

**LIVERPOOL CITY REGION
TRADING ON SCHEME-OCTOBER 2021
TERMS AND CONDITIONS**

Note to applicants:

These terms and conditions will apply to any grant funding you may be awarded under the Scheme. It is important that you note the contents of these terms and conditions and ensure that you are able to abide by them.

1. Definitions and interpretation

1.1 The following defined terms shall apply:

- (a) **Agreement** shall refer to your acceptance of the Grant Offer Email and its associated Terms and Conditions.
- (b) **Applicant** means the business entity making an application for funding under the Scheme, as identified in the Application.
- (c) **Application** shall refer to an application made on the form prescribed by the Council, for funding under the Scheme.
- (d) **Conditions** shall refer to these terms and conditions.
- (e) **Council** means Sefton Metropolitan Borough Council whose address is Bootle Town Hall, Oriel Road, Bootle, L20 7AE
- (f) **Grant** means the grant funding detailed in the Grant Offer Email.
- (g) **Grant Offer Email** means the email entitled "Grant Offer Email" by which the Council confirms that it will pay the Grant to the Applicant and detailing the amount of the Grant.
- (h) **Prohibited Act** means:
 - (i) offering, giving or agreeing to give to any servant of the Council any gift or consideration of any kind as an inducement or reward for:
 - (A) 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 Council; or
 - (B) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Council;
 - (ii) entering into this Agreement or any other contract with the Council where a commission has been paid or has been agreed to be paid by the Applicant 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 Council;
 - (iii) committing any offence:
 - (A) under the Bribery Act 2010;
 - (B) under legislation creating offences in respect of fraudulent acts; or
 - (C) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Council; or
 - (iv) defrauding or attempting to defraud or conspiring to defraud the Council.
- (i) **Scheme** shall refer to the **Liverpool City Region Trading On Scheme October 2021** operated by the Council.
- (j) **State Aid Law:** The EU State aid rules no longer apply to subsidies granted in the UK following the end of the transition period, which ended on 31 December 2020. This does not impact the limited circumstances in which State aid rules still apply under the Withdrawal Agreement, specifically Article 10 of the Northern Ireland Protocol. The United Kingdom remains bound by its international commitments, including subsidy obligations set out in the EU-UK Trade and Cooperation Agreement (TCA).
- (k) **Subsidy Law:** From Thursday 4 March 2021, a new domestic subsidy allowance for COVID-19 business support grants came into effect and all Local Authorities must apply the updated scheme rules set out in guidance issued by Government on 15 April 2021, subsequently amended 24 June 2021. The following scheme

rules are to be applied to COVID-19 business grants on the basis of the EU-UK Trade and Co-operation Agreement (TCA). The updated scheme rules set out in the guidance do not apply retrospectively. Therefore, where a Local Authority has previously rejected an applicant's application for grant before Thursday 4 March 2021 on the grounds that the applicant had reached previous scheme limits, the Local Authority must not revisit this decision. However, Local Authorities may accept Applications submitted from 4 March 2021 from eligible Applicants that are now within the new scheme limits as a result of the increased subsidy allowances. There are three new domestic subsidy allowances for this Scheme (Small Amounts of Financial Assistance Allowance; the COVID-19 Business Grant Allowance; and the COVID-19 Business Grant Special Allowance) as set out below:

(i) Small Amounts of Financial Assistance Allowance

Grants may be paid in accordance with Article 3.2(4) of the TCA, which enables an applicant to receive up to a maximum level of subsidy without engaging Chapter 3 of the TCA. This allowance is 325,000 Special Drawing Rights, to a single economic actor over any period of three fiscal years, which is the equivalent of £335,000 as at 2 March 2021. An Applicant may elect not to receive Grants under the Small Amounts of Financial Assistance Allowance and instead receive Grants only using the below allowances available under this Scheme.

(ii) COVID-19 Business Grant Allowance

Where the Small Amounts of Financial Assistance Allowance has been reached, Grants may be paid in compliance with the Principles set out in Article 3.4 of the TCA and in compliance with Article 3.2(3) of the TCA under the COVID-19 Business Grant Allowance (subsidies granted on a temporary basis to respond to a national or global economic emergency). For the purposes of these scheme rules, this allowance is £1,600,000 per single economic actor. This allowance includes any grants previously received under the COVID-19 business grant schemes and any State aid previously received under Section 3.1 of the European Commission's Temporary Framework across any other UK scheme. This may be combined with the Small Amounts of Financial Assistance Allowance to equal £1,935,000 (subject to the exact amount applicable under the Small Amounts of Financial Assistance Allowance using the Special Drawing Rights calculator).

