

DATED

[2022]

(1) NORTH YORKSHIRE COUNTY COUNCIL

(2) [INSERT NAME OF BORROWER]

FUNDING AGREEMENT - LOAN

[INSERT PROJECT TITLE]

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Template

BETWEEN

- (1) **NORTH YORKSHIRE COUNTY COUNCIL** of County Hall, Northallerton, North Yorkshire DL7 8AD (the "**Council**"); and
- (2) **[INSERT NAME OF BORROWER]** of **[INSERT REGISTERED ADDRESS OF BORROWER]** with registered company number **[INSERT REGISTERED COMPANY NUMBER OF BORROWER]** (the "**Borrower**").

BACKGROUND

- (A) The Council is the accountable authority for the York and North Yorkshire Local Enterprise Partnership (the "**LEP**") which promotes business and employment growth in the region.
- (B) The LEP manages the **[insert name of relevant grant fund]** for the region which brings together public and private funding for the priority areas identified in the LEP’s strategic economic plan **[insert name of relevant grant fund]**.
- (C) The Council as the accountable authority for the **[insert relevant grant fund]** has offered a loan from the **[insert relevant grant fund]** to the Borrower (as applicant of the Application (as defined below)) for **[INSERT OVERVIEW OF PROJECT]** and the Borrower has agreed to accept the loan on the terms and conditions of this Agreement.

IT IS AGREED THAT:

1. DEFINITIONS

[DRAFTING NOTE: INSERT ALL PROJECT SPECIFIC DEFINITIONS]

In this Agreement the following words and phrases shall have the following meanings:

“Agreed Milestone Completion Date” means the date specified as such in the Project Specific Conditions and being the date by which the Milestones shall be achieved;

“Agreed Project Completion means the date specified as such in the

Date	Project Specific Conditions and being the date that all of the Project Activities shall be finished and complete;
“Agreement”	means this Agreement including its Schedules and Annexes;
“Application”	means the application for a loan from the [insert relevant grant fund](and any annexes thereto) for the Project that was submitted by the Borrower to the LEP and is provided at Schedule 4 (The Application);
“Borrower Personnel”	means all employees, agents, consultants and contractors of the Borrower and/or of any sub-contractor;
“Borrower's Representative”	means the representative appointed by the Borrower for the purposes of this Agreement and whose details are provided at paragraph 2 of the Project Specific Conditions;
“Change”	means in relation to the Project as defined in the Application any of the following changes (in accordance with Clause 7 (Changes to the Project)): <ul style="list-style-type: none"> (a) a change in the Ownership, Control and Nature of Business of the Borrower; (b) a change in the nature or purpose of the Project; (c) any change to the Eligible Expenditure; (d) any change to the Expenditure Profile; (e) any change to any of the Key Milestone

Dates;

- (f) any change to any of the Project Outputs; and
- (g) any material change to the Project Programme (that is, more than merely trivial and inconsequential in its consequences);

"Code"

has the meaning give to it in Clause 15.4 (Freedom of Information) of this Agreement;

"Committed"

means in relation to any Match Funding, either:

- (a) funding (which shall constitute all or any part of the Match Funding requirement contained in this Agreement) which has been committed to the Borrower in writing pursuant to which a third party makes available an amount to the Borrower and which shall not be subject to any conditions precedent or conditions subsequent which are (in the opinion of the Council acting reasonably) unacceptable; or
- (b) funding which shall constitute all or any part of the Match Funding requirement contained in this Agreement which shall be provided from the Borrower's own resources the availability of which shall be evidenced to the Council;

"Completion"

means completion of the Project Activities to the satisfaction of the Council;

“Confidential Information”

means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the owner of the Confidential Information, including all intellectual property rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "**confidential**") or which ought reasonably be considered to be confidential;

“Consents”

means any approval, authorisation, consent, exemption, licence, permit, permission or registration by of or from any governmental or other authority or any person including but not limited to consents required from the Borrower's landlord (if any), any adjoining owner or any mortgagee of the Site or from the local planning authority in relation to the Project or any part thereof or otherwise required to enable the same to be lawfully carried out and maintained;

“Council's Representative”

means the representative appointed by the Council for the purposes of this Agreement and whose details are provided at paragraph 2 of the Project Specific Conditions;

“Data Protection Legislation”

means the Data Protection Act 1998 (as amended), the EU Data Protection Directive 95/46/EC, 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, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner and as any may be amended from time to time;

“Eligible Expenditure”

means expenditure in relation to the Project that complies in all respects with the Subsidy Control Rules and as set out in Schedule 2 (Project Eligible Expenditure and Expenditure Profile);

“Environmental Information Regulations”

means the Environmental Information Regulations 2004 (SI No 2004/3391) together with any guidance and/or codes of practice issued by the "Information Commissioner" (as referred to therein) or relevant government department in relation to these regulations;

“Event of Default”

means the occurrence of any of the following:

- (a) the Borrower fails to comply with the terms and conditions of this Agreement;
- (b) the Project Activities are not commenced by the date which falls [three (3) months] after the date of this Agreement;
- (c) the Eligible Expenditure is not claimed in line with the Expenditure Profile;
- (d) Completion of the Project Activities has not been achieved by the Agreed

Project Completion Date;

- (e) a Change is made to the Project without the prior written approval of the Council, as required by Clause 7 (Changes to the Project);
- (f) a UK Court requires any Loan paid to the Borrower to be recovered by reason of a breach of the Subsidy Control Rules;
- (g) the Borrower fails to comply with the provisions of all Subsidy Control Rules that apply to the Project and the Loan;
- (h) any report or certificate made by the Borrower's auditor or reporting accountant is unsatisfactory (where, for example, the report or certificate refers to a fundamental uncertainty or disagreement, or contains a material qualification, or states that the auditor or accountant is unable to form an opinion about any item, or reports that any amount is not correctly stated in the accounts or records examined);
- (i) the Borrower owes any sum to the Council under an agreement for the financial support of any other project or activities;
- (j) an encumbrancer takes possession or a receiver or administrative receiver or manager or sequestrator is appointed of the whole or any part of the undertaking assets rights or revenues of the Borrower or a distress or other

process is levied or enforced upon any of the assets rights or revenues of the Borrower and any such action is not lifted or discharged within ten (10) Working Days;

