

**SUBJECT TO CONTRACT/CONTRACT DENIED**

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

Strand 2 Projects

Between:

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

and

**XXXX**

## Table of Contents

1.	DEFINITIONS.....	4
2.	AGREEMENT .....	6
3.	DURATION .....	6
4	PURPOSES OF THE GRANT.....	6
5	FUNDING.....	6
6	MATCH FUNDING .....	8
7	ACCOUNTS AND RECORDS .....	8
8	FINANCIAL MONITORING AND VERIFICATION .....	9
9	INSURANCE .....	10
10	STATE AID AND DE MINIMIS FUNDING.....	10
11	PUBLIC PROCUREMENT.....	11
12	PROJECT MONITORING AND REPORTING.....	12
13	PROPOSED PROJECT CHANGES.....	13
14	GRANTEE PERSONNEL AND MANAGEMENT .....	13
15	AUTHORISATION AND STATUTORY CONSENTS .....	14
16	CAPITAL WORKS .....	15
17	EQUIPMENT AND ASSETS .....	16
18	INTELLECTUAL PROPERTY RIGHTS .....	16
19	ACKNOWLEDGEMENT AND PUBLICITY .....	17
20	CONFIDENTIALITY .....	17
21	FREEDOM OF INFORMATION .....	17
22	DATA PROTECTION .....	18
23	THE CHILDREN FIRST ACT, 2015.....	18
24	INDEMNITIES.....	18
25	WARRANTIES.....	18
26	NO WARRANTY BY THE MINISTER .....	19
27	REGISTERABLE INTERESTS.....	19
28	ASSIGNMENT .....	20
29	WITHHOLDING, SUSPENSION OR REPAYMENT OF GRANT.....	20
30	TERMINATION.....	21
31	CONSEQUENCES OF TERMINATION.....	21
32	DISPUTE AND CONFLICT RESOLUTION .....	21
33	NO PARTNERSHIP OR AGENCY .....	22
34	AGREEMENT VARIATION .....	22
35	WAIVER .....	22
36	NOTICES .....	22
37	GOVERNING LAW .....	22
38	AGREEMENT EXECUTION .....	23

**SCHEDULE 1 – PAYMENT OF GRANT .....25**  
**SCHEDULE 2 – THE PROJECT .....30**

DRAFT

THIS AGREEMENT is dated XXXX

## PARTIES

- (1) THE MINISTER OF the ENVIRONMENT, CLIMATE AND COMMUNICATIONS, (the “Minister<sup>1</sup>”); and
- (2) XXXX (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”) ) [MRTT & Project Name] set out in Schedule 2<sup>2</sup> to the Minister on [Date] and a provisional offer was granted on [Date] following the evaluation of applications through a competitive process. Following a successful verification process, the Project was accepted by the Minister and a final offer was made by means of Final Letter of Offer dated [Date].
- 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.
- F) For the avoidance of doubt, other documentation issued by the Minister in relation to the Just Transition Fund forms part of this Agreement. This includes the Information Booklet published by the Minister on 19 June 2020, any Clarifications published, the Application Form(s), the Provisional Letter of Offer, the Verification and Confirmation Form, the State Aid Costs Template, State aid FAQs and the Final Letter of Offer .The terms of same have not necessarily been repeated in this Agreement for brevity.

## IT IS HEREBY AGREED AS FOLLOWS:

### 1. DEFINITIONS

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

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<sup>1</sup> 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.

<sup>2</sup> 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.

**Commencement Date:** this Agreement shall commence on the date on which it is counter-signed by an Officer acting on behalf of the Minister and is the first date on which grant-eligible expenditures may be incurred.

**Department:** The Department of the Environment, Climate and Communications.

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

**Final Claim Date:** grantees may make final drawdown requests up to 30 June 2024. This Funding Agreement shall remain in force until the Final Claim Date.

**Grant:** the total funding provided to the Grantee by the Minister under this Agreement, as per the Final Letter of Offer, inclusive of VAT (except where it can be reclaimed under national VAT legislation). The total Grant amount is the total allocation which will be provided to the Project from the Fund and should not be interpreted as a guarantee that the full amount will be reimbursed to the Project. The Grant may be subject to Project Stages – see definition below. If Project costs prove higher than anticipated, an increase in funding will not be given.

**Grantee(s):** the Grantee(s) who sign(s) this Agreement and who assume liability for the delivery of the Project, for consortium partners and any sub-contractors, and shall ensure that consortium partners and any sub-contractors shall comply in all respects and at all times with the relevant terms of this Agreement. Where there are two Grantees, both shall sign this Funding Agreement and assume joint liability, and shall be referred to throughout this Agreement as Grantee in the singular.

**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.

**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.

**Match Funding:** the Grant is subject to a minimum of 15% match funding from other sources. The match funding amount which will be provided by the Grantee varies according to Projects and is set out in the Final Letter of Offer.

**Project Stages:** Grants may be structured into Project Stage(s) and Project Gateway(s), as per the Final Letter of Offer. Funding for subsequent Stage(s) is conditional on successful completion of the prior Stage and approval by the Minister to proceed. Costs cannot be incurred for a project Stage which has not been approved. The approval of a Stage does not automatically lead to the remainder of the funds being approved.

**Total Project Cost:** This is the Grant amount and the Match Funding amount.

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**

2.1 The Minister and the Grantee have agreed to observe, perform and comply with the terms and conditions herein contained and any amendments and updates to this Agreement, as published by the Minister.

2.2 In relation to the interpretation of the terms and conditions in this Funding Agreement, or in relation to any other matter concerning the conduct, management or implementation of the Project, the Minister's decision is final.

2.3 The Minister reserves the right to delegate the administration of all or part of the Just Transition Fund, including this Funding Agreement, to a third party. Grantees will be informed of any such arrangement and the resulting reporting and drawdown processes, if amended in any way.

