

DATED 2022

GRANT AGREEMENT

between

BUCKINGHAMSHIRE COUNCIL

and

BUCKINGHAMSHIRE BUSINESS FIRST

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THIS DEED is dated

2022

PARTIES

- (1) **BUCKINGHAMSHIRE COUNCIL** of The Gateway, Gatehouse Road, Aylesbury, Buckinghamshire HP19 8FF (the "**Funder**").
- (2) **BUCKINGHAMSHIRE BUSINESS FIRST (company number 04107584)** whose registered office is at 1 Edison Road, Rabans Lane Industrial Estate, Aylesbury, Buckinghamshire, England, HP19 8TE (the "**Recipient**").

BACKGROUND

- (A) The Funder has agreed to pay the Grant to the Recipient to assist it in carrying out the Activities.
- (B) This Agreement sets out the terms and conditions on which the Grant is made by the Funder to the Recipient.
- (C) These terms and conditions are intended to ensure that the Grant is used for the purpose for which it is awarded.

AGREED TERMS

1. DEFINITIONS

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

Activities: the Activities described in Schedule 1;

Annual Review : to be conducted in January each year between the Funder and Recipient to determine whether the grant agreement will continue for a further year but not beyond 31st March 2024

Authorised Officer: the individual who has been nominated to represent the Funder for the purposes of this Agreement as notified to the Recipient in writing from time to time.

Business Day: any day excluding Saturdays, Sundays or public or bank holidays in England.

Commencement Date: 2022

Data Protection Legislation: (i) the DPA; (ii) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; and (iii) all applicable Law about the processing of Personal Data and privacy.

DPA: (i) the Data Protection Act 2018

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679).

Governing Body: the governing body of the Recipient including its directors or trustees;

Grant: the sum of four hundred thousand pounds (£400,000) in financial year 2022/23 and the subsequent year following a successful annual review until 31st March 2024 to be paid to the Recipient in accordance with this Agreement;

Grant Period: the period for which the Grant is awarded starting on the Commencement Date and ending, at the latest, on 31st March 2024, subject to a successful annual review.

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

Law: any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Recipient is bound to comply.

LED: the Law Enforcement Directive (Directive (EU) 2016/680).

Personal Data/ Personal Data Breach: the meaning given in the GDPR.

Prohibited Act: means:

- 1) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Funder; or
- 2) defrauding or attempting to defraud or conspiring to defraud the Funder.

2. PURPOSE OF GRANT

2.1 The Recipient shall use the Grant only for the carrying out of the Activities and in accordance with the terms and conditions set out in this Agreement. The Grant shall not be used for any other purpose without the prior written agreement of the Funder.

2.2 The Recipient shall not make any significant change to the Activities without the Funder's prior written agreement.

3. PAYMENT OF GRANT

3.1 Subject to clause 10, the Funder shall pay the Grant to the Recipient in one instalment annually in advance in accordance with Schedule 2, subject to the necessary funds being available when payment falls due. The Recipient agrees and accepts that payments of the Grant can only be made to the extent that the Funder has available funds.

3.2 The amount of the Grant shall not be increased in the event of any overspend by the Recipient in its carrying out of the Activities.

3.3 The Grant shall be paid into a separate bank account in the name of the Recipient which must be an ordinary business bank account. All cheques from the bank account must be signed by at least two individual representatives of the Recipient.

3.4 The Recipient shall promptly repay to the Funder any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Grant monies have been paid in error before all conditions attaching to the Grant have been complied with by the Recipient.

4. USE OF GRANT

4.1 The Grant shall be used by the Recipient for the carrying out of the Activities in accordance with the agreed budget set out in schedule 2.

4.2 The Recipient shall not use the Grant to:

- 1) make any payment to members of its Governing Body;
- 2) purchase buildings or land; or

- 3) pay for any expenditure commitments of the Recipient entered into before the Commencement Date,

unless this has been approved in writing by the Funder.

- 4.3 Any liabilities arising at the end of the Activities including any redundancy liabilities for staff employed by the Recipient or match funding guarantees to carry out the Activities must be managed and paid for by the Recipient using the Grant or other resources of the Recipient. There will be no additional funding available from the Funder for this purpose.

5. ACCOUNTS AND RECORDS

- 5.1 The Grant shall be shown in the Recipient's accounts as a restricted fund and shall not be included under general funds.
- 5.2 The Recipient shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Grant monies received by it.
- 5.3 The Recipient 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 Funder shall have the right to review, at the Funder's reasonable request, the Recipient'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 .
- 5.4 The Recipient shall comply and facilitate the Funder's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Funder.

6. MONITORING AND REPORTING

- 6.1 The Recipient shall closely monitor the carrying out and success of the Activities throughout the Grant Period to ensure that the aims and objectives of the Activities are being met and that this Agreement is being adhered to.
- 6.2 Progress on delivery of the activities shall be reviewed by the Funder with the Recipient every quarter. The Recipient will provide up to date information on progress of activities for review each quarter.