(k) a petition is presented (other than a petition which, in the opinion of the Council, is frivolous or vexatious and which is withdrawn or stayed within ten (10) Working Days) to, or any order is made by, any competent court for the appointment of an administrator in relation to the Borrower;

(l) the Borrower is, or is adjudicated or found to be, insolvent or stops or suspends payment of its debts or is (or is deemed to be) unable to or admits inability to pay its debts as they fall due or proposes or enters into any composition or other arrangement for the benefit of its creditors generally or proceedings are commenced in relation to the Borrower under any law regulation or procedure relating to reconstruction or adjustment of debts; or

(m) any petition is presented by any person (other than a petition which, in the opinion of the Council, is frivolous or vexatious and which is withdrawn or stayed within ten (10) Working Days) or any order is made by any competent court or any resolution is passed by the Borrower for its winding-up or dissolution or for the appointment of a

liquidator of the Borrower;

“Expenditure Profile”	means the information provided by the Borrower detailing the spend forecast for the carrying out of the Project Activities and defrayal of expenditure and which is provided at Schedule 2 (Project Eligible Expenditure and Expenditure Profile);
“FOIA”	means the Freedom of Information Act 2000;
“Information”	has the meaning given in the FOIA;
“Information Commissioner”	has the meaning given in the FOIA;
“Instalment Period”	has the meaning given in the Project Specific Conditions;]
“Key Milestone Dates”	means the dates for the Milestones to achieve the Project which are contained in the Project Specific Conditions;
“Law”	means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body;
“LEP”	means the York and North Yorkshire Local Enterprise Partnership;
“Loan”	means the loan payable in relation to the Project pursuant to this Agreement and as set out in Clause 3.5 (Amount of Loan payable) the Project Specific Conditions;

"Loan Claim"	means a claim for the Loan (in full or part) under the terms of this Agreement;
"Losses"	means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses which have been incurred) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings , internal costs or demands;
"Match Funding"	means the private and/or public sector contribution to the Project to meet the balance of Eligible Expenditure not supported by the Loan and as set out in the Project Specific Conditions;
"Material Breach"	<p>means a breach of this Agreement (including an anticipatory breach) which is not minimal or trivial in its consequences including but not limited to the occurrence of any of the following:</p> <ul style="list-style-type: none"> (a) any information given or representation made by the Borrower in the Application or in any correspondence, report or other document submitted to the Council and/or the LEP relating to the Project or under this Agreement is found to be incorrect or incomplete to an extent which the Council considers to be material; (b) any fraud has been committed by the Borrower and/or its employees in connection with the Project;

- (c) a breach of the warranties by the Borrower contained in and given pursuant to this Agreement;
- (d) the Borrower fails to materially comply with the terms and conditions of this Agreement; or
- (e) the activities carried out by the Borrower are distinct or different from the description set out in the Application having regard also to the intended function of the Project Activities and the end beneficiaries of the Project;

“Outputs”

means the outputs and results for the Project identified and detailed in Schedule 3 (Project Outputs) to this Agreement;

“Not Eligible”

means expenditure on the Project that is not Eligible Expenditure;

“Ownership, Control and Nature of Business”

shall be construed in accordance with section 840 of the Income and Corporation Taxes Act 1988 and section 1162 of the Companies Act 2006 and for the avoidance of doubt shall include an evaluation of dominant influence and shadow directorships in the Borrower from time to time;

“Parties”

means the Council and the Borrower and **“Party”** shall be construed accordingly;

“Plan”

means the plan of the Site attached at Schedule 5 (The Plan);

"Project"	means the project at [INSERT OVERVIEW OF PROJECT] as fully described in the Application;
"Project Activities"	means all activities and works to be carried out in implementing the Project;
"Project Programme"	means the programme agreed between the Parties setting out the stages and timescales of the Project Activities to be carried out for the Project and a copy of which is provided at Schedule 6 (Project Programme) to this Agreement;
"Project Specific Conditions"	means those conditions which are specific to the Project and are set out in Schedule 1 (Project Specific Conditions) to this Agreement;
"Public Sector Financial Assistance"	includes all funding received or receivable by the Borrower from public sector bodies including for this purpose funding from the European Commission, government bodies (whether national or local) or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Acts 1993 and 1998;
"Request for Information"	means any request for Information or an apparent request under the FOIA or the Environmental Information Regulations (as appropriate);
"Site"	means the land shown for the purpose of identification only edged in red on the Plan including any part thereof and also includes

any estate or interest therein;

"Start Date" means **[INSERT DATE]** being the date [the Application was submitted by the Borrower] **[OR]** [of this Agreement];

"Subsidy Control Rules" means the law embodied in the EU-UK Trade and Co-operation Agreement and all relevant legislation that this encompasses and all and any subsidy control system legislation currently in force or subsequently enacted by the UK Government

"VAT" means any value added tax as provided for in the Value Added Tax Act 1994 or any other tax of similar nature; and

"Working Day" means any day from Monday to Friday (inclusive) which is not a statutory bank holiday in England.

