

DATED \_\_\_\_\_ 2015

GLOUCESTERSHIRE COUNTY COUNCIL (1)

- and -

[INSERT NAME OF PROMOTER] (2)

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**LOCAL GROWTH CAPITAL FUNDING AGREEMENT**

Financial Period [XXXXXX] to [XXXXXX]

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Legal Services  
Gloucestershire County Council  
Shire Hall, Westgate Street  
Gloucester  
GL1 2TG

THIS DEED is dated \_\_\_\_\_ 2015

**PARTIES**

- (1) **GLOUCESTERSHIRE COUNTY COUNCIL** whose principal address is at Shire Hall, Gloucester, Gloucestershire GL1 2TG (the “Authority”); and
- (2) **[INSERT NAME OF PROMOTER]** (company number: [XXXXXX]) whose registered address is at [XXXXXXXXXXXXXXXXXXXXXXXXXXXX] (the “Promoter”).

**WHEREAS:**

- (A) It is acknowledged that the Authority is the “accountable body” for the Local Growth Funding described hereunder.
- (B) The Authority has agreed to pay the said Local Growth Capital Funding to the Promoter for the purposes of the Promoter procuring the delivery of the Project.
- (C) The Authority and the Promoter are entering into this Agreement in order to record the terms and conditions on and subject to which their respective obligations hereunder in respect of the Local Growth Capital Funding will be discharged during the Funding Period.

**AGREED TERMS**

**1. DEFINITIONS**

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

“**2015 Regulations**”: the Public Contracts Regulations 2015 (and any statutory modification thereto or re-enactment thereof).

“**Budget and Project Plan**”: the budget and project plan set out in Schedule 5.

“**Capital Expenditure**”: capital expenditure net of recoverable VAT and associated expenditure (for example architect’s fees) in respect of an item with an expected life of more than one year.

“**Commencement Date**”: [INSERT LOCAL GROWTH CAPITAL FUNDING AWARD DATE].

“**HM Government**”: Her Majesty’s Government.

“**Environmental Law**”: EU law and all other applicable laws and regulations as well as applicable international treaties of which a principal objective is the preservation, protection or improvement of the environment.

**“Fixed Asset”**: any asset that consists of land and/or buildings, plant, machinery or other thing that is, or is to be, fixed to any land and which is to be acquired, developed, enhanced, constructed and/or installed as part of the Project.

**“Funding Payment Request Dates”**: the Growth Hub Funding payment request dates specified in the funding payment procedure set out in Schedule 4.

**“Funding Payment Request Form”**: a funding payment request form in the format specified in Schedule 1 submitted by the Promoter to the Authority in respect of a Local Growth Capital Funding Instalment in accordance with the funding payment procedure set out in Schedule 4.

**“Funding Manager”**: the individual who has been nominated to represent the Authority for the purposes of this Agreement.

**“Funding Period”**: the period for which the Local Growth Capital Funding is provided commencing on the Commencement Date and expiring on [XXXXXX] unless terminated earlier in accordance with the terms of this Agreement or extended pursuant to clause 4.9.

**“Half Year”** means the period of 6 consecutive months commencing on the Commencement Date and each successive period of 6 months thereafter and the use of the term **“Half Yearly”** shall be construed accordingly.

**“Intellectual Property Rights”**: all patents, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and Know-How however arising for their full term and any renewals and extensions.

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

**“Local Growth Capital Funding”**: the sum of £[●●●● (●WORDS● pounds)] to be paid by the Authority to the Promoter in accordance with this Agreement.

**“Local Growth Capital Funding Instalments”**: the Local Growth Capital Funding Instalments specified in Schedule 4, each of which is a **“Local Growth Capital Funding Instalment”**.

**“Major Asset”**: an asset which is not a Fixed Asset but has a value as at the date of this Funding Agreement (or date of acquisition if the acquisition is funded Local Growth Capital Funding) of at least £2,000 (two thousand pounds) or £1,000 (one thousand pounds) for IT equipment.

**“Prohibited Act”** means:

- (a) offering, giving or agreeing to give to any servant of the Authority any gift or consideration of any kind as an inducement or reward for:
  - (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Authority; or
  - (ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Authority;
- (b) entering into this Agreement or any other contract with the Authority where a commission has been paid or has been agreed to be paid by the Promoter or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority;
- (c) committing any offence:
  - (i) under the Bribery Act 2010;
  - (ii) under legislation creating offences in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Authority; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Authority.

**“Project”**: [INSERT PROJECT DETAILS] more particularly described in Schedule 3.

**“Project Manager”**: the person appointed by the Promoter to act on behalf of the Promoter for all purposes connected with this Agreement.