## **3. DURATION**

3.1 The term of this Agreement shall be the Grant Period and the Final Claim Date, if later.

3.2 The Minister reserves the right to review Projects in full in cases where a significant delay has arisen in relation to the final delivery date of the Project.

## **4 PURPOSES OF THE GRANT**

4.1 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. The Grantee warrants to the Minister that it shall apply the Grant wholly and exclusively for the purposes of implementation of the Project and shall comply with the requirements as set out in the Final Letter of Offer.

4.2 The Grantee shall carry out the Project wholly within the State and must operate in and target at least one of the eight counties<sup>3</sup> which comprise the 'Wider Midlands' region for the purposes of the JTF.

4.3 The Grantee shall advise the Minister immediately of any events which may have a material impact on the implementation of the Project, for example issues that arise that affect the viability, scope, timeline for delivery or the final cost of the Project, and shall comply with all reasonable directions of the Minister.

4.4 The Minister shall not provide ongoing Project support or sit on any Project steering groups or committees. Engagement with the Grantee will be as per the processes provided for in this Agreement.

## **5 FUNDING**

5.1 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

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<sup>3</sup> East Galway, Kildare, Laois, Longford, North Tipperary, Offaly, Roscommon and Westmeath.

the Project costs and up to a maximum of €1m. The requirements for the drawdown of instalments of the Grant are set out in Schedule 1.

- 5.2 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 and/or to sustain the Project on an ongoing basis.
- 5.3 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.
- 5.4 The availability of the Fund over the period of this Agreement will be subject to the general availability of Exchequer funds.
- 5.5 The provision of any funding by the Minister under this Agreement is conditional at all times upon:
  - 5.5.1 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;
  - 5.5.2 prior compliance by the Grantee with conditions of drawdown set out in Schedule 1;
  - 5.5.3 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;
  - 5.5.4 the Minister being satisfied that the Grant will be used for proper expenditure in the implementation of the Project;
  - 5.5.5 the Minister being satisfied with the implementation of the Project;
  - 5.5.6 continued compliance at all times during Project delivery by the Grantee with all relevant national and EU legislation, all applicable regulations, statutes and by-laws, the DPER Circular, and the terms of this Agreement;
  - 5.5.7 expenditure incurred may be subject to the requirements of the Capital Works Management Framework – see Section 16.
  - 5.5.8 without prejudice to the generality of the foregoing, compliance by the Grantee with 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;
  - 5.5.9 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;
  - 5.5.10 the Grantee ensuring at all times during Project delivery, compliance with this Agreement by all consortium members and any third party sub-contractors engaged by the Grantee for the purposes of the Project and/or any third party who might benefit from the Grant.
- 5.6 See Schedule 1 for full details on the payment of grants process.
- 5.7 The Grantee is responsible for ensuring that projects are not double funded i.e. costs for the same activity are not funded twice from any source, either public or private. Any funding received in such circumstances must be refunded to the Department.
- 5.8 Ineligible costs are as set out in the Information Booklet, Application Form, Response and FAQ Documents, State Aid Costs Template, Verification and Confirmation Form, and any clarifications published by the Minister, in addition to this Agreement.
- 5.9 The Grantee must not charge the administration or operating costs of other programmes, projects, schemes to the JTF Grant.

- 5.10 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 as entered in the Verification and Confirmation Form and submitted through the claims process with supporting evidence.
- 5.11 Profits, dividends and/or interest payments on financial instruments cannot be made or paid from the Just Transition Fund Grant.

## **6 MATCH FUNDING**

- 6.1 The provision of any funding by the Minister under this Agreement is conditional at all times upon the Project including a minimum of 15% match funding from other sources.
- 6.2 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 or was misrepresented in the Application Form and/or Verification and Confirmation Form, the Minister reserves the right to withhold, suspend or terminate Project funding.
- 6.3 Any changes to the availability or source of match funding which arise during any stage of the Project must be notified to the Minister immediately.

## **7 ACCOUNTS AND RECORDS**

- 7.1 All appropriate financial and government accounting rules and regulations must be complied with in relation to Grant expenditure.
- 7.2 The Just Transition Fund is Exchequer capital funding. The Grantee must be aware of and comply with the requirements of the Public Spending Code which applies to all public bodies and any organisation delivering capital projects and programmes funded by public monies. The Public Spending Code is available at [publicspendingcode.per.gov.ie](http://publicspendingcode.per.gov.ie).
- 7.3 The Grant shall be shown in the Grantee's accounts as restricted funds and shall not be included under general funds.
- 7.4 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, related to the JTF Project.
- 7.5 The Grantee will maintain an accurate account and record of the value of all work(s) and any capital or other expenditure incurred in respect of the JTF Project.
- 7.6 The Grantee shall keep all original 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.
- 7.7 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.
- 7.8 The Grantee is solely responsible for any tax or VAT implications arising in connection with this Grant. VAT cannot be claimed back if it has been included in submitted JTF invoices and reimburses.

- 7.9 The Grantee must submit annual accounts (including an income and expenditure and a balance sheet) for year(s) in which the Grant is drawn down. 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.
- 7.10 The Grantee shall provide a letter from their auditor or accountant confirming the good financial standing of the Grantee organisation on an annual basis for year(s) in which the Grant is drawn down.
- 7.11 The Grantee shall have an independent firm of auditors and will communicate its name 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.
- 7.12 The Grantee shall submit to the Minister on an annual basis for year(s) in which the Grant is drawn down, 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.
- 7.13 The Grantee must have in place a governing document (e.g. rules, constitution, memorandum and articles etc.) and must adhere to the terms of that governing document. The Grantee must supply a copy of the governing document to the Minister upon request.