2. **INTERPRETATION**

2.1 In this Agreement:

2.1.1 reference to any statute or legislation shall include any statutory extension or modification, amendment or re-enactment of such statutes and include all instruments, orders, bye-laws and regulations for the time being made, issued or given thereunder or deriving validity therefrom, and all other legislation of the European Union that is directly applicable to the United Kingdom;

2.1.2 reference to any clause, sub-clause, paragraph, sub-paragraph or schedule without further designation shall be construed as a reference to the clause, sub-clause, paragraph, sub-paragraph or schedule to this Agreement so numbered;

- 2.1.3 reference to "this Agreement" includes any variations made from time to time pursuant to the terms of this Agreement;
- 2.1.4 reference to "including" shall be construed so as not to limit the generality of any words or expressions in connection with which it is used;
- 2.1.5 reference to "determined" or "determine" means, unless the contrary is indicated a determination made at the discretion of the person making it;
- 2.1.6 where the consent approval or agreement of the Council is required pursuant to the terms of this Agreement, it shall not be construed as having been given unless provided in writing;
- 2.1.7 words importing one gender shall include both genders and the singular shall include the plural and vice versa; and
- 2.1.8 the headings in this Agreement shall not affect its interpretation.
- 2.2 In the event of a conflict between the following elements comprising this Agreement the priority shall prevail in the following descending order:
- 2.2.1 the conditions set out in the Project Specific Conditions at Schedule 1 of this Agreement;
- 2.2.2 the conditions set out in the main body of this Agreement;
- 2.2.3 the Application.
3. **LOAN**
- 3.1 In consideration of the Parties' respective obligations contained in this Agreement the Council offers the Borrower [a secured **OR** an unsecured] term Loan and the Borrower accepts the Loan on the terms and conditions of this Agreement.
- 3.2 The Borrower acknowledges and agrees that the Loan shall only be paid in respect of Eligible Expenditure and in accordance with the Project Programme. The Borrower shall inform the Council immediately of any difficulty or reason why the Loan may not be applied in accordance with the Project Programme.
- 3.3 Eligible Expenditure excludes payments made by the Borrower that are Not Eligible.

3.4 Subject to entering into this Agreement, the Loan may be used towards Eligible Expenditure that has been defrayed on or after the Start Date. For the avoidance of doubt the Loan and the provisions of this Agreement shall apply to Eligible Expenditure beginning on the Start Date.

3.5 **Amount of Loan payable**

The total amount of Loan payable shall be **[INSERT VALUE OF LOAN]** and shall be payable in accordance with Clause 3.7 (Conditions precedent to the payment of Loan) and Clause 4 (Drawdown of the Loan) of this Agreement.

3.6 **Match Funding Arrangements**

3.6.1 The payment of the Loan is conditional upon the receipt by the Borrower of the Match Funding or the Match Funding being Committed.

3.6.2 The Borrower shall notify the Council in writing immediately of any failure by the Borrower or a third party (as applicable) to make a contribution due under the Match Funding or any circumstance that affects or might affect the payment or availability of Match Funding.

3.7 **Conditions precedent to the payment of the Loan**

The Council shall not make the first payment of Loan and/or any subsequent payment of Loan unless all of the following preconditions have been complied with:

3.7.1 the relevant Loan Claim is submitted to the Council in accordance with the procedure at Clause 4 (Drawdown of the Loan) of this Agreement;

3.7.2 the expenditure is Eligible Expenditure;

3.7.3 the Borrower has satisfied the Council that the Borrower has sufficient Match Funding Committed at the date of this Agreement to achieve Completion of the Project by the Agreed Project Completion Date;

3.7.4 the Borrower has satisfied the Council that the Borrower has all funding needed to pay for expenditure in relation to the Project which is Not Eligible;

3.7.5 [that Eligible Expenditure has been defrayed (that is that Eligible Expenditure has been incurred and that payment has been made by the

Borrower) in respect of any Eligible Expenditure to which an Loan Claim relates,]

provided always that the payment of a Loan Claim shall not operate as a waiver of any of the obligations in this Clause 3.7 or exclude the right of the Council to exercise any of its rights under this Agreement.

4. DRAWDOWN OF THE LOAN

[DRAFTING NOTE: Drawdown procedure provisions to be inserted on an individual project basis.]

5. LOAN CONDITIONS

[DRAFTING NOTE: Banking and financial conditions and covenants will need to be inserted here on an individual project basis and to reflect the market. Example headings for the provisions expected to be included are provided below.]

5.1 Interest

[]

5.2 Security

[]

5.3 Council's costs charges and expenses in providing the Loan

[]

5.4 Repayment

[]

5.5 Payments by the Borrower

[]

5.6 Covenants

[]

6. **ACCEPTANCE OF TERMS**

6.1 The Borrower accepts and agrees to all of the terms of this Agreement having made full and proper enquiry before giving the warranties contained in this Agreement.

6.2 The Borrower acknowledges and agrees that the Loan has been offered to it to carry out:

6.2.1 the Project Activities specified within the Application and in accordance with the timescales set out in the Project Programme; and

6.2.2 achieve the Milestones and Project Outputs within the time limits set out in this Agreement; and

6.3 The Borrower agrees with the Council that:

6.3.1 it shall not carry out any Project Activities upon the Site without having obtained all necessary Consents for such activities and in particular shall not carry out any works constituting development for which planning permission is required under the Town and Country Planning Act 1990 without having obtained detailed planning consent for such works, and shall if requested by the Council produce to it such documents or copy documents as the Council may require to demonstrate satisfaction of its obligations under this Clause 6.3 (Acceptance of Terms); and

6.3.2 it shall at all times throughout the Project comply with all Consents including the relevant planning consent.

7. **BORROWER WARRANTIES**

7.1 The Borrower warrants to the Council that the information provided by the Borrower in the Application is accurate in all respects in relation to the Project having made proper and full enquiry in relation to the same. The Borrower acknowledges that the Council and the LEP has relied upon and based their decision to offer and pay the Loan to the Borrower on the representations made by the Borrower in the Application and in all documents and information provided by the Borrower in relation to the Project as part of the appraisal process.