**“Project Specific Conditions”** : the project specific conditions (if any) set out in Schedule 2.

**“Quarter”**: a period of 3 consecutive months. **“Quarterly”** shall be construed accordingly.

**“Regulatory Bodies”**: those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt

with in this Agreement or any other affairs of the Authority and "**Regulatory Body**" shall be construed accordingly;

- 1.2 References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted.
- 1.3 References to the singular shall include the plural and *vice versa*.
- 1.4 References to any gender shall include all genders.
- 1.5 References to clauses and Schedules are to clauses or sub-clauses, and schedules in this Agreement. References in any Schedule to paragraphs are to paragraphs or sub-paragraphs in that Schedule and references to this Agreement shall include the Schedules.
- 1.6 In the event of a conflict between the clauses and the Schedules to this Agreement, the clauses shall prevail.

## 2. **PURPOSE OF LOCAL GROWTH CAPITAL FUNDING**

- 2.1 The Promoter shall during the Funding Period use the Local Growth Capital Funding only for Capital Expenditure for the purposes of procuring the delivery of the Project. The Local Growth Capital Funding shall not be used for any other purpose without the prior written agreement of the Authority.
- 2.2 The Promoter shall not make any material change to the Project without the Authority's prior written agreement.

## 3. **PAYMENT OF LOCAL GROWTH CAPITAL FUNDING**

- 3.1 Payment of the Local Growth Capital Funding by the Authority to the Promoter is subject to and conditional upon the Authority first receiving funding of a sum equal to the Local Growth Capital Funding from the Department for Communities and Local Government for the purposes of funding the Project.
- 3.2 Subject to clauses 3.1 and 15, the Authority shall pay the Local Growth Capital Funding to the Promoter in accordance with the funding payment procedure set out in Schedule 4.
- 3.3 No Local Growth Capital Funding shall be paid unless and until the Authority is satisfied that such payment will be used for proper expenditure in procuring the delivery of the

Project in accordance with the terms and conditions of this Agreement and the Project Specific Conditions (if any).

- 3.4 The amount of the Local Growth Capital Funding shall not be increased in the event of any change to the Project pursuant to clause 2.2 or in the event any overspend by the Promoter in procuring the delivery of the Project.
- 3.5 The Promoter shall promptly repay to the Authority any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid in respect of a Local Growth Capital Funding Instalment or where Local Growth Capital Funding monies have been paid in error before all conditions attaching to the Local Growth Capital Funding have been complied with by the Promoter. Any such monies, whether disclosed by a report or otherwise, must be refunded forthwith to the Authority on its first demand or upon the Promoter becoming aware that a Local Growth Capital Funding Instalment has been overpaid, whichever first occurs.

#### **4. USE OF LOCAL GROWTH CAPITAL FUNDING**

- 4.1 The Local Growth Capital Funding shall be used by the Promoter only for Capital Expenditure net of recoverable VAT for the purposes of procuring the delivery of the Project during the Funding Period in accordance with the terms and conditions of this Agreement, the Project specification set out in Schedule 3 and the agreed Budget and Project Plan set out in Schedule 5.
- 4.2 It is agreed and acknowledged that the Local Growth Capital Funding constitutes “state resources” for the purposes of the European Commission’s State Aid rules from time to time.
- 4.3 If and to the extent the Promoter uses any of the Local Growth Capital Funding during the Funding Period to make payments to any third party, or if it transfers assets acquired using any of the Local Growth Capital Funding to any third party (where the term “third party” shall include, without limitation, any holding company or subsidiary from time to time of the Promoter or any subsidiary of any such holding company) the Promoter shall comply with (as applicable):
- (a) the European Commission’s State Aid rules from time to time; and
  - (b) the 2015 Regulations (or any regulations which amend, extend, consolidate or replace the same);

as though the Promoter is a contracting authority (as such term is defined in regulation 2(1) of the 2015 Regulations). For the avoidance of doubt, if the Promoter is a contracting authority (as such term is defined in regulation 2(1) of the 2015 Regulations) then it shall at all times comply with its obligations under the European Commission's State Aid rules from time to time and the 2015 Regulations (or any regulations which amend, extend, consolidate or replace the same).

- 4.4 Notwithstanding anything to the contrary in this Agreement, if and to the extent the aggregate value of any goods and/or services that the Promoter wishes to procure from any third party (where the term "third party" shall include, without limitation, any holding company or subsidiary from time to time of the Promoter or any subsidiary of any such holding company) during the Funding Period using the Local Growth Capital Funding will exceed the relevant procurement threshold prescribed under the 2015 Regulations from time to time the Promoter shall procure all such goods and/or services in accordance with the 2015 Regulations as though the Promoter is a "contracting authority" as defined in the 2015 Regulations. For the avoidance of doubt, if the Promoter is a contracting authority (as such term is defined in the 2015 Regulations) then it shall at all times comply with its obligations under the 2015 Regulations (or any regulations which amend, extend, consolidate or replace the same) in respect of the procurement of goods and/or services.
- 4.5 The Promoter shall if required by the Authority provide a written report detailing the procurement practices adopted by the Promoter in the delivery of the Project to include (without limitation) details of how tenders have been assessed and tenderers have been selected.
- 4.6 Without prejudice to clause 2.1, the Promoter shall **not** during the Funding Period use any of the Local Growth Capital Funding to:
- (a) pay for any expenditure commitments of the Promoter entered into before the Commencement Date without the prior written consent of the Authority;
  - (b) use any of the Local Growth Capital Funding in breach of clauses 2 or 4.1;
  - (c) make payments to any third party and/or transfer assets acquired using any of the Local Growth Capital Funding in breach of clause 4.3;
  - (d) procure any goods and/or services in breach of clause 4.4 or clause 4.7;
  - (e) fund any revenue costs;

