

SUBJECT TO CONTRACT/CONTRACT DENIED

**FUNDING AGREEMENT FOR THE JUST TRANSITION
FUND 2020**

DRAFT TEMPLATE

DRAFT

Between:

**THE MINISTER OF THE ENVIRONMENT, CLIMATE AND
COMMUNICATIONS**

and

[XXX]

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THIS AGREEMENT is dated [XXX] 2020

PARTIES

- (1) THE MINISTER OF THE ENVIRONMENT, CLIMATE AND COMMUNICATIONS, (the “Minister¹”); and
- (2) [XXX] (the “Grantee”).

WHEREAS:

- A) The Just Transition Fund 2020 (“JTF”) is a key pillar of the government’s just transition plan for the Midlands region and will provide funding for projects focussing on retraining workers and proposals to generate sustainable employment in green enterprise in the region and supporting communities to transition to a low carbon economy.
- B) On 19 June 2020 the Minister published a call for applications under the 2020 JTF.
- C) The Grantee submitted a proposal (the “Project”) set out in Schedule 2² to the Minister on [XXX] and a provisional offer was granted on [XXX] following the evaluation of applications through a competitive process. Following a successful validation process, the Project was accepted by the Minister and a final offer was made by means of Letter of Offer dated [XXX].
- D) The Minister intends to make available, at the Minister’s absolute discretion and subject to the conditions of this Agreement, funding to the Grantee from the JTF for the purposes of the implementation of the Project.
- E) This Agreement sets out the terms and conditions under which the Grantee may receive funding from the Minister. These terms and conditions are intended to ensure that the Grant, described in this Agreement, is used solely for the purpose for which it has been awarded.

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS

- 1.1 In this Agreement the following terms shall have the following meanings:

Commencement Date: this Agreement shall commence on the date on which it is counter-signed by an Officer acting on behalf of the Minister.

DPER Circular: the circular of the Department of Public Expenditure and Reform No. 13/2014, Management of and Accountability for Grants from Exchequer Funds.

Grant: the total funding in the amount of [XXX] provided to the Grantee by the Minister under this Agreement (85%). The Grant is subject to a minimum of 15% match-funding from

¹ Authorised officers of the Minister’s Department will act on the Minister’s behalf for the purposes of this Agreement and any activities related to this Agreement.

² For the avoidance of doubt, the Project is as described in the submitted Application Form(s) and all additional Further Information and Clarifications, Verifications and Confirmations provided in relation to the Project. This is set out in Schedule 2.

other sources – the match funding amount is [XXX]. The total Just Transition Fund amount (100%) is [XXX]

Grant Period: the period from the Commencement Date to an agreed completion date, or no later than 31 December 2023, or as otherwise extended by the Minister in accordance with the Agreement.

Information Booklet: the Information Booklet published by the Minister on 19 June 2020 entitled Government of Ireland Just Transition Fund (JFT) 2020 and any clarifications published by the Minister. For the avoidance of doubt, the Information Booklet, any Clarifications published, the Application Form(s), the Provisional Letter of Offer, the Final Letter of Offer, Appendix 1: Drawdown Request Schedule, Appendix 2: Project Key Performance Indicators, all form part of this Agreement,

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including Know-How and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

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

Lead Applicant: the Grantee who signs this Agreement and who assumes liability for its consortium partners and any sub-contractors and shall ensure that its consortium partners and any sub-contractors shall comply in all respects and at all times with the relevant terms of this Agreement.

- 1.2 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

2. AGREEMENT

The Minister and the Grantee have agreed to observe, perform and comply with the terms and conditions herein contained and in the Information Booklet and any updates and clarifications published by the Minister. The agreed Project is as per the submission in the Application Form and any subsequent Further Information provided to the Minister and provisions inserted in the provisional and/or final Letter of Offer.

3. DURATION

The term of this Agreement shall be the Grant Period.