7.2 The Borrower further warrants, represents and undertakes for the duration of the term of this Agreement that:

- 7.2.1 it has and will continue to hold all necessary (if any) regulatory approvals from the regulatory bodies necessary to perform the Borrower's obligations under this Agreement;
- 7.2.2 as at the Start Date all statements and representations provided by the Borrower in relation to the Project are to the best of its knowledge information and belief true and accurate and that it will advise the Council and the LEP immediately of any fact matter or circumstance of which it may become aware which would render any such statement and/or representation to be false or misleading;
- 7.2.3 it shall at all times comply with the Law in carrying out its obligations under this Agreement;
- 7.2.4 it has the power and authority to execute deliver and perform its obligations under this Agreement and no limit on its powers will be exceeded as a result of the acceptance of the Loan or any of the terms of this Agreement; and
- 7.2.5 there has been no adverse change in the Borrower's business, assets or financial condition since the submission of the Application to the LEP and that the Application is true in all respects of the Project on the date of this Agreement.

8. **CHANGES TO THE PROJECT**

- 8.1 All Changes must be approved by the Council and the LEP prior to the relevant Change being deemed to be effective. The Borrower shall request the Change in writing to the Council's Representative and all requests shall include an explanation of the effect of the Change on:
 - 8.1.1 the Loan (including repayment);
 - 8.1.2 the Eligible Expenditure;
 - 8.1.3 the Expenditure Profile;
 - 8.1.4 the Milestones; and
 - 8.1.5 the Project Outputs.

8.2 The Council and the LEP shall either agree to the Change request or reject the Change request within [thirty (30) days] of the date of the Change request.

8.3 Until such time as a Change is made in accordance with this Clause 8 (Changes to the Project), the Parties shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms before such Change.

9. **SUBSIDY CONTROL**

9.1 The Borrower has undertaken its own independent assessment of the compatibility of the Project with the Subsidy Control Rules and confirms to the Council that the Project is structured so it is compliant with the Subsidy Control Rules as further set out at paragraph 4 of Schedule 1 (Project Specific Conditions) and Annex 1 (Subsidy Control Assessment) to this Agreement. The Borrower acknowledges that the Council has taken into account the Borrower's representations on compliance with the Subsidy Control Rules in deciding to offer the Loan to the Borrower for the Project.

9.2 The Borrower warrants that the Loan and any public investment in the Project does not constitute an unlawful subsidy as defined in the Subsidy Control Rules and, without prejudice to the general nature of this, the Borrower further warrants that:

9.2.1 the Borrower's use of the Loan (including any flow down of the Loan) will at all times be in accordance with the Subsidy Control Rules;

9.2.2 the Borrower will openly procure and/or benchmark (as appropriate) all contractors and operators that will be involved in the delivery of the Project and shall comply with all applicable statutory Procurement Requirements including but not limited to the Public Contract Regulations 2015 at all times in relation to the Project to the extent required by Law;

9.2.3 the Borrower shall procure and maintain the necessary expertise and resources to deliver the Project in accordance with the Subsidy Control Rules for the full term of the Project;

9.2.4 the Borrower shall retain all documentation in relation to the Loan for a minimum of ten (10) years after the final Loan claim is paid. Such documentation may be held in either paper records or electronic form;

- 9.2.5 in the event that the Loan or part of it is determined by a Court of the United Kingdom to amount to a Subsidy under the Subsidy Control Rules the Borrower shall, to the extent the decision of the Court requires, immediately pay such incompatible Subsidy to the Council plus interest in accordance with the decision of the Court and without set-off or deduction;
- 9.2.6 in the event of any proposed variation to this Agreement including its Schedules the Borrower shall submit all information required by the Council for the purposes of ensuring the Loan complies with the Subsidy Control rules in force on the date of the proposed variation and the Borrower will repeat and reconfirm the warranties, representations and undertakings set out in this Agreement and any additional confirmation required by the Council in any variation documentation. No variation to this Agreement including its Schedules shall be agreed by the Council if the variation would result in the Loan failing to comply with the Subsidy Control Rules.
- 9.3 The Borrower acknowledges and agrees that it is responsible for ensuring that its use of the Loan and all aspects of the Project are in accordance with the Subsidy Control Rules. The Borrower hereby indemnifies the Council (its employees, agents and representatives) on demand from and against all Losses, whether direct or indirect, in respect of a breach of the Subsidy Control Rules and/or which arise out of or in consequence of a breach of any part of this Agreement.
- 9.4 The Borrower acknowledges that the Council may be obliged to assist government departments and bodies with the provision of information in respect of this Agreement and the Loan. The Borrower shall fully co-operate with the Council in the provision of such information.
10. **BEST VALUE AND PROCUREMENT**
- 10.1 The Borrower shall ensure that best value for money is obtained in the procurement of all works, goods and services that form part of the Eligible Expenditure for the Project.
- 10.2 The Borrower shall comply with all applicable UK Procurement Requirements at all times in relation to the Project to the extent required by Law.

11. **REPORTS, MONITORING, RECORDS AND NOTIFICATION**

11.1 **Submission of reports**

- 11.1.1 The Borrower shall send to the Council at quarterly intervals (or at such other intervals as notified by the Council to the Borrower in writing) a report on progress made towards the achievement of the Milestones, Project Outputs and financial statements for Eligible Expenditure on the Project.
- 11.1.2 The Borrower shall provide such additional information in such format as the Council may require at any time. This includes information about the progress of the Project Activities, the achievement of the Milestones and Project Outputs and any other information required to enable the Council to meet its reporting obligations and other obligations under the Subsidy Control Rules.
- 11.1.3 The Borrower warrants the accuracy of the reports and information it gives pursuant to this Clause 11 (Reports, Monitoring, Records and Notification) and further warrants that it has diligently made full and proper enquiry of the subject matter pertaining to the reports and information given.