- (f) pay for any overheads allocated or apportioned at rates materially in excess of those used for any similar work procured by the Promoter;
- (g) pay for any for activity of a political nature; or
- (h) balance sheet provisions.

4.7 The Promoter shall procure the delivery of the Project in such a manner that:

- (a) assists in improving the economic, social and environmental well being for the relevant area as defined in the Public Services (Social Value) Act 2012 and abide by any specific requirements of Authority policies relating to social value;
- (b) provides “best value” as described in the Local Government Act 1999 and the Promoter shall co-operate with all reasonable requests from the Authority which the Authority considers necessary in order to secure continuous improvement in the way in which the Project is delivered having regard to a combination of economy, efficiency and effectiveness.

4.8 The Promoter shall not spend any part of the Local Growth Capital Funding after the expiry of the Funding Period. If any part of the Local Growth Capital Funding remains unspent at the end of the Funding Period the Promoter shall ensure that all such unspent monies are returned to the Authority forthwith unless the Authority has agreed to extend the Funding Period in accordance with clause 4.9 and Provided that such unspent monies are used for purposes which have been agreed in writing between the Authority and the Promoter. Should any part of the Local Growth Capital Funding remain unspent at the end of the Funding Period an explanation therefor shall be provided by the Promoter to the Authority together with a timeline detailing the expected date(s) on which such Local Growth Capital Funding shall be spent.

4.9 The Authority may at its sole discretion extend the Funding Period by a period not exceeding 12 (twelve) months by it giving the Promoter written notice of such extension.

## **5. PROVISIONS RELATING TO FIXED ASSETS AND MAJOR ASSETS**

### **5.1 Inventory of the Fixed Assets and Major Assets**

- (a) If and to the extent that the Project involves the purchase of any Major Assets or Fixed Assets funded by the Local Growth Capital Funding, the Promoter must establish and maintain an inventory of each such asset which details the following:

- (i) date of acquisition of that asset;
- (ii) description of the asset;
- (iii) price paid net of recoverable VAT;
- (iv) location of the asset;
- (v) serial or identification numbers;
- (vi) location of the title deeds (where relevant) of the asset;
- (vii) date and proceeds (net of VAT) of any disposal of that asset; and
- (viii) the name and address of any person to whom a disposal of that asset is made.

## 5.2 Disposals of Major Assets and Fixed Assets

- (a) The Promoter must not dispose of any interest in any Major Asset or Fixed Asset without the prior written consent of the Authority. If the Authority provides its consent to such disposal, such consent may be subject to satisfaction of certain preconditions.
- (b) All disposals of Major Assets and/or Fixed Assets must be for a consideration which is the best that can reasonably be obtained in the open market, on an arm's length basis, on normal market terms, at the time of such disposal.
- (c) Where the Promoter disposes of any interest in any Major Asset or Fixed Asset without the prior written consent of the Authority, then the proceeds of the Disposal (limited to the total amount paid by the Authority to the Promoter under this Funding Agreement) shall be immediately payable to the Authority and may be recovered as a contractual debt if not paid within 20 Working Days of the date on which the proceeds of the disposal are received.

## 6. ACCOUNTS AND RECORDS

- 6.1 The Promoter shall operate an open book accountancy policy and keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of all Local Growth Capital Funding monies.
- 6.2 The Promoter shall keep a separate, accurate and up-to-date record of:

- (a) all payments made to third parties under clauses 4.3 and/or 4.4, detailing the recipients of such payments; the purpose of each such payment; the goods and/or services provided in consideration of such payments; and the total aggregate value of all payments paid and payable to each such third party; and
- (b) all contracts entered into by the Promoter with third parties (where the term “third parties” shall include, without limitation, any holding company or subsidiary from time to time of the Promoter or any subsidiary of any such holding company) using any of the Local Growth Capital Funding as consideration therefore.

6.3 The Promoter shall keep all invoices, receipts, procurement documentation, contract records, and accounts and any other relevant documents relating to the expenditure of the Local Growth Capital Funding for a period of at least ten (10) years following receipt by the Promoter of such Local Growth Capital Funding and the Authority, HM Government and the European Commission shall have the right to review and take copies of the same at the Authority's or (as appropriate) HM GOVERNMENT's or the European Commission's reasonable request.

