



Llywodraeth Cymru
Welsh Government

GUIDANCE

Horticulture Development Scheme: terms and conditions

Explains the scheme terms and conditions.

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Introduction

The terms and conditions of grant for the Horticulture Development Scheme are detailed below. Please read the terms and conditions before you accept the contract.

1. Any reference in the conditions to:

"You", "Your" is to; the name and registered address of grant recipient as detailed in the Contract.

"Beneficiary" and **"Beneficiaries"** is to an operator, body or firm, whether public or private, responsible for initiating, or both initiating and implementing operations or receiving support under the Contract.

"Notification Event" is to any of the events listed in Annex 1.

"Purposes" means the Contract Investment Items.

Any reference to any legislation whether domestic or international law will include all amendments to and substitutions and re-enactments of that legislation in force from time to time.

2. Use of the funding

- (a) You must use the Funding solely for the purposes set out in Contract.
- (b) Any change to the contract will require our written consent which must be obtained from us in advance of implementing any change. Please note that we

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are not obliged to give our consent but we will consider all reasonable written requests.

(c) You must not use any part of the Funding for any kind of activity which in our opinion could bring us into disrepute, including but not limited to (1) party political purposes, (2) the promotion of particular secular, religious or political views; (3) gambling, (4) pornography, (5) offering sexual services, or (6) any kind of illegal activities.

(d) You must not use any part of the Funding for: (1) purchasing capital equipment (other than as specified in the Purposes), (2) your legal fees in relation to the Contract, (3) Costs Incurred or Costs Incurred and Paid by you in the delivery of the Purposes prior to the period referred to in the Contract.

3. Funding pre-conditions

(a) We will not pay any of the Funding to you until you have accepted the Contract on RPW Online within 30 Days of the offer.

(b) Where you are required to provide information and documentation to us as evidence that you have satisfied a particular pre-condition, Condition or in support of a claim, the information and documentation must be in all respects acceptable to us. We reserve the right to reject any information and documentation which is for any reason not acceptable to us, and/or request any further or additional information and/or documentation in support of the request for Funding.

4. How to claim the funding

- a) Funding relates to the period set out in your contract and must be claimed in full by the claim deadline otherwise any unclaimed part of the Funding will cease to be available to you.
- b) You must submit your claims via your RPW Online account with all supporting evidence to be eligible for consideration for payment by the claim deadline.
- c) All items listed must have been purchased to the correct specification and be on the premises at the time you submit your claim.
- d) Supporting invoices, evidence of defrayment, geo-tagged photographs of the item on your premises and evidence of planning permission and SuDS approval (if required) must be submitted in support of your claim via your RPW Online account
- e) We will aim to pay all valid claims as soon as possible following receipt of a valid claim being made in accordance with your Contract, and provided always that the Funding pre-conditions set out in Condition 3 above have been satisfied on both the date of the claim and the date the Funding is to be paid to you:
 - i) the declarations made in Condition 8 below are true and correct and will be true and correct immediately after the relevant Funding has been paid to you; and
 - ii) no Notification Event is continuing or might result from the proposed Funding.

5. World Trade Organisation and Subsidy Control

- i) Subsidies provided under this scheme are considered to be payments under

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an environmental programme, which fall within the scope of Annex II of the World Trade Organisation Agreement on Agriculture (AoA) and have been classified as 'green box'.

ii) As such, these subsidies are exempt from the UK-EU Trade and Cooperation Agreement (TCA) and the interim UK subsidy control regime.

6. Your general obligations to us

You must:

- a) safeguard the Funding against fraud generally and, in particular, fraud on the part of your Personnel and notify us immediately if you have reason to suspect that any fraud within your organisation has occurred or is occurring or is likely to occur whether or not it relates to the Funding. You must also participate in such fraud prevention initiatives as we may require from time to time;
- b) maintain appropriate procedures for dealing with any conflicts of interest in relation to the Funding whether actual, potential or perceived;
- c) comply with all applicable domestic or international laws or regulations or official directives;
- d) maintain adequate insurances to cover against the risks which may arise in connection with any property or any activity undertaken in delivery of the Purposes. We reserve the right to require you to provide proof of your insurance;
- e) maintain appropriate financial, risk and control systems before utilising any part of the Funding to provide a grant to or procure any goods or services from third parties;
- f) co-operate fully with the Welsh Government and with any other consultant

