

## Conditions of Grant Funding

<b>Commissioning Officer</b>	Neil Kirby, 160 Tooley Street, London, SE1 2QH, who is your primary contact in the Council for discussing all matters relating to the Funding, dealing with any problems relating to these Conditions of Grant Funding, monitoring the use of the Funding and reporting to the Council on any future funding applications by the Funding Recipient – any change will be notified to you as soon as possible.
<b>Council</b>	<b>THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK</b> of 160 Tooley Street, London, SE1 2QH (also referred to as “We” or “we”).
<b>Council Rules</b>	Means all relevant Council policies, rules, codes, procedures, orders and codes of practice
<b>Funded Activities</b>	Funding is provided to The Livesey Exchange to develop a planning submission and subsequent practical delivery of a scheme to enable temporary community uses to be delivered at 563-573 Old Kent Road.
<b>Funding</b>	£581,161 (to be disbursed in accordance with Schedule 4)
<b>Funding Recipient</b>	<b>THE LIVESEY EXCHANGE</b> (Company No. 10505872) whose registered office is at Flat 6, Lewes House, Friary Estate, London, United Kingdom, SE15 1RP (“The Livesey Exchange”) (also referred to as “You” or “you” and includes, where appropriate, anyone engaged by you to provide the Funded Activities including any sub-contractor, volunteer, licensee or employee.)
<b>Legislation</b>	Means all relevant Acts of Parliament, statutory regulations, order, guidance and codes of practice including any subsequent amendments or comparable legislation
<b>Funding Recipient Representative</b>	Nicholas Okwulu, Flat 6, Lewes House, Friary Estate, London, SE15 1RP ( <a href="mailto:nicholas@pempeople.com">nicholas@pempeople.com</a> ), who shall be responsible for the Funded Activities and who has the authority to speak on behalf of the Funding Recipient on a day-to-day basis.

Please sign below to confirm that you have read, understood and accept on behalf of the Funding Recipient, these Conditions of Grant Funding.

Name:

Position: CHAIR / DIRECTOR

Signature:

FOR AND ON BEHALF OF  
THE FUNDING RECIPIENT

Date:

Name:

Position: DIRECTOR

Signature:

FOR AND ON BEHALF OF  
THE FUNDING RECIPIENT

Date:

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## **1 Overall Aim**

- 1.1 The Council and the Funding Recipient are both committed to supporting the aims and outcomes identified in the grant application form. The Council has a responsibility to ensure that organisations which receive funding continue to achieve certain levels of effective management and financial practices and use the funding they receive for the purposes it was granted. The Conditions of Grant Funding set out these requirements and what may happen if they are not met. This document does not constitute a contract and there is no intention to create a legal relationship between us.

## **2 Funding Recipients' Core Obligations**

- 2.1 The Funding Recipients' Core Obligations to the Council in relation to the Funding are to:-

- (a) Use the Funding effectively and as set out in your Business Plan, in line with relevant planning applications and as agreed by the Council for the Funded Activities;
- (b) Comply with these Conditions of Grant Funding;
- (c) Comply with any Legislation or Council Rules which are relevant to the management, provision and delivery of the Funded Activities. In particular, you will support and assist the Council in compliance with our obligations under Best Value and the Human Rights Act 1998;
- (d) Ensure that you have and keep in place effective governance and management practices as set out in Schedule One;
- (e) Ensure that you have and keep in place sufficient resources and effective financial practices as set out in Schedule Two;
- (f) Ensure that you are properly managed, staffed, operated and/or equipped to provide the Funded Activities as set out in Schedule Three;
- (g) Ensure that you have and keep in place effective monitoring and information systems as set out in Schedule Four;
- (h) Primarily base your Funded Activities within the boundaries of the Ledbury estate and environs within the London Borough of Southwark and to directly or indirectly benefit the people who live or work in Southwark and to take positive steps, where appropriate, to involve local people in managing or otherwise participating in the Funded Activities;
- (i) Comply with all of the Special Conditions as set out in Schedule Five.

## **3 Council's Obligations**

- 3.1 Subject to your compliance with these Conditions of Grant Funding, the Council will:

- (a) act reasonably in all matters;
- (b) ensure reasonably prompt payment (and, in any event, not to be later than 10 Business Days of you providing the documents specified in 4.1(a) and (b) below) of the Funding subject to compliance by you with the terms of these Conditions of Grant Funding;
- (c) endeavour to maintain clear communication;
- (d) give you reasonable notice of any matter which affects or may affect the provision of the Funding; and
- (e) provide you, wherever reasonably possible, with appropriate additional non-financial support.