4. FUNDING

- 4.1 The Minister intends to make available subject to resources, and subject to the conditions of this Agreement, funding in the form of the Grant to the Grantee from the Just Transition Fund for the purposes of the implementation of the Project subject to a maximum amount of 85% of the Project costs and up to a maximum of €1m. The method of drawdown of instalments of the Grant and associated requirements are set out in Schedule 1.
- 4.2 The Grantee takes full responsibility for financial management of the Project. The Minister is not liable for any future funding to sustain the Project and will not cover any cost overruns and shortage of funds to complete and/or continue the Project or to sustain Project on an ongoing basis. The awarding of funding through the JTF should be not interpreted as a commitment by Government to continue to support the Project on an ongoing basis through the JTF or other government schemes.
- 4.3 The provision of any funding by the Minister under this Agreement is conditional at all times upon:
- a. the Grantee providing the Minister with the name and contact details of a Grantee representative to facilitate timely interaction in the context of payments and information requests;
 - b. the Project including a minimum of 15% match funding from other sources³; Match funding may be in the form of a combination of other Exchequer-funded schemes and/or State-sector expenditure, Local Authority investment and/or land, EU funding sources, community investment, philanthropic contributions, private-sector investment, provided by a private Grantee from its own capital or other asset contributions. Confirmation and/or evidence of match funding secured is required (including from private sources). Contributions to match funding through a proportion of salary costs (contribution in kind) or work in lieu do not qualify.
 - c. Prior compliance by the Grantee with conditions of drawdown set out in Schedule 1;
 - d. the Grantee being in possession of a valid tax clearance certificate and in compliance with all relevant taxation law at all times during Project delivery;
 - e. the Minister being satisfied that the Grant will be used for proper expenditure in the implementation of the Project;
 - f. the Minister being satisfied with the implementation of the Project;
 - g. continued compliance at all times during Project delivery by the Grantee with all relevant legislation, all applicable regulations, the terms of this Agreement, the Information Booklet and DPER Circular (including compliance with the Statement of Principles for Grantees (Appendix A) in the DPER Circular);
 - h. without prejudice to the generality of the foregoing, compliance by the Grantee with clauses 6 and 7 of this Agreement and the resolution by the Grantee to the satisfaction of the Minister of all queries on any documentation which may be raised by the Minister from time to time;
 - i. continued compliance by the Grantee at all times during Project delivery with all reasonable directions of the Minister relating directly or indirectly to this Agreement;
 - j. the Grantee as Lead Applicant ensuring at all times during Project delivery compliance with this Agreement by all the Lead Applicant's consortium members and any third party sub-contractors engaged by the Lead Applicant for the purposes of the Project and/or any third party who might benefit from the Grant.

³ In order to ensure that organisations are committed to project delivery and willing to share project risk, it may be determined that upon evaluating the application that larger value projects are required to spend the match funding amount in advance of the JTF grant and that this will be condition of the Funding Agreement – this will be communicated to those Lead Applicants where it may apply

- 4.4 The Minister takes no responsibility where Grantees are unable to secure the match funding and will not provide additional funding to make up for any shortfall in match funding. If it arises that the match funding is not available at a future point, the Minister reserves the right to cease all project funding.
- 4.5 The Grantee is required to comply with relevant public procurement guidelines where applicable and to appropriately use public procurement to select sub-contractors.
- 4.6 Should any part of the Grant remain unspent at the end of the Grant Period, the Grantee shall ensure that any unspent monies are returned to the Minister. If there is an overpayment of the Grant, a refund should be obtained.
- 4.7 Grantees must ensure they are State aid compliant at all times during Project delivery.

5. PURPOSES OF THE GRANT

- 5.1 The Grantee shall use the Grant for the sole purpose of implementing the Project and the Grant shall not be used for any other purpose without the prior written consent of the Minister.
- 5.2 The Grantee shall advise the Minister immediately of any events which may have a material impact on the implementation of the Project and shall comply with all reasonable directions of the Minister.
- 5.3 The Grantee warrants to the Minister that it shall apply the Grant wholly and exclusively for the purposes of implementation of the Project.
- 5.4 In addition to the ineligible costs (4.3) set out in the Information Booklet and Response Documents and any clarifications published by the Minister, the Grantee shall not use the Grant to make any payment to members of the board and/or Officer of the Grantee, other than reasonable out of pocket expenses.
- 5.5 The Minister will not provide ongoing Project support, advise the Project on future direction or next steps, or sit on steering groups or committees. Engagement with the Grantee will be as per the processes outlined in this Agreement.

6. ACCOUNTS AND RECORDS

- 6.1 The Grant shall be shown in the Grantee's accounts as restricted funds and shall not be included under general funds.
- 6.2 The Grantee shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of all grants and donations received by it, from whatever source.
- 6.3 The Grantee shall keep all invoices, receipts and accounts and any other relevant documents relating to the expenditure of the Grant received by it for a period of ten years following the expiry or termination of this Agreement.

