|  |
| --- |
| Classification: Official |
| Publication reference: 08257 |



|  |
| --- |
| NHS model grant agreement |
| Version 4, April 2023 |

Prepared by: NHS Standard Contract Team, NHS England

[england.contractshelp@nhs.net](mailto:england.contractshelp@nhs.net)

(please do not send grant agreements to this email address)

Contents

[1. Interpretation 4](#_Toc98335262)

[2 Purpose and Scope of the Grant 6](#_Toc98335263)

[3 Payment of the Grant 7](#_Toc98335276)

[4 Third-Party Funding 8](#_Toc98335279)

[5 Recipient’s warranties 8](#_Toc98335282)

[6 Project Standards and Conduct 9](#_Toc98335289)

[7 Safeguarding 9](#_Toc98335301)

[8 Repayment or recovery of the Grant 10](#_Toc98335310)

[9 Duration, termination and consequences of termination 11](#_Toc98335326)

[10 Insurance 12](#_Toc98335333)

[11 Accounting and record keeping 12](#_Toc98335334)

[12 Reporting and Review 13](#_Toc98335337)

[13 Publicity and NHS Branding 13](#_Toc98335345)

[14 Assets 13](#_Toc98335348)

[15 Data Protection and Information Governance 14](#_Toc98335356)

[16 Confidentiality 15](#_Toc98335365)

[17 Liability 16](#_Toc98335377)

[18 General 16](#_Toc98335380)

[SCHEDULE 1 - THE PROJECT 19](#_Toc98335390)

[SCHEDULE 2 – THE GRANT 20](#_Toc98335391)

[ANNEX A – THE APPLICATION 21](#_Toc98335392)

|  |  |
| --- | --- |
| **CORRESPONDENCE** | |
| **Addresses for service of notices** | **ICB: [ ]**  **Address: [ ]**  **Email: [ ]**  **Recipient: [ ]**  **Address: [ ]**  **Email: [ ]** |
| **ICB representative(s)** | **[ ]**  **Address: [ ]**  **Email: [ ]**  **Tel: [ ]** |
| **Recipient representative** | **[ ]**  **Address: [ ]**  **Email: [ ]**  **Tel: [ ]** |

# THIS AGREEMENT is dated [DATE]

## Parties

1. [*name*] **INTEGRATED CARE BOARD** (the **ICB**).
2. [*name of recipient*] [incorporated and registered in England and Wales with company number [*number*] whose registered office is at [*address*]] ***OR*** [registered charity number [*number*] [*number*] whose registered office is at [*address*]] (the Recipient).

## Background

1. The Recipient provides [*summarise in broad terms the nature of the Recipient’s activities to which the Grant relates*] for the benefit of [*describe the category of person that benefits from the Recipient’s activities*] (the **Activities**). The Recipient has applied to the ICB for grant funding for the Project in furtherance of these Activities. A copy of its Application is annexed to this Agreement.
2. The ICB has the discretion, under section14Z48(1)(b) of the Health and Care Act 2022, to award grants to Voluntary Organisations that provide services that are similar to those in respect of which the ICB has functions.

[*Note: section 14Z48 also permits ICBs to make loans to Voluntary Organisations. This document is not suitable for situations where the ICB is making a loan, rather than a grant, to a Voluntary Organisation, and ICBs should take appropriate advice if making a loan]*

1. In order to assist the Recipient in furthering its Activities by carrying out the Project, and in consideration of the undertakings given by the Recipient in this Agreement, the ICB wishes to make this Grant on the terms and conditions of this Agreement.
2. The ICB does not require the delivery of services from the Recipient, and the Recipient is not obliged to provide services under this Agreement, but the ICB makes the Grant conditional on the terms and conditions of this Agreement in order to safeguard the funds contained in the Grant and to ensure the appropriate use of the Grant by the Recipient.