- 6.3 The Recipient shall provide the Funder with a financial report and an operational report on its use of the Grant and carrying out of the Activities in such format as the Funder may reasonably require within 21 days following the last day of the Grant Period.
- 6.4 The Recipient shall on request provide the Funder with such further information, explanations and documents as the Funder may reasonably require in order for it to establish that the Grant has been used properly in accordance with this Agreement.
- 6.5 The Recipient shall permit any person authorised by the Funder for the purpose to visit the Recipient on the giving of reasonable notice to monitor the carrying out of the Activities.
- 6.6 From time to time the Funder's representative will be invited to the Recipient's Board to provide relevant and timely updates to the Board Members. On these occasions the Funder's representative may be able to observe the Board meeting to enhance the Funder's understanding of the activities being undertaken.
- 6.7 An annual review in January shall take place to determine whether the grant agreement will continue for a further year up to and not exceeding 2023/24.

7. ACKNOWLEDGMENT AND PUBLICITY

- 7.1 The Recipient shall acknowledge the Grant in its annual report and accounts, including an acknowledgement of the Funder as the source of the Grant.
- 7.2 The Recipient shall not publish any material referring to the Activities or the Funder without the prior written agreement of the Funder. The Recipient shall acknowledge the support of the Funder in any materials that refer to the Activities. Such acknowledgements (where appropriate or as requested by the Funder) shall include the Funder's name and logo (or any future name or logo adopted by the Funder) using the templates provided by the Funder from time to time.

73 The Funder may acknowledge the Recipient's involvement in the Activities as appropriate without prior notice.

8. FREEDOM OF INFORMATION

81 The Recipient acknowledges that the Funder is subject to the requirements of the Freedom of Information Act 2000 **(FOIA)** and the Environmental Information Regulations 2004 and shall assist and co-operate with the Funder (at the Recipient's expense) to enable the Funder to comply with these information disclosure requirements.

82 The Recipient shall:

- 1) transfer the request for information to the Funder as soon as practicable after receipt and in any event within two Business Days of receiving a request for information;
- 2) provide the Funder with a copy of all information in its possession or power in the form that the Funder requires within five Business Days (or such shorter period as the Funder may reasonable specify) of the Funder requesting that information; and
- 3) provide all necessary assistance as reasonably requested by the Funder to enable the Funder to respond to a request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations 2004.

83 The Funder shall be responsible for determining at its absolute discretion whether the information:

- 1) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations 2004;
- 2) is to be disclosed in response to a request for information.

84 In no event shall the Recipient respond directly to a request for information unless expressly authorised to do so by the Funder.

85 The Recipient acknowledges that the Funder may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations 2004 to disclose information:

- 1) without consulting with the Recipient; or

- 2) following consultation with the Recipient and having taken its views into account,

provided always that where clause 8.S(b) applies the Funder shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Recipient advanced notice, or failing that, to draw the disclosure to the Recipient's attention after any such disclosure.

- 86 The Recipient shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Funder to inspect such records as requested from time to time.

9. DATA PROTECTION

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

10. WITHHOLDING, SUSPENDING AND REPAYMENT OF GRANT

- 101 The Funder's intention is that the Grant will be paid to the Recipient in one lump payment in advance in accordance with Schedule 2. However, without prejudice to the Funder's other rights and remedies, the Funder may terminate this Agreement with immediate effect and be under no further obligation to pay any (or any more) of the Grant or, at its discretion, withhold or suspend payment of the Grant and/or require repayment of all or part of the Grant if:

- 1) the Recipient uses the Grant for purposes other than those for which they have been awarded;
- 2) the carrying out of the Activities does not start within 14 days following the Commencement Date and the Recipient has failed to provide the Funder with a reasonable explanation for the delay;
- 3) the Recipient is, in the reasonable opinion of the Funder, carrying out the Activities in a negligent manner;
- 4) the Recipient obtains funding from a third party which, in the reasonable opinion of the Funder, undertakes activities that are likely to bring the reputation of the Activities or the Funder into disrepute;
- 5) the Recipient provides the Funder with any materially misleading or inaccurate information;

- 6) the Recipient commits or has committed a Prohibited Act;
 - 7) the Recipient ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bonafide and solvent reconstruction or amalgamation);
 - 8) the Recipient 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; or
 - 9) the Recipient fails to comply with any of the terms and conditions set out in this Agreement and fails to rectify any such failure within 14 days following receipt of a written notice detailing the failure.
 - 10) the Annual Review concludes that the Recipient's activities are not meeting the requirements of the grant agreement
- 10.2 The Recipient shall make any payments due to the Funder without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- I 0.3 Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on its effective carrying out of the Activities or compliance with this Agreement it will notify the Funder as soon as possible so that, if possible, and without creating any legal obligation, the Funder will have an opportunity to provide assistance in resolving the problem or to take action to protect the Funder and the Grant monies.