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appointed by us to monitor your use of the Funding and your compliance with the Terms and Conditions;

g) inform us immediately if any of the declarations made in Condition 8 is incorrect in any respect or, if repeated at any time with reference to the facts and circumstances then existing, would be incorrect;

h) notify us of any funding received by you from any source which is procured or utilised in conjunction with the Funding to directly support the Purposes including but not limited to your insurance provider (cancellation/business disruption insurance), and/or any Welsh Government fund/scheme and any other funders. The intention of this Condition is to avoid any duplication of funding in respect of the Purposes.

i) not dispose of, transfer or sell any of the equipment purchased during the project and for five years from the contract end date only with prior written consent of the Welsh Government.

j) You must undertake to meet any statutory obligations such as Health and Safety; employment; hygiene; environmental management and protection; animal or crop health and welfare that apply during the time of this project.

k) meet any obligations in relation to obtaining planning permission, where necessary.

l) consents, licences and permissions have been granted where required.

7. Contract amendments

7.1 Changes to the Contract Terms and Conditions

7.1.1 The Welsh Ministers may need to make changes to this Contract for a number of reasons. For example, we may need to update the management conditions to take account of the latest scientific advice, amend scheme rules to take account of any changes to legislation, amend scheme rules to take account of any Welsh Government Policy changes and revise payment rates, amongst other things.

7.1.2 The Welsh Ministers will publicise the changes in Gwlad Online, on [the Welsh Government's website](#) and where necessary contact Beneficiaries via RPW online accounts

7.1.3 The Beneficiary is required to abide by any changes made to this Contract in the event of any statutory variation or modification of the Regulations and following notification by the Welsh Ministers.

7.2.1 Termination

7.2.1 Termination by Welsh Ministers

The Welsh Ministers may terminate this Contract where changes to Welsh Ministers budgetary provisions necessitate amendments to the operation of the Small Grants Efficiency Scheme.

7.2.2 Termination by the Beneficiary.

In the event that the Beneficiary terminates this Contract prior to the expiry of the term of the commitment, the Welsh Ministers, in accordance with the

Regulations will take recovery action for payments made to the Beneficiary under the Contract with interest.

8. Declarations

You declare that:

(a) you have the power to enter into and to perform the obligations set out in the Terms and Conditions and you have taken all necessary action to authorise the entry into and performance of the obligations under the Terms and Conditions;

(b) no limit on your powers will be exceeded as a result of claiming the Funding, or the grant of any security contemplated by the Terms and Conditions;

(c) the entry into and performance by you of, and the transactions contemplated by, the contract do not and will not contravene or conflict with:

1. your constitutional documents;
2. any agreement or instrument binding on you or your assets or constitute a default or termination event (however described) under any such agreement or instrument; or
3. any law or regulation or judicial or official order, applicable to you;

(d) no Notification Event is continuing or might reasonably be expected to result from the provision of the Funding and no other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination thereof, would constitute) a default or termination event (howsoever described) under any other agreement or instrument which is binding on you or to which any of your assets is subject;

(e) no litigation or arbitration or administrative proceeding is current or pending

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or, so far as you are aware, threatened, which has or could have an adverse effect on your ability to perform and comply with any of the Terms and Conditions;

(f) you have disclosed to us all material facts or circumstances which need to be disclosed to enable us to obtain a true and correct view of your business and affairs (both current and prospective) or which ought to be provided to any person who is considering providing funding to you;

(g) you have not artificially created the conditions required to obtain the funding

(h) any information, in written or electronic format, supplied by you to us in connection with the Funding was, at the time it was supplied or at the date it was stated to be given (as the case may be):

1. if it was factual information, complete, true and accurate in all material respects;
2. if it was an opinion or intention, made after careful consideration and was fair and made on reasonable grounds; and
3. not misleading in any material respect, nor rendered misleading by a failure to disclose other information,

except to the extent that it was amended, superseded or updated by more recent information supplied by you to us.

