

# **GRANT AGREEMENT USER GUIDE**

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## INTRODUCTION

- This user guide is intended to provide resources to Government of Jersey employees throughout the negotiation and drafting process of a Grant Agreement (“**Agreement**”).
- The Agreement template can be obtained from the [Commercial Services Intranet](#).
- This user guide is made of two parts:
  - **Checklist**: follow the checklist as you draft the agreement, to help you fill in the blanks.
  - **Guidance**: use the search function (“*control+f*”) to search for topics and clauses about which you have questions.
- It is not necessary to read this user guide from cover to cover.
- This user guide has been designed to provide practical drafting guidance, including:
  - background into the Agreement and its requirements.
  - What clauses are negotiable and those that are set in stone;
  - Alternative and additional clauses available; and
  - FAQs.
- Any queries regarding this document should be directed to the contracting specialist at [commercialservices@gov.je](mailto:commercialservices@gov.je).
- This guidance applies only to general grants made by departments to their Arm’s Length Organisations (“**ALOs**”) (referred to as “**Grant Recipients**”) using Government of Jersey (the “**Authority**”) funding. It is not intended to apply to grants in aid, however the document may be used for this purpose at departmental discretion. The Public Finances (Jersey) Law 2019 (the “**PFL**”) and the Public Finances Manual (the “**PFM**”) contain requirements and guidance for Authority grants which will continue to be developed in the future.
- The Authority’s primary concern when administering grants is to have due regard to the PFM and the key documents and processes referred to within it. Therefore, this user guide should be read in conjunction with the PFM.
- This user guide should be approached on a comply or explain basis. It is important to consider flexibility and proportionality in adhering to the minimum requirements. As such, there may be some specific instances where the requirements may not be met in full. In these instances, appropriate justification should be recorded within the contract risk register or equivalent approval documents.
- All terms and definitions in this user guide correspond directly with those in the Agreement.

## PURPOSE

- The Agreement and further guidance for general grants set out below, has been developed to help ensure that all Authority grant schemes have appropriate contracts in place, which set out amongst other provisions: the purpose and objectives of the award, standard terms, and conditions for the receipt of funding, performance monitoring, financial assurance, and the funded activities schedule. This should assist in minimising risk around accidental or deliberate misuse, provide necessary controls to manage delivery and ensure adherence to the appropriate parts of the minimum requirements for general grants. It is strongly recommended that Authority's grant-awarding departments use the PFM which has legal clearance and is fully compliant with the minimum requirements under the PFL.

## CONTRACT CHECKLIST

Items	Status
<b>Miscellaneous</b> <ul style="list-style-type: none"> <li>• Have you completed the front page of the Agreement, including the full name of the ALO, the start and end dates of the Agreement, and the contract reference number?</li> </ul>	
<b>Parties</b> <ul style="list-style-type: none"> <li>• Have you inserted the full name of each Party?</li> <li>• Define the type of business (Company, Charity etc.) of the ALO.</li> </ul>	
<b>Recitals</b> <ul style="list-style-type: none"> <li>• Do you want to insert the relevant principles applicable to the funding and a narrative on the ALO's alignment with the States of Jersey's Common Strategic Priorities?</li> </ul>	
<b>Definitions</b> <ul style="list-style-type: none"> <li>• Have you checked the use of defined and capitalised terms?</li> <li>• Have you removed all square brackets?</li> </ul>	
<b>Term</b> <ul style="list-style-type: none"> <li>• Have you inserted the Commencement and Expiry Date?</li> </ul>	
<b>Cyber security</b> <ul style="list-style-type: none"> <li>• Have you applied the most appropriate level?</li> </ul>	
<b>Insurance</b> <ul style="list-style-type: none"> <li>• Does the Grant Recipient have appropriate insurance?</li> </ul>	
<b>Statutory Obligations and Code of Practice</b> <ul style="list-style-type: none"> <li>• Has the Grant Recipient conducted the relevant safeguarding/ criminal background checks on staff and sub-contractors?</li> </ul>	
<b>Notices</b> <ul style="list-style-type: none"> <li>• Have you included the addresses of both Parties?</li> <li>• Is it appropriate to use emails for notices?</li> </ul>	

<p><b>Signature</b></p> <ul style="list-style-type: none"> <li>• Please insert the title of the Authorised Signatories.</li> <li>• Have you had the Agreement signed by both Parties?</li> </ul>	
<p><b>Schedule 1 – Grant Schedule</b></p> <ul style="list-style-type: none"> <li>• Have you identified the type of grant being awarded?</li> <li>• Has the grant amount and payment plan been set?</li> <li>• Have you clearly defined the Funded Activities and set KPIs etc.?</li> </ul>	
<p><b>Relevant documents to the Agreement</b></p> <ul style="list-style-type: none"> <li>• Business Plan</li> <li>• ALO Governance Checklist</li> <li>• Grant Pre-Payment Checklist</li> <li>• Document Submission Timeline / Wheel</li> </ul>	

