

Terms of funding: Leadership Management Development Fund (from December 2022)

This is a supporting legal document which you should read before completing an application form.

Between:

(1) The Construction Industry Training Board (Registered charity number 264289 and SC044875) whose principal place of business is at Sand Martin House, Bittern Way, Fletton Quays, Peterborough PE2 8TY (**'CITB or we'**); and

(2) The recipient ('you')

- (A) We have reviewed your proposal (**'the Project'**) and grant funds* (**'the Funds'**) to assist in carrying out the Project.
- (B) This Agreement sets out the terms and conditions on which the Funds are granted to you and any entity that directly or indirectly controls, is controlled by, or is under common control with you (**'Associated Business'**).
- (C) The terms and conditions are intended to ensure that the Funds are used for the purpose for which they are awarded.
- (D) Any reference in this Agreement to you includes the Associated Business named within your Project (whether or not the Associated Business has a separate legal personality).

*in the sum communicated to you separately in the covering letter to this Agreement.

1. Funding and tax

- 1.1. CITB grants the Funds to the Project inclusive of any VAT if applicable, subject to the below clause 1.4.
- 1.2. The Funds will only be used by you and any participating businesses named in your application and only for the Project.
- 1.3. The amount of the Funds shall not be increased in the event of any overspend by you in the delivery of the Project.

- 1.4. You shall promptly repay to CITB any money incorrectly paid to you 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 or where Funds have been paid in error before all conditions attaching to the Funds have been complied with by you.
- 1.5. You understand that our obligation does not extend to paying you any amounts in respect of VAT in addition to the Funds and that the Funds we give are inclusive of any VAT if applicable.
- 1.6. You shall not use the Funds to:
 - a) fund employees, directors or trustees other than in accordance with the details provided in your application; or
 - b) purchase building or land or large infrastructure; or
 - c) fund any capital expenditure; or
 - d) pay third parties, agents or providers to write funding bids on your behalf.

2. Duration

- 2.1. Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until the end date specified in the application form completed by you in relation to this funding.
- 2.2. 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.

3. Intellectual Property Rights, marketing and promotion

- 3.1. **'Intellectual Property Rights' ('IPR')** means any confidential information, patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all existing and future rights capable of present assignment, applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world. For the avoidance of doubt, data shall fall outside this category and shall be handled as set out in the data protection clause.

'Background IPR' shall mean IPR owned by you or a third party not created under this Agreement but needed for the performance of the Agreement or for use and exploitation of Foreground IPR.

'Foreground IPR' means IPR created by you or a sub-contractor for the Project.

- 3.2. Any advertising, presentation or media coverage by you and training materials, activity or products connected to the Project shall acknowledge CITB's funding.
- 3.3. Except as expressly set out in this Agreement you are not authorised to use any of CITB's logo and/or trademarks without our prior written approval.
- 3.4. Nothing in this Agreement entitles you to state, either expressly or impliedly, that you are endorsed by, approved by, affiliated with or have any corporate association with CITB.
- 3.5. We may publicise funding the Project and we may use your logo/trademark to do so.
- 3.6. Nothing in this Agreement shall affect your ownership of the Background IPR. The Foreground IPR shall collectively belong to you and CITB.
- 3.7. You grant us (and will get third parties to do the same) a perpetual, royalty-free, non-exclusive worldwide licence to use the Background IPR so we can use the Foreground IPR.
- 3.8. You will have agreements with third parties equivalent to these IPR provisions and will provide us with copies upon request.
- 3.9. We own all the new creative content in the outputs / outcomes and may share this across the construction industry.

4. Payment

- 4.1. CITB will make payments of the Funds in instalments on the successful completion of the agreed milestones as stipulated in the covering letter to this Agreement.
- 4.2. We may at any time throughout the duration of the Project request from you proof to show how the Funds have been utilised by the submission of evidence aligned to the approved application content or by completing such other

documents as we may require. Such documentation shall be returned to us within 10 working days of any such request.

- 4.3. We reserve the right during the duration of the Project, having given you reasonable notice, to carry out Project visits and telephone interviews in order for us to review and measure the progress of the Project.
- 4.4. Failure to comply with any request in clauses 4.2 and 4.3 may affect the payment of further instalments as well as your future eligibility for funding.