(i) there are no conflicts of interest in relation to the Funding whether actual, potential or perceived;

(j) acceptance of this award of Funding will not result in duplicate funding in respect of the activities required to deliver the Purposes. This includes but is not limited to any payments received by you in relation to the effects of the spread of the Coronavirus (COVID-19) from your insurance provider (cancellation/ business disruption insurance), and/or any Welsh Government fund/scheme and

any funders.

(k) You will be deemed to repeat the declarations in this Condition 8 on each date you may have any liability to repay the award of Funding to us, and by reference to the facts and circumstances existing on each such date.

9. Notification Events and their consequences

(a) You must notify us immediately if a Notification Event has occurred or is likely to occur but we also reserve the right to notify you where we believe a Notification Event has occurred or is likely to occur.

(b) We will either:

- i) notify you that we, at our absolute discretion, consider the Notification Event is not capable of remedy; or
- ii) if we consider, at our absolute discretion, that the Notification Event is capable of being remedied, seek to discuss the Notification Event with you with a view to agreeing a course of action to be taken to address the Notification Event.

(c) We will be entitled to take any of the actions listed in Condition 9(d) if:

- i) despite our efforts we have been unable to discuss the Notification Event with you; or
- ii) we notify you that the Notification Event is not, in our opinion, capable of remedy; or
- iii) a course of action to address and/or remedy the Notification Event is not agreed with you; or
- iv) a course of action to address and/or remedy the Notification Event is agreed with you but you fail to follow it, or any conditions attached to it are not met (including without limitation the timescale for such course of action) to our satisfaction; or
- v) the course of action fails to remedy the Notification Event to our satisfaction.

(d) If any of the circumstances set out in Condition 9(c) occurs we may, at our absolute discretion, by notice to you:

- i) withdraw the award of Funding; and/or
- ii) require you to repay all or part of the Funding with interest; and/or
- iii) suspend or cease all further payment of Funding; and/or
- iv) make all further payments of Funding subject to such conditions as we may specify; and/or
- v) deduct all amounts owed to us under the Terms and Conditions from any other funding that we have awarded or may award to you; and/or
- vi) exercise any other rights against you which we may have in respect of the Funding and or
- vii) prohibit you from entering a new undertaking or new agreement for a period not exceeding two years from the date of termination.

(e) Interest shall be calculated for the period elapsing between the payment deadline for the Beneficiary indicated in the recovery order, which shall not be set at more than 60 days, and the date of either repayment or deduction.

All repayments of Funding must be made to us within 60 days of the date of our demand.

10. Monitoring requirements

You must:

- (a) provide us with such documents, information and reports which we may reasonably require from time to time in order for us to monitor your compliance with the Terms and Conditions
- (b) meet with the Welsh Government and such other of our representatives as we may from time to time reasonably require.

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- (c) You must allow officials from Welsh Government, or their representatives, to inspect the items purchases within a five year period.
- (d) site visits will be made on a percentage of the projects approved within five years following final completion (Project End Date) to ensure the applicant still has and is using the equipment purchased with the grant and that the business is performing as expected.
- (e) it will be a requirement of the grant award that equipment purchased with the aid of a grant must be kept in situ, operational and in good repair, and used for the same purpose as set out in the original application, for at least five years from the date of completion of the project as set out in the contract. This is to ensure the longevity of the project and to guarantee primary producers a lasting share of the project's benefits.

11. Audit requirements

(a) You must:

- i) maintain complete, accurate and valid accounting records identifying all income and expenditure in relation to the Purposes;
- ii) without charge, permit any officer or officers of the Welsh Government, Audit Wales or any UK subsidy enforcement body at any reasonable time and on reasonable notice (in exceptional circumstances, such as the prevention or detection of fraud, it may not be practicable to provide you with reasonable notice) being given to you to visit your premises and/or to inspect any of your activities and/or to examine and take copies of your books of account and such other documents or records howsoever stored as in such officer's reasonable view may relate in any way to your use of the Funding. This undertaking is without prejudice and subject to any other statutory rights and powers exercisable by the Welsh Government, Audit Wales or any UK subsidy

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enforcement body or any officer, servant or agent of any of the above;

iii) retain all original documents relating to the Funding for 5 years after the final scheme payment.

iv) render all reasonable assistance to an authorised person in relation to the Contract. If an Authorised Person considers it necessary, the Beneficiary shall accompany an Authorised Person.

v) Consent to the Welsh Ministers contacting other relevant authorities to seek disclosure of information pursuant to any enquiries which the Welsh Ministers may wish to make to verify information supplied by the Beneficiary.