11.2 **Notification by the Borrower**

The Borrower shall notify the Council in writing:

- 11.2.1 as soon as practicable thereafter, firstly in the event of any Change in the information on costs (whether actual or estimated) of carrying out the Project Activities contained in the Application and secondly of any event which materially affects the continued accuracy of such information;
- 11.2.2 as soon as practicable thereafter, in the event of the receipt of any other Public Sector Financial Assistance, other funding or guarantees by the Borrower in relation to the Project, or an offer of the same, in respect of any aspect of the Project or the Project Activities (or any part of it or them);
- 11.2.3 as soon as practicable thereafter, of any event which might adversely affect the carrying out and/or Completion of the Project Activities or any part of them;

11.2.4 as soon as practicable thereafter, of any event which might adversely affect the delivery of the Project by the Agreed Project Completion Date; and

11.2.5 immediately on the occurrence of an Event of Default.

11.3 **Records**

11.3.1 The Borrower shall provide the Council with such information and documentation as the Council may require in connection with the Project from the date of this Agreement to the date on which the Borrower has fulfilled all its obligations under this Agreement.

11.3.2 The Borrower shall keep a record of all Eligible Expenditure, all quotes, tenders and procurement practices, and all financial contributions made towards the Project.

11.3.3 The Borrower shall provide to the Council such information as may be requested by the Council or the LEP as to the benefits derived from the provision of the Loan for the Project.

11.4 **Retention of documents**

11.4.1 The Borrower shall ensure that all original documents in its possession relating to the Project and its implementation and financing are retained for a minimum period of twelve (12) years from Completion.

11.4.2 The Borrower shall make available all original documents or verified true copies of the original documents relating to the Project and its implementation and financing (including all procurement documentation) if and when required to do so by the Council and the LEP and their respective auditors and any statutory predecessors.

11.5 **Conflicts of interest and financial irregularities**

11.5.1 The Borrower and all officers, employees and other persons engaged or consulted by the Borrower in connection with the Project shall not be in a position where there is a conflict of interest. The Borrower is required to have formal procedures obliging all such persons to declare any actual or potential personal or financial interest in any matter concerning the

Project, and to be excluded from any discussion or decision-making relating to the matter concerned.

11.5.2 If the Borrower has any grounds for suspecting any financial impropriety in the use of any amount paid under this Agreement, it must notify the Council immediately, explain what steps are being taken to investigate the suspicion, and keep the Council informed about the progress of the investigation. For these purposes “financial impropriety” includes fraud or other impropriety; mismanagement; and use of the Loan for improper purposes.

11.5.3 The Council and the LEP shall be entitled to interview employees of the Borrower if fraud or other financial irregularity is suspected by the Council or the LEP on the part of the Borrower, its employees or agents in connection with the Project.

12. ACCOUNTING RECORDS AND SUPPORTING EVIDENCE

12.1 The Borrower shall maintain full and accurate accounts and documentary evidence for the Project on an open book basis and the Borrower shall permit the Council and the LEP and persons authorised by the Council and the LEP to inspect audit and take copies of all reports books accounting records and vouchers which the Council and the LEP properly considers relevant to the Project.

12.2 The Borrower shall maintain either a separate accounting system or an adequate accounting code for all transactions relating to the Project without prejudice to national accounting rules.

12.3 The Borrower shall provide the Council and the LEP with such other information as the Council and the LEP may require in connection with the Project and the Project Activities.

13. RIGHTS RESERVED FOR BREACH OF THIS AGREEMENT, TERMINATION AND INDEMNITIES

13.1 Rights reserved for the Council for breach of this Agreement

Where the Council determines that an Event of Default or a Material Breach has or may have occurred, the Council may by written notice to the Borrower take any one or more of the following actions:

- 13.1.1 suspend the payment of Loan for such period as the Council shall determine; and/or
- 13.1.2 reduce the value of the Loan in which case the payment of the Loan shall thereafter be made in accordance with the reduction as notified to the Borrower;
- 13.1.3 cease to make payments of the Loan to the Borrower under this Agreement and (in addition) require the Borrower to repay to the Council the whole or any part of the Loan previously paid to the Borrower; and/or
- 13.1.4 terminate this Agreement.

13.2 **Opportunity for the Borrower to remedy an Event of Default**

- 13.2.1 If the Council gives written notice to the Borrower pursuant to clause 13.1.1 (above) to suspend payment of the Loan such notice shall specify the relevant Event of Default and give the Borrower an opportunity to rectify the relevant Event of Default within such period as the Council shall determine to be reasonable and as shall be set out in such written notice (or such extended period as the Council shall thereafter determine).
- 13.2.2 The Council shall not by reason of the occurrence of an Event of Default which is, in the opinion of the Council, capable of remedy, exercise its rights under either Clause 13.1.3 or Clause 13.1.4 (above) unless the Borrower has failed to rectify the default pursuant to Clause 13.2.1 within such period referred to in Clause 13.2.1 to the satisfaction of the Council.

13.3 **Continued rights of actions or remedies of the Council**

The exercise by the Council of its rights under Clause 13.1 (Rights reserved for the Council in relation to an Event of Default) (above) shall be without prejudice to any other right of action or remedy of the Council in respect of any breach by the Borrower of the terms of this Agreement.

13.4 **Cessation of entitlement to the Loan**

If the Council exercises its right under Clause 13.1.3 (Rights reserved for the Council in relation to an Event of Default) (above) the Council shall give written notice to the Borrower that the Council is ceasing to make payment of the Loan and

from the date of such notice the Council shall cease to be under any obligation to pay any amount of the Loan to the Borrower and shall have no ongoing or continuing obligations in respect of the Project under this Agreement.

13.5 Liability to meet demand for repayment of Loan and Covenant to Pay

13.5.1 Where the Council requires the Loan Recipient to repay any amount of the Loan pursuant to this Clause 13 (Rights Reserved for Breach of this Agreement, Termination and Indemnities) the Borrower shall repay the amount concerned within fifteen (15) Working Days of receiving the demand for repayment. The liability to meet such a demand shall be enforceable as a contractual debt.