## **4 Funding**

- 4.1 The funding made available to grant fund The Livesey Exchange is from three sources and the management and monitoring of these, where different from the Council's standard terms and conditions is set out in the Schedule Five of this agreement. These sources are set out below:
- (a) Good Growth Fund (GLA to Southwark Council): £267,300
  - (b) Southwark Council, New Homes Bonus funds (Southwark with monitoring returns to GLA): £130,000
  - (c) S106 funding: £140,561
  - (d) Southwark Council Tenant Fund: £43,300

- 4.2 Not later than the 10 Business Days before the proposed Funding (or a relevant portion of the Funding) is to be dispersed, The Livesey Exchange may request Funding (or the relevant portion of the Funding) by providing to the Council:-
- (a) (i) an invoice (receipted if the relevant portion of the Funding is to refinance the relevant amount) submitted by a contractor or (ii) any other evidence of the cost or expense (receipted if the relevant portion of the Funding is to refinance the relevant amount) where the relevant portion of the Funding is to finance or refinance a cost or expense not incurred to a contractor; and
  - (b) a certificate from the Council's monitoring surveyor confirming that the cost or expense to be financed or refinanced by the relevant portion of the Funding (i) are for Funded Activities and (ii) has not been the subject of a previous request for Funding, each in form and substance satisfactory to the Council.
- 4.3 Funding payments depend on your continued satisfactory management and operation, the Funded Activities continuing on an on-going basis and compliance with these Conditions of Grant Funding.
- 4.4 You must only use the Funding in accordance with the Funded Activities. You must keep the Commissioning Officer informed at all times about how you use the Funding. In particular, if you wish to use part of the Funding for any other purpose, this must be agreed in writing in advance by your Commissioning Officer.
- 4.5 The Council does not permit Funding to be used to fund your deficit under any circumstances.
- 4.6 You must not use the Funding to pay for publicity which is for or against any political party.
- 4.7 The Council reserves the right to withhold Funding, or demand repayment of any Funding already paid, if the Funding is not used for the Funded Activities or in breach of these Conditions of Grant Funding as set out in Condition 7.

## **5 Premises**

- 5.1 You shall ensure that the premises from or in connection with which the Funded Activities are provided are appropriate and offer a safe environment. So far as is required by law, you shall make those premises fully accessible to people with disabilities.
- 5.2 Where you are in occupation of Council owned premises, you will enter into a lease or licence for those premises in the terms provided by your Commissioning Officer and where the Funding includes a sum to cover the rent the Council may take this amount from the Funding payments.
- 5.3 Works will be carried on the site under licence, with a lease granted on successful completion of works.

## **6 Dispute Resolution**

- 6.1 The Council will endeavour to work with you to address any problems identified through the monitoring process, or to address any concerns raised with the Council in another way. All initial queries or concerns should be raised with your Commissioning Officer.
- 6.2 If an issue or dispute relating to the Funding cannot be resolved between the Funding Recipient Representative and the Commissioning Officer, it will be referred to a more senior representative of the Council and the Funding Recipient for resolution.
- 6.3 Both parties acknowledge that it is generally in both of their interests for issues or disputes between them to be practicably resolved amicably by negotiation wherever possible.

## **7 Suspension, Termination and Recovery of Funding.**

- 7.1 Subject to Condition 4.2, you must not in any circumstances assume that the Council will provide future Funding.