## **GRANT AGREEMENT GUIDANCE**

**\* – Sections marked with an asterisk are standard form, do not amend.**

### **MISCELLANEOUS**

- A. **Date of Agreement** – The start date and end date should only be inserted upon signing of the Agreement. Insert the date of signing as a preference, but if you need to use an alternative start date option, please confirm with LOD or Commercial Services first.
- B. **Contract Signing** – While there's no general rule about the order in which Party's should sign the Agreement, our preference is for the Grant Recipient to sign the Agreement first. Once the Grant Recipient has signed the Agreement, add the dates and countersign. The preferred method of signing the Agreement is electronic signatures, either via DocuSign or Adobe Acrobat. Once the Agreement has been signed by both Parties, please email a copy of the contract to [commercialservices@connect.gov.je](mailto:commercialservices@connect.gov.je) to be logged on the Contracts Register.
- C. **Contract Reference** – Once the budget has been approved by the Accounting Officer, please contact [commercialservices@connect.gov.je](mailto:commercialservices@connect.gov.je) to obtain a contract reference number. Please fill this in on the cover page and in the footer.
- D. **Control of Records**- once the Agreement has been signed and stored, you should delete all drafts to avoid any confusion.

### **PARTIES**

- For the Authority, insert the Ministerial position for your department.
- Insert the full trading name and registered address of the Grant Recipient in the respective fields. This address will also be used for service of any notices. If the Grant Recipient is not a registered company, please provide the relevant information for their entity. For example, this may be a charity or a trust. It is best practice to check the registration details on the published registers of the independent commissions.

### **RECITALS**

- This clause provides the context that the Agreement follows a framework structure, under which the Authority can provide many grants to the Grant Recipient, via the Grant Schedule(s).
- This means that the entire Agreement will only need to be signed once, for a 3 – 5 year period, and the Relationship Manager(s) will then only need to fill out the Grant Schedule each year.
- Under this clause the Authority must also insert the relevant principles applicable to the funding provided to the Grant Recipient and provide a

narrative on how the Grant Recipient will align with the States of Jersey's Common Strategic Priorities. The recitals are a placeholder for users to insert any relevant guiding principles, ministerial requirements, or overarching ideas associated with the relationship between the Parties. For example, while this Agreement is not a 'Partnership Agreement', this clause is a good place for the Authority to define the collaborative, open or cooperative nature of the relationship with the Grant Recipient.

## **AGREEMENT**

### **CLAUSE 1 – DEFINITIONS AND INTERPRETATIONS**

- The definitions section sets out a glossary of words and phrases which are to have a particular meaning when used in the document. The term's definition applies in the context of the particular Agreement and the definitions are usually only applicable to that Agreement.
- New definitions can be added, or alternatively existing definitions can be removed at the discretion of LOD and/or Commercial Services.
- If you would like to add a new definition, ensure that this new defined term is capitalised wherever it is used, however do not capitalise where the word has an alternative meaning to how it has been defined.
- If you would like to remove a definition, ensure the definition has been de-capitalised wherever the word has been referenced.
- The interpretation section states how the Parties intend particular grammatical conventions or references in the Agreement to be interpreted. All interpretations are mandatory, non-contentious and should not be removed or amended.

### **CLAUSE 2 – TERM**

- The Agreement will be valid and commence upon signature, so it is extremely important to have the Agreement signed. This is the "Commencement Date".
- The term of the Agreement may be set for any duration between 3 – 5 years. It is not recommended that you set a longer term, as the contract may become outdated and fail to meet the necessary regulatory requirements. Any shorter term would just be an administrative burden to renegotiate so soon.
- Regardless of when this Agreement is signed, please note that no work may be governed by it until a Grant Schedule is signed. This will be completed annually in line with the Government Plan.
- The Agreement will end on the date inserted as the "Expiry Date" unless terminated or extended in terms of the Agreement.
- Please ensure that these dates are filled out where required in the Agreement.

### **\*CLAUSE 3 – ANNUAL GRANT APPLICATIONS**

- This clause highlights the procedure for applying for a Grant, as well as the mandatory documents required for submission. The details of the Grant will be captured in the Grant Schedule.
- Where square brackets have been set around the key dates, they may be removed or the date(s) may be changed if necessary.
- Any changes to this clause must comply with the PFM and the Government Plan process.

### **CLAUSE 4 – ADDITIONAL GRANT APPLICATIONS**

- This clause relates to the same procedure as above, but in relation to Additional Grants awarded throughout the year. For example, this clause will apply if another department wishes to make a one-off award to the Grant Recipient.

### **CLAUSE 5 – USE OF GRANTS**

- All Grant Recipients must understand that a Grant may only be used for the specific Funded Activities as described in the Grant Schedule. It is preferred that you keep this description as specific as possible to ensure that the Grant Recipient is compliant and in order to track the use of the Grant.

