

# Terms of Funding: Industry Impact Fund (8 September 2023)

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 at Sand Martin House, Bittern Way, Fletton Quays, Peterborough PE2 8TY (**'CITB'** or **'we'** or **'our'**); and

(2) **The recipient ('you' or 'your')**

each one **'a Party'** and together **'the Parties.'**

## Preamble:

- (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 (if your application is successful).
- (C) The terms and conditions are intended to ensure that the Funds are used for the purpose intended and for which they are awarded (**'the Funded Activities'**).

\*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 any applicable VAT, subject to clause 1.4 and 5 and in accordance with these Terms.
- 1.2. You will not be able to apply for the Funds if your project has already been funded by CITB (for example via a commission or other funded route).
- 1.3. The award of the Funds will be confirmed in a signed and dated letter sent from CITB to you (the **'Funding Offer Letter'**).
- 1.4. The Funds will only be used by you and any participating businesses named in your application and only for the Project.
- 1.5. The amount of the Funds shall not be increased in the event of any overspend by you in the delivery of the Project.
- 1.6. 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.

- 1.7. 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.
- 1.8. Payment will be by the number of instalments, in the sums, on the dates and as agreed between the parties so long as we are satisfied that such payment will or has been used for the proper expenditure of the Project.
- 1.9. You shall not use the Funds to:
  - a) fund employees, directors or trustees other than in accordance with the details provided in your application;
  - 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. Eligible Expenditure**

- 2.1. 3.1. **'Eligible Expenditure'** means payments made by you during the period that the Funds are allocated for the purposes of the Funded Activities.
- 2.2. A payment is defined as taking place at the moment when money passes out of your control.
- 2.3. You must not deliberately incur liabilities for Eligible Expenditure in advance of need; nor pay for Eligible Expenditure sooner than the due date for payment. The following costs must be excluded from Eligible Expenditure:
  - 2.3.1. activities of a political or exclusively religious nature;
  - 2.3.2. goods or services that you have a statutory duty to provide;
  - 2.3.3. payments reimbursed or to be reimbursed by other public or private sector grants;
  - 2.3.4. contributions in kind (i.e. a contribution in goods or services, as opposed to money) unless specifically agreed between the parties and approved by CITB in advance;
  - 2.3.5. depreciation, amortisation or impairment of fixed assets owned by the grant recipient;
  - 2.3.6. the acquisition or improvement of fixed assets unless the applicable expenditure is agreed by us in advance in writing;
  - 2.3.7. interest payments (including service charge payments for finance leases);
  - 2.3.8. gifts to individuals other than promotional items with a value of no more than £25 a year to any one individual;
  - 2.3.9. entertaining (anything that would be a taxable benefit to the person being entertained according to current UK tax regulations);

- 2.3.10. statutory fines, criminal fines or penalties; or
  - 2.3.11. liabilities incurred before the issue of this Agreement unless agreed in writing by us.
- 2.4. You must seek prior written permission from us before purchasing any items not for the sole purpose of delivering your Project.

### **3. Duration**

- 3.1. 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.
- 3.2. 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.

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

- 4.1. **'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.

- 4.2. Any advertising, presentation or media coverage by you and training materials, activity or products connected to the Project shall acknowledge CITB's funding.
- 4.3. 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.
- 4.4. 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.
- 4.5. We may publicise funding the Project and we may use your logo/trademark to do so.
- 4.6. Nothing in this Agreement shall affect your ownership of the Background IPR. The Foreground IPR shall belong to CITB.
- 4.7. 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.

- 4.8. We grant you a perpetual, royalty-free, non-exclusive worldwide licence to use the Foreground IPR. You may not sub-license the Foreground IPR.
- 4.9. You will have agreements with third parties equivalent to these IPR provisions and will provide us with copies upon request.
- 4.10. We own all the new creative content in the outputs/ outcomes and may share this across the industry.

## **5. Payment**

- 5.1. CITB will make payments of the Funds in instalments on the successful completion of the agreed milestones as stipulated in the covering letter to this Agreement.
- 5.2. Payment of the Funds will be made subject to:
  - a. the submission of satisfactory evidence that the Project is proceeding to the satisfaction of CITB;
  - b. your confirmation that payments made by you during the period that the Funds are allocated for the purposes of the Funded Activities have not been funded or part funded by, or cannot be claimed back from, another third party; and
  - c. in accordance the payment arrangements as set out in your Funding Agreement (for example a payment claim form or a drawdown invoice).
- 5.3. Subject to clause 5.1 and 5.2 we shall make payment within 30 days of receipt of the drawdown invoice.
- 5.4. We may at any time throughout the duration of the Project request proof to show how the 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.
- 5.5. We reserve the right during the duration of the 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.
- 5.6. Failure to comply with any request in this clause 4 may affect the payment of further instalments as well as your future eligibility for funding.

