

[INSERT DATE] 2021

NCFE ⁽¹⁾

and

[INSERT ORGANISATION] ⁽²⁾

**Assessment Innovation Fund
Grant Agreement**

CONTENTS

Clause	Page
1. DEFINITIONS.....	1
2. TERM	2
3. OTHER COLLABORATION AND SUPPORT BEYOND THE TERM	3
4. PURPOSE AND USE OF THE GRANT	3
5. PROJECT PLAN	3
6. PAYMENT OF THE GRANT	4
7. WITHHOLDING, SUSPENDING AND REPAYMENT OF THE GRANT	4
8. ACCOUNTS AND RECORDS	5
9. MONITORING AND REPORTING	6
10. CONFIDENTIALITY	6
11. PUBLICITY	7
12. DATA	7
13. INTELLECTUAL PROPERTY	7
14. SAFEGUARDING.....	9
15. TERMINATION.....	9
16. LIMITATION OF LIABILITY	10
SCHEDULE 1	14
Application Pack.....	14
SCHEDULE 2	15
Agreed Budget	15
SCHEDULE 3	16
Payment	16
SCHEDULE 4	17
Data Protection.....	17
SCHEDULE 5	19
Data Processing	19

THIS GRANT AGREEMENT IS MADE ON

BETWEEN

- (1) **NCFE** (Recipient Number 02896700 and NCFE Number 1034808) whose registered office is at NCFE Quorum Park, Benton Lane, Newcastle Upon Tyne, NE12 8BT (**NCFE**); and
 - (2) **[INSERT DETAILS AND STATUS OF THE RECIPIENT ORGANISATION]** (the **Recipient**)
- individually "**a Party**" and collectively "**the Parties**".

BACKGROUND

- (A) NCFE is established to promote and advance education and training of young persons and adults (the **Object**).
- (B) As part of NCFE's current strategy, in furtherance of its Object, it wishes to create robust and reliable assessment approaches and solutions for learners and education providers, to help to build trust, confidence, and value at every level of the education system.
- (C) To achieve its strategy as set out in (B) above, NCFE is committing up to £1 million grant funding to run an assessment innovation fund that will support pilots looking at developing new approaches and solutions to delivering assessment ("**Assessment Innovation Fund**").
- (D) The Recipient has successfully applied to NCFE for a proportion of the available grant funding and has been awarded the Grant.
- (E) This Agreement sets out the terms and conditions on which the Grant is made by NCFE to the Recipient, and is intended to ensure that the Grant is used for the purpose for which it is awarded.

1. DEFINITIONS

Agreement	refers to the arrangement between the Parties, contained in these conditions and in the schedules attached.
[AIF Board	is as defined in the Application Pack.]
Application Pack	is as defined in the application form at Schedule 1 of this Agreement.
Background Intellectual Property Rights	any Intellectual Property Rights other than Foreground Intellectual Property Rights, that are used in connection with the Project.
Commencement Date	[the date this Agreement is signed][the date on which the Project commences, as agreed by the Parties].
Data Protection Legislation	all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended 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 (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner.

[FoA Project Board]	is as defined in the Application Pack.]
Foreground Intellectual Property Rights	any Intellectual Property Rights that are created, arise or are obtained or developed by, the Recipient in the course of or in connection with the Project.
Grant	the maximum sum of £[INSERT FIGURE] payable under this Agreement by NCFE to the Recipient to fund the Project.
[HoAI]	is as defined in the Application Pack.]
Intellectual Property Rights	copyright and related rights, moral rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in computer software, database rights, patents, rights to inventions, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.
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.
NCFE Pilot Owner	is as defined in Clause 5.
Personal Data	shall have the meaning as set out in the Data Protection Legislation.
Project	the proposal for which the Grant Fund is being provided as set out in the application form submitted by the Recipient to NCFE (and attached at Schedule 1), and which is to be delivered in accordance with the Project Plan.
Project Plan	the project plan agreed between the Parties, which shall include milestones, key outcomes, and timeframes [as set out in Schedule 1].
Regulated Activity	is as defined in the Safeguarding Vulnerable Groups Act 2006.
Team	the team of persons that the Recipient employs or engages to deliver or support with the Project (or part thereof).
Term	the period of 12 months beginning on the Commencement Date.
UK GDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

2. TERM

- 2.1 This Agreement shall start on the Commencement Date and shall continue for a period of [INSERT TIME PERIOD SET OUT IN THE PROJECT PLAN FOR THE PILOT] (after which it shall automatically terminate), unless and until it is terminated early in accordance with Clause 14 (Termination).