### **CLAUSE 6 – PROPOSED CHANGES TO EXISTING GRANTS**

- It is important for the Grant Recipient to understand that it cannot make any changes to any aspect of the Funded Activities or Grant Schedule without notifying the Authority and signing an updated Grant Schedule. While it may seem like a lot of work for a minor change, to do so via a variation or any other recording process would pose a greater risk and effort for the Authority. If you would like further information, please contact Commercial Services.
- However, if the Grant Recipient would like to reallocate up to 10% of the Grant amount, it will not be considered a Proposed Change and they may do so, provided they have obtained the written consent of the Authority.
- The reallocation of any Grant amount must still be in line with the Grant Recipient's obligation under this Agreement.
- 10% is the maximum cap that is permitted and it may not be increased any further. You may decrease this percentage or substitute it for a fixed value equal or less than 10% of the current grant amount. It should be determined at the Authority's discretion depending on the overall value of the Grant and its impact.

### **CLAUSE 7 – PAYMENT OF GRANTS**

- The Authority is responsible for paying the Grant and/or any instalments by the Payment Date(s) which may occur at any frequency or percentage. The Parties may agree on any payment pattern suitable, but you should choose a frequency



method that balances your administrative efforts against the potential loss should a Grant Recipient not deliver and you cannot get any money back.

- The Authority has the discretion to withhold payment if the Grant Recipient has not met any of its obligations under the Funded Activities. This is another reason why the scope and extent of the Funded Activities must be clearly defined in the Grant Schedule.
- It is also important for the Grant Recipient to be notified if any payments will be withheld at the regular meetings between the parties. Such actions must be documented in the minutes.

#### **CLAUSE 8 – UNSPENT GRANT AMOUNTS**

- For the purpose of this clause, it is understood that all relevant Grant monies have been spent or are due to be spent before any other income that the Grant Recipient may receive from other sources. This is of considerable benefit to the Grant Recipient where they have other sources of revenue, and will ensure that the Grant Recipient makes full use of the Grant during the current calendar year.
- There may be scenarios where the Grant Recipient may need to retain any Unspent Grant Amount. This is not an assumed right, and you must determine whether retaining such Unspent Grant Amounts are appropriate and justified, depending on the reasons motivated by the Grant Recipient.
- Unspent Grant Amounts are not the same as the Grant Recipient's reserves, which may be made up of other sources of income that they receive.
- There is no set percentage of the Unspent Grant Amount which may be retained, so it is fully at the discretion of the Authority to approve and ensure the Grant Recipient's compliance. However, it is vital to consider how necessary the Grant Recipient's spending needs are, and whether they have been clearly outlined to you.

#### **\*CLAUSE 9 - GRANT RECIPIENT'S WARRANTIES**

- Each Grant Recipient needs to be aware of their obligations and warranties under this clause, which reflect on the delivery of the Funded Activities. This clause is non-contentious and should not be changed.
- These warranties focus on a variety of issues, with a focus on:
  - Assurance that the Grant Recipient is compliant with the law and all necessary approvals throughout the duration of the Agreement;
  - Assurance that the Grant Recipient holds the relevant insurances in line with clause 20 of the Agreement; and
  - Assurance that the Grant Recipient cannot enter into any loan agreement (other than typical bank overdraft arrangement) without the Authority's consent. If consent is provided, the Grant Recipient and the third-party

financer must confirm that the Authority is in no way responsible for the repayment of the loan or any similar obligations. The basis for the sub-clause is that given the nature of the relationship between the parties, there may be an expectation that the Authority would assist the Grant Recipient with settling debts. This is incorrect and this subclause confirms that the Authority cannot be held liable to pay off any loans.

- While there is no time frame specified in the Agreement, the Authority must be aware of the Grant Recipient's warranties and observe any non-conformity with this clause at any given time.
- In principle, a Grant Recipient is not entitled to any payment it has received for the Funded Activities if any warranties which were found to be non-conforming are not remedied. Non-compliance with this clause also allows the Authority to potentially reduce payment of the grant, in line with clause 21(c) of the Agreement and in extreme situations to terminate the agreement.
- The Grant Recipient's obligations under this clause are tied to its own acts or omissions under the Agreement as well as that of its sub-contractors and agents.

#### **CLAUSE 10 – PERFORMANCE REVIEW**

- Similar to the clause above, it is the role of the Grant Recipient to ensure that the objectives of the Funded Activities are achieved.
- That being said, the Authority is also responsible for ensuring that there is no misuse of Government funding and that the Grant Recipient delivers the Funded Activities accordingly, in line with the milestones and key performance indicators specified under Schedule 1.
- This clause emphasises that and grants the Authority the right to review the Grant Recipient at any given time, as well as the right to request any further information and/or documents in addition to the ones stipulated in the Agreement.
- This clause also places a responsibility on the Grant Recipient to inform the Authority of any actual or potential breaches of the Agreement caused for whatever reason. Failure to do this may lead the Authority to reduce or suspend payment of the grant.

#### **CLAUSE 11 – MEETINGS**

- As part of your obligations, you will be responsible for setting up regular meetings between the Parties. These meetings must occur (at a minimum) in each quarter of the calendar year in accordance with the PFM. You may also set up more regular meetings, such as a monthly occurrence, if that would assist in the relationship between the Parties.