## Agreed terms

# 1. Interpretation

The following definitions apply in this Agreement:

|  |  |
| --- | --- |
| Activities | has the meaning given to it in the Background to this Agreement |
| Application | the Recipient’s application to the ICB to request or apply for grant funding in relation to the Project, including without limitation any application at Annex A, any materials referred to or included in its application and any representations made by the Recipient in connection with the application |
| Assets | any assets that are to be purchased or developed with Grant monies, including equipment or any other assets (including intangible assets), as listed (where applicable) in Schedule 1 |
| Bribery Act | the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation |
| Caldicott Guardian | the senior health professional responsible for safeguarding the confidentiality of patient information |
| Data Guidance | any guidance applicable to the Recipient and/or the Project regarding information governance, confidentiality, privacy or compliance with Data Protection Legislation which is publicly available or notified to the Recipient by the ICB or any Regulator. This includes but is not limited to guidance issued by NHS Digital, the National Data Guardian for Health & Care, the Department of Health and Social Care, NHS England, the Health Research Authority, the UK Health Security Agency, the European Data Board and the Information Commissioner |
| Data Protection Legislation | * + - 1. (i) the General Data Protection Regulation (*Regulation (EU) 2016/679*), the Law Enforcement Directive (*Directive (EU) 2016/680*) and any applicable national laws implementing them as amended from time to time (ii) the Data Protection Act 2018 (iii) all applicable law concerning privacy, confidentiality or the processing of Personal Data including but not limited to the Human Rights Act 1998, the Health and Social Care (Safety and Quality) Act 2015, the common law duty of confidentiality and the Privacy and Electronic Communication (EC Directive) Regulations |
| Data Security and Protection Toolkit | an online self-assessment tool that allows organisations to measure their performance against the National Data Guardian’s 10 data security standards  <https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/data-security-and-protection-toolkit> |
| DBS | the Disclosure and Barring Service established under section 87 of the Protection of Freedoms Act 2012 |
| Depreciation Period | the period over which any Assets are to be written down in the Recipient’s accounts, as may be set out in the Application or, if not so specified, according to accepted accounting practice |
| EIR | the Environmental Information Regulations 2014 |
| FOIA | the Freedom of Information Act 2000 |
| Fundamental Standards of Care | the requirements set out in regulations 9 to 19 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 |
| Good Health and/or Social Care Practice | using standards, practices, methods and procedures conforming to law and applicable guidance and reflecting up-to-date published evidence and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced provider and a person engaged in activities the same as or similar to the Activities at the time of the Grant Period |
| Governing Documents | as applicable, the Recipient’s articles of association, memorandum, constitution, objects, trust deed or any other document controlling the scope of its activities |
| Grant | the sums to be paid to the Recipient in accordance with this Agreement as set out in Schedule 2 |
| Grant Period | the period for which the Grant is awarded, as set out in Schedule 1 and/or Schedule 2 |
| Health and Safety Requirements | 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 persons on the Recipient’s premises in the conduct of the Project |
| HRA | the Human Rights Act 1998 |
| Insolvency Event | the Recipient: (i) passing a resolution for its winding up, or a court or Regulator of competent jurisdiction making an order for it to be wound up or dissolved (other than for the purposes of a bona fide reconstruction or amalgamation), or being otherwise dissolved; or (ii) an administrator, receiver or administrative receiver being appointed to it; or (iii) entering into an arrangement, compromise or composition for the benefit of its creditors or any class of them; or (iv) becoming insolvent, being declared bankrupt, placed into liquidation or having a petition presented for its winding up, or being unable to pay its debts as they fall due; or (v) taking or suffering any actions analogous to (i) to (iv) above in consequence of debt |
| Intellectual Property | inventions, copyright, patents, database right, trademarks, designs and confidential know-how and any similar rights anywhere in the world whether registered or not, including applications and the right to apply for any such rights |
| Match Funding | a sum to be paid by a third party to the Recipient which is equivalent value to the Grant and is contingent on the Recipient receiving the Grant |
| NHS Body | has the meaning given to it in section 275 of the National Health Service Act 2006 |
| NHS Branding Guidelines | NHS brand policy and guidelines, as revised, updated or re-issued from time to time by NHS England and/or the Department of Health and Social Care, and which are available at: <https://www.england.nhs.uk/nhsidentity> |
| Operational Day | a day other than a Saturday, Sunday or bank holiday in England |
| Personal Data | has the meaning given to it in Data Protection Legislation |
| Prohibited Act | the Recipient: (i) offering, giving, or agreeing to give the ICB (or an of its Staff) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to this Agreement, or for showing or not showing favour or disfavour to any person in relation to this Agreement or any other arrangement with the Recipient; and (ii) in connection with this Agreement, paying or agreeing to pay any commission, other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the ICB; or (iii) committing an offence under the Bribery Act 2010 |
| Project | the project and/or activities described in Schedule 1 |
| Regulated Activity | in relation to children, as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006; and in relation to vulnerable adults, as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 |
| Regulated Activity Provider | has the meaning given to it in section 6 of the Safeguarding Vulnerable Groups Act 2006 |
| **Regulator** | any regulatory body with power to regulate the Recipient or its activities, including but not limited to the Care Quality Commission, the Charities Commission, the Financial Conduct Authority and the Community Interest Company Regulator, as applicable, and “**Regulatory**” is to be understood accordingly |
| Service User | a recipient of any service provided by the Recipient as part of or in connection with the Project |
| Service User Safety Incidents | any unintended or unexpected incident that occurs in relation to the Project in respect of a Service User, during and as a result of the provision of the Services, that could have led, or did lead to, harm to that Service User |
| Staff | a party’s employees, officers, representatives or advisers and including (in the case of the Recipient) volunteers, and “Relevant Staff” means (in the case of the Recipient), Staff who are or may be engaged or involved in the Project |
| Voluntary Organisation | a body whose activities are carried on otherwise than for profit (but not including any public or local authority) |