13.5.2 Where the Council makes a determination to recover any amount of the Loan pursuant to this Clause 13 (Rights Reserved for Breach of this Agreement, Termination and Indemnities), it may recover the amount concerned by withholding or deducting the amount from any sum due from the Council to the Borrower under this Agreement or under any other agreement with the Council.

13.5.3 The Council may require interest to be paid on any amount repayable by the Borrower pursuant to this Clause 13 (Rights Reserved for Breach of this Agreement, Termination and Indemnities) in accordance with the rates published in the Official Journal of the European Union from time to time. The amount of interest payable by the Borrower will be determined by the Council or as directed in any recovery notice.

13.6 Exclusion and Limitation of Liability

13.6.1 Neither Party shall be liable to the other Party (so far as permitted by law) for indirect special or consequential loss or damage of any nature in connection with this Agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

13.6.2 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Agreement.

13.6.3 The Council shall under no circumstances whatever be liable to the Borrower whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any Losses arising under or in connection with this Agreement.

13.6.4 Any clause limiting the Borrower's liability does not apply in relation to any recovery order of a UK Court in respect of the Loan for breach of the Subsidy Control Rules.

13.7 **Termination of this Agreement**

13.7.1 The Parties acknowledge and agree that this Agreement shall terminate in accordance with its terms.

13.7.2 Any termination of this Agreement for any reason shall not affect any accrued rights or liabilities of either Party, nor the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination including without limitation clauses on warranty, indemnity, limitation of liability and confidentiality or any right or entitlement of either Party to claim damages arising from such termination (subject to and in accordance with the provisions of this Agreement).

13.7.3 The Borrower acknowledges and agrees that the Council and the LEP shall have no ongoing or continuing obligations in relation to the Project upon the termination of this Agreement.

13.8 **Indemnities**

13.8.1 The Borrower shall indemnify and keep indemnified the Council against all liabilities, damages, expenses, Losses and costs incurred or suffered by the Council arising out of or attributable to the acts or omissions of the Borrower or any of its employees, agents or sub-contractors in connection with this Agreement.

14. **CONFIDENTIALITY**

14.1 Except to the extent set out in this Clause 13 (Confidentiality) or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:

- 14.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - 14.1.2 not disclose the other Party's Confidential Information to any other person without that Party's prior written consent.
- 14.2 Clause 14.1 (above) shall not apply to the extent that:
- 14.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, "Code of Practice on Access to Government Information" or the Environmental Information Regulations pursuant to Clause 15 (Freedom of Information) of this Agreement;
 - 14.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 14.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 14.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
 - 14.2.5 it is independently developed without access to the other Party's Confidential Information.
- 14.3 The Borrower may only disclose the Council's and/or the LEP's Confidential Information to the Borrower Personnel who are directly involved in the Project and who need to know the information, and shall ensure that such Borrower Personnel are aware of and shall comply with these obligations as to confidentiality.
- 14.4 The Borrower shall not, and shall procure that the Borrower Personnel do not, use any of the Council's and/or the LEP's Confidential Information received otherwise than for the purposes of this Agreement.
- 14.5 Nothing in this Agreement shall prevent the Council and/or the LEP from disclosing the Borrower's Confidential Information:
- 14.5.1 to any consultant, contractor or other person engaged by the Council or the LEP in respect of the Project;

- 14.5.2 to enable the Council and the LEP to meet their reporting obligations and other obligations under the Subsidy Control Rules for the purpose of any audit pursuant to Clause 12 (Accounting Records and Supporting Evidence) of this Agreement; or
- 14.5.3 for the purpose of the examination and certification of the Council's accounts.
- 14.6 The Council shall use all reasonable endeavours to ensure that any person to whom the Borrower's Confidential Information is disclosed pursuant to Clause 14.5 (above) is made aware of the Council's obligations of confidentiality.

15. **FREEDOM OF INFORMATION**

- 15.1 The Borrower acknowledges that the Council is subject to the requirements of the "Code of Practice on Access to Government Information", FOIA and the Environmental Information Regulations and the Borrower agrees to assist and cooperate with the Council to enable it to comply with its Information disclosure obligations.
- 15.2 Where the Borrower receives a Request for Information in relation to the Council, the Borrower shall and shall procure that any relevant sub-contractors shall:
- 15.2.1 immediately and in any event within two (2) Working Days of receiving a Request for Information pass the Request for Information to the Council;
- 15.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within three (3) Working Days (or such other period as the Council may specify) of the Request for Information; and
- 15.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations (as applicable).
- 15.3 The Borrower acknowledges and agrees that the Council shall be responsible for determining (notwithstanding any other provision in this Agreement or any other agreement) whether any Information is exempt from disclosure in accordance with

the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

15.4 The Borrower acknowledges and agrees that (notwithstanding the provisions of this Clause 15 (Freedom of Information)) the Council may acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of FOIA (the "Code") be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Borrower or the Project Activities:

15.4.1 in certain circumstances without consulting the Borrower; or

15.4.2 following consultation with the Borrower and having taken its views into account,

provided always that where Clause 15.4.1 applies the Council shall in accordance with any recommendations of the Code take reasonable steps to give the Borrower advanced notice, or failing that draw the disclosure to the Borrower's attention after any such disclosure.

16. **ASSIGNMENT OR CHARGING OF THIS AGREEMENT**

16.1 The Borrower shall not, without the prior written consent of the Council, assign its rights under this Agreement or charge the benefit of this Agreement or novate the rights and liabilities of this Agreement to a third party.

16.2 If the Borrower wishes to assign, charge or novate its rights and liabilities under this Agreement, it shall give as much notice as possible of its proposals to the Council and shall provide a full account of relevant circumstances and such further particulars as the Council shall request concerning the party to which this Agreement is proposed to be assigned, novated or charged.