5. Withholding, Suspending and Repayment of Funding

- 5.1. You shall use the Funds for this Project and no other purpose.
- 5.2. CITB's intention is that the Funds will be paid to you in full. However, without prejudice to CITB's other rights and remedies, we may at our discretion withhold or suspend payment of the Funds and/or require repayment of all or part of the Funds if:
 - a) The Funds have not been used for the purpose of the Project or for which they were awarded;
 - b) You do not tell us of changes to the Project we deem substantial;
 - c) The future of the Project is in jeopardy;
 - d) Your bid contained, or you provided inaccurate, false or misleading information or acted dishonestly or disreputably;
 - e) Progress towards completion of the Project is unsatisfactory;
 - f) You are, in the reasonable opinion of CITB, delivering the Project in a negligent manner;
 - g) There is a serious delay or delivery fails in some other way;
 - h) We discover that the Project has been funded or part funded by another third party; or
 - i) You have failed to deliver all the Project activities stipulated.
- 5.3. If CITB makes an overpayment, you will repay that to CITB on demand.
- 5.4. Notwithstanding the outcome of the bidding process:
 - a) CITB will monitor the degree to which funds are being invested in specific projects to ensure that the overall amount invested is proportionate and in line with the objectives of the Leadership Management Development Fund. CITB reserves the right to suspend funding in projects if it deems that the funding being invested is disproportionate to the requirements of industry.

b) CITB reserves the right to prioritise the funding awarded or to pause or to close down the Leadership Management Development Fund in the event that demand exceeds the budget set.

6. Indemnity

6.1. You shall indemnify, save and hold harmless CITB from and against any and all third-party actions, claims, loss, damage, cost and expense (including reasonable legal fees) incurred by CITB arising directly as a result of the Project, a breach of the terms of this Agreement or any third party IPR infringement arising.

7. Insurance

7.1. You will effect and maintain adequate insurance, as detailed in the Application Declaration Form and, if requested, you shall supply us with the relevant insurance documentation and evidence that the relevant premiums have been paid.

8. Discrimination

8.1. You 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) against anyone.

8.2. You shall take reasonable steps to secure observance of this clause by all servants, employees or agents engaged by you and all supplier and sub-contractors engaged on the Project.

9. Safeguarding

9.1. If the Project involves work with children, young people or vulnerable adults ('vulnerable people'), you will take all reasonable steps to ensure their safety.

9.2. You will obtain written agreement from the legal carer or guardian before any direct contact with vulnerable people and have policies and procedures to safeguard them, obtaining appropriate disclosure checks for anyone in contact with them.

10. Data Protection

10.1. "**Data Protection Legislation**" means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data

Protection Regulation ((EU) 2016/679); the UK General Protection Regulation, the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; any other United Kingdom or European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and any other law relating to data protection, the processing of personal data and privacy as a consequence of the United Kingdom leaving the European Union; and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

- 10.2. For the purposes of this Clause 10, the terms “**Data Controller**”, “**Data Subject**”, “**Data Processor**”, “**Personal Data**”, “**Process**” and “**Processing**” shall have the meaning prescribed under the Data Protection Legislation.
- 10.3. The parties acknowledge that for the purposes of the Data Protection Legislation and this Contract, the parties are Independent Data Controllers. “**Independent Data Controllers**” shall mean that where a Data Controller in accordance with clause 10 has provided Personal Data to another party which is not a Processor or a Joint Data Controller (as defined under the Data Protection Legislation) because the recipient itself determines the purposes and means of Processing but does so separately from the Data Controller providing it with Personal Data and “**Independent Data Controller**” shall be construed accordingly.
- 10.4. With respect to Personal Data provided by one party to another party for which each party acts as a Controller, each party undertakes to comply with the applicable Data Protection Legislation, including any obligations and notification requirements, in respect of their Processing of such Personal Data as Controller and shall not do anything to cause the other party to be in breach of its obligations.
- 10.5. You shall provide Personal Data to CITB immediately upon request (email request is suffice) and by no later than 3 working days from the date of request.

