request for proof of expenditure at any time during the Funding Period.
- 3.12 The Recipient shall not use the Funding to:
- 3.12.1 make any payment to members of its Governing Body;
 - 3.12.2 purchase buildings or land; or
 - 3.12.3 pay for any expenditure commitments of the Recipient entered into before the Commencement Date,
- unless this has been approved in writing by NLWA.
- 3.13 The Recipient shall not spend any part of the Funding on the delivery of the Project after the Funding Period.
- 3.14 Should any part of the Funding remain unspent at the end of the Funding Period, the Recipient shall ensure that any unspent monies are returned to NLWA or, if agreed in writing by NLWA, shall be entitled to retain the unspent monies to use for charitable purposes as agreed between the parties.
- 3.15 Any liabilities arising at the end of the Project including any redundancy liabilities for staff employed by the Recipient to deliver the Project must be managed and paid for by the Recipient using the Funding or other resources of the Recipient. There will be no additional funding available from NLWA for this purpose.

4 The Project

- 4.1 The Recipient must obtain the prior written consent of NLWA before making any changes to the Project or its aims, structure, delivery, outcomes, duration or ownership.
- 4.2 In the event that NLWA agrees that the Recipient can make changes to the Project, NLWA reserves the right to request for additional conditions for the changes. Any agreed changes and/or additional conditions will be set out in a separate legal agreement and the Recipient shall not start any new or changed activity until that agreement has been signed by both NLWA and the Recipient.

- 4.3 The Recipient shall start the Project on the date set out in the Award Letter and shall ensure that all milestones and deliverables are delivered on time, make satisfactory progress on the delivery Project and deliver the Project on time.
- 4.4 The Funding comes from public money and the Recipient shall ensure that any goods or services bought with the Funding monies is always used in a way that will give value for money and avoids any conflict of interest.

5 Accounts and records

- 5.1 The Funding shall be shown in the Recipient's accounts as a restricted fund and shall not be included under general funds. For avoidance of doubt this means that unspent funds and/or assets in respect of this Funding must be shown separately in the Recipient's accounts and subject condition 3.13 are repayable to NLWA in the event that the Funding is not fully utilised for the purpose for which it was paid
- 5.2 The Recipient shall keep separate, accurate and up-to-date accounts (and have them independently audited annually by a qualified accountant) and records of the receipt and expenditure of the Funding monies received by it.
- 5.3 The Recipient shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Funding for a period of at least six years following receipt of any Funding monies to which they relate. NLWA shall have the right to review, at NLWA's reasonable request, the Recipient's accounts and records that relate to the expenditure of the Funding and shall have the right to take copies of such accounts and records.
- 5.4 The Recipient shall provide NLWA with a copy of its annual accounts within six months (or such lesser period as NLWA may reasonably require) of the end of the relevant financial year in respect of each year in which the Funding is paid and within fourteen (14) days of a request to do so .
- 5.5 The Recipient shall comply and facilitate NLWA's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and NLWA.
- 5.6 The Recipient shall upon request submit an adopted Constitution Memorandum and Articles of Associations (where appropriate) and notify NLWA in writing and within seven (7) days in advance of proposed changes to its Constitution.
- 5.7 The Recipient shall ensure that no person involved in the preparation of accounts has any business or personal relationship to another person involved in the everyday operation of the Recipient's organisation.

6 Monitoring and reporting

- 6.1 The Recipient shall closely monitor the delivery and success of the Project throughout the Funding Period to ensure that the aims and objectives of the Project are being met and that these Conditions are being adhered to.
- 6.2 The Recipient shall provide NLWA with such financial reports and operational reports on its use of the Funding and delivery of the Project at such frequency and in such formats as specified in the Guidance Document and, if not so specified, at such frequency as NLWA may reasonably require.
- 6.3 Where the Recipient has obtained funding from a third party for its delivery of part of the Project, the Recipient shall include the amount of such funding in its financial reports together with details of what that funding has been used for.
- 6.4 The Recipient shall address the health and safety of its staff and the members of the public, that are engaged in the delivery of the Project, in a risk register and shall ensure that the risk register is kept up to date throughout the Funding Period.
- 6.5 The Recipient shall on request provide NLWA with such further information, explanations and documents as NLWA may reasonably require in order for it to establish that the Funding has been used properly in accordance with the Funding Agreement.
- 6.6 The Recipient shall permit any person authorised by NLWA such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Recipient's fulfilment of the conditions of the Funding Agreement and shall, if so required, provide appropriate oral or written explanations from them.
- 6.7 The Recipient shall permit any person authorised by NLWA for the purpose to visit the Recipient to monitor the delivery of the Project during the Funding Period for such period as may be agreed by NLWA and the Recipient. Where, in its reasonable opinion, NLWA considers that additional visits are necessary to monitor the Project, it shall be entitled to authorise any person to make such visits on its behalf.
- 6.8 The Recipient shall satisfy NLWA on the advice of NLWA's legal advisors as necessary that the Project and its associated activities fall within the ambit of the Recipient's constitutional powers.
- 6.9 The Recipient shall keep proper and up to date records of activities in respect of which the grant is used and make available a full report as specified by NLWA; keep proper and up to date relevant statistics on numbers of persons assisted and other monitoring information as NLWA may reasonably require.
- 6.10 Where the Recipient has obtained funding from a Third Party Funder in relation to its delivery of the Project (including without limitation funding for associated administration