## **8 FINANCIAL MONITORING AND VERIFICATION**

- 8.1 The Grantee will ensure that systems of financial management and control are in place in the Grantee organisation and are regularly reviewed and that the expenditure in all cases represents value for money.
- 8.2 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.
- 8.3 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.
- 8.4 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.
- 8.5 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 Grantee Organisation.
- 8.6 All funding provided by the Minister under this Agreement is subject to audit and verification by the Minister, the Department of the Environment, Climate and Communications, agents of the Department, the Comptroller and Auditor General and/or other appropriately authorised bodies or parties.
- 8.7 The Minister may authorise site visits to Grantee organisations as part of a compliance and audit function, which may not be notified in advance. A sample of Projects may be selected annually

for audit and verification purposes. Site visits could include verifying technical capacity, Project progress, the creation and maintenance by the Grantee of the number of direct jobs as stated per Appendix 2, financial expenditure and purchases. On request, the Grantee will make all premises, assets, invoices, receipts, records, materials and personnel available to any individual appointed or designated by the Department and will comply with all directions given by the Department in respect of audit and compliance, as may be required for them to complete the audit.

## **9 INSURANCE**

- 9.1 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:
- 9.1.1 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,
  - 9.1.2 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,
  - 9.1.3 any other insurances as required for delivery of the Project.
- 9.2 The Grantee shall provide annual confirmation to the Minister that it has in place the required level of insurance for the year(s) in which the Grant is drawn down. The Grantee shall advise the Minister immediately of any change in its insured status.
- 9.3 The Minister will not assume liability for accidents, illnesses or claims arising out of work supported by the JTF Grant. The Grantee must take steps as may be deemed necessary to insure and protect itself, its employees and its property.

## **10 STATE AID AND DE MINIMIS FUNDING**

- 10.1 State aid refers to forms of public assistance, using taxpayer-funded resources, given to undertakings on a discretionary basis, with the potential to distort competition and affect trade between Member States of the European Union. The level of support provided to any project as part of the JTF call for applications is limited by European Union State aid rules including under the Commission Regulation (EU) No 651/2014 (the General Block Exemption Regulation or “GBER”). State aid rules will not apply to all of the project applications received, however, with the applicability of the rules applying being reviewed by the Department on a case-by-case basis. In the event that the State aid rules apply, the Fund operates under the terms of GBER and the published Scheme S.A 61140.
- 10.2 Grantees may also be awarded State aid for their project pursuant to Commission Regulation (EU) No 1407/2013<sup>4</sup> (the “De Minimis Regulation”) in the event that the State aid rules apply. De Minimis aid allows State aid of up to €200,000 to be granted to an undertaking over any three-year period (subject to certain sector specific exemptions). The amount of €200,000 under the De Minimis Regulation is allowed by the European Commission as this is considered to be at a level which will not have a substantive effect on trade between Member States nor distort or threaten to distort competition and therefore can be awarded without notification to or clearance by the European Commission

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<sup>4</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352 18.12.2013, p. 1) available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2013.352.01.0001.01.ENG&toc=OJ:L:2013:352:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2013.352.01.0001.01.ENG&toc=OJ:L:2013:352:TOC)

- 10.3 De Minimis aid can be awarded provided that the grant recipient (the “Grantee”) has confirmed in the Department’s De Minimis Aid Declaration that it will not be in excess of the cumulative limit of €200,000 allowed for under De Minimis aid once this grant is approved. The De Minimis Aid Declaration is required because a Member State is required to have a mechanism to track De Minimis aid and to ensure that the combined amount of De Minimis aid payments from all sources to one enterprise in any three-year period respects the €200,000 ceiling. Grantees should therefore take into account when completing the De Minimis Aid Declaration any other De Minimis aid received in the three years prior to the date of the approval of this grant in determining whether they will be in excess of the cumulative limit of €200,000 allowed for under De Minimis aid once this Grant is allocated. It should be noted that a false declaration resulting in the threshold of €200,000 being exceeded could later give rise to the aid being recovered with interest.
- 10.4 Grantees must ensure they are State aid compliant at all times during Project delivery. Grantees must ensure that nothing shall be done or omitted in a Project as would lead to the funding not being State aid compliant.
- 10.5 In the event of any decision of the European Commission which under the State aid rules requires the recovery of the Grant, the Grantee agrees that an amount determined by the Department to comply with said decision becomes due and payable by it to the Department as a simple contract debt, which for the avoidance of doubt may include any interest that is applicable by operation of law.
- 10.6 Without prejudice to the foregoing or more generally to the conditions of this Agreement, the Grantee agrees that it will not make any counterclaim or institute separate proceedings for damages of any kind against the Department where a notice seeking repayment is issued by reason of a recovery decision of the European Commission with respect to the scheme.
- 10.7 When recovery is sought under the State aid rules by reason of any act or omission (including by reason of any misrepresentation or other breach of this agreement) of the Grantee affecting the availability or extent of any exemption under the GBER or affecting compliance with selected GBER article(s), then in addition to recovery of the aid with interest, the Grantee shall indemnify the Department in respect of all legal, accounting and any related costs incurred by it as a result of the reason.
- 10.8 The Department may include details of the Grant approved in respect of the Grantee on a State aid website, such details to include the Grantee name, granting act, amount of aid and instruments used for grants. Grantees may be required to provide additional information to the Minister to assist in reporting on State aid to the European Commission.

## **11 PUBLIC PROCUREMENT**

- 11.1 The Grantee is required to comply with relevant EU and national public procurement procedures with regard to the Grant in relation to the JTF Project. Where the Grantee is subsidised at 50% or more by the JTF to deliver the Project (for clarity, at 50% or more of the Total Project Cost amount), it must comply with public procurement to purchase works, goods or services from suppliers. Please refer to the Office of Government Procurement guidelines for goods and services in force. Guidance on supporting an appropriate procurement process can be found at [www.etenders.ie](http://www.etenders.ie).
- 11.2 In general, a competitive process carried out in an open, objective and transparent manner can achieve best value for money in public procurement. This is in line with EU Treaty principles and EU Directives on public procurement. Essential principles to be observed in conducting the

procurement function includes non – discrimination, equal treatment, transparency, mutual recognition, proportionality, freedom to provide service and freedom of establishment.