- 6.4 The Grantee shall comply with all applicable statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns. See Schedule 1 – Payment of Grant for specific requirements in relation to the drawdown request process.
- 6.5 The nature of the Grantee’s accounts may vary according to the size and nature of the Organisation. Organisations with a yearly total income or total expenditure equal to or less than €150,000 must submit a set of annual accounts (which includes an income and expenditure account and a balance sheet, if applicable) to the Minister within six months of the Organisation’s financial year-end. These must be signed and dated by the Organisation’s chairperson, secretary and treasurer and approved by the Organisation’s governing body. It is not necessary to have these accounts independently audited.
- 6.6 Organisations with a yearly total income or total expenditure in excess of €150,000 must submit annual accounts (including an income and expenditure and a balance sheet). These accounts must be independently audited not later than nine months following the end of the relevant financial year by a person who is qualified to be appointed as an auditor pursuant to the Companies Act and these audited accounts must be submitted to the Minister within eight months of the Organisation’s financial year end.
- 6.7 Organisations with a yearly total income or total expenditure in excess of €150,000 shall have an independent firm of auditors, which name shall be communicated to the Minister in advance of any Grant funds issuing. The Grantee shall notify the Minister immediately of any change to its nominated firm of auditors and shall inform the Minister of the reason for the change in appointment.
- 6.8 Grantees must report in their financial statements the requirements as set out in the DPER Circular 13/2014 (Section 5: Grantee Responsibilities).
- 6.9 All funding provided by the Minister under this Agreement is subject to audit by the Minister and the Comptroller and Auditor General. The Grantee shall grant auditors and other representatives from the Minister’s Department and / or the Comptroller and Auditor General and /or parties contracted by the Minister immediate access to all premises, assets, invoices, receipts, records, materials and personnel as may be required for them to complete their audit.
- 6.10 The Grantee shall provide annual confirmation to the Minister that it has in place the required level of insurance and a letter from an Auditor/Accountant confirming the good financial standing of the Grantee.

7 MONITORING AND VERIFICATION

- 7.1. The Grantee shall immediately on request provide the Minister with any information, explanations and documents as the Minister may reasonably require in order to establish that the Grant monies have been used properly in accordance with this Agreement.
- 7.2. The Grantee shall permit the Minister to review, at the Minister’s reasonable request, the Grantee’s accounts and records that relate to the application of the Grant monies and to take copies of such accounts and records.
- 7.3. The Grantee shall make its financial records available for inspection to the Comptroller and Auditor General in accordance with the provisions of the DPER Circular.

- 7.4. The Grantee shall closely monitor the delivery and success of the Project throughout the Grant Period to ensure that the Project is being delivered and the KPIs, final outputs and outcomes met to the satisfaction of the Minister, as set out in the Project (Schedule 2), and that this Agreement is being adhered to.
- 7.5. The Grantee undertakes to retain all original receipts and invoices in respect of all items of direct costs and records and supporting documentation in respect of all salary and overhead costs.
- 7.6. The Grantee will ensure that:
- a. Systems of financial management and control are in place in the Grantee and are regularly reviewed;
 - b. Duplicate public funding has not been received from other sources for the same purpose;
 - c. The expenditure in all cases represents value for money.
- 7.7. The Grantee shall submit, alongside the annual financial reports, a Certificate of Assurance certifying that the public money granted was used in accordance with the terms and conditions of the Grant. This is to be signed at management level by two responsible persons, for example at management or board level. In small organisations, with a single manager, a single management signature is acceptable.
- 7.8. The Grantee must have a governing document (e.g. rules, constitution, memorandum and articles etc.) and must adhere to the terms of that governing document. The Organisation must supply a copy of the governing documents to the Minister upon request. The Minister reserves the right to withdraw or reduce the Grant in the event of any material changes to the nature, activities or management of the Organisation.

