

HIGHWAYS ENGLAND GRAFFITI FUNDING COMPETITION

TERMS & CONDITIONS

The terms and conditions set out below (the “**Agreement**”) apply to all awards made under this programme, which is funded by Highways England and delivered by the Connected Places Catapult.

All successful applicants to the programme acknowledge and agree that this Agreement will become binding upon them immediately upon signing the funding offer letter issued by Connected Places Catapult.

1. DEFINITIONS

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

Award Date: the date on which the funding is awarded, being the date of the Funding Offer Letter.

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Catapult: Connected Places Catapult, a company limited by guarantee (company number 11837978) whose registered office is at The Pinnacle, 170 Midsummer Boulevard, Milton Keynes, MK9 1BP.

Data Protection Legislation: all applicable data protection legislation and privacy legislation in force from time to time in the UK including the GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426); any other directly applicable European Union regulation relating to privacy; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data and the privacy of electronic communications.

Funder: The Department for Transport whose address is Great Minster House, 33 Horseferry Road, London, SW1P 4DR.

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

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

Funding: the amount of monies to be paid to the Recipient under the Programme as set out in the Funding Offer Letter.

Funding Offer Letter: the letter sent by the Catapult to the Recipient formally offering the monies to the Recipient.

Project Delivery Period: the period for which the funding is awarded starting on the Award Date and ending on the date specified in the Funding Offer Letter.

Intellectual Property Rights: all patents, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and Know-How however arising for their full term and any renewals and extensions.

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.

Personal Data: shall have the same meaning as set out in the Data Protection Legislation.

Prohibited Act: committing any offence:

- (a) under the Bribery Act;
- (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 Catapult or Funder.

Programme: The Graffiti Funding Competition, funded by Highways England and administered by the Catapult.

Project: the project referred to in the Funding Offer Letter.

Project Manager: the individual who has been nominated to represent the Catapult for the purposes of this Agreement.

Recipient: the company, organisation or other entity named in the Funding Offer Letter as the recipient of monies under the Programme.

Representative: means a party's employees, advisors, contractors and agents.

Start Date: means the date on which the Project is due to start as set out in the Funding Offer Letter.

2. PURPOSE OF FUNDING

- 2.1 The Recipient shall use the funding only for the delivery of the Project and in accordance with the terms and conditions set out in this Agreement. Funding shall not be used for any other purpose without the prior written agreement of Highways England and the Catapult.
- 2.2 The Recipient shall not make any material change to the Project without written agreement from Highways England and the Catapult.
- 2.3 Where the Recipient intends to apply to a third party for other funding for the Project, it will notify Highways England and the Catapult in advance of its intention to do so and, where such funding is obtained, it will provide the Catapult with details of the amount and purpose of that funding. The Recipient agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Project or any related administration costs that the Catapult is funding in full under this Agreement. For the avoidance of doubt, compliance with any

obligations or conditions attaching to third party funding are the sole responsibility of the Recipient and Catapult shall have no liability in respect thereof.

3. PAYMENT OF FUNDING

- 3.1 Subject to clause 11, the Catapult shall pay the funding to the Recipient in the amounts and in accordance with the payment schedule set out in the Funding Offer Letter, subject to the necessary funds being available to Catapult when payment falls due. The Recipient agrees and accepts that payments can only be made to the extent that the Catapult has available funds.
- 3.2 No funding shall be paid unless and until the Catapult is satisfied that such payment will be used for proper expenditure in the delivery of the Project.
- 3.3 The amount of the funding shall not be increased in the event of any overspend by the Recipient in its delivery of the Project.
- 3.4 The Recipient shall not transfer any part of the funding to bank accounts which are not ordinary business accounts within the clearing bank system, without the prior written consent of the Catapult.
- 3.5 The Recipient shall promptly repay to the Catapult 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 monies have been paid in error before all conditions attaching to the funding have been complied with by the Recipient.