# Purpose and Scope of the Grant

* 1. The Recipient acknowledges that its receipt of the Grant is conditional on its compliance with the terms and conditions of this Agreement.
  2. The Recipient must use the Grant only for the delivery of the Project as set out in Schedule 1. The Recipient must not, without the prior written consent of the ICB:
     1. make any material changes to the Project;
     2. use any portion of the Grant for any purposes or activities outside the Project; or
     3. spend any of the Grant on liabilities incurred before the Grant Period (unless expressly covered in the Application).

The following are not permitted uses of the Grant: payments that support activity to influence or attempt to influence Parliament, Government or political parties, or to influence the awarding or renewal of contracts or grants, or to influence legislative or regulatory action.

*[Note: do not amend or delete final paragraph of 2.2: see* [*https://www.gov.uk/government/news/government-announces-new-clause-to-be-inserted-into-grant-agreements*](https://www.gov.uk/government/news/government-announces-new-clause-to-be-inserted-into-grant-agreements)*]*

* 1. The Grant is given on condition that it is used for the Project during the Grant Period. If the Recipient has not spent any or all of the Grant on the Project by the end of the Grant Period, the Recipient must, as soon as it becomes aware that the full amount of the Grant will not be applied to the Project during the Grant Period, notify the ICB accordingly. Unless the ICB (in its absolute discretion) notifies the Recipient that the Recipient may retain the unspent amount of the Grant (on such terms and conditions as the ICB may impose), the Recipient must return any unspent amount of the Grant to the ICB in accordance with clause 8.2.
  2. The Recipient understands and acknowledges that:
     1. the ICB is under no obligation to fund any subsequent activities or projects related to the Project that the Recipient may wish to carry out;
     2. the ICB is not responsible for any overspend by the Recipient on the Project and the ICB has no obligation to increase the Grant in those circumstances; and
     3. any exit costs (including employment costs) that may be incurred by the Recipient at the end of the Project are the responsibility of the Recipient and the ICB will not (unless they were included and approved within the Application and are part of the Grant) provide funding or bear any responsibility for those exit costs.