8 CONDUCT OF THE PROJECT AND REPORTING

- 8.1. An annual report prepared by the Grantee in respect of each calendar year in which the Agreement subsists shall be submitted to the Minister by 31st March of the following year (“the **Annual Report**”). The Annual Report shall detail the work carried out to deliver the Project and will include an assessment of the work and details of expenditure, together with any other information which may be agreed with the Minister. An Annual Report in March 2021 will be required to detail Project work carried out in 2020. The Annual Reports will be used to monitor Project delivery, Project status, KPIs, identify any issues, and inform wider learning from the JTF process etc. A template setting out the information to be provided in the Annual Report will be provided by the Minister.
- 8.2. In addition to the Annual Report, the Grantee shall prepare a short progress report (the “**Mid Year Progress Report**”) six months after the submission of the Annual Report each year outlining progress in the previous six-month period of the operation of their work plan. This must be submitted by 31 September annually during project delivery and may also be submitted as part of a drawdown request. The Mid-Year Progress Reports will be used to monitor Project delivery, Project status, KPIs and identify any issues.
- 8.3. A final report (the “**Final Report**”) detailing the work done by the Grantee in respect of the Project shall be submitted to the Minister not later than three months from the expiry date of this Agreement detailing all elements of expenditure relating to the Grant and all Project Outcomes and Outputs, and demonstrate the impact of the Grant.

- 8.4 The Project may be evaluated to assess the impact of the Grant, the Project and the Just Transition Fund. The Grantee shall collect quantitative and qualitative data (including KPIs, outputs etc.) to facilitate the evaluation process and provide this data to the Minister in a format to be specified by the Minister and any other requirements of the Minister. Results of Grantee led evaluations shall be incorporated into annual reports and progress reports where available.
- 8.5 The Minister may request regular meetings with Grantees to discuss Project progress and receive verbal updates.

9 ACKNOWLEDGEMENT AND PUBLICITY

- 9.1 The Grantee shall acknowledge the Grant in its annual report and accounts, and in any written (either online or in print) or spoken public presentations about its activities funded through the Just Transition Fund and the Carbon Tax Fund⁴. Such acknowledgements (where appropriate or if requested by the Minister) shall, with the prior written approval of the Minister, include the name and logo of the Minister's Department and/or the Government of Ireland, using such logos and text and templates as may be provided by the Minister from time to time.
- 9.2 The Grantee agrees to participate in and co-operate with promotional activities relating to the Project that may be instigated and/or organised by the Minister in relation to the Just Transition Fund/Carbon Tax and to provide any requested supporting promotional material e.g. photographs, images, graphics, video footage, website material.
- 9.3 The Grantee shall comply with any reasonable requests from the Minister to facilitate reports, statistics and the development of video or written case studies.
- 9.4 The Grantee is forbidden from presenting the Project in any communications or publicity materials as having been endorsement by the Minister.

10 INTELLECTUAL PROPERTY RIGHTS

- 10.1 All Intellectual Property Rights, Know-How, and all right, title and interest in or to any information, data, reports, documents, procedures, forecasts and technology howsoever generated by the Grantee or in which the Grantee has secured an interest for the purposes implementing the Project, shall belong to the Grantee.
- 10.2 The Grantee shall grant to the Minister and all Ministers of the Government of Ireland, Central Government Departments, Offices and non-commercial Agencies and Organisations which have a formal reporting and legal relationship to Central Government Departments, a royalty free, non-exclusive, perpetual licence to any information, data, reports, documents, procedures, forecasts and technology howsoever created pursuant to the Project
- 10.3 The Grantee will make publically available all final reports, findings, research, feasibility studies etc. which have been funded by the JTF once the Project is completed, or sooner if so decided by the Grantee and/or Minister, and no later than 31 December 2023. The Grantee shall publish these online so they can be freely accessed by all and inform the Minister accordingly.

11 CONFIDENTIALITY

⁴ Part of the funding for the JFT comes from the Carbon Tax Fund

- 11.1 The Grantee agrees to hold confidential all information, documentation and other material received, provided or obtained arising from its participation in this Agreement (“Confidential Information”) and shall not disclose same to any third party except to:
- its professional advisers subject to the provisions of this clause ; or
 - as may be required by law; or
 - as may be necessary to give effect to the terms of this Agreement subject to the provisions of this clause 11
- 11.2 The Grantee undertakes to comply with all reasonable directions of the Minister with regard to the use and application of all and any Confidential Information.
- 11.3 The Minister reserves the right to publish information in relation to the Project and provide Project updates and information regarding funding amounts.

12 FREEDOM OF INFORMATION

The Grantee acknowledges that the Minister is subject to the requirements of the Freedom of Information Act 2014 (the “2014 Act”) and shall assist and co-operate with the Minister to enable the Minister to comply with the same. In the event of the Minister receiving a request for information relating to this Agreement under the 2014 Act, the Minister shall take reasonable steps to consult with the Grantee. Should the Grantee consider that any information supplied is commercially sensitive, confidential, or of a personal nature, the Grantee must, at the time of providing the information, identify such information. The Minister shall however determine whether any information should be disclosed under the Freedom of Information Act.

