

## Terms of funding: Training Group GET Training fund

This version dated 22 July 2020

This is a supporting legal document which you should read before completing an application form.

### Between:

**(1) The Construction Industry Training Board** (Registered charity number 264289 and SC044875) whose principal place of business is Sand Martin House, Bittern Way, Fletton Quays, Peterborough, PE2 8TY ('CITB or we'); and

### **(2) The recipient ('you')**

(A) We have reviewed your proposal ('the Project') and grant funds\* ('the Funds') to assist in carrying out the Project.

(B) This Agreement sets out the terms and conditions on which the Funds are granted to you.

(C) The terms and conditions are intended to ensure that the Funds are used for the purpose for which it is awarded.

\*in the sum communicated to you separately in the covering letter to this Agreement.

### **1. Funding and tax**

**1.1** CITB grants the Funds to the Project inclusive of VAT, subject to clause 1.4 and 5 and in accordance with this Agreement.

**1.2** The Funds will be used only by you and only for the Project.

**1.3** The amount of the Funds shall not be increased in the event of any overspend by you in the delivery of the Project.

**1.4** You shall promptly repay to CITB any money incorrectly paid to you either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Funds have been paid in error before all conditions attaching to the Funds have been complied with by you.

**1.5** You acknowledge the Funds are not a taxable supply for VAT purposes by you to us. You understand our obligation does not extend to paying you any amounts in respect of VAT in addition to the Funds and that the Funds we give are inclusive of VAT.

You shall not use the Funds to:

- a) exclusively fund employees, directors or trustees;
- b) purchase building or land or large infrastructure;
- c) fund any capital expenditure;

d) pay third parties, agents or providers to write funding bids on your behalf.

## **2. Duration**

**2.1** Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until the end date specified in the application form completed by you in relation to this Funding.

**2.2** Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

## **3. Intellectual Property Rights, marketing and promotion**

**3.1 'Intellectual Property Rights' ('IPR')** means any confidential information, patents, registered and unregistered trademarks, registered designs and unregistered design rights, copyright, know-how, trade secrets and all other creative content in the world. For the avoidance of doubt, data shall fall outside this category and shall be handled as set out in the data protection clause.

**'Background IPR'** shall mean IPR owned by you or a third party not created under this Agreement but needed for the performance of the Agreement or for use and exploitation of Foreground IPR.

**'Foreground IPR'** means IPR created by you or a sub-contractor for the Project.

**3.2** Any advertising, presentation or media coverage by you and training materials, activity or products connected to the Project shall acknowledge CITB's funding.

**3.3** Except as expressly set out in this Agreement you are not authorised to use any of CITB's logo and/or trademarks without our prior written approval.

**3.4** Nothing in this Agreement entitles you to state, either expressly or impliedly, that you are endorsed by, approved by, affiliated with or have any corporate association with CITB.

**3.5** We may publicise funding the Project and we may use your logo/trademark to do so.

**3.6** Nothing in this Agreement shall affect your ownership of the Background IPR. The Foreground IPR shall belong to CITB.

**3.7** You grant us (and will get third parties to do the same) a perpetual, royalty-free, non-exclusive worldwide licence to use the Background IPR so we can use the Foreground IPR.

**3.8** We grant you a perpetual, royalty-free, non-exclusive worldwide licence to use the Foreground IPR. You may not sub-license the Foreground IPR.

**3.9** You will have agreements with third parties equivalent to these IPR provisions and will provide us with copies upon request.

**3.10** We own all the new creative content in the outputs/ outcomes and may share this across the industry.

#### **4. Payment**

**4.1** Where the Funds are £25,000 or less payment terms will be stipulated in the covering email to this Agreement.

**4.2** We may at any time throughout the duration of the Project request demonstration as to how Funds have been utilised by the submission of evidence aligned to the approved application content or by completing such other documents as We may require. Such documentation shall be returned to us within 10 working days of any such request.

**4.3** We reserve the right during the duration of Project, having given You reasonable notice, to carry out Project visits and telephone interviews in order for us to review and measure the progress of the Project.