4. USE OF THE FUNDING

- 4.1 Funding shall be used by the Recipient exclusively for the delivery of the Project in accordance with the agreed budget set out in in the Funding Offer Letter.
- 4.2 Where the Recipient has obtained funding from a third party in relation to its delivery of the Project (including without limitation funding for associated administration and staffing costs), the amount of such funding shall be included in the budget together with a clear description of what that funding shall be used for.
- 4.3 The Recipient shall not use the funding to:
 - (a) make any payment to members of its Governing Body;
 - (b) purchase buildings or land; or
 - (c) pay for any expenditure commitments of the Recipient entered into before the Award Date,

unless this has been approved in writing by Highways England and the Catapult.

- 4.4 The Recipient shall not spend any part of the funding on the delivery of the Project after the project delivery period.

4.5 Should any part of the funding remain unspent at the end of the project delivery period, the Recipient shall ensure that any unspent monies are returned to the Catapult or, if agreed in writing by the Catapult, shall be entitled to retain the unspent monies to use for such purposes as are agreed between the parties.

4.6 Any liabilities arising at the end of the Project including any redundancy liabilities for staff employed by the Recipient to deliver the Project must be managed and paid for by the Recipient. There will be no additional funding available from the Catapult for this purpose.

5. ACCOUNTS AND RECORDS

5.1 The funding 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 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 funding for a period of at least six years following receipt of any monies to which they relate. The Catapult shall have the right to review, at the Catapult's reasonable request, the Recipient's accounts and records that relate to the expenditure of the funding and shall have the right to take copies of such accounts and records.

5.4 Upon request by the Catapult, the Recipient shall provide the Catapult with a copy of its annual accounts within six months (or such lesser period as the Catapult may reasonably require) of the end of the relevant financial year in respect of each year in which the funding is paid.

5.5 The Recipient shall comply and facilitate the Catapult's compliance with:

(a) all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Catapult; and

(b) any requirements as regards financial reporting imposed upon the Catapult by the Funder in respect of the Programme.

6. MONITORING AND REPORTING

6.1 The Recipient shall closely monitor the delivery and success of the Project throughout the project delivery period to ensure that the aims and objectives of the Project are being met and that this Agreement is being adhered to.

6.2 Where the Recipient has obtained funding from a third party for its delivery of part of the Project, the Recipient shall include the amount of such funding in its financial reports together with details of what that funding has been used for.

6.3 The Recipient shall on request provide the Catapult with such further information, explanations and documents as the Catapult may reasonably require in order for it to establish that the funding has been used properly in accordance with this Agreement.

- 6.4 The Catapult may appoint an auditor to investigate whether The Recipient is complying with these Terms and Conditions. You agree to give the auditor access to Your Funded Activities records within 2 weeks of notice of his/her appointment. If the auditor determines that The Recipient should repay the funding or any part of it, The Catapult may recover the cost of the auditor's work from The Recipient.
- 6.5 The Recipient shall permit any person authorised by the Catapult such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Recipient's fulfilment of the conditions of this Agreement and shall, if so required, provide appropriate oral or written explanations from them.
- 6.6 In accordance with the Funding Offer Letter, the Recipient shall provide the Catapult with a final report on completion of the project delivery period which shall confirm whether the Project has been successfully and properly completed.

7. ACKNOWLEDGMENT AND PUBLICITY

- 7.1 The Recipient shall acknowledge the funding in its annual report and accounts, including an acknowledgement of the Catapult and the Funder as the source.
- 7.2 The Recipient shall not publish any material referring to the Project or the Catapult without the prior written agreement of the Catapult. The Recipient shall acknowledge the support of the Catapult in any materials that refer to the Project and in any written or spoken public presentations about the Project. Such acknowledgements (where appropriate or as requested by the Catapult) shall include the Catapult's name and logo (or any future name or logo adopted by the Catapult) using the templates provided by the Catapult from time to time.
- 7.3 In using the Catapult's name and logo, the Recipient shall comply with all reasonable branding guidelines issued by the Catapult from time to time.
- 7.4 The Recipient agrees to participate in and co-operate with promotional activities relating to the Project that may be instigated and/or organised by the Catapult and/or Highways England.
- 7.5 The Catapult and/or Highways England may acknowledge the Recipient's involvement in the Project as appropriate without prior notice.
- 7.6 The Recipient shall comply with all reasonable requests from the Catapult and/or Highways England to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Catapult and/or Highways England in its promotional and fundraising activities relating to the Project.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 The Catapult and the Recipient agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either the Catapult or the Recipient before the Start Date or developed by either party during the period from the Start date to the end of the project delivery period, shall remain the property of that party.