13 DATA PROTECTION

The Grantee agrees at all times to comply with all applicable national and EU data protection legislation (including but not limited to EU Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “General Data Protection Regulation”)) and the Data Protection Act, 2018 and any guidelines and codes of practice issued by the Office of the Data Protection Commission (together the “Data Protection Laws”).

14. THE CHILDREN FIRST ACT, 2015

The Grantee will comply, where lawfully required, with the Children First Act, 2015 and to all statutory guidance for the Protection and Welfare of Children.

15. INDEMNITIES

The Grantee shall be liable for and hereby indemnifies and shall keep indemnified the Minister and the State and their servants and agents against all and any losses, costs, claims, demands, damages, proceedings, expenses or any other liabilities which the Minister or the State or their servants or agents may suffer arising directly or indirectly from any breach of contract, negligence, act, omission, breach of duty, insolvency, recklessness, bad faith, willful default or fraud of the Grantee, its employees, consortium partners, subcontractors or agents

or from any death of or injury to any person or persons and / or any damage to property arising directly or indirectly from the carrying out by the Grantee of its obligations and activities under this Agreement.

16. NO WARRANTY BY THE MINISTER

16.1 It is an express condition of this Agreement and the Grantee so acknowledges and confirms that nothing in this Agreement shall be construed so as to imply or have the effect of the granting by the Minister of any warranty or assurance whatsoever to the Grantee or to any third party whomsoever as to any of the following matters or otherwise:

16.1.1 the adequacy of the Project;

16.1.2 the competency of the Grantee, its personnel or agents; or

16.1.3 the stability of any structure or soundness of any materials used or the adequacy of its purpose of any buildings or facility.

16.2 The Minister accepts no liability for any consequences, whether direct or indirect, that may come about from the obligations or activities of the Grantee and its consortium partners and subcontractors under this Agreement through the use of the Grant or from any withdrawal, termination or amendment of the Grant.

17. REGISTERABLE INTERESTS

17.1 The Grantee confirms that it has carried out a conflicts of interest check and is satisfied that it has no conflicts in relation to, and its obligations undertaken under this Agreement. The Grantee hereby undertakes to advise the Minister forthwith should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Minister's directions in respect thereof.

17.2 Any registrable interest involving the Grantee and the Minister, the Ceann Comhairle (Speaker), or any member of the Government, or any member of the Oireachtas, or their relatives must be fully disclosed to the Minister immediately upon such information becoming known to the Grantee and to comply with the Minister's directions in respect thereof, to the satisfaction of the Minister. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995 (as amended) a copy of which is available on request.

17.3 The Grantee shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Agreement. Any breach of this clause 16 or the commission of any offence by the Grantee, any subcontractor, agent or employee under the Prevention of Corruption Acts, 1889 to 2010 shall entitle the Minister to terminate this Agreement forthwith and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Grantee of the amount or value of any such gift, consideration or commission.

18. WARRANTIES

18.1 The Grantee warrants, undertakes and agrees that:

- 18.1.1 as Lead Applicant, it assumes liability for its consortium partners and any subcontractors and shall ensure that its consortium partners and any subcontractors shall comply in all respects and at all times with the relevant terms of this Agreement;
- 18.1.2 it has all necessary resources and expertise to implement the Project;
- 18.1.3 it shall at all times comply with all applicable regulations, and the requirements of the Information Booklet, Clarification Documents, and DPER Circular (including compliance with the Statement of Principles for Grantees (Appendix A) in the DPER Circular) and shall notify the Minister immediately of any significant departure from any such legislation, regulations or requirements;
- 18.1.4 it shall comply with the requirements of Health and Safety legislation and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons associated with the implementation of the Project;
- 18.1.5 it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- 18.1.6 it has and shall keep in place systems to oversee financial controls, and to deal with the prevention of fraud and/or administrative malfunction;
- 18.1.7 all financial and other information concerning the Grantee which has been provided to the Minister is to the best of its knowledge and belief, true and accurate;
- 18.1.8 it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from compliance with the conditions of this Agreement; and
- 18.1.9 that it has the authority to enter into this Agreement and to carry out its obligations and responsibilities under this Agreement.
- 18.1.10 that it all times ensure that the State's investment is protected and will not be used as security for any other activity without prior consultation with the parent Department and sanction of DPER.