- 11.3 The Grantee should retain all records relating to tendering/procurement/contracting/ sub-contracting, for audit inspection for a period of ten years after the completion of the project.
- 11.4 The Grantee remains solely responsible for ensuring compliance with all relevant EU and National public procurement rules and procedures. The Grantee acknowledges and warrants that any disputes arising with contractors, builders or other service delivery entities are solely the responsibility of the Grantee for the project concerned.
- 11.5 The Minister reserves the right to request any documentation from the Grantee to evidence that they used a public procurement process e.g. the tender evaluation documentation.

## 12 PROJECT MONITORING AND REPORTING

- 12.1 Monitoring of the project must be undertaken and reported to the Minister. The Grantee will collect agreed indicators / metrics to facilitate this process through the Annual Report, Mid-Year Progress Report and Final Report, during claims requests, and submit this information to the Department.
- 12.2 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 that the KPIs, final outputs and outcomes are being met to the satisfaction of the Minister, as set out in the Project (Schedule 2). Should the monitoring undertaken be considered insufficient or deficient by the Minister in any way, the Grantee will be required to revisit the process in accordance with instructions issued by the Minister.
- 12.3 After completion of each Project Stage and reaching a Project Gateway, the Grantee must inform the Minister of the outcome of the Stage and confirm if, in their view, the Project can proceed to the next Stage. The Minister, at his discretion, may determine that a Project should not proceed to the subsequent Stage.
- 12.4 Officials acting on behalf of the Minister may request meetings with Grantees to discuss Project progress, Project reports, and receive verbal updates as required.
- 12.5 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. Annual Reports will be used to monitor Project delivery, Project status, KPIs, identify any issues, and inform wider learning from the JTF process. It must also include a list of all staff employed in the Grantee organisation through the Just Transition Fund for the Project – see Grantee and Personnel Management Section. A template setting out the information to be provided in the Annual Report will be provided by the Minister.
- 12.6 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 Project. This must be submitted by 31 September annually and may be submitted as part of a drawdown request. Mid Year Progress Reports will be used to monitor Project delivery, Project status, KPIs and identify any issues.

- 12.7 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 demonstrating the impact of the Grant.
- 12.8 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. Results of Grantee led evaluations shall be incorporated into annual reports and progress reports where available.

### **13 PROPOSED PROJECT CHANGES**

- 13.1 At any time during the term of this Agreement, the Grantee may propose a change or changes to the Project using a change control procedure. The change control procedure set out will apply to all Project changes.
- 13.2 Proposed changes to Projects must be cost neutral i.e. may not result in additional costs to the Project and no additional funding can be requested as a result of a proposed Project change. Grantees must ensure that Project changes are fully compliant with State aid eligible costs, funding rules, and maximum permitted funding.
- 13.3 A change control notice (“Change Control Notice”) shall be prepared for all Project change requests using a set template which can be requested from the Department. The Change Control Notice must provide a description of the change requested to the Project, how this varies from the agreed Project, the rationale for the change, the effect of the change on the Project, an estimate of the effort required to integrate the change, the impact on Project cost and cost categories, and confirmation of State aid compliance. This may include requests to re-allocate costs across Cost Categories as set out in the Verification and Confirmation Form.
- 13.4 All Change Control Notices must be submitted for review to the Minister. The Minister will indicate his acceptance or rejection of the change request within a reasonable timeframe, subject to a maximum of thirty (30) calendar days or other such period as agreed between the Parties.
- 13.5 Approved Change Control Notices shall be considered to form part of this Agreement – Schedule 2: The Project.
- 13.6 If the Minister rejects the Change Control Notice, the change(s) shall not take place and the Grantee shall continue to deliver the Project as agreed in the absence of the proposed change(s).

### **14 GRANTEE PERSONNEL AND MANAGEMENT**

- 14.1 It is an express condition of this Agreement that the responsibility for recruitment and management of staff shall be a matter for the Grantee.
- 14.2 Funding supports for personnel from the Grant will only be for new additional personnel who must have fixed term contracts, have written contracts of employment, and be employed directly by the Grantee to drive the various elements of the Project over the Grant Period. 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. 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.

- 14.3 The Project Application, all Annual Reports and Mid-Year Progress Reports must show evidence, satisfactory to the Minister, that personnel numbers remain viable and sustainable over the Grant Period.
- 14.4 The Grantee shall provide on an annual basis, through the Annual Report, a list of all staff employed in the Grantee organisation through the Just Transition Fund for the Project, their Full Time Equivalent, and provide confirmation that new additional personnel have been selected through an open recruitment process.
- 14.5 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.
- 14.6 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 24 (Indemnities) of this Agreement against all any claims which might be made against the Minister in this regard.
- 14.7 Personnel who are to be paid by the Grantee through the Grant must be appointed within six months of the date of the Final Letter of Offer and funding of such personnel shall continue for no greater than the Grant Period.
- 14.8 All personnel not working full-time on the JTF Project must complete work timesheets on a daily basis in respect of the time spent on Project activities. These work timesheets must be approved by the relevant person in the Grantee organisation. See Schedule 1 – Payment of Grant for more information in relation to salary claims.

## **15 AUTHORISATION AND STATUTORY CONSENTS**

- 15.1 The Grantee takes full responsibility for ensuring it has all required planning and regulatory permissions and consents and has secured the necessary authorisations and/or rights of access to all required land, buildings and property for all associated work required for Project delivery. Where the Grantee is found not to have the relevant permissions, consents, authorisations and/or rights in place, the Minister reserves the right not to approve a subsequent Project Stage and/or to terminate this Agreement.
- 15.2 Grantees must inform the Minister where authorisation to access sites and/or planning permission and/or other regulatory consents are required for Project delivery. Grantees must immediately inform the Minister if statutory permissions required as part of Project delivery have been applied for and not granted. Grantees must immediately inform the Minister if a lease/licensing arrangement which is required for Project delivery has not been secured, and/or if the Grantee does not have authorisation to access sites required for Project delivery.
- 15.3 Where a Grantee requires a lease/licensing arrangement to secure a site/building(s)/floor space for Project delivery, Grantees are required to submit a copy of the signed lease agreement once a final offer is made.