16.3 The Council shall determine as to whether or not to give consent to an assignment or novation or charging of this Agreement or as to any conditions to be imposed.

16.4 If the Council consents to an assignment, charge or novation, then the Council may notify the Borrower that the documentation giving effect to the assignment, charge or novation is to be approved by the Council and copies of all completed documents shall be supplied to the Council upon completion of the same.

17. DATA PROTECTION

17.1 The Parties shall comply at all times with Data Protection Legislation and shall not perform any of their obligations under this Agreement in such a way as to cause the other Party to breach any of its applicable obligations under Data Protection Legislation.

18. NOTICES

18.1 Any notice demand or communication to be given or served under this Agreement shall be in writing.

18.2 Any notice demand or communication to be given or served under this Agreement shall be given or served:

18.2.1 in the case of notice to be served upon the Council, by personal delivery or by sending it by pre-paid recorded postal delivery to the address specified in this Agreement for the attention of the Council's Representative or to such other address as may from time to time be notified by the Council; and

18.2.2 in the case of notice to be served upon the Borrower, by personal delivery or by sending it by pre-paid recorded postal delivery to the address specified in this Agreement for the attention of the Borrower's Representative or such other address as may from time to time be notified by the Borrower to the Council.

18.3 Any such notice shall (where sent by post) be deemed to have been served and received on the second Working Day following the day of posting and where delivered personally be deemed to have been given when delivery is made.

19. VALUE ADDED TAX

19.1 The payment of the Loan by the Council under this Agreement is believed to be outside the scope of VAT but in the event any VAT shall become chargeable all payments shall be deemed to be inclusive of all VAT and the Council shall not be obliged to pay any additional amount by way of VAT.

19.2 All sums or other consideration payable to the Borrower or provided by the Borrower to the Council at any time shall be deemed to be exclusive of all VAT payable and

where any such sums become payable or due or other consideration is provided the Borrower shall at the same time or as the case may be on demand by the Council in addition to such sums or other consideration pay to the Council all the VAT so payable upon the receipt of a valid VAT invoice.

20. **GOOD FAITH AND COOPERATION**

20.1 The Borrower covenants with the Council that:

20.1.1 it shall at all times act with the utmost good faith towards the Council and the LEP (as applicable) and shall at all times co-operate fully with the Council and the LEP (as applicable) in relation to this Agreement;

20.1.2 it shall comply with all the Council's and the LEP's (as applicable) reasonable requirements in relation to the Project from time to time; and

20.1.3 it shall not do anything which would put the Council or the LEP in breach of any of its obligations in relation to the Loan and the [insert name of relevant grant]programme.

21. **PUBLICITY**

21.1 The Borrower hereby gives consent to the Council and the LEP to publicise in the press or any other medium the Loan and the details of the Project using any information gathered from the Application or the monitoring of the Project Activities.

21.2 The Borrower shall obtain the prior written consent of the Council and the LEP to any publicity activity in the press or any other medium in relation to the Loan.

22. **INSURANCE**

22.1 The Borrower covenants with the Council that it shall ensure that it maintains at all times adequate insurance cover with an insurer of good repute to cover all claims and liabilities under this Agreement or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with the Project.

22.2 The Borrower shall take out and maintain or procure that any works contractor shall take out and maintain a policy of "all risks" insurance to cover the full reinstatement or replacement cost of any works forming part of the Project Activities and shall procure that the Council's interest is noted on any such insurance policy.

23. **VARIATIONS**

23.1 The Parties may vary this Agreement at any time subject to the written consent of the Parties subject to all variations only taking effect if made by Deed and expressed to be supplementary to this Agreement.

23.2 The Council reserves its right to amend this Agreement with prospective effect upon notification to the Borrower if any directions guidance or other communication is given or made to the Council by any government body or agency or equivalent entity requiring such amendment.

24. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

With the exception of the rights afforded to the LEP under the terms of this Agreement a person who is not party to this Agreement shall not have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce its terms.

25. **JURISDICTION**

This Agreement shall be governed by and construed in accordance with the law of England and each Party submits to the exclusive jurisdiction of the English Courts.

26. **MISCELLANEOUS**

26.1 Nothing in this Agreement shall constitute a partnership or joint venture between the Parties or constitute the Borrower as the agent of the Council or the LEP for any purpose whatsoever and the Borrower shall ensure that any sub-contractor is made aware of this.

26.2 A certificate by the Council as to any sum payable under this Agreement to the Borrower shall be (save in the case of manifest error) conclusive evidence of the matter to which it relates and shall contain reasonable details of the basis of determination.

26.3 If at any time any of the provisions of this Agreement become illegal, invalid or unenforceable in any respect under any law or regulation of any jurisdiction, neither the legality validity nor enforceability of the remaining provisions of this Agreement shall be in any way affected or impaired as a result.

26.4 No failure or delay on the part of either Party in exercising any right or power and no course of dealing between the Parties to this Agreement (and the LEP where

applicable) shall operate as a waiver nor shall any single or partial exercise of any right power or remedy of that Party prevent any other exercise of it or the exercise of any other right power or remedy of that Party. The rights and remedies available to the Parties under this Agreement are cumulative and are in addition to and not in substitution for any other rights or remedies which the Parties would otherwise have however arising.