3. OTHER COLLABORATION AND SUPPORT BEYOND THE TERM

- 3.1 The Parties agree and acknowledge that the Project may require further funding as it transitions from its pilot phase and may require collaboration with technology partners to upscale the Project. By the end of [INSERT DATE], the Parties will therefore meet to review the progress of the Project against the Project Plan and agree in good faith if and how NCFE shall continue to support the Project beyond its pilot phase and what collaboration with technology partners will be required to upscale the Project. (For the avoidance of doubt, NCFE is not committed to continuing its support or to providing further funding).
- 3.2 Notwithstanding clause 3.1, if the Project involves the use of third party partners (technology or otherwise) through the pilot phase, then any contractual relationships with such partners shall be subject to such terms and conditions as NCFE shall determine.
- 3.3 Should the Parties agree that NCFE will continue to support the Project beyond its pilot phase then the Parties will enter into such terms and conditions as proposed by NCFE and agreed by the Parties (and any technology partner(s) party to those terms and conditions) to govern the next phase.

4. PURPOSE AND USE OF THE GRANT

- 4.1 The Recipient shall use the Grant:
- 4.1.1 Only for the delivery of the Project in accordance with the terms and conditions set out in this Agreement. The Grant shall not be used for any other purpose, and the Recipient shall not make any significant change to the Project, without the prior written consent of NCFE.
- 4.1.2 Only for the delivery of the Project in accordance with the budget agreed with NCFE [and set out in Schedule 2] The Recipient must seek NCFE's prior written consent to any changes to the budget that it requires.
- 4.2 Where the Recipient intends to apply to a third party for other funding for the Project it must obtain the prior written consent of NCFE to do so and, where consent is given NCFE may impose conditions or directions in relation to such consent. Where third party funding is obtained pursuant to this clause, the Recipient will provide NCFE with details of the amount and purpose of that funding.
- 4.3 The Recipient agrees and confirms that it shall not apply for duplicate funding in respect of any part of the Project or any related administration costs that NCFE is funding in full under this Agreement.
- 4.4 The acceptance by the Recipient of any third party funding pursuant to this Agreement shall not undermine or prejudice the Recipient's ability to comply with the terms of this Agreement and fulfil its obligations to NCFE.
- 4.5 Where the Recipient is in any doubt as to whether a proposed activity or purpose funded by Grant monies is consistent with Clause 4.1 it will consult with NCFE, whose determination as to whether Grant monies may be used for such activity or purpose shall be final.

5. PROJECT PLAN

- 5.1 The Recipient will be assigned an NCFE Pilot Owner i.e. a person responsible for overseeing the Project's development and managing the performance of the Project on behalf of NCFE on a day-to-day basis.
- 5.2 Changes to the Project Plan
- 5.2.1 Should the Recipient require any changes to be made to the Project or Project Plan then they must notify their NCFE Pilot Owner in writing. Where the NCFE Pilot Owner

deems the changes proposed by the Recipient to be significant, they must promptly report the proposed changes to [the AIF Board / HoAI / FoA Project Board] which will, without unreasonable delay, either:

- (a) accept the proposed changes (and notify the NCFE Pilot Owner re the same); or
- (b) reject the proposed changes (and notify the NCFE Pilot Owner re the same); or
- (c) provide the NCFE Pilot Owner with written notice of specific comments on, or requests for amendment to, the proposed changes.

5.2.2 The NCFE Pilot Owner shall inform the Recipient of the [the AIF Board / HoAI / FoA Project Board] determination and, where the determination falls within Clause 5.2.1(c), shall meet with the Recipient to discuss the comments or requests received with a view to agreeing appropriate changes to the Project or Project Plan (as applicable) for resubmission to the [the AIF Board / HoAI / FoA Project Board]. Clause 5.2.1 shall apply again to the resubmission.