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

- 6.1. You shall use the Funds for this Project and no other purpose. We may ask you to show how the funds were used by completing forms and such other documents as we require. You shall return these documents within ten (10) working days of any such request.
- 6.2. 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 if:

- 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, or that the payments made by you in connection with the Project may be claimed back from, another third party;
- i) You have failed to deliver all the Project activities stipulated in your application.

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

6.4. Notwithstanding the outcome of the bidding process:

- a) CITB will monitor the degree to which funds are being invested in specific projects to ensure that the overall amount invested is proportionate and in line with the objectives of the Industry Impact Fund. CITB reserves the right to suspend funding in projects if it deems that the being invested is disproportionate to the requirements of industry.
- b) CITB reserves the right to prioritise the funding awarded or to pause or to close down the Industry Impact Fund in the event that demand exceeds the budget set.
- c) CITB may require you to attend collaboration meetings with other successful applicants at any stage of your project to facilitate the success of the Industry Impact Fund (including your project) which may involve for example sharing knowledge, discussing best practice and sharing lessons learnt. CITB reserves the right to withhold or suspend your funding if you fail to attend the collaboration meetings.

## **7. Indemnity**

7.1. You shall indemnify, save and hold harmless CITB, its employees, agents, officers and subcontractors from and against any and all third party actions, claims, loss, damage, costs and expenses (including reasonable legal fees), or other liabilities arising from the Project or incurred by reason of the actions and/or omissions (including without limitation infringement of IPR rights) of you in relation to the Project, nonfulfillment of obligations of you under this Agreement or your obligations to third parties..

7.2. Nothing in this agreement limits any liability which cannot legally be limited, including but not limited to liability for death or personal injury caused by negligence and fraud or fraudulent misrepresentation.

## **8. Insurance**

8.1. The Supplier shall effect and maintain with reputable insurance companies policies of insurance in respect of all risks which may be incurred by the Supplier arising out of the Supplier's performance of the Contract the following minimum levels of insurance cover:

(a) Employer's (Compulsory) Liability Insurance = £5 million (minimum)

(b) Public Liability Insurance = £1 million (minimum)

8.2. If requested, you shall supply us with the relevant insurance documentation and evidence that the relevant premiums have been paid.

## **9. Discrimination**

9.1. 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.

9.2. 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.

## **10. Safeguarding**

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

10.2. 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.

## **11. Data Protection**

11.1. For the purposes of this Clause 11, Data Protection Legislation shall mean all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the UK General Protection Regulation, the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; any other United Kingdom or European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and any other law relating to data protection, the processing of personal data and privacy as a consequence of the United Kingdom leaving the European Union; and the guidance and codes of practice

issued by the relevant data protection or supervisory authority and applicable to a party; and the terms "Data Controller", "Data Subject", "Data Processor", "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the Data Protection Legislation.

- 11.2. The Parties acknowledge that they are each individually subject to the requirements of the Data Protection Legislation and each Party shall offer such prompt and reasonable assistance to the other party to assist it in complying with the applicable obligations under the Data Protection Legislation.
- 11.3. Each Party is individually a Data Controller in respect of any Personal Data processed by it and each agrees to comply with its obligations under the Data Protection Legislation.
- 11.4. Both Parties shall share the Personal Data collected under this Agreement to the extent necessary for the performance of the Agreement. Where Personal Data is to be processed by the one Party on behalf of the other, the Parties shall:
  - 11.4.1. comply with all applicable laws;
  - 11.4.2. process the Personal Data only to the extent and in such manner as is necessary for the provision of each Party's obligations under the Agreement which obligations include enabling CITB to fulfil the functions (and purposes incidental to those functions) as set out in the Industrial Training Act 1982;
  - 11.4.3. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure;
  - 11.4.4. take reasonable steps to ensure the reliability of its employees and agents who may have access to the Personal Data and use all reasonable endeavours to ensure that such persons have sufficient skills and training in the handling of Personal Data; and
  - 11.4.5. co-operate to enable each Party to comply with any request under the applicable Data Protection Legislation.
- 11.5. Where the Parties agree it would be beneficial and reasonably practicable, the Parties may anonymise or aggregate such information to the degree that it does not identify any individual. The Parties may agree additional terms or conditions upon which such data is to be shared.
- 11.6. A material failure by either Party to comply with this clause 11 shall be deemed a material/serious breach which shall entitle either Party to immediately terminate the Agreement without consequence or any liability under this Agreement;
- 11.7. Historical personal data shall be retained by the Parties in accordance with legal retention requirements. Personal Data which cannot be lawfully retained shall be securely deleted in accordance with Data Protection Legislation.