**4.4** Failure to comply with any request in clause 4.2 and 4.3 may affect future eligibility for funding.

#### **5. Withholding, Suspending and Repayment of Funding**

**5.1** You shall use the Funds for this Project and no other purpose.

**5.2** CITB's intention is that the Funds will be paid to you in full. However, without prejudice to CITB's other rights and remedies, we may at our discretion withhold or suspend payment of the Funds and/or requirement repayment of all or part of the Funds:

- a) The Funds have not been used for the purpose of the Project or for which they were awarded;
- b) You do not tell us of changes to the Project we deem substantial;
- c) The future of the Project is in jeopardy;
- d) Your bid contained, or you provided inaccurate, false or misleading information or acted dishonestly or disreputably;
- e) Progress towards completion of the Project is unsatisfactory;
- f) You are, in the reasonable opinion of CITB, delivering the Project in a negligent manner;
- g) There is a serious delay or delivery fails in some other way; or
- h) We discover that the Project has been funded or part funded by another third party.
- i) You have failed to deliver all the Project activities stipulated.

**5.3** If CITB makes an overpayment, you will repay that to CITB on demand.

#### **6. Indemnity**

**6.1** You shall indemnify, save and hold harmless CITB from and against any and all third party actions, claims, loss, damage, cost and expense (including reasonable legal fees) incurred by CITB

arising directly as a result of the Project, a breach of the terms of this Agreement or any third party IPR infringement arising.

## **7. Insurance**

**7.1** You will effect and maintain adequate insurance, as detailed in the Application Declaration Form and, if requested, you shall supply us with the relevant insurance documentation and evidence that the relevant premiums have been paid.

## **8. Discrimination**

**8.1** You shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) against anyone.

**8.2** You shall take reasonable steps to secure observance of this clause by all servants, employees or agents engaged by you and all supplier and sub-contractors engaged on the Project.

## **9. Safeguarding**

**9.1** If the Project involves work with children, young people or vulnerable adults ('vulnerable people'), you will take all reasonable steps to ensure their safety.

**9.2** You will obtain written agreement from the legal carer or guardian before any direct contact with vulnerable people and have policies and procedures to safeguard them, obtaining appropriate disclosure checks for anyone in contact with them.

## **10. Data Protection**

**10.1** You shall:

a) Follow our instructions only in relation to data including personal data as defined by the Data Protection Act 1998 as amended and/or replaced;

b) Use sufficient, appropriate technical/organisational measures to stop unauthorised or unlawful processing, accidental loss, destruction or damage;

c) Comply with the obligations imposed on you under the Data Protection Act 1998 as amended and/or replaced including notification to the Information Commissioner, if applicable; and

d) Provide us with details of the measures you take to comply with this clause.

**10.2** We shall process any data you provide only for lawful and fair purposes including sharing for evidence and monitoring.

## **11. Freedom of Information**

**11.1** You acknowledge that CITB is subject to the requirements of the Freedom of Information Act 2001 (FOIA).

**11.2** You undertake to:

(a) provide all necessary assistance and cooperation as reasonably requested by CITB and enable CITB to comply with its obligations under FOIA;

(b) transfer to CITB all requests for information relating to this Agreement that you receive as soon as practicable and in any event within two (2) working days of receipt;

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

(d) not respond directly to a request for information unless authorised in writing to do so by CITB.

**11.3** You acknowledge that CITB may be required under the FOIA to disclose information without consulting or obtaining consent from you. CITB shall take reasonable steps to notify you of a request for information to the extent that is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) CITB shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA.

## **12. Accounts and records**

**12.1** The Funds shall be shown in your accounts as restricted funds and shall not be included under general funds.

**12.2** You shall keep separate, accurate and up to date accounts and records of the receipt and expenditure of the Funds, which we will wish to view upon reasonable request.

**12.3** You shall observe all statutory accounting requirements.

**12.4** You shall comply and facilitate CITB's compliance with all applicable statutory requirements as regards project related evidence, accounts, audit or examination of accounts, annual reports and annual returns.

## **13. Limitation of Liability**

**13.1** CITB accepts no liability for any consequences, whether direct or indirect, that may come about from you running the Project, the use of the Funds or from withdrawal of the Funds.

**13.2** You shall indemnify and hold harmless CITB, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of you in relation to the Project, non-fulfilment of obligations by you under this Agreement or your obligations to third parties.

