

**DATED**

**202**

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**GRANT AGREEMENT**

**RELATING TO**

[REDACTED]

**between**

**BLACKBURN WITH DARWEN BOROUGH COUNCIL**

**and**

[REDACTED]

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**PARTIES**

- (1) **Blackburn with Darwen Borough Council**, Town Hall, King William Street, Blackburn, BB1 7DY (**Funder**).
- (2) [REDACTED], of [REDACTED] (**Recipient**).

**BACKGROUND**

- (A) The Funder has agreed to pay the Grant to the Recipient to assist it in carrying out the Project as detailed in Schedule 1
- (B) This Agreement sets out the terms and conditions on which the Grant is made by the Funder to the Recipient.
- (C) These terms and conditions are intended to ensure that the Grant is used for the purpose for which it is awarded.
- (D) Nothing in this agreement will lead to the creation of a contract for services.

**AGREED TERMS**

**1. DEFINITIONS**

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

**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.

**Commencement Date:** [REDACTED].

**Data Protection Legislation:** The Recipient shall (and shall procure that any of its staff involved in connection with the activities under the Agreement shall) comply with any notification requirements under the Data Protection Act 2018 (as amended) (DPA) and both Parties will duly observe all their obligations under the DPA, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner and as any may be amended from time to time, which arise in connection with the Agreement.

**Grant:** the sums as detailed in Schedule 2 to be paid to the Recipient in accordance with this Agreement.

**Grant Period:** the period for which the Grant is awarded starting on the Commencement Date and ending on the [REDACTED].

**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.

**Prohibited Act:** means:

- (a) offering, giving or agreeing to give to any servant of the Funder any gift or consideration of any kind as an inducement or reward for:
  - (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Funder; or
  - (ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Funder;
- (b) entering into this Agreement or any other contract with the Funder where a commission has been paid or has been agreed to be paid by the Recipient or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Funder;
- (c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation creating offences in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other agreement with the Funder; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Funder.

**Project:** the project described in Schedule 1.

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

## 2. PURPOSE OF GRANT

- 2.1 The Recipient shall use the Grant only 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 the Funder.

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

2.3 Where the Recipient intends to apply to a third party for other funding for the Project, it will notify the Funder in advance of its intention to do so and, where such funding is obtained, it will provide the Funder 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 Funder is funding in full under this Agreement.

### **3. PAYMENT OF GRANT**

3.1 The Funder shall pay the Grant to the Recipient in one instalment in accordance with Schedule 2.

3.2 No Grant shall be paid unless and until the Funder is satisfied that such payment will be used for proper expenditure in the delivery of the Project.

3.3 The amount of the Grant shall not be increased in the event of any overspend by the Recipient in its delivery of the Project.

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

### **4. USE OF GRANT**

4.1 The Grant shall be used by the Recipient for the delivery of the Project in accordance with this Agreement.

4.2 Should any part of the Grant remain unspent at the end of the Grant Period, the Recipient shall ensure that any unspent monies are returned to the Funder.

### **5. ACCOUNTS AND RECORDS**

5.1 The Recipient shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Grant monies received by it.

5.2 The Recipient shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Grant for a period of at least six years following receipt of any Grant monies to which they relate. The Funder shall have

the right to review, at the Funder's reasonable request, the Recipient's accounts and records that relate to the expenditure of the Grant and shall have the right to take copies of such accounts and records.

- 5.3 The Recipient shall comply and facilitate the Funder's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Funder.

## **6. MONITORING AND REPORTING**

- 6.1 The Recipient shall closely monitor the delivery and success of the Project throughout the Grant 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 and inform the Funder.

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

- 6.4 The Recipient shall provide the Funder with a final report on completion of the Grant Period which shall confirm whether the Project has been successfully and properly completed.

## **7. ACKNOWLEDGMENT AND PUBLICITY**

- 7.1 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 Funder.

- 7.2 The Funder may acknowledge the Recipient's involvement in the Project as appropriate without prior notice.