- 7.2 Subject to Condition 7.6, Funding may be temporarily or permanently reduced, withheld, recovered and/or discontinued by the Council in the Council's sole discretion at any time on the occurrence of any one or more of the following events:
- (a) you or any person acting on your behalf are in material or repeated breach of any one or more of your Core Obligations;
  - (b) you are or are likely to become subject to an insolvency or bankruptcy event or to cease to operate or to provide the Funded Activities;
  - (c) you are in breach of any of the covenants or conditions of any lease, licence or permit with the Council;
  - (d) the Council decides for financial or other reasons not to continue the Funding;
  - (e) if The Livesey Exchange fail to enter relevant contracts to deliver the Funded Activities by 31 March 2021 (or such other date as the parties may agree, acting reasonably),
- 7.3 Where the Council intends to exercise its right to reduce, withhold, recover or discontinue Funding, we will give you as much prior written notice as reasonable in the circumstances setting out a summary of the reasons for the proposed action. You may then, if appropriate, be given the opportunity to make representations to the relevant Council decision-maker as to why the Council should not take the proposed action and to present any information which you consider relevant.
- 7.4 However, you should be aware that if you create or allow the occurrence of a nuisance, commit or allow the occurrence of a fraud or a fraudulent activity or in any way act unlawfully you are liable to have your funding immediately suspended, pending a full investigation by the relevant Council decision-maker.
- 7.5 If the Council withdraws the Funding, it will consider giving you winding down costs. However, the Council shall not in any circumstances be responsible for any of your outstanding liabilities.
- 7.6 In the event that The Livesey Exchange should progress the project to planning, but not then proceed with the delivery of the approved plans within 12 months of receiving planning permission, it will hand to the Council all specifications, bills of quantities, drawings, calculations and plans it has in its possession relevant to the Funded Activities and assign to the Council the copyright or such other interest as it has relating thereto. In this scenario, The Livesey Exchange shall assign, transfer and/or novate to the Council, in so far as it is able, the benefit and burden of all of the following in respect of the Funded Activities which have been or are to be carried out:
- (a) any consultants appointments;
  - (b) any other contracts or agreements entered into by you (or any of your group members) in relation thereto including the building contract;
  - (c) all of your rights against any principal sub-contractors and consultants in respect thereof; and
  - (d) all warranties whether as to design, materials or otherwise in relation thereto and any other guarantees and warranties given by any consultants and suppliers and manufacturers in respect of all plant, machinery and apparatus installed as part of the development carried out.

## **8 Dissolution**

- 8.1 Where the dissolution of the Funding Recipient has been approved, your governing body shall notify the Council of the amount of any unspent Funding that is held by you and shall provide the Council with a final set of accounts up to the date of dissolution.
- 8.2 Any amount of unspent or otherwise uncommitted Funding shall be refunded to the Council and any assets purchased by you with the Funding, shall be returned to the Council unless the Council agrees otherwise in writing.

## **9 Variations**

- 9.1 The Council may, from time to time, change any or some of these Conditions of Grant Funding. Where this occurs, the Council will write and tell you about the changes and subject to your written consent, the changes will be deemed to be incorporated into these Conditions of Grant Funding with effect from the date of any such notice. You shall use your reasonable endeavours to accommodate any changes to the needs and requirements of the Council.

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## **Schedule One - Governance and Management**

The Funding Recipient must have and keep in place effective governance and management practices. Minimum requirements and assistance in meeting this Core Obligation are set out in this Schedule.

### **1. Politics**

- 1.1. You must be seen to be politically neutral and not engage in party political activity. Activities which show a party political bias or involve party political propaganda will not therefore be approved for financial assistance.

### **2. Constitutional Documents**

- 2.1. As part of the application process, you will have provided the Council with copies of your constitutional or other governing documents. These will demonstrate your independence, openness to participation by members of the community and your adherence to policies and procedures that are appropriate to a publicly accountable Funding Recipient.
- 2.2. Whilst you are in receipt of Funding you will maintain and comply with your constitutional documents at all times and notify and provide copies of any changes to your Commissioning Officer within 7 working days, including changes to your governing body or Funding Recipient Representative.
- 2.3. You are advised to discuss any proposed changes to your constitutional documents with your Commissioning Officer in advance to ensure that you continue to meet your effective management and governance obligations. If the Council considers that any such changes to the constitutional documents are of an adverse nature, this may lead to the Funding being withheld or withdrawn.
- 2.4. You must promptly advise your Commissioning Officer of any significant change in the circumstances within your organisation or in the circumstances on which the Council based our decision to provide or to continue to provide your Funding.

### **3. Governing Body and Meetings**

- 3.1. You must have a democratically elected body (the Governing Body) which should comprise a management committee, a board of directors, a number of trustees or a satisfactory similar arrangement, and specific rules for your membership should be set out in your constitutional documents. All your annual and other general meetings must be open to all of your members. You will provide the Council with the names, addresses, and telephone numbers and, where applicable, e-mail addresses, of the chair, secretary, treasurer and/or other members of your Governing Body.
- 3.2. You will hold regular meetings of your Governing Body and/or any relevant management committee in accordance with your constitutional documents and shall give the Commissioning Officer reasonable advanced written notice of all such meetings and any additional meetings that are scheduled (which notice shall include an agenda that briefly sets out the matters that are to be discussed). You shall invite and permit the Commissioning Officer to attend these meetings and the Commissioning Officer shall be able to discuss or raise any matters relating to the Funded Activities at any such meetings. You shall keep copies of the agenda and minutes of every meeting of your Governing Body and/or of any relevant management committee, access to which must be provided to the Commissioning Officer on request. However, part or all of confidential client and staff information need not be provided.