5.2.3 In the event that the [the AIF Board / HoAI / FoA Project Board] rejects any changes proposed by the Recipient, or the Recipient rejects any comments or requests proposed by the [the AIF Board / HoAI / FoA Project Board], this Agreement shall continue in full force and effect with the Project Plan unamended, but either Party may refer the matter for resolution under Clause 18 (Dispute Resolution).

5.3 **Significant** for the purpose of this Clause 5 means anything which, in the reasonable opinion of the NCFE Pilot Owner, deviates from the timescales, outputs, impact or objectives of the Project.

6. PAYMENT OF THE GRANT

6.1 Subject to the other terms and conditions of this Agreement, NCFE will support the Project during the Term through the provision of the Grant.

6.2 The Grant will be payable in accordance with the terms of Schedule 3.

6.3 Interest on late payments shall be 1% above the Bank of England base rate from time to time and interest shall accrue on a monthly basis.

6.4 The Recipient shall not spend any part of the Grant after the Term.

6.5 The Parties agree that all payments by NCFE under this Agreement are by way of a grant and no VAT is therefore payable on the same. If any court of competent authority nevertheless deems VAT to be payable on the Grant Fund, the parties shall discuss and agree in good faith the implications of the same on the Project and any revisions to the Project or its budget but for the avoidance of doubt, NCFE is not liable to make any additional payment to the Recipient in the event that any VAT is deemed payable on the same.

7. WITHHOLDING, SUSPENDING AND REPAYMENT OF THE GRANT

7.1 Without prejudice to NCFE's other rights and remedies, NCFE may at its discretion withhold or suspend payment of the Grant and/or require repayment of all or part of the Grant if:

7.1.1 the Recipient uses the Grant for purposes other than those for which it has been awarded;

7.1.2 the delivery of the Project does not start within [2 months] of the Commencement Date and the Recipient has failed to provide NCFE with a reasonable explanation for the delay;

7.1.3 NCFE considers that the Recipient has not made satisfactory progress with the delivery of the Project;

- 7.1.4 the Recipient is, in the reasonable opinion of NCFE, delivering the Project in a negligent manner;
 - 7.1.5 the Recipient obtains duplicate funding from a third party for the Project without NCFE's prior written consent;
 - 7.1.6 the Recipient undertakes activities that are likely to bring the reputation of the Project or NCFE into disrepute;
 - 7.1.7 the Recipient provides NCFE with any materially misleading or inaccurate information at any point leading up to or during this Agreement;
 - 7.1.8 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 Funder, bring or are likely to bring NCFE's name or reputation into disrepute;
 - 7.1.9 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);
 - 7.1.10 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
 - 7.1.11 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 from NCFE detailing the failure.
- 7.2 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 NCFE as soon as possible so that, if possible, and without creating any legal obligation, NCFE will have an opportunity to provide assistance in resolving the problem or to take action to protect NCFE and the Grant monies.
- 7.3 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 NCFE.

8. ACCOUNTS AND RECORDS

- 8.1 The Grant shall be shown in the Recipient's accounts as a restricted fund and shall not be included under general funds.
- 8.2 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.
- 8.3 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. NCFE shall have the right to review, at NCFE'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.
- 8.4 The Recipient shall comply and facilitate NCFE's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and NCFE.