- 7.3 The Recipient shall comply with all reasonable requests from the Funder that will assist the Funder in its promotional and fundraising activities relating to the Project.

## **8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1 The Funder 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 Funder or the Recipient before the Commencement Date or developed by either party during the Grant Period, shall remain the property of that party.

## **9. CONFIDENTIALITY**

- 9.1 Subject to clause 10 (Freedom of Information), 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.

## **10. FREEDOM OF INFORMATION**

- 10.1 The Recipient acknowledges that the Funder is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIRs**).
- 10.2 The Recipient shall:
- (d) provide all necessary assistance and cooperation as reasonably requested by the Funder to enable the Funder to comply with its obligations under the FOIA and EIRs;

- (e) transfer to the Funder all requests for information relating to this Agreement that it receives as soon as practicable and in any event within 2 working days of receipt;
- (f) provide the Funder with a copy of all information belonging to the Funder requested in the request for information which is in its possession or control in the form that the Funder requires within 5 working days (or such other period as the Funder may reasonably specify) of the Funder's request for such information; and
- (g) not respond directly to a request for information unless authorised in writing to do so by the Funder.

10.3 The Recipient acknowledges that the Funder may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the Recipient. The Funder shall take reasonable steps to notify the Recipient of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Funder shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## **11. DATA PROTECTION**

The Recipient shall (and shall procure that any of its staff and/or third parties involved in connection with the activities under this Agreement shall) comply with the Data Protection Legislation and will duly observe all their obligations under the Data Protection Legislation which arise in connection with the Agreement.

## **12. WITHHOLDING, SUSPENDING AND REPAYMENT OF GRANT**

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

- (h) the Recipient uses the Grant for purposes other than those for which it has been awarded;
- (i) the Funder considers that the Recipient has not made satisfactory progress with the delivery of the Project;
- (j) the Recipient is, in the reasonable opinion of the Funder, delivering the Project in a negligent manner;
- (k) the Recipient obtains duplicate funding from a third party for the Project;



- (l) the Recipient obtains funding from a third party which, in the reasonable opinion of the Funder, undertakes activities that are likely to bring the reputation of the Project or the Funder into disrepute;
- (m) the Recipient provides the Funder with any materially misleading or inaccurate information;
- (n) the Recipient commits or committed a Prohibited Act;
- (o) any elected member, 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 the Funder's name or reputation into disrepute;
- (p) 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);
- (q) 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
- (r) 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.

12.2 The Funder 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 Funder.

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

12.4 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 Funder as soon as possible so that, if possible, and without creating any legal obligation, the Funder will have an opportunity to provide assistance in resolving the problem or to take action to protect the Funder and the Grant monies.

### **13. ANTI-SLAVERY**

Each Party will, in connection with the Project:

- Comply with all laws, statutes and regulations which apply to it or its activities and which relate to anti-slavery and human trafficking, including Modern Slavery Act 2015;
- Not do anything which would constitute an offence under section 1, 2 or 4 Modern Slavery Act 2015 if it has been carried out in the United Kingdom;
- Have and maintain its own policies and procedures to ensure compliance with the Modern Slavery Act 2015 and follow and enforce them;
- Include in its contracts with any sub Recipients and suppliers anti-slavery and human trafficking provisions which are at least as onerous as those set out in this clause;
- Promptly report to the other Party any breach of this clause of which it becomes aware;
- Provide such evidence of compliance with this clause as the other Party may reasonably request from time to time;
- Keep accurate and up to date records to trace the supply chain of all goods and materials supplied by it in connection with this Agreement and the Project and the steps taken by it to comply with this clause. (Those records must be sufficient to allow the other Party to verify compliance with this clause);
- On request during normal working hours, allow the other Party access to and to copy the records referred to in this clause and to meet with its personnel to verify compliance with this clause.

### **14. COUNTER-TERRORISM AND SECURITY ACT (CTSA)**

- 14.1 The parties shall comply with all applicable laws, statutes, regulations, codes and internal policies relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom.