### **4. Conflict of Interests**

- 4.1. You will conduct your operations in a manner that guards against the possibility of any conflict of interest arising. In particular, no decision shall be made which may compromise the good standing or reputation of the Funding Recipient or the Council. Your Governing Body and/or persons working on your behalf must not use their positions or influence within the organisation to gain undue advantage for themselves or others in a private capacity. In the event of any such

circumstances arising, alternative arrangements must be discussed and agreed with the Commissioning Officer.

- 4.2. The scenarios set out below are examples of situations in which conflicts of interest may arise. The list is not exhaustive. It is your responsibility to guard against conflicts of interest and abuse of position or influence.

- 4.2.1. a member of your Governing Body shall not also be employed by you as a member of staff, or receive payment for any services provided;
- 4.2.2. your paid employees shall only attend meetings of your Governing Body in a non-voting capacity and at the discretion of the members of the Governing Body;
- 4.2.3. any member of your Governing Body who has a pecuniary or other interest in a contract for goods or services being considered by you shall declare the nature of such interest in advance of any decision relating to that contract and shall abstain from voting on the award of that contract. Such declarations are to be recorded in the formal minutes of that meeting;
- 4.2.4. you shall promptly inform the Council of any employee of the Council or currently elected member of the Council who is serving on your Governing Body. You shall also procure (to the extent you are able) that the employee or member of the Council concerned shall also make such declaration to the Council as is required by the Council's internal rules and regulations. The member or employee in question should abstain from voting on issues relating to your relationship with the Council.

## **5. Internal Disputes**

- 5.1. The Council considers that internal disputes within your organisation are the responsibility of your Governing Body and you must have agreed procedures in place for dealing with and/or resolving any such disputes. As any such disputes may have an impact on the provision of the Funded Activities, you should inform the Commissioning Officer of any such dispute at an early stage.

## **6. Dissolution**

- 6.1. Any dissolution of the Funding Recipient shall be done in accordance with your constitutional documents and/or other relevant rules and the Council shall be given proper notice of the meeting(s) at which the your dissolution is considered and/or approved. You shall also promptly provide the Council with the minutes of any such meeting.



## **Schedule Two – Finance**

The Funding Recipient must have and keep in place sufficient resources and effective financial practices. Minimum requirements and assistance in meeting this Core Obligation are set out in this Schedule.

### **1. Insurance**

- 1.1. You must be adequately insured to cover all relevant risks. Such insurance cover shall include without limitation buildings and contents cover, employers and public liability insurance and professional indemnity cover. The Council will require you to provide satisfactory documentary evidence that adequate insurance cover is maintained.

### **2. Bank Account**

- 2.1. You must have a bank account in your name. The signatures of at least two (2) members of your Governing Body or the relevant management committee members shall be required to carry out any transactions in relation to such bank account. One of these members must be your treasurer. The signatories shall not be direct or indirect relatives or business associates of one another.

### **3. Budget Statement**

- 3.1. You must submit an estimated budget statement to the Council at least four (4) weeks prior to the commencement of the financial year to which it relates.

### **4. Accounts**

- 4.1. You must (unless otherwise agreed by the Council in writing) provide the Council with audited accounts for every financial year or part of a financial year during which you receive the Funding. The accounts will show all of your income and expenditure and shall be independently audited by a fully qualified accountant or independent financial examiner and must conform to all relevant law and accounting standards and practice, and must include specific itemised information on how you used the Funding.
- 4.2. You must send your accounts to the Council by 31 October of the following financial year. If you do not use the same financial year as the Council, you must send the accounts to the Council by no later than six (6) months after the end of your financial year. Usually, the Council will hold back the next and/or final instalment of the Funding until the Council has received all relevant accounts or written statement of financial transactions (as applicable), which are in a form that is satisfactory to the Council.
- 4.3. Where the Council has concerns relating to your submitted audited accounts, the Council may require you to submit further financial details and evidence of expenditure.