6.4 The Promoter shall comply and facilitate the Authority's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Authority in relation to the Local Growth Capital Funding.

**7. MONITORING AND REPORTING**

7.1 The Promoter shall appoint a Project Manager. Any notice, information, instruction or other communication given or made to the Project Manager shall be deemed to have been given or made to the Promoter.

7.2 The Promoter shall forthwith give notice in writing to the Authority of the identity, address, email address and telephone numbers of the person appointed as its Project Manager and of any subsequent appointment to such role.

7.3 The Promoter shall closely monitor the delivery and success of the Project throughout the Funding Period to ensure that the aims and objectives of the Project and the milestones/deliverables specified in the Budget and Project Plan are being met and that this Agreement is being adhered to.

7.4 The Promoter shall within one month following the last day of each [Half Year] OR [Quarter] provide to the Authority a report in a form stipulated by the Authority which details:

- (a) the progress of the Project against the milestones/deliverables set out in the Budget and Project Plan;
- (b) the Promoter's defrayed costs compared to the forecast set out in the agreed Budget and Project Plan set out in Schedule 5 for that [Half Year] OR [Quarter];
- (c) an accurate and up to date record of the information specified in clause 6.2(a) for the relevant [Half Year] OR [Quarter];
- (d) the Promoter's aggregate spend under each of the contracts described in clause 6.2(b) in the relevant [Half Year] OR [Quarter]; and
- (e) a copy of the asset inventory described in clause 5.1.

7.5 In relation to the Local Growth Capital Funding, the Authority and/or HM Government and their respective representatives and advisers shall have the right to inspect the Project (to include, without limitation, site inspection visits) at any time and from time to time and to require such further information to be supplied as they see fit. Such further information may include but is not limited to information concerning the financial position of the Promoter. Reasonable notice shall be given by the Authority of its intention to carry out such visits. In addition the Authority and/or HM Government and their respective representatives and advisers shall have the right to call meetings with the Promoter if necessary.

7.6 The Promoter shall on request provide the Authority with such further information, explanations and documents as the Authority may reasonably require in order for it to establish whether the Local Growth Capital Funding has been used properly in accordance with this Agreement.

7.7 The Promoter shall provide the Authority with a final report on completion of the Funding Period which shall confirm whether the Project has been successfully and properly completed.

7.8 The Promoter shall inform the Authority promptly in writing of any cessation of work on the Project and of any event or circumstance likely to affect significantly the satisfactory completion of the Project.

7.9 *If* the Promoter has any grounds for suspecting any financial irregularity in the use of any amount paid under this Agreement, it must notify the Authority immediately, explain what steps are being taken to investigate the suspicion, and keep the Authority informed about the progress of the investigation. For these purposes "financial irregularity" includes fraud or other impropriety; mismanagement; use of Local Growth Capital Funding for improper

purposes; and failure to comply with the requirements set out in this Agreement. The Authority or its representatives shall be entitled to interview employees of the Promoter if fraud or other financial irregularity is suspected by the Authority on the part of the Promoter.

7.10 The Promoter shall provide to the Authority on each anniversary of the Commencement Date a statement of assurance in the form set out in Schedule 6 confirming that the Local Growth Capital Funding has been used in accordance with clause 4.

## 8. **AUDITS**

8.1 Subject to clause 8.2, except where an audit is imposed on the Authority by a Regulatory Body, the Authority may, not more than once in any Half Year conduct an audit for the following purposes:

- (a) to verify the accuracy and completeness of the reports and information produced by the Promoter pursuant to clauses 6 and 7;
- (b) to review any books of account kept by the Promoter in connection with the Project and the performance of its obligations under this Agreement;
- (c) to monitor and evaluate the Promoter's fulfilment of its obligations in accordance with the terms and conditions of this Agreement;
- (d) to carry out the audit and certification of the Authority's accounts; and
- (e) to ensure that the Promoter is complying with clause 4 hereto.

8.2 Notwithstanding clause 8.1, the Authority may conduct audits more frequently than once in any Half Year if such audits are conducted in respect of a suspected fraud.

8.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Promoter or delay the Project.

8.4 Subject to the Authority's obligations of confidentiality, the Promoter shall provide the Authority (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information and records requested by the Authority within the permitted scope of the audit;
- (b) reasonable access to any premises controlled by the Promoter;
- (c) access to the Promoter's information and communications technology system used by it in the delivery of the Project (including all software and equipment); and

(d) access to the Promoter's directors, members, employees and agents.