- The purpose of these meetings is to ensure that the awarding of grants to the Grant Recipient are managed correctly and compliant with the PFM. It is also an opportunity for the Parties to discuss any concerns or queries.
- These meetings must be attended by at least one board member / director of the Grant Recipient and a Government Participant. This may be any person appointed by the Chief Officer of the department or Minister responsible for the administration of the grant. Any additional meetings may be attended by any representative of the Parties, upon mutual agreement.
- While the above persons must always be in attendance, there is also an expectation on the Authority to ensure that the CEO of the Grant Recipient attends these meetings at least twice in a calendar year.
- The Authority must provide the Grant Recipient with at least 30 Days' notice of the meeting in order for the Grant Recipient to prepare and send the relevant documents listed under subclause (b). The Authority may even request to see further documentation that is not specified under this clause.
- Additionally, the Grant Recipient is obligated to inform the Authority of its own Board meetings and the matters that will be considered, and if requested, shall allow the Authority to attend and participate in these Board meetings. However, the Authority will not have any voting rights at these Board meetings.
- This clause is more onerous than a supply agreement and is a key differentiator between a grant agreement and a supply agreement. The clause is necessary to allow government employees to meet their obligations under the PFM and cannot be amended.

## **CLAUSE 12 – AUDITING AND ASSURANCE**

- In addition to being a legal requirement for public companies (and private companies who have opted to do so), audits are a tool used by the Authority to verify that contractual commitments are being met. The Authority has an interest in ensuring that the Grant Recipient's accounts are audited and aligned with the Authority's obligations in the delivery of the Funded Activities.
- While the requirement of 'audited' accounts is our best practice position, where the Grant Recipient is not required to by law, and unwilling to do so, the term 'audited' may be removed from this clause 12(a), and clause 12(a)(ii) may be deleted.
- The review of accounts also provide guidance to the Authority when considering matters such as the Grant Recipient's business continuity, and whether the Grant Recipient may be permitted to retain Unspent Grant Amounts.

- While it is mandated for the Grant Recipient to deliver these audited accounts within 6 months after the end of its financial year, it may do so at any other time which the Authority agrees upon, subject to the PFL and PFM.
- ISA 260 defines those charged with the responsibility for overseeing the strategic direction and accountability of an entity's financial reporting process. However, there are instances where the Grant Recipient may not be able to or struggle to comply with the ISA 260 requirements, given a lack of funding or expertise.
- In these instances, one can negotiate the removal of compliance with the ISA 260 requirement, in place for an agreed informal action plan on how the Grant Recipient will build up to being able to comply with such requirement or provided that compliance with the Comptroller and Auditor General's Annuals Reporting Good Practice Guide is sufficient. If the Parties agree to remove the ISA 260 requirement, simply delete the mention of "*ISA 260 correspondence*" under clause 12(a)(ii).
- The Comptroller and Auditor General's Annuals Reporting Good Practice Guide serves as a tool to guide the Grant Recipients as to the format of their reports.
- The Grant Recipient must keep all records in respect of the award of the grant, for a period of 10 years after the end of the Agreement, or for any other period agreed upon by the Parties. This period cannot be changed as it is in accordance with the Public Records (Jersey) Law 2002 which relates to the retention of financial documents.

### **CLAUSE 13 – CYBER ESSENTIALS**

- Anyone contracting with the Authority is subject to an increasing array of restrictions relating to cyber security. The regulatory environment regarding cyber security is in a state of rapid evolution.
- This clause mandates that the Grant Recipient adhere to an accredited Cyber Security system. Depending on the nature of each ALO's business they are encouraged to sign up to either the lower-threshold Cyber Essentials, Cyber Essentials Plus or the more stringent ISO 27001, so please select the relevant option. If you require advice on the most appropriate scheme, please liaise with Stuart Powell, Head of Information Security.
- Schedule 2 of the Agreement contains hyperlinks to the Cyber Essentials (and Plus) schemes and relevant information pertaining to these requirements. However, there is a risk that these links may become outdated during the 3 – 5 year term of the Agreement. It is the obligation of the Grant Recipient to research the up-to-date Cyber Essentials/ ISO 27001 requirements.

- Signing up to a Cyber Essentials scheme, at £300 for the basic license, is affordable even for a small entity and a valuable assurance measure that shows the Grant Recipient takes information security seriously. The advanced Cyber Essentials Plus and ISO 27001 licenses are more costly, but come with the added service of a full diagnostic of the Grant Recipient's current cyber security parameters. The level of cyber security required is always depending on the nature of the Grant Recipient's business and information.
- As the Authority, we cannot mandate any further requirements other than what the Grant Recipient ought to already be doing, due to the fact that as an organization we are not fully cyber-compliant to insist that our Grant Recipients be as well.

#### **\*CLAUSE 14 – PREVENTION OF FINANCIAL IRREGULARITY**

- This clause is non-contentious and should not be amended.
- The Authority is bound by the States of Jersey's Anti-Bribery and Corruption Policy and will therefore have an obligation to ensure that all public funds are used wisely and comply with ethical standards.
- As a result, the Grant Recipient will be obligated to prevent any improper use or mismanagement of the Grant or Funded Activities, which are in line with the Anti-Bribery and Corruption Policy and may not be amended in any manner.
- Given the importance of this clause, it is necessary for the Grant Recipient to inform the Authority if any Financial Irregularity is suspected and the updates and/or outcomes of such investigations.
- It is also at the sole discretion of the Authority to decide what action shall be taken following any Financial Irregularity, which may include suspending the Grant or withdrawing any payments.
- Any request by an ALO to amend this clause should be treated with immense caution as financial propriety is a minimum operating standard for all government funded organisations.

