

WATER EFFICIENCY BUSINESS PARTNERSHIP FUND (Agreement)

Between:

1. **SOUTHERN WATER SERVICES LIMITED** (No.02366670) whose registered office is at Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX (**SOUTHERN WATER**); and
2. INSERT BUSINESS NAME HERE (Company no X) whose registered office is at (X) (**Recipient**).

each a '**Party**' and collectively the '**Parties**'

Whereas:

- A. **SOUTHERN WATER** has agreed to pay the Grant to the **Recipient** for the Project as part of one of **SOUTHERN WATER**' water saving initiatives in consideration of the undertakings given by the Grant **Recipient** set out in this Agreement.
- B. The **Recipient**'s Grant application and details of their project proposals are attached at **Schedule 1**.
- C. This Agreement sets out the terms and conditions on which the Grant is made by the **SOUTHERN WATER** to the **Recipient**.
- D. These terms and conditions are intended to ensure that the Grant is used for the purpose for which it is awarded.

It is agreed:

Definitions:

For the purposes of this Agreement the following definitions apply:

EIR the Environmental Information Regulations 2004;

Data Protection Legislation means the Data Protection Act 2018 and all applicable data protection and privacy legislation including Regulation (EU) 2016/679 (the "General Data Protection Regulation" or "GDPR") and the Privacy and Electronic Communications (EC Directive) Regulations and any guidance or codes of practice issued by any Regulator from time to time (all as amended, updated or re-enacted from time to time);

Grant the sums to be paid to the Recipient by SOUTHERN WATER in accordance with this Agreement;

Recipient the company receiving the Grant under this Agreement;

Permitted Uses means those activities set out in the Recipient's proposal set out in Schedule 1.

Personal Data has the meaning given in the Data Protection Legislation;

Project the community water saving project described in the Grant Recipients application for grant funding appended to this Agreement in **Schedule 1**;

Term shall have the meaning set out in clause 10.



1. **Purpose of the Grant**

1. **Purpose of Grant**

The **Recipient** may use the Grant only as contribution towards the Permitted Uses in accordance with the terms and conditions set out in this Agreement. The Grant shall not be used for any other purpose.

2. **Payment of Grant**

2. **Payment of Grant**

1. **SOUTHERN WATER** shall pay the Grant for the sum of £() (insert amount here pounds) and (pence) (exclusive of VAT) to the **Recipient** to deliver the Project detailed in **Schedule 1** and the **Recipient's** funding application listed at Schedule 2 .

2. The **Recipient** shall promptly repay to the Funder any money incorrectly paid to it either as a result of an administrative error or otherwise.

3. **Use of Grant**

1. The Grant shall be used by the **Recipient** as contribution towards the Permitted Uses during the Term of this Agreement.

2. Should any part of the Grant remain unspent at the end of the Term, the **Recipient** shall ensure that any unspent monies are returned to **SOUTHERN WATER** or, if agreed in writing by **SOUTHERN WATER**, shall be entitled to retain the unspent monies to use for purposes as agreed between the Parties.

3. The Grant Recipient further undertakes:

a. not to make any significant change to the Project without providing prior written notification to **SOUTHERN WATER**.

b. not to apply for duplicate funding in respect of any part of the Project or any related administration cost that **SOUTHERN WATER** is funding in full under this Agreement.

Records

c. to keep accurate records clearly showing how the Grant monies have been used and keep all invoices, receipts and accounts and any relevant documents relating to the expenditure of the Grant until the later of the date being three (3) years from the end of the Term. **SOUTHERN WATER** may request to see and make copies of all such records that relate to expenditure of the Grant.

d. to provide **SOUTHERN WATER** with a progress report on the use of the Grant and delivery of the Project, including measured water savings delivered by the project, at least once every quarter or at other such intervals required by **SOUTHERN WATER**, and in such formats as **SOUTHERN WATER** may reasonably require.

e. to allow any person authorised by **SOUTHERN WATER** to visit to monitor delivery of the Project.

f. to provide **SOUTHERN WATER** with a final report on the use of the Grant, including a summary of the measured water savings delivered by the project, on completion of the Project or within a period agreed by both parties to allow for the collection of any final measurement data.



Publicity

g. to not, without the prior written consent of **SOUTHERN WATER**, apply **SOUTHERN WATER**' name or logo to the Project, and must obtain **SOUTHERN WATER**' prior written approval (not to be unreasonably withheld or delayed) for any press releases or publicity in connection with the Project which mention SOUTHERN WATER. If the Grant Recipient uses **SOUTHERN WATER**'s name and logo the Grant Recipient agrees to comply with all reasonable guidelines issued by SOUTHERN WATER from time to time.

h. to tag **SOUTHERN WATER** in any promotions or communications regarding the Project on social media platforms.

Delay

i. if the **Recipient** suspects or knows that the Project is, or is likely to be, delayed, as a result of Covid 19, or for any other reason, the Recipient shall immediately inform **SOUTHERN WATER**.

4. Intellectual Property

1. The Parties 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 (including copyright, trademark, design and patent rights) whatsoever owned by either the **Recipient** or **SOUTHERN WATER** before the date of this agreement or developed by either Party during the Term of this Agreement, shall remain the property of that Party.

2. Where **SOUTHERN WATER** provides 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 **SOUTHERN WATER**.

3. Each Party warrants that all material provided by that Party to the other or used by that Party in relation to the relationship established under this Agreement (other than material created or provided by the other Party) does not and will not in any way infringe any third party intellectual property rights. Each Party agrees to indemnify the other Party from and against any loss other than economic or consequential loss (including legal costs and expenses on a solicitor/own client basis) incurred or suffered by the other Party arising from a breach of this warranty.