### **5. Financial management**

- 5.1. You are responsible for ensuring you comply with all relevant legal requirements in respect of your operations, including the way you conduct your business with third parties. You must establish and maintain proper financial management and accounting systems and practices, including proper arrangements for the payment of tax, national insurance and VAT, where appropriate.
- 5.2. You must, upon request, be able to demonstrate to the Council that you have proper financial accounting systems and practices in place, including proper arrangements for paying all relevant taxes and national insurance contributions.
- 5.3. You shall keep proper records and accounts that show how the Funding has been used. Your Governing Body shall ensure that there are adequate and effective internal financial controls to protect your income and assets from misuse, abuse, waste, fraud or potential fraud. It is your duty to be aware of the Council's policies and codes of conduct to combat fraud and corruption. You can seek advice from your Commissioning Officer regarding this.

**6. Fund Raising**

- 6.1. Monies generated through fund raising and the Funded Activities may be retained by you to be invested in the Funded Activities, as appropriate.

**7. Contingency Fund**

- 7.1. It is recommended that you set up a contingency fund to meet any redundancy payments and other potential financial liabilities (e.g., to provide any additional equipment that is required, or to fund any unexpected major premises costs).

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## **Schedule Three - Employment Practices**

The Funding Recipient must be properly managed, staffed, operated and/or equipped to provide the Funded Activities. Minimum requirements and assistance in meeting this Core Obligation are set out in this Schedule.

### **1. Employees**

1.1. You must provide all of your employees with:

- a contract of employment;
- a job description;
- a copy of your equal opportunities policy and code of practice;
- a copy your disciplinary and grievance procedure;
- regular support and supervision;
- appropriate training opportunities; and
- consultation about organisational or service changes that are likely to affect them.

1.2. You will, upon request, provide the Commissioning Officer with copies of these documents.

### **2. Equality and Diversity**

2.1. The Council is committed to the implementation of equal opportunities policies and you must promote and implement equal opportunities. In particular you must have a written equal opportunities policy and you must be able to demonstrate to the Council that you are implementing this policy and show that:

- you have taken positive and practical steps to ensure that people from all groups and backgrounds are encouraged to participate in your organisation and are able to use your services and participate in your activities;
- you have taken positive steps to welcome people from all groups on to your Governing Body and any other of your committees;
- your employment practices are fair and you do not discriminate in relation to pay and conditions of employment, recruitment, promotion, career opportunities; and victimisation and harassment disciplinary procedures; and
- you are actively monitoring the effectiveness with which you put your equal opportunities policy into practice.

2.2. You shall ensure that you (and anyone acting on your behalf) comply with the law (as amended) in the United Kingdom and in particular do not commit any act of discrimination rendered unlawful by the Equality Act 2010. There are nine protected characteristics under this Act. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

### **3. Safeguarding and Vetting**

3.1. All Council funded organisations have a duty to safeguard and promote the welfare of children and vulnerable adults. Whatever service you provide, you may identify a child (under 18 years) or a vulnerable adult who is being harmed or neglected. You must therefore have and comply with a Safeguarding Policy and Procedure on referring a child/person at risk to social care.

3.2. You shall follow the guidance of the Southwark Safeguarding Children Board (SSCB) and the Southwark Safeguarding Adults Partnership (SAPB) to ensure that all persons who are engaged are fit and suitable.

3.3. Where an employee, volunteer or other person acting on behalf of the Funding Recipient will have contact with children or vulnerable adults in any 'regulated' activity you must carry out appropriate checks with the Criminal Records Bureau and/or the Independent Safeguarding Authority. From October 2009 it has become a criminal offence for an employer to allow a 'barred' person to work

in such an activity. It will be a criminal offence for an employer to take on a person in a regulated activity if they fail to check that person's status.

- 3.4. If having carried out such checks you are unsure as to the suitability of a particular person, you shall promptly discuss the matter with your Commissioning Officer to agree the course of action to be taken.
- 3.5. Any allegation of harm to a child or vulnerable adult by a member of staff or volunteer must be immediately referred by you to the relevant officer in children's social care or adult social care in the Council.

#### **4. Volunteers**

- 4.1. You are expected, where appropriate, to develop and operate a volunteer policy that sets out the respective rights and responsibilities of the Funding Recipient and the volunteers.
- 4.2. Volunteers must not be paid by you for the tasks they undertake. However, they should be reimbursed for any reasonable expenses that they have incurred in connection with their voluntary service.

