

Water Saving Non-Household Innovation Fund Agreement

Background

- A. The Grant Recipient applied to South West Water Limited ("**SWW**") for grant funding for the Project.
- B. In order to assist the Grant Recipient on furthering it's Project, and in consideration of the undertakings given by the Grant Recipient in this Agreement, SWW wishes to make a Grant on the terms and conditions of this Agreement.

For the purposes of this Agreement the following definitions apply:

EIR	the Environmental Information Regulations
Grant	the sums to be paid by SWW in accordance with this Agreement
Grant Recipient	the company receiving the Grant under this Agreement
Project	the community water saving project described in the Grant Recipients application for grant funding appended to this Agreement at Annexure 1.

1 SWW Commitments

1.1 SWW agrees:

- (a) To provide a one-off Grant of £XXX to support the Project.
- (b) To provide [XXX%] of the total Grant within seven (7) days of receipt of this signed Agreement.
- (c) To provide XXX% of the Grant within seven (7) days of the approval by SWW of the first report produced in accordance with clause 2.1 (f) below

1.2 SWW's involvement in the Project shall be limited to providing the Grant.

2 Your commitments

2.1 The Grant Recipient undertakes:

Use of the Grant

- (a) to only use the Grant for the delivery of the Project and in accordance with the terms and conditions set out in this Agreement. The Grant shall not be used for any other purpose without the prior written agreement of SWW.
- (b) not to make any significant change to the Project without providing prior written notification to SWW.
- (c) not to apply for duplicate funding in respect of any part of the Project or any related administration cost that SWW is funding in full under this Agreement.
- (d) to promptly repay to SWW any money incorrectly paid to it either as a result of an administrative error or otherwise.

Record keeping

- (e) to keep accurate records clearly showing how the Grant monies have been used and shall 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 date of this Agreement or six (months) following completion of the Project. SWW may request to see and make copies of all such records that relate to expenditure of the Grant.
- (f) to provide SWW 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 every quarter or at other such intervals required by SWW, and in such formats as SWW may reasonably require.
- (g) to allow any person authorised by SWW to visit to monitor delivery of the Project.
- (h) to provide SWW 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

- (i) to not, without the prior written consent of SWW, apply SWW's name or logo to the Project, and must obtain SWW's prior written approval (not to be unreasonably withheld or delayed) for any press releases or publicity in connection with the Project which mention SWW. If the Grant Recipient uses SWW's name and logo the Grant Recipient agrees to comply with all reasonable guidelines issued by SWW from time to time.
- (j) to tag SWW in any promotions or communications regarding the Project on social media platforms.

Delay

- (k) if it suspects or knows that the Project is, or is likely to be, delayed, whether as a result of Covid 19 or for any other reason, to immediately inform SWW.

3 Intellectual property

- 3.1 All rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology and any other intellectual property rights whatsoever owned by either the Grant Recipient or SWW before the date of this Agreement shall remain the property of that party.
- 3.2 Where SWW provides the Grant Recipient with any of its intellectual property rights for use in connection with the Project (including without limitation its name and logo), the Grant 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 SWW.

4 Confidentiality

- 4.1 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.
- 4.2 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.

4.3 This clause 4 shall survive termination of this Agreement.

5 Data Protection

5.1 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.

5.2 The Grant Recipient acknowledges that SWW is subject to the requirements of the EIR and agrees:

- (a) to provide all necessary assistance and cooperation as reasonably requested by SWW 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 SWW; and
- (c) to promptly provide SWW with a copy of all information belonging to SWW relevant to the request for information.

6 Withholding, suspending and repayment of Grant

6.1 SWW's intention is that the Grant will be paid to the Grant Recipient in full. However, without prejudice to SWW's other rights and remedies, SWW 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 Grant Recipient uses the Grant for purposes other than those for which it has been awarded;
- (b) delivery of the Project does not start within six (6) months of the date of this Agreement and the Grant Recipient has failed to provide SWW with a reasonable explanation for the delay;
- (c) SWW considers that the Grant Recipient has not made satisfactory progress with the delivery of the Project;
- (d) the Grant Recipient obtains duplicate funding from a third party for the Project;
- (e) the Grant Recipient provides SWW with any materially misleading or inaccurate information;
- (f) the Grant Recipient takes any actions which, in the reasonable opinion of SWW, bring or are likely to bring SWW's name or reputation into disrepute;
- (g) the Grant 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 Grant 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.

7 Limitation of Liability

- 7.1 SWW accepts no liability for any consequences, whether direct or indirect, that may come about from the Grant Recipient running the Project, the use of the Grant or from withdrawal of the Grant.
- 7.2 For the avoidance of doubt, SWW's total liability under this Agreement is limited to the payment of the Grant, subject to the terms and conditions of this Agreement.

8 Term

- 8.1 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.
- 8.2 SWW 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.

9 Assignment

- 9.1 The Grant Recipient may not, without the prior written consent of SWW, 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.

10 Disputes

- 10.1 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.

11 General

- 11.1 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.
- 11.2 No variation to this Agreement shall be effective unless in writing and signed by a duly authorised representative on behalf of each party.
- 11.3 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.
- 11.4 No other person than a party to this Agreement shall be entitled to enforce any term of this Agreement.
- 11.5 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.

11.6 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.

11.7 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.

12 Governing law and jurisdiction

12.1 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.

Please sign and return the enclosed copy of this letter to acknowledge your agreement to the terms of this Agreement.

Yours faithfully

For and on behalf of South West Water

We agree to the terms of this Agreement.

Signed:

For and on behalf of [xxx]

Date:

Annexure 1 – Application Form