19. INSURANCE

- 19.1. The Grantee shall effect and maintain with a reputable insurance company or companies policies of insurance for the duration of the Project, which shall include:
 - 19.1.1. public liability insurance with a limit of indemnity of not less than [six million five hundred thousand euros] €6,500,000 in relation to any one claim or series of claims,

19.1.2. employer's liability insurance with a limit of indemnity of not less than [twelve million seven hundred thousand euros] €12,700,000 in relation to any one claim or series of claims,

19.1.3. directors' and officers' insurance.

19.2 The Grantee shall supply to the Minister a copy of such insurance policies and evidence that the relevant premiums have been paid on an annual basis and/or when the insurance policy has expired, and upon request. The Grantee shall advise the Minister immediately of any change in its insured status.

20. ASSETS AND PERMISSIONS

20.1 It shall be the responsibility of the Grantee to ensure that all assets purchased from the Grant shall be duly recorded on an assets register to be kept by the Grantee and all assets shall be maintained in good order, repair and condition. The Minister retains a lien on all capital items acquired in whole or in part out of the Grant. The Grantee shall execute all such documents as may be required by the Minister to protect his/her interest in any such capital items.

20.2 No assets purchased from the Grant shall be hired out, pledged, mortgaged or charged for financial gain without prior written approval from the Minister and the Minister may impose such conditions as it in its discretion so determines. Where the Grantee ceases to operate for whatever reason the assets in question shall revert to the Minister and the Grantee shall take all such action as may be necessary to ensure that full legal title in all such assets vests in the Minister absolutely.

20.3 A lease must be in place for the duration of the the Project and for at least five years after Project completion. The Grantee will observe fully the terms of any contract or lease as may exist in respect of any such property. In circumstances where the Grantee is occupying a property whether owned or leased by the Minister, the Grantee will observe fully the terms of any contract or lease as may exist in respect of any such property.

20.4 The Grantee takes full responsibility for ensuring it has all required planning permission, has secured the necessary rights and access to land and property, and that permissions and consents are in place for all such associated work required for Project delivery. Any disputes which may arise between the Grantee and other parties as a result of Project delivery are a matter for the Grantee alone and the Minister will not be a party to any such disputes.

21. GRANTEE PERSONNEL AND MANAGEMENT

21.1 It is an express condition of this Agreement that the responsibility for recruitment and management of staff shall be a matter for the Grantee.

21.2 For the avoidance of doubt all employment contracts shall be entered into between the Grantee as employer and the Grantee staff as employees. It is hereby acknowledged and confirmed that no employment relationship is hereby created or deemed to be created or shall at any time be created between the Minister and the Grantee staff arising from or pursuant to this Agreement and the Grantee shall ensure that this is expressly acknowledged by the Grantee personnel within their contract of employment with the Grantee.

- 21.3 The Grantee acknowledges and agrees that the Grantee is solely responsible for all procedures and processes relating to any recruitment, including any consequences which arise from the termination of any employment relating to the Project approved by the Minister, and the Grantee hereby indemnifies the Minister in full in accordance with clause 15 of this Agreement against all any claims which might be made against the Minister in this regard.
- 21.4 Funding supports for the personnel from the Grant will only be for new additional personnel who must have fixed term contracts and be employed directly by the Grantee to drive the various elements of the Project over the Grant Period.
- 21.5 Only key management personnel or key technical personnel charged with the management and delivery of the overall Project or specific elements of the Project will be eligible for funding support from the Grant. The Project Funding Plan and all Annual Reports and Progress Reports must show evidence, satisfactory to the Minister, that personnel numbers remain viable and sustainable over the Grant Period.
- 21.6 Roles for which funding pursuant to the Grant has been approved by the Minister must be clearly assigned with responsibilities relating to implementation of the Project.
- 21.7 Personnel who are to be paid by the Grantee through the Grant must be appointed within six months of the date of the Letter of Offer and funding of such personnel shall continue for the Grant Period.

22. ASSIGNMENT

- 22.1. The Grantee may not, without the prior written consent of the Minister, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement or, except as contemplated as part of the Project, transfer or pay to any other person any part of a Grant.