#### **\*CLAUSE 15 – CONFIDENTIALITY**

- This clause is non-contentious and should not be amended. While a clear meaning of Confidential Information is provided under the Definitions clause, it may be expanded further under clause 1(a)(xii) to include specific information in order to avoid any doubt.
- It is also worth noting the types of information which are not considered to be Confidential Information, such as public knowledge.
- In addition to the above, the Authority may require that any Representatives of the Grant Recipients sign a separate confidentiality undertaking in relation to the Agreement. If this is required, you may find a copy of the Standard

Government of Jersey Non-Disclosure Agreement [here](#) or by contacting Commercial Services.

- While the Agreement states that Confidential Information may only be used for the purposes of the Agreement, the Authority may be required to hand over Confidential Information pursuant to a governmental or court order.
- Any Confidential Information should only be shared with the Recipient's employees as required for the purpose of the Agreement. In the event the Parties contemplate that their respective affiliates or third parties (e.g., agents, consultants, subcontractors) will be involved in furtherance of the Purpose, Confidential Information should be shared with those entities only if:
  - those entities use the Confidential Information to the same extent as the Recipient may under the Agreement between the Discloser and the Recipient;
  - the Recipient ensures that those entities will comply with confidentiality obligations comparable to the ones contained in the Agreement between the Discloser and the Recipient; and
  - any necessary Discloser consent has been given.
- The degree of care given by the Recipient for safeguarding a Discloser's Confidential Information should be no less than that it gives to its own similar Confidential Information.
- Violating confidentiality obligations can cause irreparable harm that goes beyond mere direct monetary damages and may include both indirect and consequential damages, loss of revenues, profits, or the like. The recipient should also promptly notify the discloser about all losses or wrongful disclosures and take measures to mitigate the effects of such events.
- The Agreement does not specify the duration of the Parties' confidentiality obligations, with the assumption that all confidentiality obligations would end upon expiry of the Agreement. However, it is possible to insert a clause stating that the confidentiality obligations will continue for any period of time following termination of the Agreement, or even indefinitely.
- The duration of the confidentiality obligations may be the expected period over which the Confidential Information continues to be relevant or of value to the disclosing party if kept confidential. Factors to be considered include whether the information is a trade secret, whether the information is expected to become stale or will likely become public at some point, and standards for the particular market or industry.
- Neither Party may retain any Confidential Information upon expiry of the Agreement or at the end of the duration of their confidentiality obligations,



whichever is earlier. Both Parties will also have the right to request the return of any Confidential Information at any point in the Agreement.

**\*CLAUSE 16 – FREEDOM OF INFORMATION**

- The Freedom of Information (Jersey) Law 2011 (FOIL) affords individuals the right to request any recorded information held by a Scheduled Public Authority, a Government of Jersey department or agency listed in Schedule 1 of the FOIL.
- The Grant Recipient is currently outside of the scope of a Scheduled Public Authority under Schedule 1 of the FOIL, and is therefore not subject to any reporting requirements. However, at any time, the Authority may be required to disclose Confidential Information in line with its obligations under the FOIL. If so, other parties will be required to assist and cooperate where necessary.
- Any disclosures will be at the discretion of the Authority and it is usually standard practice to only disclose the information available at hand.

**\*CLAUSE 17 – DATA PROTECTION**

- The data protection clause has been updated to lay out a clear set of requirements that the Grant Recipient must adhere to as per the relevant legislation.
- Since the Grant Recipient does not fall within the scope of the Authority's central Data Protection Unit (DPU) or Data Protection Officer (DPO), therefore it is a requirement under the Privacy and Data Protection Requirements that each Grant Recipient appoints its own DPO.
- This clause is mandatory and cannot be amended or removed.

**\*CLAUSE 18 – INTELLECTUAL PROPERTY RIGHTS**

- This clause governs the ownership, title and rights associated with intellectual property owned by the Parties, as well as that produced during the course of the Agreement.
- Intellectual property owned by a Party remains that Party's property unless expressly transferred under the Agreement. This accounts for instances where the Grant Recipient may wish to use the logos or trademarks of the Authority.
- The Grant Recipient shall be the owner of all intellectual property that is produced as a result of the Deliverables from the Agreement, but the Authority will have the licence to use the Deliverables for its own purposes.
- The Grant Recipient should stand behind all intellectual property incorporated into the Deliverables and indemnify the Authority against third party claims that relate to the Deliverables and any elements thereof, subject to appropriate limitations.

- While this clause should not be amended, if the Grant Recipient proposes any changes please review these with LOD.