*[Note: ICBs should be aware, when considering whether to allow the Recipient to vary the Project or to retain any part of the Grant for other purposes, that any purposes to which ICB funds are given or retained should fall within the ICB’s powers under section14Z48 of the Health and Care Act 2022: funds initially given for one purpose cannot be retained by the Recipient for another purpose, if that subsequent purpose is not one to which the ICB is empowered to give grant funding.]*

# 3 Payment of the Grant

3.1 The ICB will pay the Grant to the Recipient [within [20] Operational Days of the date of this Agreement ***OR*** in [quarterly] instalments in advance] ***OR*** [*add other local timescales*] and according to the scheme set out in Schedule 2, subject to the terms and conditions of this Agreement. [*Note: /ICBs should vary the timing of payment to suit local requirements, and other payment mechanisms may be suitable.*]

* 1. Where conditions are set out in Schedule 2 linking payments of Grant monies to specific activities or elements of the Project, or to the achievement of specific Project milestones, no payment will be made unless the ICB is reasonably satisfied that those amounts are being allocated to the relevant activities or elements, or that relevant Project milestones have been achieved.

[*DN: some precedents stipulate that funding will only be paid if the funder has available funds. That is clearly a protection for the ICB, but may cause issues if the recipient has committed to costs in expectation of the grant being paid according to schedule.*]

# Third-Party Funding

* 1. The Recipient warrants to the ICB that it has disclosed in the Application any other sources of funding for the Project that, at the time of submission of the Application, had either been received or were being sought by the Recipient, with details as to the purposes to which that funding has been or will be applied. The Recipient must inform the ICB if, at any time before the end of the Grant Period, it receives any funding from any other source or person towards the Project not stated in the Application to be already committed to the Recipient, including the amount of that funding and purposes to which it is to be applied.
  2. Where, before or during the Grant Period, the Recipient receives any funding from any other source or person towards the Project that is not Match Funding or was not already committed to the Recipient and disclosed in the Application, the ICB may, where that funding duplicates funding contained in the Grant, require repayment part of the Grant (up to the amount of duplicate funding received) in accordance with clause 8.

# Recipient’s warranties

* 1. The Recipient warrants, represents and undertakes that:

### it has full power and authority to enter into this Agreement and to deliver the Project, and that all necessary approvals and consents have been obtained and are in full force and effect;

### the execution of this Agreement does not and will not contravene or conflict with its Governing Documents or any legal obligations (including under contract) to which it is subject;

### the information contained in the Application was in all material respects accurate and not misleading, and that since the Application there has not been any material change to that information or to the Recipient’s position or developments that would have adversely affected the decision of a reasonable public-sector funder to fund the Project substantially on the terms of this Agreement;

### to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to deliver the Project (assuming receipt of the Grant); and

### it has, and will maintain, adequate insurances in respect of the Project in accordance with clause 10.

# Project Standards and Conduct

* 1. The Recipient must carry out the Project in accordance with:

### Good Health and/or Social Care Practice;

### the Fundamental Standards of Care (as applicable to the Activities);

### Health and Safety Requirements; and

### any applicable guidance and Regulatory requirements.

* 1. The Recipient must perform the Project in compliance with:

### all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise); and

### any ICB equality and diversity policies, or other reasonable requirements relating to equality or diversity, communicated to it by the/ICB.

### the HRA as if it was a public authority for the purposes of that Act.

* 1. [Where the Recipient engages in clinical correspondence (paper or electronic) with commissioners or providers of NHS health care services in respect of an individual Service User, the Recipient must [use all reasonable endeavours to] ensure that the Service User’s verified NHS Number is used as the primary identifier for that Service User in that correspondence, and the Recipient must observe NHS guidance on the use of the NHS Number as applicable to the Project.]
  2. The Recipient must take all necessary steps to ensure that all Relevant Staff comply with this clause 6.