23. NOTICES

- 23.1 Any notice or other written communication to be given under this Agreement shall either be delivered personally or sent by post or email. The Parties will from time to time agree primary and alternative contact persons and details for the purposes of this clause 23.
- 23.2 All notices shall be deemed to have been served as follows:
- 23.2.1 if personally delivered, at the time of delivery;
- 23.2.2 if sent by post;
- 23.2.3 if communicated by email, on the next calendar day following transmission.

24. WITHHOLDING, SUSPENSION OR REPAYMENT OF GRANT

- 24.1 The Minister may at his discretion withhold or suspend payment or require repayment of all or part of the Grant or part thereof if:

- 24.1.1 Implementation of the Project does not start within six months of the Commencement Date and the Grantee has failed to provide the Minister with a reasonable explanation for the delay;
 - 24.1.2 the Grantee uses the Grant or any part thereof for purposes other than those for which it has been granted;
 - 24.1.3 the Grantee provides the Minister with any materially misleading or inaccurate information;
 - 24.1.4 the Minister considers that the Grantee has not made sufficient progress with the delivery of the Project;
 - 24.1.5 the Grantee, any member of the Board, officer, employee or volunteer of the Grantee has acted (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the implementation of the Project or (b) taken any actions which, in the reasonable opinion of the Minister, bringing or likely to bring the Minister's name or reputation into disrepute;
 - 24.1.6 in the event of failure by the Grantee to provide any reports or returns as required by the terms of this Agreement.
- 24.2 Any Grant made available pursuant to this Agreement is made available by way of grant and any part of the said Grant which is unspent or not spent on implementation of the Project shall immediately become repayable by the Grantee but without interest, charges or other expenses.
- 24.3 Should the Grantee be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Project or compliance with this Agreement it will notify the Minister as soon as possible so that, if possible, and without creating any legal obligation, the Minister will have an opportunity to consider what remedies might be available to resolve the problem or to take action to protect the Minister and the Grant monies.

25. TERMINATION

- 25.1 The Minister may terminate this Agreement without liability for compensation or damages by serving the Grantee four (4) month's written notice.
- 25.2 This Agreement shall automatically terminate:
- 25.2.1 upon the expiry of the Grant Period;
 - 25.2.2 in the event that the Grantee ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
 - 25.2.3 in the event that the Grantee becomes insolvent, or it is declared bankrupt, or it is placed into receivership, examinership or liquidation, or a petition has been

presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due.

- 25.3 Any liabilities arising upon expiry or termination of this Agreement, including but not limited to any liabilities in relation to staff employed by the Grantee shall be managed and paid for by the Grantee.

26. CONSEQUENCES OF TERMINATION

Upon the termination of this Agreement, the following clauses shall continue in force: 6.3, 10.2, 11, 12, 15 and 16 and 27.

27. DISPUTE AND CONFLICT RESOLUTION

- 27.1 Subject to the Parties' respective rights to apply to the courts upon any cause of action at any time, the Parties shall seek to resolve any disputes between them, arising out of or relating in any way to the issues covered by this Agreement, amicably.

28. NO PARTNERSHIP OR AGENCY

- 28.1 This Agreement shall not create any partnership or joint venture between the Minister and the Grantee, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.
- 28.2 The Grantee shall at all times be an independent contractor for the purpose of this Agreement and the relationship of principal and agent shall not exist between the Minister and the Grantee. For the avoidance of doubt it is expressly declared and confirmed that it is not the purpose or intention of this Agreement to create, nor shall the same be construed as creating any commercial or other partnership or fiduciary relationship between the Minister and the Grantee.
- 28.3 The employees of the Grantee are not, and shall not hold themselves out to be and shall not be held by the Grantee as being servants or agents of the Minister for any purposes whatsoever.

29. SEVERANCE

- 29.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 29 shall not affect the validity and enforceability of the rest of this Agreement.

30. VARIATION

- 30.1 No variation of this agreement shall be effective unless it is in writing and signed by the Parties or their authorised representatives.
- 30.2 The Minister reserves the right to amend and update the Agreement as required.

31. WAIVER

- 31.1 No failure or delay by either Party to exercise any right, power or remedy shall operate as a waiver of it, nor shall any partial exercise preclude further exercise of same or some other right, power or remedy.

32. GOVERNING LAW

- 32.1 This Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Parties hereby agree that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement.
- 32.2 This Agreement shall be executed in duplicate and each copy of the Agreement shall be signed by all the Parties hereto. Each of the Parties to this Agreement confirms that this Agreement is executive by their duly authorised officers.

IN WITNESS of which this Agreement has been signed by duly authorised representatives on behalf of the Parties on the day and year first stated above.