(b) Under paragraph 17 of Schedule 8 to the Government of Wales Act 2006 the Auditor General for Wales has extensive rights of access to documents and information relating to monies provided by the Welsh Government. They and their officials have the power to require relevant persons who control or hold documents to give any assistance, information and explanation that they may require; and to require those persons to attend before them for such a purpose. The Auditor General and their staff may exercise this right at all reasonable times.

12. Third party obligations

a. Nothing in the Terms and Conditions imposes any liability on us in respect of any liability incurred by you to any third party (including, without limit, employees and contractors).

b. You must indemnify us against any liabilities, claims, proceedings, demands, losses, costs and expenses suffered or incurred by us directly or indirectly arising as a result of or in connection with any failure by you to perform fully or in part any obligation you may have to a third party.

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13. Intellectual property rights and publicity

- (a) Nothing in the Conditions transfers to us any rights in any intellectual property created by you as a result of the Purposes.
- (b) You agree that from the date of the contract until 5 years from the date of the final payment of Funding we may include details about your organisation and business, the Funding and the Purposes in Welsh Government promotional materials and you further agree to cooperate with our reasonable requests to achieve the production of such materials.

14. Special conditions

You must comply with any special conditions listed in the contract otherwise no special conditions apply.

15. Competitive tendering and procurement

a) You must follow the Welsh Government guidance and requirements for Competitive Tendering and Procurement via the following:

- [Competitive Tendering and Public Procurement - Technical Guidance Notes](#)
- [Competitive Tendering and Public Procurement - Register and Record](#)

b) The grant paid on goods or services may be reclaimed in full or in part if it is found subsequently that the competitive tendering requirements have not been met.

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16. Privacy Notice: Welsh Government Grants

This notice informs the Beneficiary about the Welsh Ministers' use of the information held and obtained in relation to this Contract or any other document which is used, created or obtained in connection with this Contract.

It also explains the Welsh Government's processing and use of your personal data and your rights under the General Data Protection Regulation.

The Welsh Government will be data controller for any personal data you provide in relation to your grant application or request for grant funding. The information will be processed as part of our public task (i.e. exercising our official authority to undertake the core role and functions of the Welsh Government) and will help us assess your eligibility for funding.

Before we provide grant funding to you, we undertake checks for the purposes of preventing fraud and money laundering, and to verify your identity. These checks require us to process personal data about you to third party fraud prevention agencies.

If we, or a fraud prevention agency, determine that you pose a fraud or money laundering risk, we may refuse to provide the grant funding you applied for, or we may stop providing existing grant funding to you.

A record of any fraud or money laundering risk will be retained by the fraud prevention agencies, and may result in others refusing to provide services, financing or employment to you.

In order to assess eligibility we may also need to share personal information relating to your application with:

- Natural Resources Wales

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- Animal and Plant Health Agency
- Veterinary Medicine Directorate
- Welsh Local Authorities
- Food Standards Agency Wales
- DEFRA
- Other UK Government Agriculture Offices.
- Regulatory authorities, such as HM Revenue and Customs, Local Authorities, Health and Safety Executive and the Police.

We may also share your information with organisations which deliver training, knowledge transfer and innovation advice and support on behalf of the Welsh Government for the purposes of appropriate targeting of support.

Your information, including your personal information, may be the subject of a request by another member of the public. When responding to such requests the Welsh Government may be required to release information, including your personal information, to fulfil its obligations under the Freedom of Information Act 2000, the Environmental information Act 2004 or the Data Protection Act 2018.