- 8.2 Where the Catapult has provided the Recipient with any of its Intellectual Property Rights for use in connection with the Project (including without limitation its name and logo), the Recipient shall, on termination of this Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by the Catapult.
- 8.3 The Recipient hereby grants to the Catapult a non-exclusive, royalty-free licence to use Know-How and any other Intellectual Property Rights created or devised by the Recipient in the performance of the Project for the Catapult's own internal non-commercial research purposes, subject always to the provisions of clause 9 (Confidentiality).

9. CONFIDENTIALITY

- 9.1 Each party shall during the term of this Agreement and thereafter keep secret and confidential all Intellectual Property Rights or Know-How or other business, technical or commercial information disclosed to it as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other party.
- 9.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property Rights, Know-How or other business, technical or commercial information which:
- (a) at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;
 - (b) is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or
 - (c) is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party;
 - (d) is at any time before or after the Award Date disclosed independently by a third party such that it is already in the public domain or subsequently enters the public domain without any breach of any term of this Agreement by either party.
- 9.3 Each party may disclose the other's confidential information:
- (a) to such of its Representatives who need to know such information for the purposes of exercising the receiving party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its Representatives to whom it discloses the other party's confidential information comply with this clause 9; and
 - (b) as may be required by law, a court of competent jurisdiction, any UK governmental authority, or any UK or EU regulatory authority.

10. DATA PROTECTION

Both Parties will comply with all applicable requirements of and all their obligations under the Data Protection Legislation which arise in connection with the Agreement.

11. WITHHOLDING, SUSPENDING AND REPAYMENT OF FUNDING

11.1 The Catapult's intention is that funding will be paid to the Recipient in full. However, without prejudice to the Catapult's other rights and remedies, the Catapult may at its discretion withhold or suspend payment of the funding and/or require repayment of all or part of it if:

- (a) the Recipient uses the funding for purposes other than those for which it has been awarded;
- (b) the delivery of the Project does not start within 1 month of the Start Date and the Recipient has failed to provide the Catapult with a reasonable explanation for the delay;
- (c) the Catapult considers that the Recipient has not made satisfactory progress with the delivery of the Project;
- (d) the Recipient is, in the reasonable opinion of the Catapult, delivering the Project in a negligent manner;
- (e) the Recipient obtains duplicate funding from a third party for the Project;
- (f) the Recipient obtains funding from a third party which, in the reasonable opinion of the Catapult, undertakes activities that are likely to bring the reputation of the Project, the Catapult or the Funder into disrepute;
- (g) the Recipient provides the Catapult with any materially misleading or inaccurate information;
- (h) the Recipient commits or committed a Prohibited Act;
- (i) any member of the governing body, employee or volunteer of the Recipient has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project or (b) taken any actions which, in the reasonable opinion of the Catapult, bring or are likely to bring the Catapult's or the Funder's name or reputation into disrepute;
- (j) 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 bona fide and solvent reconstruction or amalgamation);
- (k) 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

- (I) 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 30 days of receiving written notice detailing the failure.

11.2 The Catapult may retain or set off any sums owed to it by the Recipient which have fallen due and payable against any sums due to the Recipient under this agreement or any other agreement pursuant to which the Recipient provides goods or services to the Catapult.

11.3 The Recipient shall make any payments due to the Catapult without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

11.4 Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Project or compliance with this Agreement it will notify the Catapult as soon as possible so that, if possible, and without creating any legal obligation, the Catapult will have an opportunity to provide assistance in resolving the problem or to take action to protect the Catapult and the monies received.

11.5 For the avoidance of doubt, no event or actions described in this clause 11 shall cause this Agreement to automatically terminated unless the Catapult provides notice of termination in accordance with clause 19 (Termination).

12. ANTI-DISCRIMINATION

12.1 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.

12.2 The Recipient shall take all reasonable steps to secure the observance of clause 12.1 by all servants, employees or agents of the Recipient and all suppliers and sub-contractors engaged on the Project.