9. MONITORING AND REPORTING

- 9.1 The Recipient shall monitor the use of Grant monies throughout the Term to ensure that the Grant is only being used for the purposes set out in this Agreement and that the aims and objectives of the Project are being met.
- 9.2 At the request of the NCFE Pilot Owner and / or HoAI, the Recipient shall provide the NCFE Pilot Owner and / or HoAI with a financial report and an operational report on its use of Grant monies in respect of the period and in such form as the NCFE Pilot Owner and HoAI may request.
- 9.3 Where the Recipient has obtained funding from a third party for its delivery of part of the Project with the consent of NCFE, the Recipient shall include the amount of such funding in its financial reports together with details of what that funding has been used for.
- 9.4 From time to time NCFE may request additional information from the Recipient to enable NCFE to monitor the expenditure of the Grant, and the Recipient shall provide such additional information to NCFE as soon as reasonably practicable following such request by NCFE.
- 9.5 The Recipient shall permit any representative of NCFE (including without limitation NCFE's trustees, employees and professional advisers) reasonable access to the Recipient's employees, agents, premises, facilities and records (including accounting records), for the purpose of discussing, monitoring and evaluating the Recipient's fulfilment of the conditions of this Agreement.
- 9.6 The NCFE shall have the right, at its discretion and expense, to audit (directly or via third parties engaged by it) expenditure in relation to the activities funded by the Grant and / or the systems used by the Recipient to administer the Grant at any time.
- 9.7 The Recipient shall provide NCFE with a final report on termination of this Agreement in such form as NCFE shall require and which shall confirm whether the Project has been successfully and properly completed together with such other details as NCFE may request.

10. CONFIDENTIALITY

- 10.1 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.
- 10.2 Subject to Clause 11, 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:
- 10.2.1 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;
 - 10.2.2 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
 - 10.2.3 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.
- 10.3 Clause 10.1 shall not apply to information which is required to be disclosed by law to either Party's professional advisors or which otherwise is in the public domain (other than through an unauthorised disclosure).

11. PUBLICITY

- 11.1 NCFE may make public announcements and issue press releases in relation to the pilots funded by the Assessment Innovation Fund, including (but not limited to) through online publications, training sessions and webinars.
- 11.2 The Recipient shall not issue any media releases, public announcements or public disclosures relating to this Agreement or its subject matter, including promotional or marketing material and publications, without the prior written consent of NCFE to such release, announcement or disclosure and its content.

12. DATA

- 12.1 The Parties agree and acknowledge that all Personal Data in relation to the Project shall be held and processed in accordance with the Data Protection Legislation and the terms of Schedule 4 and Schedule 5.

13. INTELLECTUAL PROPERTY

Background Intellectual Property Rights

- 13.1 Subject to Clause 10 (Confidentiality), the Recipient shall give full disclosure to NCFE of all Background Intellectual Property Rights owned or licensed by it which is relevant to the Project.
- 13.2 All Background Intellectual Property Rights are and shall remain the exclusive property of the Party owning them (or, where applicable, the third party from whom its right to use the Background Intellectual Property Rights has derived).
- 13.3 Where NCFE, during the Term of this Agreement, grants to the Recipient a licence to use any of NCFE's Background Intellectual Property Rights for use in connection with the Project (including without limitation NCFE's name and logo):
 - 13.3.1 the Parties hereby agree and acknowledge that such licence is revocable and non-exclusive and that the Recipient may only use NCFE's Background Intellectual Property Rights for the purpose of the Project;
 - 13.3.2 the Recipient shall not give permission to any third party to use NCFE's Background Intellectual Property Rights without NCFE's prior written consent; and
 - 13.3.3 the Recipient shall, on termination or expiry of this Agreement, cease to use such Background Intellectual Property Rights immediately and shall either return or destroy such Background Intellectual Property Rights as requested by NCFE.
- 13.4 The Recipient hereby grants to NCFE a non-exclusive, revocable licence to use the Recipient's Background Intellectual Property Rights during the Term and in connection with the Project. on termination or expiry of this Agreement, NCFE shall, unless otherwise agreed with the Recipient and to the extent that such Background Intellectual Property Rights have not been incorporated into the Foreground Intellectual Property Rights, cease to use such Background Intellectual Property Rights immediately and shall either return or destroy such Background Intellectual Property Rights as requested by the Recipient.
- 13.5 The Recipient shall not to register or attempt to register any of NCFE's Background Intellectual Property Rights.

Foreground Intellectual Property Rights

- 13.6 The Parties agree and acknowledge that all Foreground Intellectual Property Rights shall vest in and be owned absolutely by NCFE. To the extent that the Foreground Intellectual Property Rights vest in the Recipient, the Recipient shall hold them on trust for NCFE.