SIGNED BY: _____

being an Officer so authorised by the **Minister of the Environment, Climate and Communications**, under section 15(4) of the Minister's and Secretaries Act, 1924

In the presence of: _____

Witness

Date: _____

SIGNED BY: _____

being an Officer so authorised by Grantee

POSITION: : _____

In the presence of: _____

Witness

Date: _____

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SCHEDULE 1 – PAYMENT OF GRANT⁵

- Payments from the Fund will be made over the course of the Project on the basis of milestones being achieved by the project organisations and on the basis of submitting vouched expenses; requests for payment should be no more frequent than quarterly.
- The first drawdown request can be made in Q1 2021.
- Any individual claim for payment must be for a minimum of 10% and a maximum of 30% of the total JT Project cost.
- The Minister will seek to make payment to the Applicant within 30 days of receiving the payment request. During this time the Minister will have the opportunity to inspect and verify the completed work.
- Grantees are required to complete Appendix 1: Drawdown Request Schedule to indicate annual projected drawdown requests.
- Match funding must be spent concurrently alongside JTF Funding. The supporting documentation must evidence spend of the Just Transition Fund Grant (85%) and the match funding (15%) to total 100%. 85% of each drawdown request will be reimbursed.
- Reimbursements will cease when the full JTF sum has been allocated.
- At the first drawdown request one, where pre-funding was advanced, vouched expenditure must be submitted to show how the initial pre-funding advance has been fully used.
- All costs are VAT inclusive and no additional funding will be allocated.
- The last date a request for payment will be accepted is Q1 2024, to allow for reimbursement of any final Projects costs incurred in late 2023.
- The final 10% of the Grant amount will not be paid until completion of the project and sign-off by the Minister;
- The Minister will undertake to verify that the Project has been completed within 30 days of the Applicant's final funding request. If the Minister is not satisfied that the Project deliverables, as set out in this document, are complete following a request for final payment, he will set out the grounds for not verifying, and allow the Applicant a reasonable period to carry out any further works or corrective measures.

All requests for drawdown of funds under this Agreement should be made by email to JTFaccounts@dcae.gov.ie. Each drawdown request should be made in one email with the below requirements attached.

- 1 A signed letter of request for the amount of funding required. The Grantee should state with every drawdown request that:
 - The invoices used to support their claims relate to activities and services appropriate to the Project objectives and the specific milestone identified;
 - The amounts invoiced have been paid; and
 - The invoices have not and will not be used in support of another claim for reimbursement from any other funder(s);
 - They certify that the amount of the funds supplied, pursuant to this request under this Agreement, has been allocated and expended in conformity with the conditions of this Agreement;
- 2 Evidence and descriptions of incurred costs as below.
 - A description of the activities which have incurred the costs, linking this back to Project milestones, and overview of the overall expenditure claimed.
 - A schedule listing each invoice/receipt with a brief description of each.

⁵ **Pre-funding:** The Minister may approve the payment of an initial JTF instalment on a pre-funding basis, determined on a case by case basis where requested from the Grantee. Any pre-funding payments must be aligned with the Grantee's cash needs, taking into account the scale of the investment required in the early project phase. Monitoring and control arrangements will be in place in relation to pre-funding.

- The accompanying supporting documentation in the form of valid invoices, receipts and payslips demonstrating that the expenditure has been incurred. The invoice must be made out in all cases to the Grantee;
 - Note that only electronic/scanned copies of the invoices and receipts will be accepted; the Grantee should retain the originals for audit purposes. Invoices/receipts should where possible be saved as one PDF file or saved in one ZIP folder and attached:
- 3 The cumulative payment amount received by the Grantee;
 - 4 The projected expenditure of the next drawdown request and when this will be made, and a brief description of planned Project activities;
 - 5 Any other such other information and evidences as requested by the Minister;

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SCHEDULE 2 – THE PROJECT⁶

The Project, for clarity, is covered by the below documents:

- Application Form(s) MRTT Number X as submitted on X date and X date
- Further Information submitted by the Applicant on X dates
- Provisional Letter of Offer made on X date, and responses submitted by Grantee
- Final Letter of Offer, and Appendix 1 and Appendix 2 (as completed and returned) issued on X date

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⁶ For the avoidance of doubt, all Further Information and Clarifications provided and provisions, where applicable to the Project, are deemed to form part of the Project set out in Schedule 2.