- 8.5 The Promoter shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Promoter's performance of its obligations in respect of the Project.
- 8.6 The Authority shall provide at least 10 working days' notice to the CEO (or equivalent) of the Promoter at the Promoter's registered address as referred to above of its intention to conduct an audit unless such audit is conducted in respect of a suspected fraud, in which event no notice shall be required.
- 8.7 The Authority and the Promoter agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 8, unless the audit identifies a material breach by the Promoter of its obligations under this Agreement in which case the Promoter shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

9. **STATE AID**

- 9.1 The use of the Local Growth Capital Funding by the Promoter for beneficiaries must comply with Articles 107 and 108 of the Treaty on the Functioning of the European Union. The Promoter must ensure that if an exemption is relied upon, the relevant requirements of the exemption are met and that the use of the exemption is properly recorded and documented.
- 9.2 The Authority shall be entitled to withhold payment and/or claim repayment of the Local Growth Capital Funding under this Agreement to the extent of the amount of any grant or other payment which has been received, or is, in the opinion the Authority, likely to be received, from any public authority and which the Authority considers is payable towards the Project. For the purposes of this clause "public authority" includes any of the European Communities or their Institutions, any government department, research council, local authority, or body wholly or partly supported by public funds or charitable contributions. The terms of this clause do not apply to grant or other payment whose availability has been disclosed by the Promoter to the Authority before the date of this Agreement.
- 9.3 The Authority may be required to submit state aids notifications to the European Commission on those aspects of the Authority's activities which involve the provision of support which might constitute a state aid. The Promoter shall at all times during the Funding Period comply with the European Commission's State Aid rules in relation to the operation of the Local Growth Capital Funding and shall provide all reasonable assistance to the Authority in complying with the Authority's obligations in respect of such State Aid rules.

9.4 The Authority may recover from the Promoter on demand, with interest calculated at the prescribed rate, any Local Growth Capital Funding made in contravention of the European Commission's State Aid rules in accordance with European Union law on the recovery of unlawful State Aid.

9.5 Notwithstanding clause 9.2 the Promoter expressly agrees that:

(a) if any payment of the Local Growth Capital Funding by the Authority to the Promoter or by the Promoter to a third party is considered to be unlawful State Aid by any of HM GOVERNMENT, the European Commission, the European Court of Justice or any national court and an order for its payment is made the Promoter will repay the relevant payment of the Local Growth Capital Funding to the Authority within 15 working days of demand together with any such interest as may be applicable;

(b) the provisions of this clause 9 may be enforced by the Authority or any successor body in its own right.

## 10. **ACKNOWLEDGMENT AND PUBLICITY**

10.1 The Promoter shall acknowledge the Local Growth Capital Funding in its annual report and accounts, including an acknowledgement of HM Government as the source of the Local Growth Capital Funding, GFirst LEP and the Authority as "Accountable Body". Acknowledgement of GFirst LEP should be through use of its name and logo.

10.2 GFirst LEP and the Authority may acknowledge the Promoter's involvement in the Project as appropriate without prior notice.

## 11. **INTELLECTUAL PROPERTY RIGHTS**

11.1 The Authority and the Promoter agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either the Authority or the Promoter before the Commencement Date or developed by either party during the Funding Period, shall remain the property of that party.

11.2 Where the Authority has provided the Promoter with any of its Intellectual Property Rights for use in connection with the Project (including without limitation its name and logo), the Promoter shall, on termination of this Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by the Authority.

12. **CONFIDENTIALITY**

12.1 Subject to clause 13 (Freedom of Information), each party shall during the during the Funding Period and thereafter keep secret and confidential all Intellectual Property Rights or Know-How or other business, technical or commercial information disclosed to it as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other party.

12.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property Rights, Know-How or other business, technical or commercial information which:

- (a) at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;
- (b) is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or
- (c) is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party; or
- (d) may be required by law, court order, regulatory authority, any department, office or agency of the Government, or other competent authority.

13. **FREEDOM OF INFORMATION**

13.1 The Promoter acknowledges that the Authority is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") and shall assist and co-operate with the Authority (at the Promoter's reasonable expense) to enable the Authority to comply with these information disclosure requirements or any other statutory requirements.

13.2 The Promoter shall:

- (a) transfer the request for information under the FOIA and/or the EIR and/or any other statutory requirement to the Authority as soon as practicable after receipt and in any event within two Working Days of receiving a request for information thereunder;
- (b) provide the Authority with a copy of all information in its possession or power in the form that the Authority requires within five working days (or such other period as the Authority may specify) of the Authority requesting that information; and
- (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a request for information under the FOIA and/or the EIR and/or any other statutory requirement within the time for compliance set out in the relevant legislation.

13.3 The Authority shall be responsible for determining at its absolute discretion whether the information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations 2004 or other statutory requirement;
- (b) is to be disclosed in response to a request for information under the FOIA and/or the EIR or other statutory requirement.

13.4 In no event shall the Promoter respond directly to a request for information under the FOIA and/or the EIR and/or other statutory requirement unless expressly authorised to do so by the Authority.

13.5 The Promoter acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the and/or the EIR to disclose information:

- (a) without consulting with the Promoter; or
- (b) following consultation with the Promoter and having taken its views into account,

provided always that where clause 13.5(b) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Promoter advanced notice, or failing that, to draw the disclosure to the Promoter's attention after any such disclosure.