- 13.7 The Recipient warrants to NCFE that it will obtain from any individual that creates Foreground Intellectual Property Rights, who is not an employee of the Recipient, a written and valid assignment of all Foreground Intellectual Property Rights and a written irrevocable waiver of all the individual's statutory moral rights in the Foreground Intellectual Property Rights to the fullest extent permissible by law, and that the individual will hold on trust for NCFE any of the rights referred to in this Clause in which the legal title will not pass to NCFE. The Recipient agrees to provide to NCFE a copy of such assignment before engaging such an individual to create the Foreground Intellectual Property Rights.
- 13.8 To the extent that legal title in and to any Foreground Intellectual Property Rights does not vest in NCFE as described in Clause 13.6, the Recipient undertakes that it shall immediately at the request of NCFE either during or after the Term, and in consideration of the sum of £1:
- 13.8.1 assign to NCFE (or, where applicable, procure the assignment to NCFE) absolutely with full title guarantee all its rights, title and interest in and to the Foreground Intellectual Property Rights and all materials embodying such rights to the fullest extent permitted by law, and execute (or, where applicable, procure the execution of) all documents, make all applications, give all assistance and do all acts and things as may, in the opinion of NCFE be necessary or desirable to achieve this;
- 13.8.2 hold on trust (or procure that any relevant individual holds on trust) the NCFE any of the rights referred to in this Clause in which legal title has not passed (or will not pass) to NCFE; and
- 13.8.3 defend NCFE against claims that works embodying the Foreground Intellectual Property Rights or any materials embodying such rights infringe third party rights, and otherwise to protect and maintain the Foreground Intellectual Property Rights.
- 13.9 In respect of the Foreground Intellectual Property Rights and all materials embodying such rights, the Recipient hereby waives all moral rights to which it is or may at any future time be entitled under the Copyright, Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 13.10 The Recipient undertakes to notify NCFE in writing of the full details of any Foreground Intellectual Property Rights promptly on their creation and not to register or attempt to register any Foreground Intellectual Property Rights unless requested to do so by NCFE.

Power of attorney

- 13.11 The Recipient hereby irrevocably appoints NCFE to be its attorney in the Recipient's name and on its behalf to execute documents, use its name and do all things which are necessary or desirable for NCFE to obtain for itself or its nominee the full benefit of this Clause 13.

Claims, indemnities and insurance

- 13.12 Each Party shall immediately give written notice to the other Party of any actual, threatened or suspected infringement of any Party's Background Intellectual Property Rights or of the Foreground Intellectual Property Rights.
- 13.13 The Recipient shall indemnify NCFE and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by NCFE, or for which NCFE may become liable, with respect to any intellectual property infringement claim relating to or arising from the Project, NCFE's use or ownership of the Foreground Intellectual Property Rights, or NCFE's use of the Recipient's Background Intellectual Property Rights (other than in respect of the use or incorporation of NCFE's Background Intellectual Property Rights as permitted by this Agreement). The Recipient shall maintain adequate liability insurance coverage and ensure that NCFE's interest is noted on the policy, and shall supply a copy of the policy to NCFE on request.
- 13.14 NCFE shall indemnify the Recipient and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Recipient, or for which the Recipient may become

liable, with respect to any intellectual property infringement claim or other claim relating to the Recipient's use of NCFE's Background Intellectual Property Rights, provided that such use is in accordance with Clause 13.3.