#### **5. Health and Safety**

- 5.1. You shall comply and procure compliance with all relevant provisions of the Health and Safety at Work Act 1974 and develop and implement a health and safety policy for the protection of your employees, volunteers and service users.
  - 5.2. Security: The Funding Recipient is responsible for safeguarding the site, the Works, products, materials, etc. and shall take all precautions to prevent unauthorised access to the site.
  - 5.3. Stability: The Funding Recipient shall be responsible for maintaining the stability and structural integrity of the Works and adjacent structures during the works.
  - 5.4. Dangerous or Hazardous Substances: The Contractor shall report any suspected dangerous or hazardous substances discovered during the works and inform the relevant authorities to agree a method for safe removal or remediation.
  - 5.5. Fire Prevention: The Funding Recipient shall prevent personal injury or death, and damage to the works or other property from fire.
  - 5.6. Smoking on Site: Smoking on site is not permitted.
  - 5.7. Burning on Site: Burning on site is not permitted.
  - 5.8. Avoidance of Nuisance: The Funding Recipient is not to do or permit anything which shall cause any unlawful nuisance or disturbance to the Landlord(s), occupiers of any shared or adjacent demise/premises or the public and shall save and indemnify the Council from and against all claims from damage or nuisance or disturbance during the course of the works. The Funding Recipient must ensure that he does not commit any nuisance by reasons of excessive noise, smoke or smell and in particular he shall take the best practicable means of preventing or reducing noise including the use of effective silencers on all plant and equipment and the use of a purpose made muffler on any pneumatic or other breaker or drill.
  - 5.9. The Funding Recipient must be able to demonstrate how they meet their employer's duties under all Statutory Requirements.
  - 5.10. CDM Requirements: The Funding Recipient shall provide proposals on how he will discharge his obligations as the Principal Contractor required by the Construction (Design & Management) Regulations 2015, with particular reference the satisfying the Council that it is both competent and will allocate sufficient resources to manage all health and safety matters.
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## **Schedule Four – Monitoring and Information**

The Funding Recipient must ensure that you have and keep in place effective monitoring and information systems. Minimum requirements and assistance in meeting this Core Obligation are set out in this Schedule.

### **1 Annual Report**

1.1 You must provide the Commissioning Officer with a written report in respect of every financial year or part of a financial year. These reports shall be provided by the time(s) specified by the Commissioning Officer and should include:

- a summary description of the Funded Activities provided by you;
- summary information regarding the numbers and types of users;
- summary information regarding the full costs of providing the Funded Activities;
- evidence of the benefits users gain from the Funded Activities; and
- a summary of any problems or issues that you have come across in delivering the Funded Activities.

### **2 Monitoring**

2.1 The Council is accountable to the GLA, its taxpayers and ratepayers for the money that it awards in funding. Monitoring is therefore an integral requirement of the Conditions of Grant Funding. You shall comply with all monitoring and evaluation procedures that are required by the Commissioning Officer.

2.2 The Council has to ensure its services meet the needs of local people, and are continually improving. The Council expects you to share this responsibility. You shall therefore provide upon request evidence of sustained improvement against agreed performance indicators. You must be able to demonstrate to the Council that you are meeting your aims and purposes effectively and that you provide high quality Funded Activities that offer good value for money.

2.3 You must give the Commissioning Officer reasonable opportunities to observe how you deliver the Funded Activities and how users participate or respond to them.

### **3 Confidential Information**

3.1 Neither the Council nor the Funding Recipient will disclose or allow to be disclosed to any person (except on a confidential basis to professional advisers) any confidential information acquired in the course of carrying out the Funded Activities, except as may be required or permitted by law.

### **4 Inspection**

4.1 You will give to the Commissioning Officer, the Council, the Council's auditors, the District Auditor and the Local Government Ombudsman such information, explanations and access to and copies of any documents as may reasonably be required to satisfy themselves as to your compliance with these Conditions of Grant Funding. Direct reasonable costs of any inspection will be met by the Council except where the information is requested as a result of complaints of poor performance or non-compliance.

### **5 Co-operation**

5.1 You will, in performing your obligations under these Conditions of Grant Funding, liaise with and co-operate with the Commissioning Officer and all officers of the Council and other organisations undertaking duties on behalf of the Council. You shall comply with all reasonable instructions issued by the Commissioning Officer.

### **6 Complaints handling**

6.1 You will deal with any complaints promptly, courteously and efficiently and will notify the Council in writing of all complaints received and the steps you have taken in response to them.