The Welsh Government will publish details of the amounts paid to Rural Support beneficiaries. Data will be published for all beneficiaries on a searchable website, and will include the name and locality of the farmer/land manager and details of the amounts and schemes for which subsidy has been paid. However, for those receiving less than the equivalent of £1,250 in subsidies the name will be withheld. The data will be published annually on 31 May and remain available for two years from the date it is published. The information will be available on the Defra website at: <https://cap-payments.defra.gov.uk/Default.aspx>

We will keep personal information contained in files in line with our retention policy. If successful in your application then your personal data will be kept for 7 years after the date when you, as grant recipient, are free from all conditions relating to the grant awarded and all payment have been made. If you are

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unsuccessful, your details will be kept for one year after the date you provided them.

Under the data protection legislation, you have the right:

- to access the personal data the Welsh Government holds on you
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to lodge a complaint with the Information Commissioner's Office (ICO) who is the independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

Email: dataprotectionofficer@gov.wales

The contact details for the Information Commissioner's Office are:

2nd Floor, Churchill House
Churchill Way
Cardiff
CF10 2HH

Telephone: 0330 414 6421

Website: <https://ico.org.uk/>

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17. Interpretation

The paragraph headings are inserted for convenience of reference only and shall not in any way affect the construction meaning or effect of anything contained in this Contract or govern the rights and liabilities of the parties.

18. Giving notice

Where notice is required to be given under the Conditions it must be in writing in the form of a letter with a topic heading of “**Notice in relation to the xxxx**” via your RPW Online account.

A notice will be deemed to have been properly given as follows:-

By RPW Online: upon transmission or the next Business Day if after 4pm or on a weekend or public holiday.

19. Equality

You must have in place and apply equality policies covering employment, use of volunteers and provision of services, in accordance with the Equality Act 2010.

20. Welsh language

(a) The Welsh Government is committed to supporting the Welsh language and culture and The Cymraeg 2050: A million Welsh speakers Welsh language strategy (Cymraeg 2050) provides a vision for the growth and further

development of the Welsh language.

(b) Where the Purposes include or relate to the provision of services in Wales, they must be provided in Welsh and English unless it would be unreasonable or disproportionate to do so. They must be provided in such a way as to not treat the Welsh language less favourably than English, in accordance with the Welsh Language (Wales) Measure 2011.

(c) Where the provision of services forms part of the Purposes, you must act in accordance with the Welsh Language (Wales) Measure 2011 and the aims of Cymraeg 2050. In practice, this will include the following:

- i) Ensure that any written material produced, including digital material, is bilingual.
- ii) Ensure that any signage is bilingual.
- iii) Ensure that any training or public events are held bilingually.
- iv) Actively promote and facilitate the Welsh language (including providing services and increasing opportunities to use the Welsh language) within funded activities.

For general advice on providing services bilingually and for information on which organisations are able to support you, please contact the Welsh language advice service “Helo Blod” on 03000 258888 or e-mail heloblod@gov.wales with your query.

21. Sustainable development

Your use of the Funding must contribute to the achievement of the Welsh Government’s well-being objectives contained in the Welsh Government’s Programme for Government. You must work in a sustainable way (sustainable development principle) in delivering the Purposes so as to ensure you are working in a preventative, integrated, long-term and collaborative way that involves people that reflect the diversity of Wales.

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22. Welsh Ministers' functions

You acknowledge that the Welsh Ministers have a range of functions which will continue to accrue and be amended and that decisions in relation to each such function are obliged to be taken in the light of all relevant and to the exclusion of all irrelevant considerations. You agree that nothing contained or implied in, or arising under or in connection with, the Terms and Conditions will in any way prejudice, fetter or affect the functions of the Welsh Ministers or any of them nor oblige the Welsh Ministers or any of them to exercise, or refrain from exercising, any of their functions in any particular way.

23. General

- (a) If at any time any of the Terms and Conditions are deemed to be or become invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.
- (b) No failure or delay on our part to exercise any power, right or remedy under the Terms and Conditions will operate as a waiver of any such power, right or remedy or preclude its further exercise or the exercise of any other power, right or remedy. The powers, rights or remedies hereby provided are cumulative and not exclusive of any powers, rights or remedies provided by law.
- (c) Any amendment or variation to the Terms and Conditions must be in writing and signed by us and you in the same manner as the Contract (or as otherwise agreed by us in writing from time to time).
- (d) You may not assign or otherwise dispose of in any way your rights, benefits, obligations or duties under the Conditions.
- (e) Conditions 6,9,11,13, 16,23(e) of the Terms and Conditions and such other Conditions which by implication need to continue in force beyond the final payment of Funding will so continue in full force and effect.