14. SAFEGUARDING

- 14.1 The Recipient shall not employ or engage any person who is barred from carrying out, or whose previous conduct or records indicate that s/he would not be suitable to carry out, any Regulated Activity or who may otherwise present a risk to children or vulnerable adults, whose role in delivering or supporting with any part of the Project is in a Regulated Activity or grants them access to unsupervised contact with children or vulnerable adults.
- 14.2 The Recipient shall ensure it has adequate safeguarding policies and procedures in place that comply with the law and that it properly investigates any safeguarding concerns which may arise from time to time in relation to any part of the Project.
- 14.3 Prior to the commencement of the Project (as detailed in the Project Plan), the Recipient shall:
- 14.3.1 confirm to NCFE that it has carried out all necessary and suitable safer recruitment checks on its Team; and
 - 14.3.2 ensure that any member of its Team who, during the Term, will be engaged in the provision of Regulated Activities has a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (or any successor body) including a check against the adults' barred list or the children's barred list, as appropriate. The Recipient shall be required to discuss any relevant disclosure issues with NCFE within 7 days and to provide copies of the updated DBS disclosures for each member of its Team to NCFE upon request. The checks required under this Clause shall be carried out at the Recipient's expense.
- 14.4 The Recipient warrants that at all times for the purposes of this Agreement, and where the delivery or support of the Project by the Team includes a Regulated Activity, it has no reason to believe that any member of the Team is barred from carrying out that Regulated Activity.
- 14.5 The Recipient shall promptly notify NCFE of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 14 have been met.
- 14.6 Where either the Recipient or NCFE has any safeguarding concerns about a member of the Team, the Recipient shall immediately prevent that member (either temporarily or otherwise) from supporting with the delivery of the Project and shall immediately inform NCFE in writing of the action taken.
- 14.7 Subject to Clause 16.1, NCFE shall not be liable either to the Recipient or to any member of the Team in respect of any liability loss or damage resulting from the exercise of the right under Clause 14.6.
- 14.8 The Parties agree and acknowledge that for the purposes of Data Protection Legislation, the Recipient is the controller in respect of DBS checks carried out on the Team. The Recipient shall ensure that its disclosure of safer recruitment information to NCFE is permitted by its privacy notices in place with the Team.

15. TERMINATION

- 15.1 NCFE may terminate this Agreement at any time by giving at least three months' prior written notice to the Recipient.
- 15.2 NCFE shall be entitled either to suspend or terminate this Agreement with immediate effect if the Recipient:

- 15.2.1 does anything which in the reasonable opinion of NCFE's trustees brings the NCFE's reputation into disrepute in any way;
 - 15.2.2 uses any Grant, or any part of any Grant, made under this Agreement otherwise than in accordance with the purposes set out in this Agreement;
 - 15.2.3 uses any Grant, or any part of any Grant, to provide financial or non-financial private benefit to any person which is more than ancillary and incidental to the purposes set out in this Agreement;
 - 15.2.4 is, in the reasonable opinion of NCFE, applying the Grant monies in a negligent manner;
 - 15.2.5 deliberately or recklessly provides NCFE with misleading or substantially inaccurate information;
 - 15.2.6 fails to comply with any of the terms and conditions set out in this Agreement or any other ancillary document, and (if such failure is remediable) fails to remedy that failure within 30 days of receiving written notice from NCFE detailing the breach and action required to remedy the same.
- 15.3 On termination of this Agreement in accordance with Clause 6.4 and this Clause 14 NCFE may at its discretion withhold or suspend payment of the Grant, and/or require repayment of all or part of the Grant already awarded and which has not been properly spent.
- 15.4 Either Party shall be entitled to terminate this Agreement with immediate effect at any time if the other Party:
- 15.4.1 ceases to operate for any reason, or 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); or
 - 15.4.2 becomes insolvent, or is declared bankrupt, or is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or enters into any arrangement or composition for the benefit of its creditors, or is unable to pay its debts as they fall due.

16. LIMITATION OF LIABILITY

- 16.1 Nothing in this Agreement limits any liability which cannot legally be limited, including but not limited to liability for death or personal injury caused by negligence, and fraud or fraudulent misrepresentation.
- 16.2 NCFE accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient's use of the Grant, or from the withdrawal of the Grant or the delivery of the Project.
- 16.3 Subject to clause 16.1, NCFE's liability under this Agreement is limited to the payment of the Grant (but then only to the extent that Grant is/becomes payable under this Agreement).
- 16.4 The Recipient shall indemnify and hold harmless NCFE, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the Project and/or the Grant, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties.
- 16.5 The Recipient will be liable for all loss, damage or liability incurred by or claims made against NCFE in respect of any loss or damage which arises from anything done or omitted to be done by the Recipient in carrying out the Project, provided that this provision shall not apply to the extent that such loss, damage or injury is caused by any neglect, default or wrongful act of NCFE.