(iii) COVID-19 Business Grant Special Allowance

Where an applicant has reached its limit under the Small Amounts of Financial Assistance Allowance and COVID-19 Business Grant Allowance, it may be able to access a further allowance of funding under these scheme rules of up to £9,000,000 per single economic actor, provided the following conditions are met:

- A. The Special Allowance covers only the applicant's uncovered fixed costs incurred during the period between 1 March 2020 and the date of application, including such costs incurred in any part of that period ('eligible period');
- B. Applicants must demonstrate a decline in turnover during the eligible period of at least 30% compared to the same period in 2019. The calculation of losses will be based on audited accounts or official statutory accounts filed at Companies House, or approved accounts submitted to HMRC which includes information on the applicant's profit and loss;
- C. 'Uncovered fixed costs' means fixed costs not otherwise covered by profit, insurance or other subsidies;
- D. The grant payment must not exceed 70% of the applicant's uncovered fixed costs, except for micro and small enterprises (for the purposes of this scheme defined as less than 50 employees and less than £9,000,000 of annual turnover and/or annual balance sheet), where the grant payment must not exceed 90% of the uncovered fixed costs;
- E. Grant payments under this allowance must not exceed £9,000,000 per single economic actor. This allowance includes any grants previously received in accordance with Section 3.12 of

the European Commission's Temporary Framework; all figures used must be gross, that is, before any deduction of tax or other charge;

- F. Grants provided under this allowance shall not be cumulated with other subsidies for the same costs.

An Applicant must be able to provide the necessary documentation to demonstrate it is eligible for funding under this COVID-19 Business Grant Special Allowance. The Council will first verify that an Applicant can meet all the criteria set out under this allowance before providing further funding under this allowance.

- (m) **Working Day** means Monday to Friday, excluding any public holidays in England.

1.2 The following rules of interpretation shall apply:

- (a) Clause headings shall not affect the interpretation of the Agreement.
- (b) References to any legislation are to be taken as including references to any subordinate legislation made under that legislation from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
- (c) References to **writing** or **written** includes e-mails but not faxes.
- (d) In the event of any inconsistency between the provisions of the Conditions and the provisions of Grant Offer Email the provisions of the Conditions shall prevail.

2. Application of terms

The terms and conditions contained in the Agreement shall apply to all Applications and to all Grants awarded, under the Scheme and shall apply to the exclusion of any other terms.

3. Payment of Grant

3.1 The Council shall aim to pay the Grant between November 2021-January 2022

3.2 Payment of the Grant shall be subject to the necessary funds being available when payment falls due. The Applicant agrees and accepts that payments of the Grant can only be made to the extent that the Council has available funds.

3.3 Payment of the Grant shall not imply any liability on the Council to make any further payments to the Applicant over and above the Grant.

3.4 The Applicant shall only use the Grant to continue the usual operation of its business and shall not use the Grant for any of the following purposes (irrespective of whether it would under normal circumstances use its own funds for such purposes):

- (a) To make payments to any of its directors, owners, trustees or (where applicable) other member of the company's governing body or partners in the case of a partnership;
- (b) To purchase buildings or land;
- (c) To make payments to any company or person connected to the Applicant or any of its directors, trustees, (where applicable) other member of its governing body or any of the Applicant's staff or partners in the case of a partnership.

4. Records and Monitoring

4.1 The Applicant shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Grant for a period of at least six years following receipt of any Grant monies to which they relate. The Council shall have the right to review, at the Council's reasonable request, the Applicant's accounts and records that relate to the expenditure of the Grant and shall have the right to take copies of such accounts and records.

4.2 The Applicant shall comply and facilitate the Council's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Council.

4.3 The Applicant shall on request provide the Council with such further information, explanations and documents as the Council may reasonably require in order for it to establish that the Grant has been used properly in accordance with the Agreement.

4.4 The Applicant shall permit any person authorised by the Council such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Applicant's fulfilment of the conditions of the Agreement and shall, if so required, provide appropriate oral or written explanations from them.

5. Warranties

5.1 The Applicant warrants, undertakes and represents that:

- (a) the information it has provided in its Application for the Grant to the Council was correct when the Application was made and remains correct thereafter;
- (b) the Applicant has met the eligibility criteria at the date of the Application and continues to do so;
- (c) it has not committed, nor shall it commit, any Prohibited Act;
- (d) it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Council immediately of any significant departure from such legislation, codes or recommendations;
- (e) all financial and other information concerning the Applicant which has been disclosed to the Council is to the best of its knowledge and belief, true and accurate;
- (f) 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 Grant;
- (g) it is not aware of anything in its own affairs, which it has not disclosed to the Council or any of the Council's advisers, which might reasonably have influenced the decision of the Council to make the Grant available on the terms contained in the Agreement.