11. ANTI-DISCRIMINATION

- 11.1 The Recipient shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment or in the delivery of activities.
- 11.2 The Recipient shall take all reasonable steps to secure the observance of clause 11.1 by all servants, employees or agents of the Recipient and any of its suppliers and sub-contractors engaged on the Activities.

12. NOT USED

13. LIMITATION OF LIABILITY

131 The Funder accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient running the Activities, the use of the Grant or from withdrawal of the Grant pursuant to the exercise of its rights under Clause 10.1. The Funder shall indemnify and hold harmless the Recipient, its employees, agents, officers or sub-contractors with respect to all claims, demands and actions by third parties (and all costs, expenses, losses, damages and all other liabilities arising from them) arising by reason of the Funder's withdrawal of funds other than pursuant to Clause 10.1. The Recipient shall indemnify and hold harmless the Funder, 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 negligent actions and/or omissions of the Recipient in relation to the Activities or the non-fulfilment of obligations of the Recipient in breach of this Agreement or its obligations to third parties.

132 The Recipient shall keep the Funder indemnified in full against all actions, proceedings, costs, claims, demands, fines, orders, expenses and liabilities (including legal and other professional fees and expenses) whenever brought arising directly or indirectly in connection with:

- 1) the termination of employment by the Recipient (or any sub-contractor or agent of the Recipient) of any employee during the Grant Period or in connection with its expiry; and/or
- 2) any act or omission of the Recipient (or any sub-contractor or agent of the Recipient) during the Grant Period or in connection with its expiry in respect of the employment of any employee.

13.3 It is agreed between the Recipient and the Funder that each shall indemnify the other and its staff against all and any liability, loss, costs, expenses, claims or proceedings whatsoever arising under any statute or at common law in respect of any injury to any person, injury resulting in death and any loss of or damage to personal property directly related to such injury where such injury, loss or damage is caused as a direct result of the negligence of the relevant party or any of the relevant party's staff.

13.4 The Funder will indemnify the Recipient against any and all liabilities, proceedings, costs, losses, claims and demands whatsoever arising under any statute or at common law and made against the Recipient by the

employee where such claims are, in the reasonable opinion of the Recipient, brought about directly or indirectly by the actions of the Funder.

- 13.5 The above indemnities shall not apply to any claim or proceeding:
- 1) To the extent that such liability and/or personal injury (including death (or loss of or damage to property) is caused by the failure of the Recipient, its employees or agents to meet their obligations in accordance with this Agreement; and/or
 - 2) To the extent such liability and/or personal injury (including death) or loss of or damage to property pre-dates the commencement date of this Agreement.
 - 3) The Funder and the Recipient will indemnify and keep indemnified each other against all liabilities, arising directly or indirectly from any events, acts or omissions in relation to their respective functions owing prior to the commencement date of this Agreement.
 - 4) Any of the above indemnities shall not apply to any such claim or proceedings:

unless as soon as reasonably practicable following receipt of notice of any such claim or proceeding, the party in receipt of it shall notify the other party in writing and shall allow the latter party, at the full cost of the latter party, to have full care and control of the claim or proceeding.

- 13.6 If a party in receipt of the claim or proceedings, its employees or agents, shall have made an admission in respect of such claim or proceedings or taken any action relating to such claim or proceedings prejudicial to the defence of such claim or proceeding without the written consent of the other party (such consent not to be unreasonably withheld), provided that this condition shall not be treated as breached by any statement properly made by the party, its employees or agents in the operation of its internal complaints procedures, accident reporting procedures, or disciplinary procedures or where such statement is required by law.
- 13.7 Each party shall keep the other and its legal advisers fully informed of the progress of any such claim or proceeding, will consult fully with the other party on the nature of any defence to be advanced and will not settle any such claim or proceeding without the written consent of the other party (such consent not to be unreasonably withheld).

- 13.8 Both parties will use their reasonable endeavours to inform each other promptly of any circumstances reasonably thought likely to give rise to any such claim or proceeding of which the party is directly aware and shall keep the other party reasonably informed of developments in relation to any such claim or proceedings even where the party decides not to claim under the Agreement indemnities.
- 13.9 Each party shall provide the other party with such help as may reasonably be required for the efficient conduct and prompt handling of any such claim or proceeding.
- 13.10 Subject to the above the Funder's liability under this Agreement is limited to the payment of the Grant.