- 13.6 The Promoter shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 13.7 The Promoter acknowledges that HM GOVERNMENT and/or the Authority may choose to publish the amount of Local Growth Capital Funding together with the name of the Promoter and a brief description of the Project. The Promoter acknowledges and agrees that by entering into this Agreement the Promoter consents to any decision by HM GOVERNMENT and/or the Authority to publish such information.
- 13.8 The Authority and/or HM GOVERNMENT may be required to provide the European Commission with information relating to this Agreement. The Promoter acknowledges and agrees that by entering into this Agreement the Promoter consents to any decision by HM GOVERNMENT and/or the Authority to provide such information to the European Commission and that it will cooperate with the Authority and HM GOVERNMENT in providing such information.

14. **DATA PROTECTION**

- 14.1 The Promoter shall (and shall procure that any of its staff involved in connection with the activities under the Agreement shall) comply with any notification requirements under the Data Protection Act 1998 (DPA) and both Parties will duly observe all their obligations under the DPA, which arise in connection with this Agreement.

15. **WITHHOLDING, SUSPENDING AND REPAYMENT OF LOCAL GROWTH CAPITAL FUNDING**

- 15.1 Subject to clause 3.1, the Authority's intention is that the Local Growth Capital Funding will be paid to the Promoter in full. However, without prejudice to the Authority's other rights and remedies, the Authority may at its discretion withhold or suspend payment of the Local Growth Capital Funding and/or require repayment by the Promoter of all or (as appropriate) the relevant part of the Local Growth Capital Funding if:
- (a) the Promoter uses the Local Growth Capital Funding for purposes other than those described in Schedule 3;
  - (b) the Promoter breaches clauses 4.6 and/or 4.8;
  - (c) the Authority acting reasonably considers that the Promoter has not made satisfactory progress with the Project against the milestones/deliverables set out

in the Budget and Project Plan and the Authority and the Promoter have not agreed in writing an extension to the relevant milestones/deliverables;

- (d) the Authority acting reasonably considers that the future of the Project is in jeopardy;
- (e) the Promoter does not have sufficient financial resource to carry out and/or satisfactorily complete the Project;
- (f) if there is any cessation of work on the Project of any event or circumstance likely to affect significantly the satisfactory completion of the Project;
- (g) the Authority acting reasonably considers that progress towards completion of the Project is unsatisfactory or if the part of the Project funded by the Local Growth Capital Funding is not completed by the end of the Funding Period or, the Authority considers there is no longer any reasonable prospect of the part of the Project funded by the Local Growth Capital Funding being completed by that date;
- (h) there is a change in the nature or scale of the Project which the Authority considers is substantial, without the prior written approval of the Authority;
- (i) the Authority exercises its right to withhold and/or claim repayment of the Local Growth Capital Funding pursuant to clause 9 (State Aid);
- (j) the Promoter disposes of any Major Asset or Fixed Asset which has been purchased using the Local Growth Capital Funding without receiving the prior written consent of the Authority;
- (k) the Promoter is, in the reasonable opinion of the Authority, performing its obligations in respect of the Project in a negligent manner;
- (l) the Promoter provides the Authority with any materially misleading or inaccurate information;
- (m) the Promoter commits or committed a Prohibited Act;
- (n) any financial irregularities are identified in connection with the Project;
- (o) the Promoter engages in or permits improper or fraudulent accounting methods;
- (p) any member of the governing body, employee or volunteer of the Promoter has acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project;

- (q) an asset, the cost of which has been included in the Budget and Project Plan, is not used for the purpose of the Project;
- (r) within the period commencing on the Commencement Date and ending 6 years after the date on which the final payment of Local Growth Capital Funding is made, the Promoter becomes the subject of a proposal for a voluntary arrangement or has a petition for Administration Order or a petition for a winding-up Order brought against it or passes a resolution for a winding-up or makes any composition, arrangement, conveyance or assignment for the benefit of its creditors, or purports to do so, or if a receiver or any other person is appointed in respect of its undertaking or of all or any of its property or if the Promoter does or suffers anything substantially equivalent to any of the foregoing;
- (s) the Promoter 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);
- (t) the Promoter fails to comply with any of the terms and conditions set out in this Agreement and fails to rectify any such failure within 30 days of receiving written notice detailing the failure.

15.2 Wherever under the Agreement any sum of money is recoverable from or payable by the Promoter under the Agreement (including any sum that the Promoter is liable to pay to the Authority in respect of any breach of the Agreement), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Promoter under the Agreement or under any other agreement or contract with the Authority.

15.3 The Promoter shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

15.4 Should the Promoter be subject to financial or other difficulties which are capable of having a material impact on the effective delivery of the Project or compliance with this Agreement it will notify the Authority as soon as possible so that, if possible, and without creating any legal obligation, the Authority will have an opportunity to provide assistance in resolving the problem or to take action to protect the Authority and the Local Growth Capital Funding monies.