- 14.2 Each party is subject to the CTSA which places an obligation on a party to have due regard to the need to prevent people from being drawn into terrorism. The obligations extend to all persons who come into contact with a party whether students, staff, Recipients, speakers, volunteers or otherwise.
- 14.3 Each party shall comply with the CTSA (as amended from time to time) insofar as it is applicable to them under this Agreement and in any event, shall not put the other party in breach of their obligations under the CTSA.
- 14.4 For the avoidance of doubt, each Party shall
- Promptly report to the other party and/or Police any suspicions or concerns under the CTSA.
  - Ensure that any person associated with it who is performing services and/or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Parties in this clause.
  - Ensure that all staff are made aware of the CTSA and their appropriate policy for offering support and sharing information.
  - Any breach of this clause shall be deemed a material breach of this Agreement entitling the other Parties to terminate this Agreement immediately.

## **15. ANTI-DISCRIMINATION**

- 15.1 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.
- 15.2 The Recipient shall take all reasonable steps to secure the observance of clause 15.1 by all servants, employees or agents of the Recipient and all suppliers and sub-contractors engaged on the Project.

## **16. HUMAN RIGHTS**

- 16.1 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.
- 16.2 The Recipient shall undertake, or refrain from undertaking, such acts as the Funder requests so as to enable the Funder to comply with its obligations under the Human Rights Act 1998.

**17. LIMITATION OF LIABILITY**

- 17.1 The Funder accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient running the Project, the use of the Grant or from withdrawal of the Grant. The Recipient shall indemnify and hold harmless the Funder, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the Project, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties.
- 17.2 Subject to clause 17.1, the Funder's liability under this Agreement is limited to the payment of the Grant.

**18. 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 Grant);
- 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 Funder 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 Funder is to the best of its knowledge and belief, true and accurate;
- i) it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Grant;
- j) it is not aware of anything in its own affairs, which it has not disclosed to the Funder or any of the Funder's advisers, which might reasonably have

influenced the decision of the Funder to make the Grant on the terms contained in this Agreement; and

- k) since the date of its last accounts there has been no material change in its financial position or prospects.

## **19. INSURANCE**

- 19.1 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.

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

## **20. DURATION**

- 20.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until for so long as any Grant monies remain unspent by the Recipient.
- 20.2 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.

## **21. TERMINATION**

The Funder may terminate this Agreement and any Grant payments on giving the Recipient written notice should it be required to do so by financial restraints or for any other reason.

## **22. ASSIGNMENT**

The Recipient may not, without the prior written consent of the Funder, assign, transfer, or in any other way make over to any third party the benefit and/or the burden of this Agreement.

## **23. 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.

**24. 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 sent by prepaid post 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 5.00pm on any working day they shall be deemed received on the next working day) and if sent by post all such communications shall be deemed to have been given and received on the third working day following such mailing.

**25. DISPUTE RESOLUTION**

- 25.1 In the event of any complaint or dispute (which does not relate to the Funder's right to withhold funds or terminate) arising between the parties to this Agreement in relation to this Agreement the matter shall be referred for resolution to the Project Manager or any other individual nominated by the Funder from time to time.

**26. NO PARTNERSHIP OR AGENCY**

This Agreement shall not create any partnership or joint venture between the Funder and the Recipient, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

**27. 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.

**28. 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.

**29. GOVERNING LAW**

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

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



## Schedule 1

The purpose of the funding is to create additional secondary school age pupil capacity across the mainstream school sector.

The [ ] have agreed to a minimum increase in pupil capacity of:

- [ ] additional mainstream places, based on:
  - [ ] Year 7, by [ ]
  - [ ] Year 8, by [ ]
  - [ ] Year 9, by [ ]
  - [ ] Year 10, by [ ]
  - [ ] Year 11, by [ ]



**Schedule 2 - Payment Schedule**

<b>Amount of Grant Payable</b>	<b>Date of Payment</b>
	On completion of the Grant Agreement
	On completion of the Grant Agreement