- 10.6. Where a party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other party pursuant to the Agreement (“**the Recipient**”):
- 10.6.1. the other party shall provide any information and/or assistance as reasonably requested by the Recipient to help it respond to the request or correspondence, at the cost of the Recipient; and/or
 - 10.6.2. where the request or correspondence is directed to the other party and/or relates to that other party's Processing of the Personal Data, the Recipient will:
 - 10.6.2.1. promptly, and in any event within three (3) working days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
 - 10.6.2.2. provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 10.7. Each party shall within 24 hours of it becoming aware of any Personal Data breach provided by the other party pursuant to this Agreement shall:
- 10.7.1. do all such things as reasonably necessary to assist the other party in mitigating the effects of the Personal Data breach;
 - 10.7.2. implement any measures necessary to restore the security of any compromised Personal Data;
 - 10.7.3. work with the other party to make any required notifications to the Information Commissioner’s Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - 10.7.4. not do anything which may damage the reputation of the other party or that party's relationship with the relevant Data Subjects, save as required by the law.
- 10.8. Taking into account the nature of the processing, each party shall provide the other party with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 10.6 (and insofar as possible within reasonable timescales) including by promptly providing:
- (a) full details and copies of the complaint, communication or request;

- (b) such assistance as is reasonably requested to enable the Party to comply with any complaint, communication or request within the relevant timescales set out in the Data Protection Legislation;
- (c) at the either party's request, any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested in the event of any data loss event; and
- (e) assistance as requested with respect to any request from the Information Commissioner's Office, or any consultation with the Information Commissioner's Office.

10.9. The parties shall maintain complete and accurate records and information to demonstrate its compliance with this clause 10.

10.10. You shall allow for audits of its Data Processing activity by CITB or CITB's designated auditor.

10.11. CITB may, at any time and by no less than 30 working days' notice, revise this clause 10 by replacing it with any applicable data processing clauses which conform with the Data Protection Legislation and/or any guidance issued by the Information Commissioner's Office.

10.12. You shall fully indemnify and keep indemnified CITB, its officers, servants or agents against the costs of dealing with any claims, made in respect of information subject to the Data Protection Legislation, which claims would not have arisen but for the act, omission, or negligence from you.

10.13. The provisions of this clause 10 shall apply during the length of this Agreement and indefinitely after the expiry or earlier termination of this Agreement (as the case may be).

11. Freedom of Information

11.1. You acknowledge that CITB is subject to the requirements of the Freedom of Information Act 2001 (FOIA) and the Environmental Information Regulations 2004 (EIR).

11.2. You undertake to:

- (a) provide all necessary assistance and cooperation as reasonably requested by CITB and enable CITB to comply with its obligations under FOIA and EIR;
- (b) transfer to CITB all requests for information relating to this Agreement that you receive as soon as practicable and in any event within two (2) working days of receipt;
- (c) provide CITB with a copy of all information belonging to CITB requested in the request for information which is in your possession or control in the form that CITB requires within five (5) working days (or such other period as CITB may reasonably specify) of CITB's request for such information; and
- (d) not respond directly to a request for information unless authorised in writing to do so by CITB.

11.3. You acknowledge that CITB may be required under the FOIA and EIR to disclose information without consulting or obtaining consent from you. CITB shall take reasonable steps to notify you of a request for information to the extent that is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) CITB shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and EIR.

12. Accounts and records

- 12.1. The Funds shall be shown in your accounts as restricted funds and shall not be included under general funds.
- 12.2. You shall keep separate, accurate and up to date accounts and records of the receipt and expenditure of the Funds, which we will wish to view upon reasonable request.
- 12.3. You shall observe all statutory accounting requirements.
- 12.4. You shall comply and facilitate CITB's compliance with all applicable statutory requirements in regards to project related evidence, accounts, audit or examination of accounts, annual reports and annual returns.

13. Limitation of Liability

- 13.1. CITB accepts no liability for any consequences, whether direct or indirect, that may come about from you running the Project, the use of the Funds or from withdrawal of the Funds.

- 13.2. You shall indemnify and hold harmless CITB, 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 you in relation to the Project, non-fulfilment of obligations by you under this Agreement or your obligations to third parties.
- 13.3. Subject to clause 13.1 CITB's liability under this Agreement is limited to the payment of the Funds.