and staffing costs), the amount of such funding shall be included in the motoring report together with a clear description of what that funding was used for.

7 Acknowledgement and publicity

- 7.1 The Recipient shall acknowledge the Funding in its annual report and accounts, including an acknowledgement of NLWA as the source of the Funding.
- 7.2 Subject to condition 7.3, the Recipient shall not publish any material referring to NLWA or any of its constituent boroughs without the prior written agreement of NLWA and shall not include the name of NLWA or any of its constituent boroughs in any materials or literature that refer to the Project and in any written or spoken public presentations about the Project, without the prior written consent of NLWA.
- 7.3 The Recipient shall include the NLWA logo strip on all publicity materials which must comply with the NLWA contractor brand book. The Authorised Officer will provide the Recipient with the NLWA contractor brand book and the NLWA logo strip electronically.
- 7.4 The Recipient agrees to participate in and co-operate with promotional activities relating to the Project that may be instigated and/or organised by NLWA.
- 7.5 NLWA may acknowledge the Recipient's involvement in the Project as appropriate without prior notice.
- 7.6 The Recipient shall comply with all reasonable requests from NLWA to facilitate visits, provide reports, statistics, photographs and case studies that will assist NLWA in its promotional activities relating to the Project or the Fund

8 Intellectual Property

- 8.1 NLWA and the Recipient agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either NLWA or the Recipient before the Commencement Date or developed by either party during the Funding Period, shall remain the property of that party.
- 8.2 Subject to condition 7.2, where NLWA has provided the Recipient with any of its Intellectual Property Rights for use in connection with the Project (including without limitation its name and logo), the Recipient shall, on termination of the Funding Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by NLWA.

9 Confidentiality

- 9.1 Subject to condition 10 (Freedom of Information), each party shall during the term of the Funding Agreement and thereafter keep secret and confidential all Intellectual Property Rights or Know-How or other business, technical or commercial information

disclosed to it as a result of the Funding Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of the Funding Agreement or save as expressly authorised in writing by the other party.

9.2 The obligation of confidentiality contained in this condition shall not apply or shall cease to apply to any Intellectual Property Rights, Know-How or other business, technical or commercial information which:

9.2.1 at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of the Funding Agreement by the receiving party;

9.2.2 is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or

9.2.3 is at any time after the commencement of the Funding Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.

10 Freedom of Information

10.1 The Recipient acknowledges that NLWA is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIRs**).

10.2 The Recipient shall:

10.2.1 provide all necessary assistance and cooperation as reasonably requested by NLWA to enable NLWA to comply with its obligations under the FOIA and EIRs;

10.2.2 transfer to NLWA all requests for information relating to the Funding Agreement that it receives as soon as practicable and in any event within 2 working days of receipt;

10.2.3 provide NLWA with a copy of all information belonging to NLWA requested in the request for information which is in its possession or control in the form that NLWA requires within 5 working days (or such other period as NLWA may reasonably specify) of NLWA's request for such information; and

10.2.4 not respond directly to a request for information unless authorised in writing to do so by NLWA.

10.3 The Recipient acknowledges that NLWA may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the Recipient. NLWA shall take reasonable steps to notify the Recipient of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is

permissible and reasonably practical for it to do so but (notwithstanding any other provision in the Funding Agreement) NLWA shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

11 Data Protection

11.1 The Recipient shall (and shall procure that any of its staff involved in connection with the activities under the Agreement shall) duly observe all the obligations of the Recipient as a data controller or a data processor of the General Data Protection Regulation 2016, the Data Protection Act 1998, and when it comes into force, the Data Protection Act 2018 (**Data Protection Legislation**) and both Parties will comply with the requirements of the Data Protection Legislation, which arise in connection with the Funding Agreement.

11.2 The Recipient shall take all reasonable steps to secure the observance of condition 14.1 by all servants, employees or agents of the Recipient and all suppliers and sub-contractors engaged on the Project.