- 26.5 Nothing contained in or done under this Agreement and no consents given by the Council and/or the LEP shall prejudice the Council's and/or the LEP's rights powers or duties and/or obligations in the exercise of its functions or under any statutes, bye-laws, instruments orders or regulations.
- 26.6 Nothing in this Agreement nor any other document shall impose any obligation or liability on the Council and/or the LEP with respect to any actions of or obligations or liabilities assumed or incurred by the Borrower or its agents contractors or employees whether under contract statute or otherwise.
- 26.7 Any approval by the Council and/or the LEP or any person on behalf of the Council and/or the LEP pursuant to this Agreement of any matter submitted by the Borrower for approval shall not be deemed to be an acknowledgment by the Council and/or the LEP (as applicable) of the correctness or suitability of the contents of the subject of the approval or consent.
- 26.8 The fact that the Council and/or the LEP or any representatives of the Council and/or the LEP 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 Borrower of any obligation or liability in respect of the Project Activities or otherwise.
- 26.9 Nothing in this Agreement shall affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication to come into force or continue in force upon termination or expiry of this Agreement.
- 26.10 This Agreement contains all the terms which the Parties have agreed in relation to the subject matter of this Agreement and supersedes any prior written or oral agreements representations or understandings between the Council and/or the LEP and the Borrower.

This Agreement has been entered into as a Deed on the date stated at the beginning of it.

EXECUTED AS A DEED by affixing)

THE COMMON SEAL of the)

**NORTH YORKSHIRE COUNTY)
COUNCIL**

in the presence of :)

Authorised Signatory:

Print Name:

EXECUTED AS A DEED by the)

[INSERT NAME OF BORROWER])

by :)

**[EXECUTION BLOCK TO BE
CONFIRMED]**

Schedule 1
Project Specific Conditions

[DRAFTING NOTE: All project specific conditions to be inserted into Schedule 1.]

1. Amount of Loan

The amount of Loan payable under this Agreement shall not exceed the maximum sum of £**[INSERT VALUE]** (**[INSERT VALUE]** pounds and **[INSERT VALUE]** pence).

2. Council's Representative and Borrower's Representative

The Council and the Borrower have each appointed the following representative to act as the principal contact for this Agreement:

Council's Representative	Borrower's Representative
[INSERT]	[INSERT]
[INSERT]	[INSERT]
[INSERT]	[INSERT]
[INSERT]	[INSERT]

All correspondence including any notices served pursuant to Clause 18 (Notices) of this Agreement should be made to the Council's Representative and the Borrower's Representative (as appropriate).

3. [Instalment Periods]

The instalment period for payment of the Loan shall be **[quarterly][monthly]** ending on **[INSERT QUARTERLY/MONTHLY DATES]** (the "Instalment Period"). The first Instalment Period shall end on **[INSERT END DATE OF FIRST INSTALMENT PERIOD].**

4. Subsidy Control

The Borrower has undertaken an evaluation of the Project and concluded that the Loan for the Project Activities [will][will not] constitute a Subsidy (within the meaning set out in Article 3 of the EU-UK Trade and Cooperation Act 2020 and the relevant case law)[, but is compatible with the Subsidy Control Rules]. A copy of the Borrower's Subsidy Control assessment for the Project is attached at Annex 1 (Subsidy Control Assessment) to this Agreement.

5. Key Milestone Dates

The Key Milestone Dates for the successful implementation of the Project are as set out in the table below:

Milestone Table

[DRAFTING NOTE: All specific Milestones for the Project to be inserted below. Refer to Schedule 3 for Project Outputs.]

	Milestone	Date
1	Start Date	[INSERT]
3	Agreed Project Completion Date	[INSERT]
4	Agreed Milestone Completion Date	[INSERT]
5	The date of the submission of the first Loan claim	[INSERT]
6	The date of the submission of the final Loan claim	[INSERT]
7	[INSERT]	[INSERT]

6. Match Funding

6.1 Without prejudice to Clause 3.6 (Match Funding Arrangements) of this Agreement, the Borrower agrees that at the date of this Agreement it has approved and available to it Match Funding of £[INSERT VALUE] ([INSERT VALUE] pounds and [INSERT VALUE] pence) for the Project to be allocated as follows:

Funding Contributions	[2015]	[2016]	[2017]	Total
Loan	£ []	£ []	£ []	£ []
Private Sector Match Funding [INSERT DETAIL]	£ []	£ []	£ []	£ []
Public Sector Match Funding [INSERT DETAIL]	£ []	£ []	£ []	£ []
<u>Total</u>	£ []	£ []	£ []	£ []

6.2 The Borrower shall provide evidence to the Council and the LEP to confirm the Match Funding is fully Committed prior to submitting the first Loan Claim.

6.3 The Borrower acknowledges and accepts that if it fails to provide evidence to the satisfaction of the Council and the LEP in accordance with paragraph 6.2 of these Project Specific Conditions (above) such failure shall be treated as an Event of Default pursuant to Clause 13 (Rights Reserved for Breach of this Agreement, Termination and Indemnities).

7. Additional provisions relating to the Loan

7.1 Without prejudice to Clause 3.7 (Conditions Precedent to the Payment of Loan) of this Agreement the Council may withhold payment of a Loan Claim if the Borrower fails to comply with the following condition[s] by the specified time:

7.1.1 **[INSERT ANY SPECIFIC PRECONDITIONS THAT APPLY TO THE PROJECT].**

Schedule 2
Project Eligible Expenditure and Expenditure Profile

[INSERT PROJECT ELIGIBLE EXPENDITURE AND EXPENDITURE PROFILE]

Template

Schedule 3
[Repayment Schedule]

[INSERT]

Template

**Schedule 4
Project Outputs**

[DRAFTING NOTE: Project specific outputs and dates to be inserted into table below.]

	Output	Achievement Date
1	[INSERT]	[INSERT]
2	[INSERT]	[INSERT]
3	[INSERT]	[INSERT]
4	[INSERT]	[INSERT]
5	[INSERT]	[INSERT]
6	[INSERT]	[INSERT]

Schedule 5
The Application

[INSERT BORROWER'S APPLICATION]

Template

Schedule 6
The Plan

[INSERT THE PLAN]

Template

Schedule 7
Project Programme

[INSERT AGREED PROJECT PROGRAMME]

Template

Annex 1

Subsidy Control Assessment

[INSERT BORROWER'S SUBSIDY CONTROL ASSESSMENT]

Template