#### **\*CLAUSE 19 – DISPOSAL OF SIGNIFICANT ASSETS**

- Significant Assets refer to those items which belong to the Grant Recipient, yet has been improved or purchased using all or part of a grant. These items may be purchased at any time, not just during the course of the Agreement. As a result, the Grant Recipient must ensure that such assets are well-maintained and must remain under its sole ownership.
- The Grant Recipient may only dispose of any Significant Asset provided the Authority has given its consent.
- A 'Disposal' refers to any transfer, sale, lease or any alienation of the item under law, and the Authority may determine any conditions surrounding it.
- Any amount received from the Disposal may be determined by the Authority to either be paid back to it, used in the purchase of a new Significant Asset, or any other activity related to the Grant. The Grant Recipient shall not have any right over such monies.
- This clause is non-contentious. Even if the Grant Recipient does not have or seems unlikely to have any Significant Assets, do not delete this clause.

#### **\*CLAUSE 20 – INSURANCE**

- The Authority requires the Grant Recipient to hold and maintain for a period of 6 years following termination of an Agreement a minimum of £10,000,000 Public Liability Insurance and a minimum of £10,000,000 Professional Indemnity Insurance.
- The reason a £10,000,000 insurance value has been updated (from the previous minimum amount of £5,000,000) reflects inflation over the last few years as well as Authority's appetite for risk across its supply chain.
- 6 years is the ideal middle-ground time frame for the Grant Recipient to maintain insurances, as the period for prescription of claims is 5 years in the UK and 10 years in Jersey.
- If the Grant Recipient has any concerns with regards to the insurance premiums or cannot meet, please contact [commercialservices@gov.je](mailto:commercialservices@gov.je) for advice. In extreme circumstances, please contact Jodie Warner or Haydon Calver from the insurance department for additional support.

#### **CLAUSE 21 – EVENTS OF DEFAULT**

- While many Events of Default have been outlined under this clause, they may be expanded to include any other relevant scenarios during which a Party has



failed to fulfil its obligations under the Agreement. If you are doing so, please consult with LOD prior to making any changes.

- For the Authority, this is only a failure to pay the Grant or any instalment, as specified under the Grant Schedule. In this instance, the Authority will have at least 60 Working Days to remedy the fault, following which the Agreement may be terminated by the Grant Recipient.
- For the Grant Recipient, there are more possibilities which have been listed, such as failure to deliver on the Funded Activities, bankruptcy, or a change in ownership. In this case, the Authority may decide to suspend or reduce payment of the Grant, require repayment of the Grant or terminate the Agreement.
- While the list of potential Events of Default are not exhaustive, the overarching idea is that either Party will be in default if they fail to uphold their obligations in terms of the Agreement.
- ALOs may argue that the ratio of reasons for default applicable to them vs those applicable to GoJ is inequitable. This isn't a reasonable argument as the obligations on both parties are very different. GoJ relies on the ALO to provide services effectively and reliably whilst in return the ALO only relies on GoJ to pay promptly. This clause is a fair reflection on the difference in obligations.

## **CLAUSE 22 – REMEDIAL ACTION PLAN**

- A Remedial Action Plan is an optional avenue for a Grant Recipient in default. Although this plan may be provided by the Authority, the Grant Recipient is still responsible for remedying the Event of Default.
- The Grant Recipient may also choose to develop their own plan and course of action, to which the Authority must be informed of within 5 Working Days of being informed that an Event of Default has occurred.
- The idea behind this clause is to secure business continuity for the Grant Recipient without the Authority immediately resorting to termination of the Agreement. This is due to the unique position of the Grant Recipient, who may solely rely on the Grant as a form of income as well as the challenges faced by the Authority in finding an alternative source of supply.
- Any Remedial Action Plan will look different depending on the nature of the Event of Default, but must contain clear details on the Event of Default as well as proposed actions and timescales in order to assist the Grant Recipient. Should you wish to implement a Remedial Action Plan, please consult Commercial Services for support.
- If the Authority is not satisfied by the Remedial Action Plan (or the lack thereof), then the Agreement may be terminated.

- Periods for the delivery of notices and responses can be revised, however make sure that the same updates are made to Schedule 3.

#### **\*CLAUSE 23 – EFFECT OF EXPIRATION OR TERMINATION**

- This clause is mandatory and cannot be amended or removed. Once termination of the Agreement has occurred, a sufficient notice period of 60 Working Days will come into effect in order to allow the parties to deal with the effects of the termination. This also applies in the case of the Agreement coming to an end of term.
- The key obligations on the Grant Recipient will be to repay any Unspent Grant Amount within 28 Working Days.
- Additionally, both Parties may be required to return or destroy (and provide proof thereof) any Confidential Information of the other Party if requested to do so. This will not apply to any documents that a Party is required to retain by law.

#### **\*CLAUSE 24 – DISPUTE RESOLUTION**

- This clause refers to Schedule 2, which highlights the Dispute Resolution Procedure set out in the Agreement. Both Parties are bound by this unless they decide by written agreement that a certain matter shall not be governed by the Dispute Resolution Procedure.