11.3 The Recipient shall indemnify NLWA against all actions, costs, expenses, claims, proceedings and demands which may be brought against NLWA for breach of statutory duty under the Data Protection Legislation which arises in carrying out the Project.

12 Withholding, suspending and repayment of the Funding

12.1 NLWA's intention is that the Funding will be paid to the Recipient in full. However, without prejudice to NLWA's other rights and remedies and subject to condition 13, NLWA may at its discretion withhold or suspend payment of the Funding and/or require repayment of all or part of the Funding if:

12.1.1 the Recipient makes any changes to the Project without the written consent of NLWA;

12.1.2 the Recipient fails to meet the Additional Conditions within the time specified by NLWA in the Provisional Approval Letter;

12.1.3 the Recipient uses the Funding for purposes other than those for which they have been awarded;

12.1.4 the Recipient fails to provide evidence of outcomes and expenditure for the Project as agreed between the Recipient and NLWA;

12.1.5 the Recipient fails to provide the interim or final financial and operational reports at the agreed time or in the agreed format;

12.1.6 the final operational and financial report submitted by the Recipient at the end of the Project does not provide details demonstrating that Project outcomes, targets and outputs have been met in line with the Recipients completed Application Form and the Funding Agreement;

- 12.1.7 the delivery of the Project does not start within the period specified in the Provisional Approval Letter or the Award Letter and the Recipient has failed to provide NLWA with a reasonable explanation for the delay;
- 12.1.8 NLWA considers that the Recipient has not made satisfactory progress with the delivery of the Project or NLWA deems it unlikely that the Funding is unlikely to fulfil the purpose for which it was made as set out in the Project Proposal and Application Form;
- 12.1.9 the Recipient is, in the reasonable opinion of NLWA, delivering the Project in a negligent manner;
- 12.1.10 the Recipient obtains duplicate funding from a third party for the Project without the approval of NLWA or where funding from a Third Party Funder is specified in the Project Proposal, the Recipient fails to supply evidence of funding from the Third Party Funder in accordance with condition 2.7;
- 12.1.11 the Recipient obtains funding from a third party which, in the reasonable opinion of NLWA, undertakes activities that are likely to bring the reputation of the Project or NLWA into disrepute;
- 12.1.12 the Recipient provides NLWA with any materially misleading or inaccurate information;
- 12.1.13 the Recipient commits any act or omission in the delivery of the Project leading to legal proceedings from a member of the public or a regulatory body;
- 12.1.14 the Recipient commits or committed a Prohibited Act;
- 12.1.15 any member of the governing body, employee or volunteer of the Recipient has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project or (b) taken any actions which, in the reasonable opinion of NLWA, bring or are likely to bring NLWA's name or reputation into disrepute;
- 12.1.16 the Recipient ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- 12.1.17 the Recipient becomes insolvent, or a trustee is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due; or
- 12.2 Wherever under the Funding Agreement any sum of money is recoverable from or payable by the Recipient (including any sum that the Recipient is liable to pay to NLWA in respect of any breach of the Funding Agreement), NLWA may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Recipient under the Agreement or under any other agreement or contract with NLWA.
- 12.3 The Recipient shall make any payments due to NLWA without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

- 12.4 Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Project or compliance with the Funding Agreement it will notify NLWA as soon as possible so that, if possible, and without creating any legal obligation, NLWA will have an opportunity to provide assistance in resolving the problem or to take action to protect NLWA and the Funding monies.

13 Termination

- 13.1 NLWA may terminate the Funding Agreement and any Funding payments on giving the Recipient one (1) months' written notice should it be required to do so by financial constraints.
- 13.2 NLWA may terminate the Funding Agreement and any payments upon giving the Recipient fourteen (14) calendar days' notice in writing where the Funding is withheld or suspended under condition 12.1.

14 Anti-discrimination

- 14.1 The Recipient shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and any law, enactment, order, or regulation relating to discrimination (whether in race, sex, religion or belief, disability, sexual orientation, age, pregnancy and maternity, marriage and civil partnership or gender re-assignment) in employment or public service delivery.
- 14.2 The Recipient shall take all reasonable steps to secure the observance of condition 14.1 by all servants, employees or agents of the Recipient and all suppliers and sub-contractors engaged on the Project.

15 Human Rights

- 15.1 The Recipient shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Funding Agreement as if the Recipient were a public body (as defined in the Human Rights Act 1998).
- 15.2 The Recipient shall undertake, or refrain from undertaking, such acts as NLWA requests so as to enable NLWA to comply with its obligations under the Human Rights Act 1998.