## 16. **ANTI-DISCRIMINATION**

16.1 The Promoter shall not unlawfully discriminate within the meaning and scope of any law,

enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment and, in particular, the Promoter shall comply with section 149 of the Equality Act 2010.

16.2 The Promoter shall take all reasonable steps to secure the observance of clause 16.1 by all servants, employees or agents of the Promoter and all suppliers and sub-contractors engaged in carrying out the Project.

## 17. **HUMAN RIGHTS**

17.1 The Promoter shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement as if the Promoter were a public body (as defined in the Human Rights Act 1998).

17.2 The Promoter shall undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

## 18. **LIMITATION OF LIABILITY**

18.1 The Authority accepts no liability for any consequences, whether direct or indirect, that may come about from the Promoter procuring the delivery of the Project; the use of the Local Growth Capital Funding; or from the suspension, withdrawal or a demand for repayment of the Local Growth Capital Funding. The Promoter shall indemnify and hold harmless the Authority, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Promoter in relation to the Project, the non-fulfilment of obligations of the Promoter under this Agreement or its obligations to third parties.

18.2 Subject to clause 18.1, the Authority's liability under this Agreement is limited to the payment of the Local Growth Capital Funding.

## 19. **WARRANTIES**

19.1 The Promoter warrants, undertakes and agrees that:

- (a) it has all necessary resources and expertise to procure the delivery of the Project (assuming due receipt of the Local Growth Capital Funding);

- (b) it has (and continues to have) all funding necessary to pay for expenditure in relation to the Project which is not funded by Local Growth Capital Funding;
- (c) it has not committed, nor shall it commit, any Prohibited Act;
- (d) it has not received any grant or payment of the nature described in clause 9.2;
- (e) it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations including but not limited to EU law and Environmental Law, and shall notify the Authority immediately of any significant departure from such legislation, codes or recommendations;
- (f) it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Project;
- (g) it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- (h) it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- (i) all financial and other information concerning the Promoter which has been disclosed to the Authority is to the best of its knowledge and belief, true and accurate;
- (j) 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 meeting its obligations in connection with the Local Growth Capital Funding;
- (k) it is not aware of anything in its own affairs, which it has not disclosed to the Authority or any of the Authority's advisers, which might reasonably have influenced the decision of the Authority to make the Local Growth Capital Funding on the terms contained in this Agreement; and
- (l) since the date of its last accounts there has been no material change in its financial position or prospects.

20. **INSURANCE**

20.1 Without prejudice to clause 20.2, the Promoter shall effect and maintain with a reputable insurance company throughout the Funding Period and for six years thereafter a policy or policies in respect of all risks which may be incurred by the Promoter, arising out of the Promoter's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss (the Required Insurances). The Promoter shall (on request) supply to the Authority a copy of such insurance policies and evidence that the relevant premiums have been paid.

20.2 The Promoter shall effect and maintain with a reputable insurance company throughout the Funding Period and for six years thereafter a policy of fidelity guarantee insurance for the payment of a sum equal to the Local Growth Capital Funding for any claim. Such policy shall note the interests of the Authority thereon and prohibit the lapse of or any cancellation or non-renewal of such insurance, without the prior consent in writing of the Authority. The Promoter shall (on request) supply to the Authority a copy of such insurance policy and evidence that the relevant premiums have been paid.

21. **DURATION**

21.1 Except where otherwise specified, the terms of this Agreement shall have applied and shall continue to apply throughout the Funding Period.

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

22. **TERMINATION**

22.1 On the occurrence of any of the events set out in clause 15.1 or in the event that the Promoter commits a material breach of any of its obligations under this Agreement the Authority may without prejudice to any accrued rights or remedies under this Agreement terminate the same either in whole or in part by notice in writing having immediate effect.

23. **ASSIGNMENT**

23.1 The Promoter may not, without the prior written consent of the Authority, 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 the Local Growth Capital Funding.

24. **VARIATION**

24.1 No variation or amendment of this Agreement or oral promise or commitment related to it shall be valid unless committed to writing and signed by or on behalf of both the Authority and the Promoter.

25. **WAIVER**

25.1 No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

26. **NOTICES**

26.1 All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

27. **DISPUTE RESOLUTION**

27.1 In the event of any complaint or dispute (which does not relate to the Authority's right to withhold funds or terminate) arising between the parties to this Agreement in relation to this Agreement the matter should first be referred for resolution to the Funding Manager.

27.2 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the Funding Manager or other nominated individual, as the case may be, either party may refer the matter to the Commissioning Director (Communities and Infrastructure) of the Authority and the Chief Executive (or equivalent) of the Promoter with an instruction to attempt to resolve the dispute by agreement within 28 days, or such other period as may be mutually agreed by the Authority and the Promoter.

27.3 In the absence of agreement under clause 27.2, the parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both parties). Unless otherwise agreed, the parties shall bear the costs and expenses of the mediation equally.