# Safeguarding

* 1. Where, in relation to the Project, the Recipient is a Regulated Activity Provider with ultimate responsibility for the management and control of a Regulated Activity, it must:

### ensure that all Relevant Staff are subject to a valid enhanced disclosure check for regulated activity undertaken through DBS;

### monitor the level and validity of the checks under this clause 7.1 for all Relevant Staff; and

### not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.

* 1. The Recipient warrants that it has no reason to believe that any Relevant Staff are barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made under it, as amended from time to time.
  2. The Recipient must immediately provide to the ICB any relevant information reasonably requested by the ICB to enable the ICB to be satisfied that the obligations of this clause 7 have been met.
  3. The Recipient must refer to the DBS information about any person in respect of whom it declines or withdraws permission to be involved in the Project (or would have done so, if that person had not otherwise ceased to be involved) because, in its opinion, that person has harmed or poses a risk of harm to Service Users.
  4. The Provider must comply with all relevant law and guidance in relation to the safeguarding of children and adults.

# Repayment or recovery of the Grant

* 1. The ICB may at its absolute discretion withhold, suspend, or require the Recipient to repay, all or part of the Grant if:

8.1.1 the information disclosed by the Recipient in the Application was materially inaccurate or misleading;

8.1.2 the ICB reasonably considers that delivery of the Project falls short of the standards required under this Agreement;

8.1.3 the Recipient (or any of its Staff) acts dishonestly or negligently in connection with the Project or breaches any of its or their legal obligations in a way that could lead to reputational damage for the ICB or the NHS;

8.1.4 the Recipient (or any of its Staff) commits a Prohibited Act;

8.1.5 the circumstances described in clause 2.3 apply (in which case, the ICB’s rights under this clause relate to the unspent amount only);

8.1.6 where the Recipient receives duplicate funding for the Project as referred to in clause 4 (in which case, the /ICB’s recovery will be limited to a part of the Grant equivalent to the amount of duplicate funding);

8.1.7 the Recipient applies any of the Grant in a manner not permitted under this Agreement;

8.1.8 the Recipient becomes unable, for any reason, to continue the Project substantially on the terms of Schedule 1, or the ICB reasonably considers that this will be the case;

8.1.9 the Recipient is subject to adverse findings, warning notices, interventions or other action from any Regulator;

8.1.10 the Recipient fails to commence, progress or complete the Project substantially in accordance with any timescales or milestones contained out in the Application or in Schedule 1;

8.1.11 the Recipient is subject to an Insolvency Event, ceases to carry out the Activities, ceases to be a Voluntary Organisation or loses any Regulatory consent necessary for the Project; or

8.1.12 the Recipient fails to comply with any of the terms or conditions of this Agreement and (where that failure is capable of being remedied) fails to remedy that failure within 20 Operational Days of the receipt of a notice from the ICB to remedy the failure.

* 1. Where the ICB requires repayment of any part of the Grant under this clause 8, the Recipient must repay that amount in full within 20 Operational Days of receipt of the ICB’s notice requiring repayment. The ICB may alternatively, at its discretion, set off any amounts due to it under this clause 8 against any further instalments of the Grant due to be paid, or against any other payments due from the ICB to the Recipient under this Agreement or otherwise.
  2. The ICB’s rights of withholding or recovery under this clause 8 are in addition to any other rights or remedies it may have.

# Duration, termination and consequences of termination

* 1. This Agreement comes into effect when it is signed and dated by the parties and, unless otherwise terminated in accordance with its terms, will continue until [12] months after the end of the Grant Period or, if later, the date on which all Grant monies have been spent.
  2. Without prejudice to its other rights under this Agreement, the ICB may terminate this Agreement at any time on [6] months’ written notice. Where the ICB terminates under this clause 9.2, it may not (unless otherwise entitled to do so under clause 8):

### recover any Grant monies already paid to the Recipient; or

### withhold any Grant monies otherwise due to be paid to the Recipient before the end of the notice period,

but the ICB will have no liability to pay the Recipient any further sums in relation to the Grant.