16 Limitation of Liability

- 16.1 NLWA accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient running the Project, the use of the Funding or from withdrawal of the Funding. The Recipient shall indemnify and hold harmless NLWA, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the

Project, the non-fulfilment of obligations of the Recipient under the Funding Agreement or its obligations to third parties.

- 16.2 Subject to condition 16.1, NLWA's liability under the Funding Agreement is limited to the payment of the Funding.

17 Warranties

The Recipient warrants, undertakes and agrees that:

- 17.1.1 it has all necessary resources and expertise to deliver the Project (assuming due receipt of the Funding);
- 17.1.2 It is correctly constituted and it can deliver the Project under the terms of its constitution;
- 17.1.3 It will obtain the prior written agreement of NLWA prior to changing its governing document concerning its aims, payment to its members, sharing out of its assets, the admission of new members, or transferring its assets or merging or amalgamating with any other body;
- 17.1.4 it has not committed, nor shall it commit, any Prohibited Act;
- 17.1.5 it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations;
- 17.1.6 it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons in the delivery of the Project;
- 17.1.7 it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- 17.1.8 it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- 17.1.9 all financial and other information concerning the Recipient which has been disclosed to NLWA is to the best of its knowledge and belief, true and accurate;
- 17.1.10 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 Funding;
- 17.1.11 it is not aware of anything in its own affairs, which it has not disclosed to NLWA or any of NLWA's advisers, which might reasonably have influenced the decision of NLWA to make the Funding on the terms contained in the Funding Agreement; and
- 17.1.12 since the date of its last accounts there has been no material change in its financial position or prospects.
- 17.2 The Recipient warrants, undertakes and agrees that it shall maintain and continue to maintain the required insurances set out in the Guidance Document and/or the

Provisional Approval Letter, and shall supply a copy of such insurance policies and evidence that the relevant premiums have been paid promptly upon request by NLWA prior to the Commencement Date and at any time during the Funding Period.

- 17.3 The Recipient warrants and agrees that if the Project involves working with Vulnerable Persons, the Recipient shall:
 - 17.3.1 Ensure that all individuals engaged in the Project are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service; and
 - 17.3.2 Monitor the level and validity of the checks under condition 17.3.1 for each member of staff;
 - 17.3.3 Not employ or use any person in the Project who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to work with Vulnerable Persons or who may otherwise present a risk to members of the public.
- 17.4 The Recipient warrants that at all times for the purpose of the Project it has no reason to believe that any person who is engaged or employed by the Recipient for the Project is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

18 Dispute resolution

- 18.1 In the event of any complaint or dispute (which does not relate to NLWA's right to withhold funds or terminate) arising between the parties to the Funding Agreement in relation to the Funding Agreement the matter should first be referred for resolution to the Project Manager or any other individual nominated by NLWA from time to time.
- 18.2 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the Project Manager or other nominated individual, as the case may be, either party may refer the matter to the Managing Director of NLWA and the Chair **OR** Chief Executive of the Recipient with an instruction to attempt to resolve the dispute by agreement within 28 days, or such other period as may be mutually agreed by NLWA and the Recipient.
- 18.3 In the absence of agreement under condition 18.2, the parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both parties). Unless otherwise agreed, the parties shall bear the costs and expenses of the mediation equally.

19 General

- 19.1 The Recipient may not, without the prior written consent of NLWA, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of the Funding Agreement or, except as contemplated as part of the Project, transfer or pay to any other person any part of the Funding.

- 19.2 No failure or delay by either party to exercise any right or remedy under the Funding Agreement shall be construed as a waiver of any other right or remedy.
- 19.3 All notices and other communications in relation to the Funding Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, e-mailed, or mailed (first class postage prepaid) to the address of the relevant party, as referred to in the Provisional Approval Letter. If personally delivered all such communications shall be deemed to have been given and received two days after the date of posting (except that if such day falls on a non-working day they shall be deemed received on the next working day), If emailed, all such communication shall be deemed received within 4 hours of successful transmission (except that if sent after midday they shall be deemed to have been given and received the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.
- 19.4 The Funding Agreement shall not create any partnership or joint venture between NLWA and the Recipient, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.
- 19.5 Where the Recipient is not a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign the Funding Agreement on behalf of the Recipient must have the authority of the unincorporated group to enter into the Funding Agreement on behalf of all the members of the group. NLWA reserves the right to request for evidence of such authorisation prior to the issuance of the Award Letter. All members of the group shall be jointly and severally liable for the Recipient's obligations and liabilities arising under the Funding Agreement.
- 19.6 The Funding Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.
- 19.7 The Funding Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

END