28. **NO PARTNERSHIP OR AGENCY**

28.1 This Agreement shall not create any partnership or joint venture between the Authority and the Promoter, 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.

29. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

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

30. **GOVERNING LAW**

30.1 This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

**IN WITNESS** whereof the parties hereto have executed and delivered this Agreement as a Deed the day and year first before written

# SCHEDULE 1

## Funding Payment Request Form

[On letterhead of the Promoter]

**Re: Local Growth Capital Funding agreement dated [ ] 2015 (the “Local Growth Capital Funding Agreement”) made between Gloucestershire County Council (as Accountable Body) and [INSERT NAME OF PROMOTER] (the “Promoter”)**

To: Gloucestershire County Council

Date: [date]

Dear Sirs

We refer to the above Local Growth Capital Funding Agreement. This is a Funding Payment Request Form submitted in accordance with the funding payment procedure set out in Schedule 4 of the Local Growth Capital Funding Agreement. Words and expressions in this Funding Payment Request Form shall have the meanings given to them in the Local Growth Capital Funding Agreement.

We request payment of £XXXXXX (XXWORDSXX pounds) to be made in respect of the Local Growth Capital Funding Instalment net of recoverable VAT payable for the period [XXXXXX] to [XXXXXX]. We enclose a copy of the documentation specified in paragraphs 4 and/or (as applicable) 5 of Schedule 4 to the Local Growth Capital Funding Agreement.

Please credit the above-mentioned Local Growth Capital Funding Instalment to the following account:

[ACCOUNT DETAILS]

Yours faithfully

.....  
Duly authorised for and on behalf of the Promoter

Name:.....

Position: Director

## SCHEDULE 2

Project Specific Conditions

***[NOTE: To be inserted as appropriate]***

## SCHEDULE 3

### Project Specification

*[NOTE: Insert Project specification/proposal/business case/milestones  
etc. ]*

## SCHEDULE 4

### Funding Payment Procedure

1. The Promoter shall no later than 5 working days following the relevant Funding Payment Request Date submit to the Authority a funding payment request in respect of the Funding Payment using the Funding Payment Request Form.
2. Each Funding Payment Request Form submitted to the Authority in accordance with paragraph 1 of this Schedule 4 shall be in the format set out in Schedule 1.
3. Payment shall be made within ten (10) days of receipt by the Authority (at its nominated address) of a valid Funding Payment Request Form.
4. Each Funding Payment Request Form shall be accompanied by receipted invoices or accounting documents of equivalent verifiable value (for example bank statements) in such format and detail as may be acceptable to the Authority relating to the amount of payment request. This should be provided in electronic format with original copies held by the Promoter. This evidence will be verified by a monitoring visit.
5. Where Funding Payment Request Forms are made for items on a proportional basis the Promoter will also provide itemised records to demonstrate how the amounts that are eligible for Growth Hub Funding relate to each of the original invoices [and/or salary records].

	Period to which the Funding Payment relates	Funding Payment Request Date	Funding Payment
1.	[●●●●●] to [●●●●●]	[●●●●●]	[£●●●●●]
2.	[●●●●●] to [●●●●●]	[●●●●●]	[£●●●●●]
3.			

# SCHEDULE 5

## Budget and Project Plan




## SCHEDULE 6

### Statement of Assurance

Please return this signed Statement of Assurance to the Authority within 21 days of the financial year end 31.03.16.

*[On letterhead of the Promoter]*

**Re: Local Growth Capital Funding agreement dated [ ] 2015 (the “Local Growth Capital Funding Agreement”) made between Gloucestershire County Council (as Accountable Body) and [INSERT NAME OF PROMOTER] (the “Promoter”)**

To: Gloucestershire County Council

Date: *[date]*

Dear Sirs

We refer to the above-mentioned Local Growth Capital Funding Agreement. I confirm that the Promoter has throughout the period [XXX 20XX] to [XXX 20XX] had in place a system of governance, audit and risk management for the project which gives me adequate assurance over the use of the funds. Sufficient monitoring and procedures have been implemented to ensure the expenditure is eligible and has been spent appropriately in accordance to section 4 of this Funding Agreement.

I am not aware of any evidence to indicate that the funds received from the Authority have not, in all material respects, been used for the purposes set out in the above-mentioned Local Growth Capital Funding Agreement and in accordance with the terms and conditions set out therein.

Yours faithfully

.....  
Duly authorised for and on behalf of the Promoter

Name:.....

Position: Finance Director

THE COMMON SEAL OF  
**GLOUCESTERSHIRE COUNTY**  
**COUNCIL** was hereunto affixed  
in the presence of:

**Head of Legal Services**

EXECUTED as a DEED  
By **[INSERT NAME OF PROMOTER]**  
acting by and under the  
signatures of:

.....

Print name of Director

.....

Director's Signature

.....

Print name of Director/Secretary

.....

Director's/Secretary's  
Signature