17. WARRANTIES

- 17.1 The Recipient warrants, undertakes and agrees that:
- 17.1.1 it has all necessary resources, approvals, powers and expertise to deliver the Project (assuming due receipt of the Grant);
 - 17.1.2 it will perform its obligations under this Agreement and deliver the Project in accordance with best industry practice and shall comply with all applicable laws and regulations;
 - 17.1.3 it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
 - 17.1.4 all financial and other information concerning the Recipient which has been disclosed to NCFE is to the best of the Recipient's knowledge and belief, true and accurate;
 - 17.1.5 all information provided to the Recipient during the application process is to the best of the Recipient's knowledge and belief, true and accurate; and
 - 17.1.6 it is not aware of anything in its own affairs, which it has not disclosed to NCFE which might reasonably have influenced the decision of NCFE to make the Grant on the terms contained in this Agreement;
 - 17.1.7 it is the sole legal and beneficial owner of, and owns all the rights and interests in, the Recipient's Background Intellectual Property Rights;
 - 17.1.8 NCFE's use of the Recipient's Background Intellectual Property Rights will not infringe a third party's intellectual property rights (provided that NCFE uses the Recipient's Background Intellectual Property Rights in accordance with the terms of this Agreement);
 - 17.1.9 exploitation of the Foreground Intellectual Property Rights by NCFE (and any of its successors or assignees) will not infringe the rights of any third party; and
 - 17.1.10 the Foreground Intellectual Property Rights, and any materials embodying those, are the Recipient's original work and have not been copied wholly or substantially from any other source.

18. DISPUTE RESOLUTION

- 18.1 In the event of any complaint or dispute (which does not relate to NCFE's right to withhold Grant funds or terminate) arising between the Parties in relation to this Agreement the matter should first be referred for resolution to the [INSERT ROLE] or any other individual nominated by NCFE from time to time.
- 18.2 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the [INSERT ROLE] or other nominated individual, as the case may be, either Party may refer the matter to the [INSERT ROLE] of NCFE and the [INSERT ROLE] 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 Parties.
- 18.3 In the absence of agreement under clause 18.2, 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.

19. MISCELLANEOUS

- 19.1 If there is a conflict between the terms of this Agreement and the terms in the Application Pack, then the terms of this Agreement shall prevail in relation to that conflict.
- 19.2 The Recipient shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of NCFE. Where NCFE provides its consent to subcontracting its rights and obligations under this Agreement, the Recipient shall be liable for the performance of its obligations under this Agreement, and compliance with the terms of this Agreement, by it and by its subcontractor.
- 19.3 If any provision of this Agreement is or becomes to any extent invalid or unenforceable under any applicable law then the remainder of this Agreement shall continue in full force and effect, and the Parties shall negotiate in good faith to amend the provision concerned in such a way that, as amended, it is valid and enforceable and, to the maximum extent possible, meets the original intention of the Parties.
- 19.4 This Agreement may be executed in any number of counterparts but shall not be effective until each Party has executed at least one counterpart. Each counterpart when executed shall be an original, but all the counterparts together shall constitute one document.
- 19.5 This Agreement, together with the Application Pack (as may be amended by NCFE from time to time), constitutes the entire agreement between the Parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- 19.6 No variation of this Agreement shall be effective unless agreed in writing signed by or on behalf of both Parties.
- 19.7 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).
- 19.8 This Agreement, together with the Application Pack and other ancillary documents entered into pursuant to it, shall be governed and construed in accordance with the laws of England and Wales. The Parties agree to the exclusive jurisdiction of the courts of England and Wales in any legal proceedings and as regards any claim or matter relating to this Agreement.

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

Executed as a deed by **NCFE** acting by **[NAME OF DIRECTOR]**, a director, in the presence of:

.....
Director

Signature (Witness)

Print Name

Address

.....

Occupation

Executed as a deed by the **Recipient** acting by **[NAME]**, **[POSITION e.g. DIRECTOR]**, in the presence of:

.....
[INSERT ROLE]

Signature (Witness)

Print Name

Address

.....