14 WARRANTIES

The Recipient warrants, undertakes and agrees that:

- 1) it has all necessary resources and expertise to carry out the Activities (assuming due receipt of the Grant);
- 2) it has not committed, nor shall it commit, any Prohibited Act;
- 3) 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 Funder immediately of any significant departure from such legislation, codes or recommendations;
- 4) it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Activities;
- 5) it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- 6) it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- 7) all financial and other information concerning the Recipient which has been disclosed to the Funder is to the best of its knowledge and belief, true and accurate;
- 8) 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;

- 9) it is not aware of anything in its own affairs, which it has not disclosed to the Funder or any of the Funder's advisers, which might reasonably have influenced the decision of the Funder to make the Grant on the terms contained in this Agreement; and
- 10) since the date of its last accounts there has been no material change in its financial position or prospects.

15 INSURANCE

15.1 The Recipient shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Recipient, arising out of the Recipient's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss (the **Required Insurances**).

15.2 The Required Insurances referred to above include (but are not limited to):

- 1) employer's liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from or relating to the carrying out of the Activities;
- 2) public liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims arising from or relating to the carrying out of the Activities; and
- 3) professional indemnity insurance with a limit of indemnity of not less than two million pounds (£2,000,000) in relation to any one claim or series of claims arising from or relating to the carrying out of the Activities.

The Recipient shall (on request) supply to the Funder a copy of such insurance policies and evidence that the relevant premiums have been paid.

16. DURATION

16.1 Subject to clause 16.2, the terms of this Agreement shall apply from the date of this Agreement until the expiry of the Grant Period when this Agreement shall terminate automatically (without the need for prior notice of such expiry of the Grant period and automatic termination by either party).

16.2 The provisions of clauses 3.4, 4.2, 4.4, 4.5, 5, 7, 8, 9,13,14, 16.2, 18, 19, 20, 21, 23 and 25 shall survive (in whole or in part) the expiry of the Grant Period and automatic termination of this Agreement and continue in full force and effect, along with any other provisions of this Agreement necessary to give effect to them. In addition, any other provision of the Agreement, which by its nature or implication (including in respect of accrued rights and liabilities) is required to survive the expiry of the Grant Period and automatic termination of this Agreement shall do so.

17. NOT USED

18. ASSIGNMENT

The Recipient may not, without the prior written consent of the Funder, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement or, except as contemplated as part of the Activities, transfer or pay to any other person any part of the Grant.

19. 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 .

20. NOTICES

Any notice or other communication in relation to this Agreement shall be in writing. Any such notice or communication shall be addressed to the relevant party, as referred to above or otherwise notified in writing. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given when received if personally delivered (except that if received on a non-working day or after 5.00 p.m. on any working day they shall be deemed received on the next working day) and if mailed two (2) working days after the day on which the letter was posted, or four hours, in the case of electronic mail or sooner where the other party acknowledges receipt of such letters or item of electronic mail.

For the avoidance of doubt, a reference to **writing or written** includes e-mail.

21. DISPUTE RESOLUTION

- 21.1 In the event of any complaint or dispute (which does not relate to the Funder's right to withhold funds or terminate) arising between the parties to this Agreement in relation to this Agreement the matter should first be referred for resolution to the Authorised Officer or any other individual nominated by the Funder from time to time.
- 21.2 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the Activities Manager or other nominated individual, as the case may be, either party may refer the matter to the Deputy Monitoring Officer and Corporate Lawyer of the Funder and the a director or senior officer of the Recipient with an instruction to attempt to resolve the dispute by agreement within 28 days, or such other period as may be mutually agreed by the Funder and the Recipient.
- 21.3 In the absence of agreement under clause 20.2, the parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both parties). Unless otherwise agreed, the parties shall bear the costs and expenses of the mediation equally.

22. NO PARTNERSHIP OR AGENCY

This Agreement shall not create any partnership or joint venture between the Funder and the Recipient, 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.

23. JOINT AND SEVERAL LIABILITY

Where the Recipient is not a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Agreement on behalf of the Recipient shall be jointly and severally liable for the Recipient's obligations and liabilities arising under this Agreement.

24. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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.

25. GOVERNING LAW

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

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The **COMMON SEAL**
of
BUCKINGHAMSHIRE COUNCIL
was hereunto affixed
in the presence of:

Authorised Signatory

..

EXECUTED AS A DEED by
BUCKINGHAMSHIRE FIRST acting
by [NAME OF DIRECTOR], a
director, in the presence of:

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

.....[SIGNATURE OF DIRECTOR]
Director

Schedule 1 The Activities

Grant name	Grant activities
Buckinghamshire Business Funding grant funding agreement	To support Buckinghamshire's business growth agenda, including opportunities to address key challenges faced by businesses in the areas of skills, finance and business support.

Schedule 2 Payment Schedule

Amount of Grant Payable	Date of Payment
£400,000 total grant payable @ In one lump sum	£400,000. April 2022
	Following, and conditional upon, a successful review in January 2023 £400,000 1 April 2023