[*DN: period of notice for termination under this clause for discussion – there should be a balance between protecting the ICB from unexpected policy changes or changed financial circumstances, and reasonable predictability for a recipient.*]

* 1. Any rights or obligations under this Agreement which are expressed to survive, or which otherwise by necessary implication survive the expiry or termination for any reason of this Agreement (including all indemnities and any obligations relating to use of unspent amounts of the Grant or use of proceeds of sale of Assets) will continue after expiry or termination.

# Insurance

The Recipient must put in place and maintain in force at its own cost appropriate insurance in respect of all liabilities that may be incurred by the Recipient in connection with the Project, including employers’ liability, clinical negligence (where the provision or non-provision of any part of the Project may result in a clinical negligence claim), public liability and (where applicable to the Project) professional negligence. On written request from the ICB, the Recipient must provide documentary evidence that these insurances are fully maintained and that any premiums on them are fully paid.

[*DN: “at its own cost”: it is for the Recipient to put appropriate insurance in place and to pay the related premium etc, but it may use grant monies to do so.*]

# Accounting and record keeping

* 1. The Recipient must segregate and account separately for the Grant, and must keep separate, accurate and up-to-date accounts and records of its receipt and expenditure of the Grant. [DN: This may be done by identifying them as ‘restricted funds’ within the Charities accounts] Without prejudice to any other obligations it may have to keep records for longer periods, the Recipient must keep all invoices, receipts, accounts and any other relevant documents relating to the expenditure of the Grant for at least six years following receipt of any Grant monies to which they relate. The ICB will have the right to review the Recipient’s accounts and records relating to the Grant and to take copies of such accounts and records.
  2. The Recipient must comply, and facilitate the ICB’s compliance with, all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and to the ICB.

# Reporting and Review

* 1. The Recipient must report to the ICB on its use of the Grant and delivery of the Project. Those reports must contain the information, and be in the format and delivered at the frequency and to the timescales, as the ICB reasonably requests. The Recipient must also provide the ICB with all reasonable assistance and co-operation in relation to any ad-hoc information requests made by the ICB in relation to the Project. [Without prejudice to these obligations, the Recipient must provide an annual report on the Project to the ICB describing activity or progress on the Project and its use of Grant monies during that period.]
  2. The Recipient must promptly supply to the ICB any information requested by the ICB to assure the ICB that the Project is being delivered in accordance with the Fundamental Standards of Care.
  3. The ICB and the Recipient will, at the ICB’s request and at the frequency specified by the ICB, meet to review the progress and delivery of the Project.
  4. Without prejudice to its other obligations under this clause 12, the Recipient must, within [2] Operational Days of becoming aware of them, inform the ICB of:

### any Service User Safety Incidents in relation to the Project;

### any adverse findings, warning notices, interventions or other regulatory action from any Regulator in relation to the Recipient; and

### any loss of consent, approval or licence that has a material adverse impact on the Recipient’s delivery of the Project;

# Publicity and NHS Branding

* 1. The Recipient must not, without the prior written consent of the ICB, apply NHS branding or the ICB’s name or logo to the Project, and must obtain the ICB’s prior written approval (not to be unreasonably withheld) for any publicity in connection with the Recipient’s receipt of the Grant.
  2. If the ICB does permit the Recipient to use NHS branding, its name or logo in connection with the Project, that permission is limited to the purposes and duration communicated to the Recipient by the ICB and the Recipient must comply with the NHS Branding Guidelines.