15.4 Where a project will be delivered from a site/building(s)/floor space that are not in the ownership of the Grantee, a minimum five years lease must be in place from date of project completion. Any leased sites/building(s)/floor space must be used for JTF Project delivery and must only host activity funded through the JTF for Project delivery. 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.

15.5 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.

## **16 CAPITAL WORKS**

16.1 Projects involving construction works may be required to adhere to the Capital Works Management Framework (CWMF). The CWMF is a suite of template tender and contract documents for the procurement of public works and works-related service contracts.

16.2 Where the Grantee is a local authority or other relevant body that provides public services, it must comply with the CWMF and the new Forms of Construction Contracts will apply. Where the Grantee is not a government department or a body under its aegis or a local authority or other relevant body that provides public services (e.g. schools, voluntary hospitals, etc), and more than 50% of the funding for the Project comes from the Just Transition Fund (for clarity, at 50% or more of the Total Project Cost amount), Grantees must comply with the CWMF and the new Forms of Construction Contracts will apply.

16.3 Grantees should consider the nature, scale and complexity of the Project and consult with the guidance material published under the CWMF (available on [constructionprocurement.gov.ie](http://constructionprocurement.gov.ie)) before determining which procurement and contracting strategy to follow. Grantees are advised to use the following suite of documents as being most suited to small to mid-value funded works Projects;

- Works Declaration LEADER (WDL)
- Tender & Schedule for Works FTS6
- Instruction to Tenderers (ITT W4 or ITT W5)
- Short Public Works Contract (PW-CF6)

16.4 Grantees may use alternative documents from the CWMF, however the Short Public Works Contract (PW-CF6) should be suitable for the majority of JTF capital works Projects given the nature of these investments. Where using the PW-CF6, the winning tender must be selected solely on the basis of the lowest price tendered. For more technically complex works projects, and where the promoter wishes to select on the basis of MEAT (Most Economically Advantageous Tender), the Grantee is advised to use PW-CF5 (Minor Works Form of Contract).

16.5 All capital works undertaken must comply with the Building Regulations and the Building Control Regulations may also apply. Building Regulations are a set of legal requirements for the design and construction of new buildings, extensions and material alterations to and certain changes of use of existing buildings. The primary purpose of the Building Regulations is to provide for good building practice in the interests of health, safety and welfare of people using buildings. Building owners, designers and builders are legally bound by the regulations and in undertaking works must ensure that the appropriate measures are taken to enable certification of compliance.

- 16.6 All capital works undertaken must comply with the Safety, Health and Welfare at Work (Construction) Regulations 2013. The purpose of these Regulations is to prescribe the main requirements for the protection of the safety, health and welfare of persons working on construction sites. These Regulations apply to all construction projects including the alteration, decoration, maintenance and repair of buildings and the installation, maintenance and removal of mechanical and other systems fixed within or to structures. They place obligations on clients and designers to ensure that safety and health is taken into account before any construction work begins.
- 16.7 Projects which involve capital works may require on-site checks to verify that the works are being realised and/or have been completed as specified for Project delivery. These on-site verification checks may verify construction and/or improvement of immovable property; purchase of new machinery and equipment up to the market value of the asset, and for any other purpose. These site visits will be undertaken by a representative acting on behalf of the Minister.

## **17 EQUIPMENT AND ASSETS**

- 17.1 It shall be the responsibility of the Grantee to ensure that all equipment and assets purchased from the Grant are duly recorded on an assets register to be kept by the Grantee and all equipment and assets shall be maintained in good order, repair and condition. All equipment and assets purchased must be paid for, fitted and working. Equipment can be new or second hand. In the case of secondhand equipment, the minimum eligible cost per unit of equipment shall be €10,000 excluding VAT and the equipment shall be less than 7 years old. All supplier or manufacturer paperwork must be retained for inspection for a minimum of 10 years from the date of relevant payment.
- 17.2 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.
- 17.3 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.

## **18 INTELLECTUAL PROPERTY RIGHTS**

- 18.1 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 of implementing the Project, shall belong to the Grantee.
- 18.2 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
- 18.3 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 March 2024. The Grantee shall

publish these online if they have their own web address, and/or they will be published by the Minister.

## **19 ACKNOWLEDGEMENT AND PUBLICITY**

- 19.1 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 Fund.<sup>5</sup> 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.
- 19.2 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 Fund and to provide any requested supporting promotional material e.g. photographs, images, graphics, video footage, website material.
- 19.3 The Grantee shall comply with any reasonable requests from the Minister to facilitate reports, statistics and the development of video or written case studies.
- 19.4 The Grantee is forbidden from presenting the Project in any communications or publicity materials as having been endorsed by the Minister.

## **20 CONFIDENTIALITY**

- 20.1 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:
- o its professional advisers subject to the provisions of this clause ; or
  - o as may be required by law; or
  - o as may be necessary to give effect to the terms of this Agreement subject to the provisions of this clause 20.
- 20.2 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.
- 20.3 The Minister reserves the right to publish any information in relation to a Project and to publish Project funding allocations and total allocations.

## **21 FREEDOM OF INFORMATION**

- 21.1 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.

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<sup>5</sup> Part of the funding for the JTF comes from the Carbon Tax Fund.

- 21.2 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.

## **22 DATA PROTECTION**

- 22.1 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”).
- 22.2 The Minister reserves the right to share any and all information relating to the JTF Project and the Grantee(s) delivering the project to a third party which has been assigned responsibility by the Minister to administer the Fund on his behalf. For clarity, this includes all and any documentation, forms, reports, emails, notes of communications between Officials acting on behalf of the Minister and the Grantee.

## **23 THE CHILDREN FIRST ACT, 2015**

- 23.1 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.

## **24 INDEMNITIES**

- 24.1 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.