#### **\*CLAUSE 25 – LIMITATION OF LIABILITY**

- This clause sets out both Parties' responsibility for any claims, obligations, or debts that may arise from the Agreement. This clause is mandatory and cannot be amended or removed.
- The Authority is not legally liable for any Losses, which include any debts or third party obligations that the Grant Recipient might have entered into. It is important to note however that a moral argument may be made that GoJ should take responsibility for any default by ALOs. This clause is an important counter-argument to that assertion and should not be amended.
- A Party's liability under the Agreement is solely related to a failure to meet its obligations specified in under the Agreement, including the Grant Schedule(s). Neither Party is responsible for any loss of revenue, profits or other similar damages.
- Exclusions from Liability are generally accepted as a standard in commercial agreements, although exceptions to those exclusions may be carved out for particular breaches, such as breach of confidentiality.
- Regardless of the above exclusions, public policy and legislation prohibit Parties from limiting their liability in certain instances where Parties are

expected to take full responsibility for their acts or omissions, such as personal injury or death, or for damages caused by a Party's gross negligence or wilful misconduct. This is referred to under subsection (a).

**\*CLAUSE 26 – FORCE MAJEURE**

- While the performance of the Agreement should be uninterrupted, and the Grant Recipient should have contingency plans in place in order to ensure continuity of deliverables, both Parties may be prevented or delayed by events defined as Force Majeure.
- Force Majeure allows the Agreement to adapt to circumstances that are beyond the reasonable control of any Party, and relieves the affected Party from liability for failure to perform, with the time for completion being suspended or postponed.
- The following are common examples of events entitling a Party to be temporarily excused from their respective obligations:
  - Acts of God, natural disasters, earthquakes, fire, explosions, floods, hurricanes, storms or other severe or extraordinary weather conditions, natural disasters;
  - Sabotage, contamination, nuclear incidents, pandemics;
  - War (civil or other and whether declared or not), military or other hostilities, terrorist acts or similar, riot, rebellion, insurrection, revolution, civil disturbance, or usurped authority);
  - Strikes or other industrial disputes that affect an essential portion of the supplies or works, except with respect to workers under the control of the Party asking for relief due to this event.
- The list of Force Majeure events should be more elaborated when the Agreement is performed in relation to business and operative environments that are unstable, and may also include, if relevant:
  - Non-availability or loss of export permit or license for the products/ solutions to be delivered, or of visas/ permits for Grant Recipient's personnel;
  - Requisition or compulsory acquisition by any competent Authority, embargo, or other sanctions;
  - Currency restrictions, shortage of transport means, general shortage of materials, restrictions on the use of or unavailability or shortage of power or other utilities.
- Do not make any additions to the list of Force Majeure events without first consulting with LOD.

- Parties may negotiate the Force Majeure definition and/or clause as part of their risk allocation; consult LOD before making any changes.
- When notifying Force Majeure to the other Party, the affected Party should provide all relevant information, describing at a reasonable level of detail the circumstances and the performance that is affected, and as soon as practically possible. The affected Party should also:
  - continually notify the other Party while Force Majeure is ongoing, describing its plan, efforts, and any timeline to resume performance to whatever extent possible; and
  - notify the other Party upon the cessation of the event of Force Majeure.
- If the Force Majeure event continues for a period longer than 6 months (or as otherwise defined), either Party will have the right to terminate the Agreement, or part of it, immediately or after a reasonable notice period.
- Neither Party should be entitled to any compensation from the other Party for costs or damages incurred as a result of a Force Majeure event. However, if the Agreement is terminated, the Authority (if unaffected) may have to pay for any Funded Activities delivered up until the date of termination.

**\*CLAUSE 27 – STATUTORY OBLIGATIONS AND CODE OF PRACTICE.**

- This clause is mandatory and cannot be amended or removed. This clause reflects the best practices that Grant Recipients must comply with as an organisation that receives funding from the Authority.
- Majority of these clauses are standard form and pertain to issues such as anti-bribery and corruption, unlawful discrimination, health and safety requirements and Jersey Living Wage.
- This clause also highlights the need for Grant Recipients to conduct criminal record checks for all staff and sub-contractors performing the Funded Activities. This is particularly important in cases where the Grant Recipient is dealing with Vulnerable Groups as defined in the Safeguarding of Vulnerable Groups Act.
- As a result of these risks, it is mandatory that the Grant Recipient inform the Authority whether any staff or sub-contractor is found to have a relevant conviction, and obtain the Authority's consent to employ said person.
- A "relevant conviction" is one regarding convictions of a violent or sexual nature or involving unlawfully supplying controlled drugs / commercial drug dealing or trafficking. It's also worth considering high-risk convictions such as theft and fraud, in scenarios wherein a potential employee has access to funds.

- This information is to be treated with confidentiality and only the nature of the conviction would need to be disclosed to the Accountable Officer when discussing the reason for employment.
- While it may not always be necessary to disclose the nature of the conviction, it falls to the discretion of the Grant Recipient and will be their responsibility to ensure that the Authority is kept informed of any potential risks that may arise out of employing any staff or sub-contractors.
- The ALO should ask for copies of all references policies and procedures. Links to copies are available on the Commercial Services intranet site.