# Assets

* 1. [Where the Recipient uses any of the Grant to purchase or develop any Assets, the Recipient must ensure that the Assets are maintained in good condition over the Depreciation Period.]
  2. [The Recipient must not [before the end of the Depreciation Period] sell, dispose of or otherwise transfer, mortgage, charge, pledge or otherwise encumber its legal or beneficial interest in any Assets without the prior written consent of the ICB. Where the Recipient sells any Assets [before the end of the Depreciation Period], the Recipient must use all reasonable endeavours to achieve the market price for the Assets and must pay to the ICB a proportion of the proceeds of such sale, equivalent to the proportion of the purchase or development costs of the Assets that was funded by the Grant, provided that the ICB may at its discretion allow the Recipient to keep all or a part of the relevant proceeds where:

### the sale of the Assets takes place after the end of the Depreciation Period;

### the proceeds of sale are to be applied directly to the purchase by the Recipient of assets that are equivalent to or replacements for the Assets; or

### the ICB is otherwise satisfied that the Recipient will apply those proceeds for purposes related to the Project or related Activities.]

* 1. [Where the ICB requires the Recipient to grant it security over any Assets, the Recipient must, at its own cost, take such action as the ICB reasonably requires to create such security, including as applicable through the execution of any documents and the making of any registrations.]

[*Note: if the ICB is funding substantial assets through the Grant, it should consider whether, in accordance with Annex 5.2 of HM Treasury guidance Managing Public Money, it should take a legal charge over the Asset to protect the ICB’s interest in any funded Asset. In these circumstances, the ICB should seek appropriate specialist advice*]

* 1. The Recipient acknowledges that the ICB has no liability or responsibility for the Recipient’s purchase, use or disposal of any Assets.

# Data Protection and Information Governance

* 1. The Recipient must observe its obligations under Data Protection Legislation, Data Guidance, FOIA and EIR, as appropriate.
  2. The Recipient acknowledges that the ICB is subject to the requirements of the FOIA and EIR. The Recipient must:

### provide all necessary assistance and cooperation as reasonably requested by the ICB to enable the ICB to comply with its obligations under FOIA and EIR;

### where it receives a request for information under FOIA in relation to this Agreement, not respond to that request (unless directed to do so by the ICB) and promptly (and in any event within 2 Operational Days) transfer the request to the ICB; and

### provide the ICB with a copy of all information belonging to the ICB relevant to the request for information, in the form that the ICB requires, within 5 Operational Days (or such other period as the ICB may reasonably specify) of the ICB’s request.

* 1. The Recipient acknowledges that the ICB, acting in accordance with the codes of practice issued and revised from time to time under FOIA and/or EIR, may disclose information concerning the Recipient and this Agreement either without consulting with the Recipient, or following consultation with the Recipient and having taken its views into account.
  2. The Recipient must have a nominated information governance lead and (where applicable) Caldicott Guardian, and must ensure that the ICB is kept informed at all times of the identities and contact details of those persons.
  3. The Recipient must complete and publish an annual information governance assessment and must demonstrate satisfactory compliance as defined in the Data Security and Protection Toolkit (or any successor framework), as applicable to the Project and the Recipient’s organisation type[[1]](#footnote-1).

# Confidentiality

* 1. Without prejudice to the obligations of the Recipient under clause 15.1 in relation to personal information that is confidential, each party must, except as permitted by this clause 16, keep confidential all information disclosed to it by the other party in connection with this Agreement, and must use all reasonable endeavours to prevent their Staff from making any disclosure to any person of that information.
  2. Clause 16.1 will not apply to disclosure of information that:

### is in or comes into the public domain other than by breach of this Agreement;

### the receiving party can show by its records was in its possession before it received it from the disclosing party; or

### the receiving party can prove it obtained or was able to obtain from a source other than the disclosing party without breaching any obligation of confidence.

* 1. A party may disclose the other party’s confidential information:

### to comply with applicable law;

### to any appropriate Regulator;

### in connection with any dispute resolution or litigation between the parties;

### as permitted under any other express arrangement or other provision of this Agreement; and

### where the disclosing party is the ICB, to NHS Bodies for the purposes of carrying out their duties.

# Liability

* 1. The total liability of the ICB under this Agreement is limited to payment of the Grant, subject to the conditions set out in this Agreement.
  2. The ICB has no responsibility for any other costs incurred by the Recipient in connection with the activities to which the Grant relates, and the Recipient must indemnify and keep the ICB indemnified against any losses, damages, costs, expenses, liabilities, claims, actions, proceedings or other liabilities that result from or arise out of the Recipient’s acts or omissions in relation to the Project or its duties to third parties.