## **7 Publicity**

- 7.1 You must acknowledge the Council's help in all literature (including your annual reports), publicity, events and advertisements for the activities the Council has funded, unless otherwise agreed with the Commissioning Officer.

## **8 Copyright**

- 8.1 All copyright or other intellectual property rights in all work created or produced by you in relation to the Funded Activities shall be your property. You hereby grant the Council, and/or any third party which performs services on behalf of the Council, a non-exclusive, perpetual, transferable, royalty free licence to use such work for Council business that is reasonably related to the Funded Activities. You also warrant that any document or design produced by you is your original work which does not infringe the copyright, design right, moral right or any other rights of any third party, and that no claims of such infringement have been made or are the subject of litigation actual or threatened.

## **9 Data Protection**

- 9.1 The Council and the Funding Recipient will comply with our respective obligations, whether as data controller, data processor or otherwise under the Data Protection Acts as and when the same are applicable to the Funded Activities and that we will comply with the additional obligations of confidentiality applying to any personal data controlled and/or processed by either of us under these Conditions of Grant Funding.

## **10 Information Requests**

- 10.1 You accept that the Council is obliged to comply with information legislation including the Freedom of Information Act 2000 and Code of Practice, Environmental Information Regulations 2004, Aarhus Convention and Audit Commission Act 1998. You will assist the Council to comply with our obligations under this information legislation. This includes helping the Council comply with its obligation to respond to requests for information within statutory deadlines and providing information to the Council where the Council requests.
- 10.2 The Council is entitled to disclose information unless we believe that the information is exempt or excluded under the legislation or the legislation does not apply. For example where information is provided in confidence, the information is a trade secret or where release is likely to prejudice commercial interests. The Council will decide, acting reasonably, whether information requested is to be disclosed or not. The Council will where reasonably practicable, consult you and will consider any representations made by you. The Council shall not be liable for any loss or other detriment caused by the disclosure of any information.

## **Schedule Five – Special Conditions**

### **1 GLA funding**

- 1.1 As set out at 4.1 of the agreement, a proportion of the Council's funding of the project will come from funding received from the GLA through a grant agreement in place between the Council and the GLA. The Grant agreement in place between the Council and the GLA is attached at Appendix 1. By grant funding the Funding Recipient, the Council is passing all obligations set out within the funding agreement to the Funding Recipient. The Funding Recipient must therefore ensure that they comply with all conditions set as within Appendix 1 and report accordingly to the Council.

### **2 Ineligible Expenditure**

- 2.1 Without prejudice to the fact that the Funding Recipient must only use the Grant Funding for the purpose of delivering the Funded Activities, the Funding Recipient must not use monies paid to it by the Council under this Agreement for:
- a) activities or objectives not agreed by the Council;
  - b) recoverable input VAT incurred;
  - c) any liability arising out of the Recipient's negligence or breach of contract;
  - d) payments for unfair dismissal, constructive dismissal or redundancy to staff employed on fixed term contracts signed after June 1996, where this arises in respect of the expiry of that term without it being renewed; and/or
  - e) the payment of any Ombudsman's award or recommendation as regards compensation for maladministration.

### **3 Governance**

- 3.1 The Funding Recipient is expected to establish a Board of Directors, to include members with legal and financial expertise.
- 3.2 The Funding Recipient is expected to arrange and chair all Project Steering Group Meetings.
- 3.3 Steering Group meetings should take place monthly.
- 3.4 The Council and the GLA are required to have representatives as members of the Steering Group

### **4 Planning consultation**

- 4.1 The Funding Recipient is expected to manage a planning consultation exercise as part of the development of the plans for the site. This will involve consulting with local residents and local businesses and be able to be included with any planning application submitted to the Planning Authority.

### **5 Procurement of works**

- 5.1 All contracts let for consultancy, construction or other works on site, must demonstrate best value and an element of competitive tendering. This must be provided to the Council and the GLA by the Funding Recipient in advance of any contracts being let.
- 5.2 The Funding Recipient shall provide details of all consultants and sub-consultants and their scope of services prior to appointment. If the Council makes reasonable objections to any of the listed consultants, the Funding Recipient shall submit alternative names to the Council for their

consideration. The Funding Recipient must inform the Council of any proposed change in consultants or sub-consultants during the project and seek their approval.