- 11.8. Each Party (the indemnifying Party) agrees to fully indemnify and keep indemnified and defend at its own expense the other Party (the indemnified Party) against all costs, claims, damages or reasonable expenses incurred by the other Party due to any failure by the indemnifying Party or its employees or agents to comply with their obligations under this Clause 11 provided that the indemnified Party takes reasonable steps to mitigate its losses, gives to the indemnifying Party prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it. The liability of the indemnifying Party under this clause shall be limited to £250,000.
- 11.9. We shall process any data you provide only for lawful and fair purposes including sharing for evidence and monitoring and to enable CITB to fulfil the functions (and purposes incidental to those functions) as set out in the Industrial Training Act 1982.

## **12. Freedom of Information**

- 12.1. You acknowledge that CITB is subject to the requirements of the Freedom of Information Act 2001 (FOIA).
- 12.2. 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.
- 12.3. 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.

## **13. Accounts and records**

- 13.1. The Funds shall be shown in your accounts as restricted funds and shall not be included under general funds.
- 13.2. 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.



- 13.3. You shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Funds and the Funded Activities for at least seven years following receipt of any of the Funds to which they relate. We shall have the right to review, at our reasonable request, your accounts and records that relate to the expenditure of the Funds and shall have the right to take copies of such accounts and records.
- 13.4. You shall observe all statutory accounting requirements including have your accounts externally audited and shall provide us with a copy of the audited annual accounts within six months (or lesser period as CITB may reasonably require) of the end of the relevant financial year ending 31st March (or such other year end date confirmed by CITB in writing) in respect of the year in which the Funds were paid.
- 13.5. 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.
- 13.6. Where funding allows for capital spend, you must keep a register of fixed assets, including all land and building acquired or improved with the Funds, at a cost exceeding £2,500.

#### **14. Limitation of Liability**

- 14.1. 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.
- 14.2. 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.
- 14.3. Subject to clause 14.1, CITB's total liability under this Agreement is limited to the payment of the Funds.

#### **15. Warranties**

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 shall provide evidence to demonstrate your economic/financial standing if requested including:
  - i. a copy of your accounts (audited where applicable) for the most recent two years;
  - ii. a statement of the turnover, profit and loss account, current liabilities and assets, and cash flow for your most recent year of trading;
  - iii. you have not been declared bankrupt, been given a Debt Relief Order or being subject to debt relief or bankruptcy relief restrictions in the last five years; and/or
  - iv. confirmation that no Director of yours has been disqualified either by the Insolvency Service, Companies House, the Competition and Markets Authority, the Courts of Great Britain or an insolvency practitioner in the last five years (this includes automatic disqualification for being declared bankrupt, being given a Debt Relief Order or being subject to debt relief or bankruptcy relief restrictions);
- (h) the filing of your accounts and other required returns at Companies House must not be overdue or if you are not a Limited Company the company accounts provided must not be more than 18 months old;
- (i) 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;
- (j) 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;
- (k) you have not committed any offence under all the applicable Laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010;
- (l) you comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015 and do not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

## **16. Assignment/sub-contracting**

- 16.1. You may not assign or sub-contract the Project or the Funds without our prior written approval.
- 16.2. 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 an equivalent term.
- 16.3. No assignment or sub-contract removes an obligation or liability of yours contained in this Agreement. You are liable for acts and omissions of assignees or sub-contractors and their employees as if your own.

## **17. Termination**

- 17.1. 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 written 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;
  - (f) If we discover that the Project has been funded or part funded by, or that the payments made by you in connection with the Project may be claimed back from, another third party.
- 17.2. CITB may terminate this Agreement without reason on thirty (30) calendar days' written notice.
- 17.3. Any provision of this Agreement which either expressly or by implication is intended to come into, or continue, in force on or after termination of this Agreement shall survive the termination or expiry of this Agreement including but not limited to clause 4 (Intellectual Property Rights, marketing and promotion), clause 7 (Indemnity), clause 8 (Insurance), clause 11 (Data Protection), clause 12 (Freedom of Information), clause 13 (Accounts and records) and clause 14 (Limitation of Liability).

## **18. Dispute resolution**

- 18.1. 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.
- 18.2. 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.

## **19. Notices**

- 19.1. 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 and signed for 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.

## **20. Third party rights**

- 20.1. 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.

## **21. Joint and Several Liability**

- 21.1. 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.

## **22. Set off**

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

## **23. Entire Agreement**

- 23.1. Neither party is induced into this Agreement by a statement or promise, unless fraudulent.

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

- 24.1. 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.

## **25. Variation**

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

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

- 26.1. 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.

## **27. Law and jurisdiction**

- 27.1. The law of England and Wales and the exclusive jurisdiction of the English and Welsh Courts shall apply.