## **25 WARRANTIES**

- 25.1 The Grantee warrants, undertakes and agrees that:
- 25.1.1 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;
  - 25.1.2 it has all necessary resources and expertise to implement the Project;
  - 25.1.3 it shall at all times comply with all applicable regulations and Fund requirements, 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;
  - 25.1.4 it is (and each of its consortium partners and sub-contractors are) in compliance in all material respects with all laws to which it is subject;
  - 25.1.5 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;
- 25.1.6 it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
  - 25.1.7 it has and shall keep in place systems to oversee financial controls, and to deal with the prevention of fraud and/or administrative malfunction;
  - 25.1.8 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;
  - 25.1.9 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;
  - 25.1.10 it has the authority to enter into this Agreement and to carry out its obligations and responsibilities under this Agreement;
  - 25.1.11 no litigation, or investigations of, or before, any court, arbitral body or agency have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it or any of its consortium partners or sub-contractors; and
  - 25.1.12 it will at 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 Department and sanction of DPER.

## **26 NO WARRANTY BY THE MINISTER**

- 26.1 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:
  - 26.1.1 the adequacy of the Project;
  - 26.1.2 the competency of the Grantee, its personnel or agents; or
  - 26.1.3 the stability of any structure or soundness of any materials used or the adequacy of its purpose of any buildings or facility.
- 26.2 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.

## **27 REGISTERABLE INTERESTS**

- 27.1 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.
- 27.2 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.
- 27.3 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 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.

## **28 ASSIGNMENT**

- 28.1 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.

## **29 WITHHOLDING, SUSPENSION OR REPAYMENT OF GRANT**

- 29.1 The Minister may at his discretion withhold or suspend payment or require repayment of all or part of the Grant or part thereof if:
- 29.1.1 implementation of the Project does not start within three months of the Commencement Date and the Grantee has failed to provide the Minister with a reasonable explanation for the delay;
  - 29.1.2 in the opinion of the Minister, the project has been subject to undue delay in delivery based on the timeline supplied for the Project by the Grantee, and/or the Minister considers that the Grantee has not made sufficient progress with the delivery of the Project;
  - 29.1.3 the Grantee uses the Grant or any part thereof for purposes other than those for which it has been granted;
  - 29.1.4 the Grantee has not complied with the authorised Project Stage as set out and/or has moved to deliver a Project Stage which has not been approved for commencement;
  - 29.1.5 the Grantee provides the Minister with any materially misleading or inaccurate information;
  - 29.1.6 in the opinion of the Minister, the Grantee is contributing to significant delay with regard to requirements under this Agreement, including the making available of appropriate documentation for review, or in the event of failure by the Grantee to provide any reports, documentation or returns as required by the terms of this Agreement or requested by the Minister.
  - 29.1.7 if the JTF Project is an element of a larger project and in the opinion of the Minister there are concerns in relation to the viability of the larger project.
  - 29.1.8 in the opinion of the Minister, the Grantee is in breach of any of the terms of this Agreement;
  - 29.1.9 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, bring or are likely to bring the Minister's name or reputation into disrepute;
- 29.2 The Minister reserves the right to disallow claims made – see Schedule 1.
- 29.3 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. If there is an overpayment of the Grant, any overpayment will be deducted from the following claim or a refund will be obtained by the Department.

- 29.4 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.

### **30 TERMINATION**

- 30.1 The Minister may terminate this Agreement without liability for compensation or damages by serving the Grantee ONE (1) month's written notice.
- 30.2 This Agreement may be terminated by the Minister with a notice period of one month if, in the opinion of the Minister:
- 30.2.1 the Grantee is in breach of any of the terms of this Agreement and/or;
  - 30.2.2 the Grantee is contributing to significant delay with regard to requirements under this Agreement including the making available of appropriate documentation for review and/or;
  - 30.2.3 the project has been subject to undue delay in commencement or delivery based on the timeline supplied for the Project by the Grantee.
- 30.3 This Agreement shall automatically terminate:
- 30.3.1 upon the expiry of the Grant Period;
  - 30.3.2 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);
  - 30.3.3 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.
- 30.4 The Grantee may request termination of this Agreement by giving the Minister ONE (1) month's notice in writing and specifying the reasons for termination. This request will be reviewed by the Minister and may or may not be approved.
- 30.5 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.
- 30.6 In the event of this Agreement being terminated, funds provided by way of Grant, which are unspent, or were not spent on the project, or were not used in accordance with the agreed proposals, or are contrary to the conditions outlined above, shall immediately become repayable to the Minister. Repayments will be required to be made to the Minister within two (2) months of the termination of the Agreement. Any money owed will be treated as a debt and may be recovered as a simple contract debt in any court of competent jurisdiction.

### **31 CONSEQUENCES OF TERMINATION**

- 31.1 Upon the termination of this Agreement, the following clauses shall continue in force: 7.4, 7.6, 18.2, 20, 21, 24, 26, 32.

### **32 DISPUTE AND CONFLICT RESOLUTION**

32.1 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.

### **33 NO PARTNERSHIP OR AGENCY**

33.1 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.

33.2 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.

33.3 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.

### **34 AGREEMENT VARIATION**

34.1 The Minister reserves the right to amend and update this Agreement as required.

34.2 No variation of this Agreement shall be effective unless it is in writing and signed by an Official acting on behalf of the Minister.

34.3 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 shall not affect the validity and enforceability of the rest of this Agreement.

### **35 WAIVER**

35.1 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.

### **36 NOTICES**

36.1 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.

36.2 All notices shall be deemed to have been served as follows:

36.2.1 if personally delivered, at the time of delivery;

36.2.2 if sent by post;

36.2.3 if communicated by email, on the next calendar day following transmission.

### **37 GOVERNING LAW**

37.1 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.

**38 AGREEMENT EXECUTION**

38.1 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.