14. Warranties

You warrant, undertake and agree that:

- (a) you have all necessary resources and expertise to deliver the Project (assuming due receipt of the Funds);
- (b) you shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify CITB immediately of any significant departure from such legislation, codes or recommendations;
- (c) you shall comply with the requirements of Health and Safety at Work etc. Act 1974 and any other acts, order, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Project;
- (d) you have and shall keep in place adequate procedures for dealing with any conflicts of interest;
- (e) you have and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- (f) all financial and other information concerning you which has been disclosed to CITB is to the best of your knowledge and belief true and accurate;
- (g) you are not aware of anything in your own affairs, which has not been disclosed to CITB, which might reasonably have influenced the decision of CITB to grant the Funds on the terms contained in this Agreement; and
- (h) since the date of your last accounts there has been no material change in your financial position or prospects and for the avoidance or doubt CITB retains the right to carry out a credit check during the term of this Agreement.

15. Assignment/sub-contracting

- 15.1. You must not assign or sub-contract the Project or the Funds without our prior written approval.
- 15.2. Any assignment or sub-contract shall be on terms no worse than these and shall (a) require payment by you no more than 30 days from receipt of a valid invoice and (b) your prompt approval of each sub-contractor invoice. A sub-contractor must include in a subcontract an equivalent term.
- 15.3. No assignment or sub-contract removes an obligation or liability of yours contained in this Agreement. You are liable for acts and omissions of assignees or sub-contractors and their employees as if your own.

16. Termination

- 16.1. CITB may terminate this Agreement by written notice to you with immediate effect and without compensation:
 - a) If you, being an individual, or where a firm, any partner in that firm shall become bankrupt or equivalent;
 - b) If you, being a company, pass a resolution, or equivalent;
 - c) If you, being a charity/public body has an analogous event to those in (a) or (b);
 - d) If you seriously breach this Agreement and do not remedy it or, following written notice, do not within thirty (30) calendar days remedy it to CITB's satisfaction; or
 - e) If your acts or omissions bring us into disrepute or attract adverse publicity.
- 16.2. CITB may terminate this Agreement without reason on thirty (30) calendar days' written notice.
- 16.3. Any provision of this Agreement which either expressly or by implication is intended to come into, or continue, in force on or after termination of this Agreement shall survive the termination or expiry of this Agreement including but not limited to clause 3 (Intellectual Property Rights, marketing and promotion), clause 6 (Indemnity), clause 7 (Insurance), clause 10 (Data Protection), clause 11 (Freedom of Information), clause 12 (Accounts and records) and clause 13 (Limitation of Liability).

17. Dispute resolution

- 17.1. In the event of any complaint or dispute (which does not relate to CITB's right to withhold funds or terminate) arising between the parties to this Agreement in relation to this Agreement, the parties shall meet promptly to resolve matters.
- 17.2. If we cannot resolve the dispute within ten (10) working days of a meeting, the parties may, by mutual consent, refer the matter to the Centre for Effective Dispute Resolution to nominate a mediator.

18. Notices

- 18.1. All notices in relation to this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service and shall be duly given or sent to the registered address of the relevant party. If personally delivered all such communications shall be deemed to have been given when received (except that it is received on a non-working day or after 4 pm on any working day they shall be deemed received on the next working day) and if mailed such communications shall be deemed to have been given and received on the second working day following such mailing. Where any notice is sent to CITB, a copy of such notice shall be emailed to L&MFund@citb.co.uk.
- 18.2. This clause does not apply to the service of any proceedings or other documents in any legal action where the applicable service method will apply.

19. Third party rights

- 19.1. The parties do not intend the Agreement to be enforceable, under the Contracts (Rights of Third Parties) Act 1999, by any person not a party to it.

20. Joint and Several Liability

- 20.1. Where you are not a company or incorporated entity with a distinct legal personality, the individuals who enter into and sign this Agreement shall be jointly and severally liable for your obligations and liabilities arising under this Agreement.

21. Set off

- 21.1. We may set off any liability of you to us against any liability of us to you without prejudicing our other rights or remedies.

22. Entire Agreement

- 22.1. Neither party is induced into this Agreement by a statement or promise, unless fraudulent.

23. No partnership or joint venture

23.1. Nothing in this Agreement shall create a partnership or joint venture between us, nor any relationship or principal and agent, nor authorize any party to make or enter into any commitments for or on behalf of the other party.

24. Variation

24.1. The terms of this Agreement may only be varied in writing and by agreement between both parties.

25. Contracts (Rights of Third Parties) Act 1999

25.1. 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.

26. Law and jurisdiction

26.1. The law of England and Wales and the exclusive jurisdiction of the English and Welsh Courts shall apply.