#### **\*CLAUSE 28 – NOTICES**

- Whilst day to day the Parties will communicate informally via meetings, emails or social media, this clause explains how formal notices must be exchanged.
- The clause acknowledges that other forms of communication will be used for correspondence, primarily by hand delivery, signed for post, or electronic mail.
- Please note that sending things by email is risky. Never ever insert a person specific email address, unless the Agreement is with a single specific person. A group accessible email address must be used, in case of changes of personnel, annual leave or other absence. If either Party does not have a suitable group accessible email account, remove references to email from this clause.

#### **\*CLAUSE 29 – GENERAL**

- These clauses cover a variety of general boilerplate clauses, such as variation, severability, waiver and enforceability. These clauses are non-contentious, standard and may not be removed or amended at all.

#### **CLAUSE 30 – GOVERNING LAW**

- This clause mandates that this Agreement will be construed in accordance with Jersey law and governed by the courts of Jersey. This clause is mandatory and cannot be removed.
- The Agreement may also include references to specific laws that are relevant to a particular industry or to laws that are particularly significant or relevant to the Funded Activities.

#### **\*SIGNATURES**

- Refer to Contract Signing, under B

## **SCHEDULES**

### **SCHEDULE 1 – GRANT SCHEDULE**

- The Grant Schedule is a document that will be used upon every application for a Grant during the term of the Agreement, and will set out the nature of the Grant for the Funding Period.
- The Grant Schedule accounts for Annual Grants, Additional Grants, and Amended Grants.
- The amount of the Grant must be clearly stated, as well as when the Grant(s) will be paid and the breakdown of each instalment.
- Payments may be made in advance or in arrears.
- The following types of payments may be made, for example:
  - Once-off annual payment – good for low value grants with well-defined requirements;
  - Monthly payments – good for well-understood services and significant grants for operating costs;
  - Quarterly payments – ideal for stable grants with limited likelihood of change;
  - Milestone payments – good for grants where significant deliverables or progress points can be identified and measured.
- More than one payment mechanism can apply to a Grant(s).
- It is essential that all details pertaining to how the Grant is to be used and what deliverables are expected are clearly set out under this Grant Schedule. Further guidance on how to do this are provided in the footnotes of the Schedule. Please delete the footnotes once you have signed the completed the Schedule.

### **SCHEDULE 2 – CYBER ESSENTIALS**

- Links to the relevant Cyber Essentials and the Information Security Policy have been provided. While up to date as the date of signature, there is a risk that these policies will become outdated over time. As a result, it will be your responsibility to ensure that the Grant Recipient is made aware of the latest policies regarding Cyber Essentials and Information Security.

### **SCHEDULE 3 – DISPUTE RESOLUTION PROCEDURE**

- Parties must be aware of the Dispute Resolution Procedure under this Agreement should it ever become enforceable. The guidance under this Schedule may be customized and incorporated where appropriate. The Dispute Resolution Procedure will not impact or suspend either Party's obligations under the Agreement.

- Agreement's should, at a minimum, require direct negotiation as a means of resolving disputes prior to utilising other dispute resolution processes or initiating litigation. Litigation takes more time due to large caseloads and required pre-trial procedures, can be more costly, and can result in numerous appeals before a final actionable judgment is rendered. The Dispute Resolution Procedure set out under the Agreement is conducted in a private forum, which allows the dispute to remain confidential between the Parties. Mediation and arbitration allow the Parties to choose specialized mediators or arbitrators who are familiar with the Parties' industry(ies), and the technical and commercial complexities of the Agreement.
- The Dispute Resolution Procedure that has been developed may follow an expedited or standard timetable, depending on the context of the dispute.
- The infographics under this Schedule first set out the internal Dispute Resolution Procedure, with the Parties attending meetings which will follow an escalation process. If the internal meetings are unsuccessful, then the dispute may be referred to Mediation.
- The Mediation infographic sets out the appointment of a Mediator, the meetings and negotiation proceedings that will follow, as well as the Mediator's Opinion that the Parties may choose to follow.
- It is only if/when the entire Dispute Resolution Procedure fails, then will the matter be referred to the Jersey courts for litigation.

### **FREQUENTLY ASKED QUESTIONS:**

**Q:** Why is this contract referred to as a Grant Agreement and not a Partnership Agreement?

**A:** We no longer refer to these agreements as Partnership Agreements as ALOs are not our Partners in the legal sense. By referring to them as such, there is a risk of legal confusion and implication of a relationship that is not accurate. ALOs are not legal partners to the Government of Jersey (and accordingly are not liable for any risk that we hold as an organisation). We prefer to refer to them in this context as "Grant Recipients" in a "Grant Agreement" which is a more accurate representation of the relationship between the Government and ALOs.

**Q:** Can the term of a Schedule be longer than the term of the Agreement?

**A:** No, the Schedule is not a separate agreement, but rather falls under the blanket of the main Agreement. Therefore, if the Agreement terminates or ends, then the

Schedule can no longer be valid. It is recommended that you update the Schedules annually, and ensure that a new Agreement is signed and entered into before the term ends.