38.2 This Funding Agreement may be executed by way of electronic signature by the Department and the Grantee in the case of the Acceptance. For the avoidance of doubt, each such party (a “Party”) hereby:

38.2.1 Consents to the execution of this Agreement by electronic signature;

38.2.2 Agrees that the use of an electronic signature on this Agreement shall have the same validity and legal effect as the use of a manual signature and is made, in each case, with the intention of authenticating this Agreement and evidencing the Party’s intention to be bound by the terms and conditions contained in the Agreement; and

38.2.3 Agrees that this Agreement will become effective on the date that it is countersigned by the Department (the “Effective Date”).

38.3 The Department will insert the Effective Date where indicated below and provide a copy of the fully executed Funding Agreement to the Grantee upon which it becomes effective.

**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 below.

**GRANTEE**

**SIGNED BY:** \_\_\_\_\_ [being an Officer so authorised by Grantee]

**PRINT NAME:** \_\_\_\_\_

**ORGANISATION NAME:** \_\_\_\_\_

**POSITION:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

In the presence of: \_\_\_\_\_ [Witness]

**PRINT NAME:** \_\_\_\_\_

**POSITION:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**GRANTEE 2:**

Where there are two Grantees, both shall sign this Agreement and assume joint liability, and shall be referred to throughout this Agreement as Grantee in the singular.

**SIGNED BY:** \_\_\_\_\_ [being an Officer so authorised by Grantee]

**PRINT NAME:** \_\_\_\_\_

**ORGANISATION NAME:** \_\_\_\_\_

**POSITION:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

In the presence of: \_\_\_\_\_ [Witness]

**PRINT NAME:** \_\_\_\_\_

**POSITION:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**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

**PRINT NAME:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

In the presence of: \_\_\_\_\_ [Witness]

**PRINT NAME:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

## **SCHEDULE 1 – PAYMENT OF GRANT**

### **Part 1: Overview**

#### **Key Points**

- This Schedule 1 can be altered at any time by Officials acting on behalf of the Minister. Grantees will be notified of any changes to Schedule 1.
- Payments from the Fund will be made over the course of the Project on the basis of milestones achieved by the Grantee and submitting vouched expenses to support the claim;
- Match funding must be spent concurrently alongside JTF Funding. The supporting documentation must evidence spend of the Just Transition Fund Grant (maximum of 85%) and the match funding (minimum of 15%), to total 100% (Total Project Cost).

#### **Payment Schedule**

- Requests for payment can be no more frequently than one request per quarter.
- Grantees are required to complete Appendix 1: Drawdown Request Schedule to indicate the scheduling of annual drawdown requests and linked milestones.
- Claims must be submitted in order i.e. claims should not be made for earlier costs incurred which were claimed during the related quarter, unless a strong rationale can be provided for the delay. For example, if costs were incurred in Q1 2022, these claims should be submitted in Q1 or Q2 2022 drawdown requests and not submitted at a later period.
- The first drawdown request can be made in Q2 2021.
- The last date a request for payment will be accepted [Final Claim Date] is 30 June 2024, to allow for reimbursement of any final Projects costs incurred in late 2023.
- 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.
- The Minister may defer/suspend paying out a claim in the event that the costs have been incurred but the Minister is not satisfied with the level of Project progress.
- Reimbursements will cease when the full JTF grant has been allocated.

#### **Claim Amounts**

- Any individual claim for payment must be for a minimum of 10% and a maximum of 30% of the total Project cost. However, where the Project is a specific deliverable (i.e.a Feasibility Study) for a limited cost and for which one invoice will be submitted (i.e. from the consultancy completing the feasibility study), a higher drawdown request may be allowable. However, in all cases 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 is 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 work or corrective measures.

#### **Evidence of Costs:**

- Payments from the Fund will be made over the course of the Project on the basis of milestones achieved by the Grantee and Grantees submitting vouched expenses to support their claim.

- Where pre-funding<sup>6</sup> was advanced to a Grantee, at the first drawdown request vouched expenditure must be submitted to show that the pre-funding advance was fully used and how. Match funding must be spent concurrently alongside any pre-funding.
- Claimed costs submitted must be inclusive of VAT unless VAT is reclaimable under national VAT legislation. VAT cannot be claimed back if it is reclaimable under national VAT legislation.
- In the event that a claim was overpaid, any overpayment will be deducted from the following claim or a refund will be obtained by the Department.
- Where overhead costs form part of Project costs, these have been entered into the Verification Document at a maximum of 25% of total salary costs. On-going evidence to vouch for overhead expenses may not be required. Where Grantees have salary costs and overhead costs (as per the Verification Document), the agreed percentage rate of the overheads will be automatically applied to each salary costs claim. This is on the basis that the Grantee has already established that the total overhead cost included is reasonable, either through evidencing the likely costs or providing a declaration from their accountant/auditor that they have validated the overhead charge. The overhead rate will have been agreed at validation stage and cannot increase from the agreed rate.
- A sample of claims may be inspected through desk-based and/or on-site visits. This may involve meeting the Grantee to discuss progress and reviewing the technical and financial elements of the Project.

### **Potential Reasons for Disallowances in Claims**

This list presents potential reasons for disallowance of claims but does not purport to cover all scenarios.

#### General Disallowance

- Costs and/or activity were carried out prior to the Project Commencement Date.
- Costs were incurred and/or activity was carried out after the Final Claim Date.
- Costs being claimed which do not relate to the approved JTF Project activity and/or include ineligible activity, e.g. new building costs, purchase of assets over €20,000 where not pre-approved.
- Costs claimed which do not reflect the amounts entered into the final Verification and Confirmation Form and set out in the Final Letter of Offer. and thus are not authorised.
- Excessive costs in any regard.
- Costs claimed which do not reflect the schedule and/or milestones entered into Appendix 1: Drawdown Request Schedule.
- Costs claimed for which there is no or insufficient supporting documentation and/or which are not presented in the format as set out below. Note that the Grantee may not pay sub-contractors or consortium partners in cash under any circumstances.
- Costs are requests for additional funding to cover increased Project costs or additional activities.
- Costs for Project Stages which the Grantee has not been authorised to commence e.g. the Grantee is approved to carry out Stage 1 activities and submits costs relating to Stage 2.
- Costs for a Project which requires a lease/licensing agreement and where no signed lease/licensing agreement has been submitted to the Minister in advance of Project commencement.
- Third party costs which have not actually been paid for or have not been paid for by the Grantee.