# General

* 1. The Recipient may not, without the ICB’s prior written consent, 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 (unless as an agreed or necessary part or enabler of the Project), transfer or pay to any other person any part of the Grant.
  2. All Intellectual Property owned or created by the either party in connection with the Project remains the property of that party.
  3. No failure or delay by either party to exercise any right or remedy under this Agreement will be construed as a waiver of any other right or remedy.
  4. Where any dispute arises between the parties in connection with this Agreement, they must attempt in good faith to resolve it by escalation to their respective senior officers.
  5. Any notices given under this Agreement must be in writing and must be served by hand, post, or e-mail to the address for the relevant party set out at the front of this Agreement or as otherwise notified in writing. Notices by post will be effective upon the earlier of actual receipt or 2 Operational Days after mailing; by hand will be effective upon delivery; and by e-mail will be effective when sent in legible form, but only if, following transmission, the sender does not receive a non-delivery message.
  6. Nothing in this Agreement will create a partnership or joint venture or relationship of employer and employee or principal and agent between the ICB and the Recipient.
  7. Where the Recipient is not itself a legal entity (for example, an unincorporated association) the individuals who enter into and sign this Agreement on behalf of the Recipient will be jointly and severally liable for the Recipient's obligations and liabilities arising under this Agreement.
  8. 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.
  9. This Agreement will be considered as an Agreement made in England and will be subject to the laws of England, and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

|  |  |
| --- | --- |
| **SIGNED by:** | **………………………………………………….**  **Signature** |
| **[*insert authorised***  ***signatory’s***  ***name*]**  **for and on behalf of the [*insert name of ICB]*** | **………………………………………………….**  **Title**  **………………………………………………….**  **Date** |
|  |  |
| **SIGNED by** | **…………………………………………………**  **Signature** |
| **[*insert authorised***  ***signatory’s***  ***name*]**  **for and on behalf of [*insert name of Recipient*]** | **………………………………………………**  **Title**  **………………………………………………**  **Date** |

# SCHEDULE 1 - THE PROJECT

[*Set out here the activity or activities to be funded by the grant. The scope of the Project as described here will determine the permitted uses to which the Recipient can apply the Grant, and so ICBS should ensure that this description is sufficiently precise to ensure that the Grant is only applied for the purposes intended by the ICB. However, the description of the Project should also allow the Recipient an appropriate measure of operational flexibility and degree of freedom in its decision making (within the parameters of the Project): the Recipient is required to gain ICB permission to amend the Project or to use the Grant for other purposes, and so an overly prescriptive or limiting description of the Project could result in an onerous process for both Recipient and ICB.*

*Where Grant monies are to be used towards the purchase or development of assets, details of those assets should be set out here]*

SCHEDULE 2 – THE GRANT

[*Set out the amount of the Grant here. This may be expressed as a single block sum, or otherwise, depending on the nature of the Grant, the payment scheme and the duration of the Grant Period*]

[*Some payment options are set out in the Agreement, but where a different payment timescale is required, set that out here (for example, if payments are linked to specific project milestones)*]

[*Where specific amounts of the grant are allocated to specific use by the Recipient set out those details here*]

ANNEX A – THE APPLICATION

[*The Recipient’s application for grant funding can be added here*]

|  |
| --- |
| NHS England  Wellington House  133-155 Waterloo Road  London  SE1 8UG  Contact: [england.contractshelp@nhs.net](mailto:england.contractshelp@nhs.net)  This publication can be made available in a number of alternative formats on request. |
| © NHS England April 2023 | 08256 |

1. See:

   <https://www.dsptoolkit.nhs.uk/> [↑](#footnote-ref-1)