(f) The award of the Funding is to you alone and no one else is entitled to make any claim in respect of the Funding or seek to rely on or enforce any of the Terms and Conditions.

(g) In circumstances where you comprise two or more persons or bodies, the liabilities of such persons or bodies shall be joint and several and the default of one of such persons or bodies shall be deemed to be the default of all.

(h) The Terms and Conditions and any disputes or claim (including any non-contractual disputes or claims) arising out of or in connection with its formation or its subject matter are to be governed by and construed in accordance with the laws of Wales and England as applied in Wales and the parties hereto submit to the exclusive jurisdiction of the courts of Wales and England.

Annex 1

Notification Events

The Notification Events referred to in Condition 9 are listed below:

1. repayment of any part of the Funding is required in accordance with any relevant legislation;
2. you fail to comply with any of the Terms and Conditions;
3. you fail to comply with the Scheme Rules
4. the Funding, in full or in part, is not being used for the Purposes;
5. you fail to achieve any or all of the Purposes within the Contract;
6. there is unsatisfactory progress towards completing the Purposes within the Contract;
7. you fail to provide information about the Purposes requested by us or any UK subsidy enforcement body or any of its auditors, agents or representatives;
8. we have reason to believe that you and/or any of your Personnel are involved in fraudulent activity or have been involved in fraudulent activity [whilst the Purposes are/were being carried out];

9. we have made an overpayment of Funding to you;
10. there is a duplication of funding in respect of any part of the Purposes. This includes but is not limited to any payments received by you in relation to the effects of the spread of the Coronavirus (COVID-19) from your insurance provider (cancellation/business disruption insurance), and/or any Welsh Government fund/scheme
11. any declaration made in Condition 8 is, or proves to be, incomplete untrue or misleading incorrect in any respect or, if repeated at any time with reference to the facts and circumstances then existing, would be incorrect;
12. an event or circumstance has occurred and is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination thereof, would constitute) a default or termination event (howsoever described) under any other agreement or instrument which is binding on you or to which any of your assets is subject;
13. a moratorium in respect of all or any of your debts or assets or a composition or an agreement with your creditors is agreed, applied for, ordered or declared;
14. you stop or suspend payment of any debts or are unable, or admit in writing your inability, to pay your debts as they fall due;
15. the value of your assets is less than your liabilities (taking into account contingent and prospective liabilities);
16. you commence negotiations, or enter into any composition, compromise, assignment or arrangement, with one or more of your creditors with a view to rescheduling any of your indebtedness (because of actual or anticipated financial difficulties).
17. any action, proceedings, procedure or step is taken in relation to you in relation to:
 - (a) the suspension of payments, a moratorium in respect of any indebtedness, winding up, dissolution, administration or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise); or
 - (b) a composition, compromise, assignment or arrangement with any of your

creditors; or

(c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of you or any of your assets.

18. a statutory demand is issued against you;

19. you cease, or threaten to suspend or cease, to carry on all or a material part of your business;

20. there is a change in your constitution, status, control or ownership and/or your external auditors resign;

21. you fail to comply with any statutory reporting obligations which are applicable to you (including, but not limited to, filing requirements at Companies House, the Charity Commission, the Financial Conduct Authority);

22. there is any change, whether permanent or temporary, in your shareholders, directors, trustees or partners and/or Personnel which may affect your ability to deliver the Purposes;

23. any event occurs or circumstances arise which in our opinion gives reasonable grounds for believing that providing the Funding and/or the continuation of the arrangements contemplated by the Contract could bring us into disrepute;

24. any event occurs or circumstances arise which in our opinion gives reasonable grounds for believing that you may not, or may be unable, to perform or comply with any of your obligations under the Terms and Conditions.

Version

Version 1: September 2022

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