5. Confidentiality

1. Each party shall during the term of this Agreement and thereafter keep secret and confidential all 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.

2. The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any 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.
3. This clause 4 shall survive termination of this Agreement.

6. Data Protection and EIR

1. The parties do not anticipate that any Personal Data will be Processed under this Grant Agreement. However, the parties agree that if Personal Data is processed, in undertaking its activities for which the Grant is made, they will comply with all applicable requirements of and all their obligations under the Data Protection Legislation which arise in connection with the Agreement.
2. The Recipient shall indemnify and keep indemnified and defend at its own expense SOUTHERN WATER against all claims, demands, costs, expenses, liabilities and damages (including legal and other professional costs) which SOUTHERN WATER may or shall suffer or incur or for which SOUTHERN WATER may become liable arising out of or in connection with or due to any failure by the Recipient or its employees, agents or subcontractors to comply with any of its obligations relating to the Data Protection Legislation.
3. The Grant Recipient acknowledges that **SOUTHERN WATER** is subject to the requirements of the EIR and agrees:
 - a. to provide all necessary assistance and cooperation as reasonably requested by **SOUTHERN WATER** to comply with its obligations under the EIR;
 - b. where it receives a EIR request for information in relation to this Agreement, not respond to that request and within 2 working days transfer the request to **SOUTHERN WATER**; and
 - c. to promptly provide **SOUTHERN WATER** with a copy of all information belonging to **SOUTHERN WATER** relevant to the request for information.

7. Withholding, suspending and repayment of Grant

1. It is **SOUTHERN WATER**' intention is that the Grant will be paid to the **Recipient** in full. However, without prejudice to **SOUTHERN WATER**' other rights and remedies, **SOUTHERN WATER** may at its discretion withhold or suspend payment of the Grant and/or require repayment of all or part of the Grant if:
 - a. the **Recipient** uses the Grant for purposes other than the Permitted Uses;
 - b. delivery of the Project does not start within two (2) months of the date of this Agreement and the **Recipient** has failed to provide **SOUTHERN WATER** with a reasonable explanation for the delay;



- c. **SOUTHERN WATER** considers that the **Recipient** has not made satisfactory progress with the delivery of the Project;
- d. the **Recipient** provides **SOUTHERN WATER** with any materially misleading or inaccurate information;
- e. the **Recipient** commits or committed a Prohibited Act or acts in breach of applicable laws in its use of the Grant or performance of any Permitted Uses;
- f. the **Recipient** takes any actions which, in the reasonable opinion of **SOUTHERN WATER**, bring or are likely to bring **SOUTHERN WATER**'s name or reputation into disrepute;
- g. the **Recipient** ceased to operate for any reason, or resolution is passed (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);
- h. 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 thirty (30) days of receiving written notice detailing the failure.

8. **Limitation of Liability**

- 1. **SOUTHERN WATER** accepts no liability for any consequences, whether direct or indirect, that may arise from the **Recipient** undertaking the Project, the use of the Grant or from withdrawal of the Grant.
- 2. For the avoidance of doubt, **SOUTHERN WATER**' total liability under this Agreement is limited to the payment of the Grant, subject to the terms and conditions of this Agreement.

9. **Warranties**

- 1. The **Recipient** warrants, undertakes and agrees that it has all necessary resources and expertise to undertake the Permitted Uses
- 2. The **Recipient** warrants that:
 - a. it shall comply with all Applicable Laws in the performance of the Permitted Uses or as required to give effect to this Agreement;
 - b. it will not make any commitment to any third party (including but not limited to competent authorities) which binds or affects, or purports to bind or affect the Funder;
 - c. it has the necessary power and authority to enter into this Agreement; and
 - d. its signatory to this Agreement is duly authorised to execute this Agreement on its behalf.

10. **Term**

- 1. This Agreement shall apply from the date of this Agreement until six (6) months after the Grant monies have been spent. 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.
- 2. **SOUTHERN WATER** may terminate this Agreement and any Grant payments on giving the Grant Recipient three (3) months written notice should it be required to do so by financial restraints or for any other reason.



11. Assignment

1. The **Recipient** may not, without the prior written consent of **SOUTHERN WATER**, 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 Grant.

12. Waiver

No failure or delay by either Party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

13. 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 nonworking day or after 5 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.

14. No partnership or agency

This Agreement shall not create any partnership or joint venture between **SOUTHERN WATER** 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.

15. Disputes

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and interpreted in accordance with the law of England and Wales.

16. General

1. Nothing in this Agreement shall exclude or restrict the liability of either party for fraudulent misrepresentation and/or for death or personal injury resulting from the negligence of such party or that of any of its officers, subcontractors, agents or employees.

2. No variation to this Agreement shall be effective unless in writing and signed by a duly authorised representative on behalf of each party.

3. This Agreement contains the entire understanding between the parties relative to the protection of the Information and supersedes all prior and collateral communication, reports and understandings between the parties relating thereto.

4. No other person than a party to this Agreement shall be entitled to enforce any term of this Agreement.

5. No failure or delay by either party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any further exercise thereof or the exercise of any right, power or privilege hereunder or otherwise.



6. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

7. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute a party the agent of the other party, or authorise a party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

17. Governing law and jurisdiction

1. The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) that arises out of, or in connection with this Agreement or its subject matter of formation.

Agreed by the parties on the date set out at the head of this Agreement.

SIGNED by [] (Full Name))
)
)
and [] (Full Name))

for and on behalf of
SOUTHERN WATER SERVICES LIMITED

SIGNED by [] (Full Name))
)
)
and [] (Full Name))

for and on behalf of
[THE SUPPLIER]