13. HUMAN RIGHTS

13.1 The Recipient shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement as if the Recipient were a public body (as defined in the Human Rights Act 1998).

13.2 The Recipient shall undertake, or refrain from undertaking, such acts as the Catapult requests so as to enable the Catapult to comply with its obligations under the Human Rights Act 1998.

14. LIMITATION OF LIABILITY

14.1 The Catapult accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient running the Project, the use of the funding or from withdrawal of the project.

14.2 Subject to clause 14.1, the Catapult's liability under this Agreement is limited to the payment of the funding.

14.3 Notwithstanding clause 14.1, Recipient shall not be liable for any financial losses, loss of profits, indirect or consequential losses incurred or suffered by the Catapult or its Representatives howsoever caused by the Recipient or its Representatives.

15. WARRANTIES

The Recipient warrants, undertakes and agrees that:

- (a) it has all necessary resources and expertise to deliver the Project (assuming due receipt of the funding);
- (b) it has not committed, nor shall it commit, any Prohibited Act;
- (c) 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 Catapult immediately of any significant departure from such legislation, codes or recommendations;
- (d) 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 Project;
- (e) it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- (f) it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- (g) all financial and other information concerning the Recipient which has been disclosed to the Catapult is to the best of its knowledge and belief, true and accurate;
- (h) 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 funding;
- (i) it is not aware of anything in its own affairs, which it has not disclosed to the Catapult or any of the Catapult's advisers, which might reasonably have influenced the decision of the Catapult to make the funding on the terms contained in this Agreement; and
- (j) since the date of its last accounts there has been no material change in its financial position or prospects.

16. INSURANCE

16.1 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**).

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

- (a) 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 the Project; and
- (b) employer's 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 the Project (save where the Recipient is not an employer in which case such insurance shall not be required).

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

17. SUBSIDIES

17.1 The Recipient acknowledges and agrees that the Catapult is a research organisation which operates partially using public funds and that therefore has a duty to publish and disseminate any information, data and/or results which are created by or result from outputs of the Project and the Programme. The Recipient shall have the right to review and redact any of its Confidential Information from a proposed publication in advance of its publication, at all times the parties acting reasonably.

17.2 The Recipient acknowledges and agrees that the funding is not intended to constitute a subsidy under the EU-UK Trade & Cooperation Agreement (“**TCA**”) and as such the Recipient has given to the Catapult a signed ‘no subsidy’ declaration confirming that receipt of the funding will not cause the Recipient to be deemed to be in receipt of a subsidy.

17.3 In the event that an unlawful subsidy is alleged to have been given as a result of any part of the funding, the Catapult shall be entitled to recover from the Recipient, and the Recipient shall pay to the Catapult, such sums as will cause the arrangement to be compliant with subsidy regime set out in the TCA.

18. DURATION

18.1 Except where otherwise specified, the terms of this Agreement shall apply from the Award Date until the expiry of the project delivery period.

18.2 Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

19. TERMINATION

The Catapult may terminate this Agreement by giving written notice to the Recipient if the Recipient is in breach of this Agreement under any of the matters set out in clause 11;

20. ASSIGNMENT

The Recipient may not, without the prior written consent of the Catapult, 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 Project, transfer or pay to any other person any part of the funding.

21. 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.

22. NOTICES

All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

23. DISPUTE RESOLUTION

23.1 In the event of any complaint or dispute (which does not relate to the Catapult'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 Project Manager or any other individual nominated by the Catapult from time to time.

23.2 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the Project Manager or other nominated individual, as the case may be, either party may refer the matter to the Chief Executive of the Catapult and the Chief Executive 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 Catapult and the Recipient.

23.3 In the absence of agreement under clause 23.2, 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.

24. NO PARTNERSHIP OR AGENCY

This Agreement shall not create any partnership or joint venture between the Catapult 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.

25. 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.

26. 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.

27. 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.

28. ENTIRE AGREEMENT

This Agreement (together with all documents attached to or referred to within it) constitutes the entire agreement and understanding between the parties in relation to the funding and supersedes any previous agreement or understanding between them in relation to such subject matter.