**13.3** Subject to clause 13.1 CITB's liability under this Agreement is limited to the payment of the Funds.

## **14. Warranties**

**14.1** You warrant, undertake and agree that:

(a) you have all necessary resources and expertise to deliver the Project (assuming due receipt of the Funds);

(b) you shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify CITB immediately of any significant departure from such legislation, codes or recommendations;

(c) you shall comply with the requirements of Health and Safety at Work etc. Act 1974 and any other acts, order, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Project;

(d) you have and shall keep in place adequate procedures for dealing with any conflicts of interest;

(e) you have and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;

(f) all financial and other information concerning you which has been disclosed to CITB is to the best of your knowledge and belief true and accurate;

(g) you are not aware of anything in your own affairs, which has not been disclosed to CITB, which might reasonably have influenced the decision of CITB to grant the Funds on the terms contained in this Agreement; and

(h) since the date of your last accounts there has been no material change in your financial position or prospects and for the avoidance or doubt CITB retains the right to carry out a credit check during the term of this Agreement.

## **15. Assignment/subcontracting**

**15.1** You may not assign or sub-contract the Project or Funds without our written approval.

**15.2** Any assignment or sub-contract shall be on terms no worse than these and shall (a) require payment by you no more than 30 days from receipt of a valid invoice and (b) your prompt approval of each sub-contractor invoice. A sub-contractor must include in a subcontract equivalent term.

**15.3** No assignment or sub-contract removes an obligation or liability. You are liable for acts and omissions of assignees or sub-contractors and their employees as if your own.

## **16. Termination**

**16.1** CITB may in writing terminate this Agreement immediately without compensation:

a) If you, being an individual, or where a firm, any partner in that firm shall become bankrupt or equivalent

b) If you, being a company, pass a resolution, or equivalent

c) If you, being a charity/public body has an analogous event to those in (a) or (b)

d) If you seriously breach this Agreement and do not remedy it or, following a notice, do not within thirty (30) calendar days remedy it to CITB's satisfaction; or

e) If your acts or omissions bring us into disrepute or attract adverse publicity.

**16. 2** CITB may terminate this Agreement without reason on thirty (30) calendar days' written notice.

## **17. Dispute resolution**

**17.1** In the event of any complaint or dispute (which does not relate to CITB's right to withhold funds or terminate) arising between the parties to this Agreement in relation to this Agreement the parties shall meet promptly to resolve matters.

**17.2** If we cannot resolve the dispute within ten (10) working days of a meeting, the parties may, by mutual consent, refer the matter to the Centre for Effective Dispute Resolution to nominate a mediator.

## **18. Notices**

**18.1** All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered or mailed (first class postage prepaid) to the address of the relevant party. If personally delivered all such communications shall be deemed to have been given when received (except that it is received on a non-working day or after 4 pm on any working day they shall be deemed received on the next working day) and if mailed such communications shall be deemed to have been given and received on the second working day following such mailing.

## **19. Third party rights**

**19.1** The parties do not intend the Agreement to be enforceable, under the Contracts (Rights of Third Parties) Act 1999, by any person not a party to it.

## **20. Joint and Several Liability**

**20.1** Where you are not a company or incorporated entity with a distinct legal personality, the individuals who enter into and sign this Agreement shall be jointly and severally liable for your obligations and liabilities arising under this Agreement.

## **21. Set off**

**21.1** We may set off any liability of you to us against any liability of us to you without prejudicing our other rights or remedies.

## **22. Entire Agreement**

**22.1** Neither party is induced into this Agreement by a statement or promise, unless fraudulent. This Agreement may be varied only in writing, by us both.

## **23. No partnership or joint venture**

**23.1** Nothing in this Agreement shall create a partnership or joint venture between us, nor any relationship or principal and agent, nor authorize any party to make or enter into any commitments for or on behalf of the other party.

## **24. Variation**

**24.1** The terms of this Agreement may only be varied in writing and by agreement between both parties.

## **25. Contracts (Rights of Third Parties) Act 1999**

**25.1** This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

## **26. Law and jurisdiction**

**26.1** The law of England and Wales and the exclusive jurisdiction of the English and Welsh Courts shall apply.