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<sup>6</sup> 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 are in place in relation to pre-funding.

- Costs claimed that are already the subject of separate exchequer grants and for the same activity which constitutes double funding.
- Costs being claimed which include profits for the Grantee, dividends and/or interest payments on financial instruments.

Disallowance relating to Cost Categories

- Salary costs are claimed which are not staff of the Grantee.
- Salary costs have been incorrectly calculated and/or are inclusive of Employers PRSI, wages subsidies, bonus, overtime or allowances.
- Overhead costs which are greater than the agreed rate as per the Verification and Confirmation Form.
- Travel & Subsistence claims that exceed the maximum allowable daily rate as per the Verification and Confirmation Form, are greater than the total amount set out in the Verification and Confirmation Form, are not sufficiently evidenced, the purpose of the journey is not clearly linked to Project delivery, or are otherwise deemed to be excessive.
- Training costs/time claimed which are not supported by a matching training record.
- Consultancy and contractor daily costs which exceed the maximum as allowed in the Verification and Confirmation Form and/or the overall maximum amount.
- Construction costs are not verifiable, and/or claims are not supported by Interim/Final Certificates for payment requests, and/or these are not signed off by the appropriate individuals.

## **Part 2: Drawdown Process**

- All requests for drawdown of funds under this Agreement should be made by email to [JTfaccounts@dcca.gov.ie](mailto:JTfaccounts@dcca.gov.ie).
- Each drawdown request should be made in one email with the below documentation included.
- Only electronic/scanned copies of invoices, receipts, documents, time sheets will be accepted - the Grantee should retain the originals for audit purposes.
- Invoices/receipts should be scanned and saved as one PDF file or saved in one ZIP folder and attached to the email.

### **A Signed Letter of Request for the Payment Amount**

This should include the following statements:

- a) That the invoices used to support the claim relate to activities and services appropriate to the Project and delivery of milestones as per Appendix 1;
- b) That the amount of the funds supplied, pursuant to this claims request, have been allocated and expended in conformity with the conditions of this Agreement;
- c) That the amounts invoiced have been paid;
- d) That the invoices have not and will not be used in support of another claim for reimbursement from any other funder(s);
- e) Provide the cumulative payment amount received by the Grantee prior to the claim;
- f) Provide a brief description of upcoming planned Project activities;
- g) Include any other such other information and evidences as relevant or requested by the Minister;
- h) All claims must be certified by the designated authorised individual in the Grantee organisation, at equivalent to Director of Service level.

### **Descriptions and Evidence of Incurred Costs**

This should include the following:

- A schedule listing the evidence of cost i.e. a list of the invoices with a brief description of each;
- A description of the specific activities which have incurred the costs, linking this to attainment of the Project milestones as set out in Appendix 1;
- Evidence of costs in the form of scanned invoices and receipts of payment demonstrating that the expenditure has been incurred. Invoices must be made out in all cases to the Grantee;
- Invoices must state the Ex VAT cost and the applicable VAT rate. Where the Grantee can reclaim VAT under national VAT legislation the Department will only pay the grant on the Ex VAT cost. VAT cannot be claimed if it is reclaimable under national VAT legislation;
- A scanned copy of the Grantee's bank statement showing that the money has been paid out to the supplier and for the matching amount.

### **Additional Requirements for Capital Project Claims**

- Sign-off from the assigned Project Manager/Technical Advisor verifying that the work for which the claim is being made has been completed;
- Each claim must include an (Interim) Certificate for a construction contract. This provides a mechanism for the Grantee to make payments to the contractor before the works are complete. The professional administering the contract will use a standard form produced by their own institution or registration body with wording that is appropriate to the extent of their liability.

The value of Certificates is the value of the work completed, less any amounts already paid, less retention. Certificates for claims must be signed by an external consultant appointed as a project manager on behalf of the Grantee carrying out the project;

- Note that for the final claim in relation to a construction contract, a Final Certificate must be submitted;
- Include photographs and/or video footage of the materials received/the work completed to evidence project progress.

#### Additional Requirements for Current Project Claims

- Include photographs and/or video footage of the work completed on the Project to evidence project progress;
- If the deliverable is a report/research piece, enclose draft and/or final reports;
- If the Project includes capacity building/training events, provide evidence that the event occurred to include sign-in sheets of attendees (if a physical event) or a list of names of attendees (if online event), ensuring each individual has given permission for their name to be recorded and shared in line with GDPR.

#### Additional Requirements for Salary Claims

- Where salary costs are being claimed, the employment contract, a role profile and the relevant payslips of each staff member must be submitted by the Grantee as evidence of incurred salary costs.
- Where staff are not full-time, time sheets for the claim period must be submitted for each staff member. All staff working part-time on the JTF Project must complete work timesheets on a daily basis in respect of the time spent on Project activities as evidence of salary costs. These work timesheets must be approved by the relevant person.
- The maximum contribution to part-time salary costs will be on the basis of the time actually worked as outlined in the timesheets and not as entered into the Verification and Confirmation Form or on the basis of any apportionment policy, if greater.

## **SCHEDULE 2 – THE PROJECT**

This Project is covered by the below documents:

- (Final) Application Form
- Further Information<sup>7</sup> submitted by the Applicant or response to queries
- Provisional Letter of Offer
- (Final) State Aid Costs Template
- (Final) Verification and Confirmation Form
- Appendix 1 and Appendix 2 (as completed and returned)
- Final Letter of Offer
- Change Control Notice (where approved)

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<sup>7</sup> For the avoidance of doubt, all Further Information and Clarifications provided, where applicable to the Project, are deemed to form part of the Project set out in Schedule 2.