- 5.3 The Council and the GLA must have input into production of the Invitation to Tender for Main Contractors. The GLA and the Council should be part of the evaluation process for the Contractor, including having a role in scoring and being part of interview panel. Each Contractor employed must be able to demonstrate their suitability for the role selected, including relevant qualifications and experience and the Funding Recipient must provide this to the Council.
- 5.4 The Funding Recipient shall provide details of all sub-contractors and the works for which they will be responsible to the Council for his comments prior to instructing on the particular package of work on site. If the Council makes reasonable objections to any of the listed Sub-Contractors, the Funding Recipient shall submit alternative names to the Council for their consideration. The Funding Recipient must inform the Council of any proposed change in sub-contractors working during the course of the works and seek their approval.

## **6 Business Plan**

- 6.1 The Fund Recipient shall ensure the project and the business plan is viable. The Funding Recipient shall allow the Council to undertake due diligence and approve the business plan.

## **7 Cost Plan**

- 7.1 The Funding Recipient is to ensure a cost plan is completed by a qualified Quantity Surveyor undertaken prior to planning submission and a pre-tender estimate completed prior to the procurement process to appoint a Contractor. The Funding Recipient shall allow the Council to undertake due diligence and approve the cost plan and pre-tender estimate ahead of funds being released.

## **8 London Living Wage**

- 8.1 The Fund Recipient is required to pay all its staff the London Living Wage and is to ensure that this extends to all sub-contractors on the works. The Funding Recipient will:
- Ensure that all relevant staff employed or engaged by the Funding Recipient are paid an equivalent hourly wage which is equal to or exceeds the London Living Wage.
  - Ensure that all relevant staff employed or engaged by its sub-contractors (if any) pay an equivalent hourly wage which is equal to or exceeds the London Living.
  - Provide to the Council such information concerning the London Living Wage and the performance of its obligations under this clause as the Employer may reasonably require and within the deadlines it reasonably imposes; and
  - Co-operate and provide all reasonable assistance to the Council in monitoring the effects of the London Living Wage including without limitation assisting us in conducting surveys and assembling data in respect of the effect of payment of London Living Wage to relevant staff.
- 8.2 For the avoidance of doubt, any breach by the funding Recipient of this may be a material breach in relation to which the Council is entitled to rely on its termination rights under the Conditions of Grant Funding.

## **9 Warranties**

- 9.1 Where the Funding Recipient or a sub-contractor or a designer or consultant has not provided a signed Warranty for works or the Funding Recipient has not provided a certified copy of Appointments or Sub-Contracts for the subcontractor's or designer's or consultant's works, the Council shall be entitled to withhold payment of grant funding until the required signed Contract Warranty and/or certified appointment/sub-contract has been provided.

## **10 Professional Indemnity**

- 10.1 The Funding Recipient should provide the Council with evidence of Professional Indemnity Insurances from all relevant consultants. The level of Professional Indemnity should be a



minimum of £2,000,000. The Council shall be entitled to withhold payment of grant funding until the required signed insurance and/or certified appointment/sub-contract has been provided.

**11 Public (and Products) Liability (PPL)**

- 11.1 The Funding Recipient should provide the Council with evidence of PPL from the appointed Contractor. The level of PPL should be a minimum of £10,000,000. The Council shall be entitled to withhold payment of grant funding until the required signed insurance and/or certified appointment/sub-contract has been provided.

**12 Employers Liability**

- 12.1 The Funding Recipient should provide the Council with evidence of Employers Liability insurance from the appointed Contractor. The level should be a minimum of £10,000,000. The Council shall be entitled to withhold payment of grant funding until the required signed insurance and/or certified appointment/sub-contract has been provided.

**13 Consents and approvals**

- 13.1 The Funding Recipient is required to gain all necessary consents and approvals throughout the project lifecycle. This includes but is not limited to planning consent, building regulations approval, all Health and Safety and CDM approvals, any notices or orders associated with the Party Wall Act, all environmental approvals, and certifications for any M&E pieces of equipment.
- 13.2 The Funding Recipient should also obtain and comply with all statutory consents in relation to the use of the building and land, including all required licences and approvals.

**14 Intellectual Property**

- 14.1 In the event that design develops significantly or the project receives planning approval, but not then proceed with the delivery of the approved plans within 12 months of receiving planning permission, Livesey Exchange will hand all intellectual property, including consultant appointments, contracts and other agreements to the Council.

**15 Payment Mechanisms**

- 15.1 Livesey Exchange will invoice the Council for works completed. This figure will be certified by the Council's Monitoring Surveyor before funding is released.

## **Appendix 1 – Good Growth Fund Grant Agreement**

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