6. Recovery of Grant

6.1 The Council's intention is that the Grant will be paid to the Applicant in full. However, without prejudice to the Council's other rights and remedies, the Council may at its discretion require repayment if within 2 years of drawdown of all or part of the Grant:

- (a) the Applicant fails to comply with any provision of the Agreement;
- (b) the Applicant provides the Council with any materially misleading or inaccurate information (whether as part of the Application or otherwise);
- (c) the Applicant commits or committed a Prohibited Act;
- (d) the Grant contravenes, in the reasonable opinion of the Council, State Aid Law and Subsidies (as set out in the EU-UK Trade and Co-operation Agreement (TCA));
- (e) any applicant, director, owner, trustee or (where applicable) other member of the Applicant's governing body, employee, partner consultant or volunteer of the Applicant has:
 - (i) acted dishonestly or negligently at any time in relation to the Application or the Grant; or
 - (ii) taken any actions which, in the reasonable opinion of the Council, bring or are likely to bring the Council's name or reputation, or the name or reputation of the Liverpool City Region Combined Authority, into disrepute; or
 - (iii) If there is non-compliance with regulatory requirements;
- (f) the Applicant ceases to operate or trade 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);

(g) the Applicant becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due.

6.2 Where the Council exercises its power to recover the Grant pursuant to this clause 6, the Council shall be entitled to add to the Grant interest at the rate of 4% per annum from the date of payment of the Grant to the Applicant (or where this is paid in stages, the date of the last payment), save where clause 6.1(d) applies, in which case interest payable and the duration over which it is payable shall be in accordance with State Aid Law and/or Subsidy Law.

7. State Aid Law and Subsidy Law

7.1 Where any government body or agency of either the United Kingdom, the European Union or any other international organisation commences proceedings, an audit or investigations into the payment of the Grant, in pursuance of State Aid Law and/or Subsidy Law, or to ascertain whether a breach of State Aid Law and/or Subsidy Law has taken place, the Applicant agrees to cooperate with any such proceedings, audit or investigation and to provide the Council with any assistance reasonably required by it for that purpose.

7.2 Where the Grant is found to have been paid in contravention of State Aid Law and/or Subsidy Law, the Applicant shall comply with any subsequent decision, order or judgment in relation to the contravention, including repayment of the Grant where required (as well as payment of any interest and penalty which may be required to be paid). The Applicant agrees to maintain appropriate records of compliance with the State Aid Law and/or Subsidy Law and agrees to take all reasonable steps to assist the Council to respond to any investigation(s) in respect of the Project.

8. Freedom of Information

8.1 The Applicant acknowledges that the Council is subject to the provisions of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and that the Council may be required, pursuant to that legislation, to disclose information relating to the Application and the Grant without consulting or obtaining consent from the Applicant.

8.2 The Council shall, where possible and practicable:

- (a) endeavour to inform the Applicant of any request for information pursuant to the above legislation which relates to the Application and/or the Grant; and
- (b) endeavour to invite the Applicant's representations before responding substantively to the request.

9. Data Protection

The Applicant shall ensure that they comply with the provisions of the Data Protection Act 2018 and the UK General Data Protection Regulation (UK GDPR), as well as any other applicable data protection and privacy law.

10. Equality and Diversity

The Applicant shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment or otherwise in connection with its business.

11. Publicity

The Applicant agrees, where reasonably practicable, to participate in and co-operate with publicity, communications and promotional activities relating to the Scheme that may be organised by the Council and/or Liverpool City Region Combined Authority.

12. Liability

12.1 The Council accepts no liability for any consequences, whether direct or indirect, that may come about from the Applicant's use of the Grant or from repayment of the Grant.

12.2 The Applicant shall indemnify and hold harmless the Council, 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 Applicant in relation to the non-fulfilment of obligations of the Applicant pertaining to the Grant or its obligations to third parties.

13. General

13.1 **Assignment.** The Applicant may not, without the prior written consent of the Council, assign, transfer, sub-contract, or in any other way make over to any third party the benefits and/or the burdens under the Agreement.

13.2 **Waiver.** 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.

13.3 Notices.

(a) any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:

(i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(ii) delivered by hand or by pre-paid first-class post or other next working day delivery service to the Council at its address contained in these Terms and Conditions sent by e-mail to its designated e-mail address.

(b) Any notice or communication shall be deemed to have been received:

(i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

(ii) if sent by pre-paid first-class post or other next working day delivery service, at 11.00 am on the second Working Day after posting or at the time recorded by the delivery service (if earlier).

13.4 **No partnership or agency.** The Agreement shall not create any partnership or joint venture between the Council and the Applicant, 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.

13.5 **Rights of third parties.** The 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.

13.6 **Entire agreement.** The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

13.7 **Jurisdiction and Governing Law.** The Agreement shall be governed by and construed in accordance with the laws of England and Wales, as applied in England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.