Occupation

SCHEDULE 1

Application Pack

[A COPY OF THE APPLICATION FORM SUBMITTED BY THE RECIPIENT TO BE INCLUDED HERE]

SCHEDULE 2

Agreed Budget

[DETAILS TO BE INSERTED HERE]

SCHEDULE 3

Payment

[DETAILS TO BE INSERTED HERE]

SCHEDULE 4

Data Protection

[Option1: NCFE and the Recipient are each independent controllers

- 1.1 Each Party agrees and acknowledges that in some instances they may each be independent controllers for the purpose of the Data Protection Legislation. Where this is the case, they shall each:
- (a) comply with the requirements of all Data Protection Legislation in force from time to time when collecting, sharing, using or otherwise processing Personal Data, and procure that their personnel do the same;
 - (b) ensure that, in relation to Personal Data shared with the other Party, it has a lawful basis (i) to share that Personal Data with the other Party; and (ii) for that other Party to use the Personal Data for the purposes envisaged under this Agreement; and
 - (c) only process any Personal Data received pursuant to this Agreement for the sole purpose of fulfilling their respective obligations under this Agreement and in furtherance of this Agreement.]

[Option 2: One Party is a controller (the Controller) and the other party is a processor¹

- 1.2 Where one Party is the Controller and the other Party is the Processor:
- (a) each Party shall comply with their respective obligations under the Data Protection Legislation;
 - (b) the provisions in Schedule 5 (Data Processing) shall apply to the processing of Personal Data pursuant to this Agreement;
 - (c) the Processor shall only process the Personal Data in accordance with the written instructions of the Controller, unless the Processor is required by law to otherwise process the Personal Data;
 - (d) the Processor shall ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction or, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

¹ This Clause sets out the details that are required by the GDPR when one party is processor and the other is controller, so cannot be amended. Given that NCFE is simply providing grant funding, it is likely that NCFE will be a processor and the Recipient the controller in relation to most of the personal information shared. However, where NCFE uses personal data shared by the Recipient for, say, its own internal reporting purposes, then it might be the case that each Party is an independent controller in relation to that personal data.

- (e) the Processor may only transfer any Personal Data outside of the European Economic Area with the prior written consent of the Controller (such consent not to be unreasonably withheld or delayed) and provided that:
 - (i) appropriate safeguards are in place in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies; and
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Processor complies with reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (f) the Processor assists the Controller in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessment and consultations with the Information Commissioner's Office or other regulators;
- (g) the Processor notifies the Controller without undue delay on becoming aware of a personal data breach;
- (h) at the written direction of the Controller, the Processor shall securely delete or return Personal Data and copies thereof to the Controller on termination of this Agreement unless required by law to store the Personal Data; and
- (i) the Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule.]

SCHEDULE 5

Data Processing²

<p>Purposes for which the Personal Data shall be processed</p> <p><i>NB Please specify the purposes for which the processor intends to process the Personal Data.</i></p>	<p>[PARTIES TO COMPLETE AND CONFIRM]</p>
<p>Description of the categories of the data subjects</p> <p><i>NB Categories of data subjects refers to the people that the data processing agreement is about. E.g. employees.</i></p>	<p>[PARTIES TO COMPLETE AND CONFIRM]</p>
<p>Description of the categories of Personal Data</p> <p><i>NB: Please specify the categories of Personal Data that shall be processed under this Agreement. Examples include: name, ID number.</i></p>	<p>[PARTIES TO COMPLETE AND CONFIRM]</p>
<p>Description of the categories of Special Category Data</p> <p><i>NB Special category data means personal data revealing racial or ethnic origin;</i></p> <ul style="list-style-type: none"> • <i>personal data revealing political opinions;</i> • <i>personal data revealing religious or philosophical beliefs;</i> • <i>personal data revealing trade union membership;</i> • <i>genetic data;</i> • <i>biometric data (where used for identification purposes);</i> • <i>data concerning health;</i> • <i>data concerning a person's sex life; and</i> • <i>data concerning a person's sexual orientation.</i> 	<p>[PARTIES TO COMPLETE AND CONFIRM]</p>
<p>Description of transfers of Personal Data to a country outside of the EEA</p> <p><i>NB Please record transfers of Personal Data outside of the EEA, recording the country and/or international organisation and, where applicable, please document suitable safeguards that are in place.</i></p>	<p>[PARTIES TO COMPLETE AND CONFIRM]</p>

² This Schedule can be deleted if option 2 is deleted at Schedule 4 (Data Protection).