

# **Wiltshire Council**



**dated**

**2022**

**Between**

**Wiltshire Council**

**and**

**Co-Cars Limited**

**Grant Agreement for the provision of the Mere Car Club Project**

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## **Parties**

- (1) **WILTSHIRE COUNCIL** of County Hall, Bythesea Road, Trowbridge, Wiltshire BA14 8JN (**Funder**); and
- (2) **CO-CARS LIMITED** incorporated and registered as a mutual society in England and Wales with registration number 31432R whose registered office is at 46 Majorfield Road, Topsham, Devon EX3 0ES and whose correspondence office is at The Generator Hub, The Gallery, Kings Wharf, The Quay, Exeter EX2 4AN (**Recipient**).

## **BACKGROUND**

- (A) The South West Wiltshire Area Board met on 16 March 2022 and 14 September 2022 and agreed to Grant the sum of £10,000 to the Recipient for the purposes of the Project.
- (B) The Funder has agreed to pay the Grant to the Recipient to assist it in carrying out the Project.
- (C) This Agreement sets out the terms and conditions on which the Grant is made by the Funder 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.

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

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;

**Business Day** means a day other than a Saturday or Sunday which is not a Service Holiday;

**Commencement Date:** the date of this Agreement;

**Controller** has the meaning given to it in the UK GDPR;

**Data Protection Legislation:** means the UK GDPR, the Data Protection Act 2018 and any other relevant national laws implementing, supplementing or relating to the derogation from the UK GDPR, and any formal guidance or codes of conduct issued by the Information Commissioner's Office (or other competent authority) in each case as amended, superseded or replaced from time to time.

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

**Grant:** the sum of up to ten thousand pounds (£10,000) to be paid to the Recipient in accordance with this Agreement as more particularly described in clause 3 and Schedule 1.

**Grant Period:** the period for which the Grant is awarded starting on the Commencement Date and ending on the first anniversary of the Commencement Date.

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

**Know-How:** information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale.

**Personal Data** has the meaning given to it in the UK GDPR;

**Processor** has the meaning given to it in the UK GDPR;

**Prohibited Act:** means:

- a) engaging in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the United Kingdom;
- b) offering, giving or agreeing to give to any servant of the Funder any gift or consideration of any kind as an inducement or reward:
  - i for 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 for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Funder; or
- c) entering into this Agreement or any other contract with the Funder in connection with which 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 contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Funder; or
- d) committing any offence:
  - iii under the Bribery Act 2010;
  - iv under the Prevention of Corruption Acts 1889-1916;

- v under Legislation creating offences in respect of fraudulent acts; or
  - vi at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Funder; or
- e) defrauding or attempting to defraud or conspiring to defraud the Funder (including offences by the Recipient under Part 3 of the Criminal Finances Act 2017);

**Prohibited Employment Grounds** means the grounds of any protected characteristic contrary to Part 5 (Employment) of the Equality Act 2010;

**Prohibited Grounds** means the grounds of any protected characteristic contrary to Part 3 (Services and Public Functions) or Part 6 (Education) of the Equality Act 2010;

**Project:** as more particularly described in Schedule 1;

**Project Manager:** the individual namely Karen Linaker, Strategic Engagement and Partnerships Manager who has been nominated to represent the Funder for the purposes of this Agreement;

**Regulated Activity:** in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;

**Regulated Activity Provider:** as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006;

**Subsidy** means any direct or indirect financial assistance which:

- (a) arises from the resources of the United Kingdom Government, devolved government, other public authority in the United Kingdom or an emanation of any of these, including:
  - vii a direct or contingent transfer of funds such as direct grants, loans or loan guarantees;
  - viii the forgoing of revenue that is otherwise due;
  - ix the provision of goods or services, or the purchase of goods or services; or
  - x a measure analogous to these,
- (b) confers an economic advantage on one or more economic actors;

- (c) is specific insofar as it benefits, as a matter of law or fact, certain economic actors over others in relation to the production of certain goods or services; and
- (d) has, or could have, an effect on trade or investment between the United Kingdom and any part of the European Economic Area and/or any other country or countries which the United Kingdom has entered into a trade agreement with which has provisions in respect of public sector funding arrangements;

**Subsidy Control** means any legislation (including the incorporation of international treaties by virtue of statutory provisions) regulations and guidance issued by a Secretary of State and/or approved by Parliament which is in force and/or applies in England which regulates Subsidy;

**UK GDPR** means the retained EU law version of the General Data Protection Regulation (EU) 2016/679), as incorporated into UK law under section 3 of the European Union (Withdrawal) Act 2018 and as defined in the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019, as amended, updated or replaced from time to time;

**Unlawful Subsidy** means Subsidy which has been granted, or from time to time is, in contravention of Subsidy Control; and

**Whistleblowing** means the reporting of suspected wrongdoing or dangers in relation to Funder related activities, including bribery, fraud or other criminal activity, miscarriages of justice, health & safety risks, risk or damage to the environment and any breach of legal or professional obligations and **Whistleblower** shall be construed accordingly.

1.2 In this Agreement, except where the context otherwise requires:

1.2.1 the masculine includes the feminine and vice-versa;

1.2.2 the singular includes the plural and vice versa;

1.2.3 a reference to any recital, clause, sub-clause, schedule or appendix is, except where expressly stated to the contrary, a reference to such recital, clause, sub-clause, schedule or appendix of this Agreement;

1.2.4 any reference to any other document shall include any permitted variation, amendment or supplement to such document;

1.2.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;

- 1.2.6 a reference to a person includes firms, partnerships, and corporations and their successors and permitted assignees or transferees;
- 1.2.7 headings are for convenience of reference only;
- 1.2.8 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words; and
- 1.2.9 the schedules and appendices to this Agreement form part 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.
- 2.4 The Recipient shall have non-exclusive rights to the Project. The Funder shall have the ability to fund and operate similar schemes in Mere and elsewhere.

## **3. PAYMENT OF GRANT**

- 3.1 Subject to clause 2, the Funder shall pay the Grant to the Recipient in accordance with this clause 3 subject to the necessary funds being available when payment falls due. The Recipient agrees and accepts that payments of the Grant can only be made to the extent that the Funder has available funds and where the Funder is on-granting funds that it has received from a third party, that it has received such funds.
- 3.2 No Grant shall be paid unless and until the Funder is satisfied, acting reasonably, that such payment will be used for proper expenditure in the delivery of the Project.

3.3 Subject to Clause 3.2, the Grant shall be paid in full within 28 days after the Commencement Date.

3.4 The amount of the Grant shall not be increased.

3.5 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.

4.2 The Recipient shall not use the Grant to:

4.2.1 purchase buildings or land; or

4.2.2 pay for any expenditure commitments of the Recipient entered into before the Commencement Date,

unless this has been approved in writing by the Funder.

4.3 The Recipient shall not spend any part of the Grant on the delivery of the Project after the Grant Period.

4.4 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.

4.5 Any liabilities arising at the end of the Project including any redundancy liabilities for staff employed by the Recipient to deliver the Project must be managed and paid for by the Recipient using the Grant or other resources of the Recipient. There will be no additional funding available from the Funder for this purpose.

4.6 Any income generated from the Project shall be capped at £5,000,000. If the income exceeds this threshold, the Recipient shall immediately inform the Authority in writing and the Authority reserves the right to terminate this Agreement and request full repayment of the Grant.

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

5.1 The Grant shall be shown in the Recipient's accounts.

5.2 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.



- 5.3 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. 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.
- 5.4 The Recipient shall provide the Funder with a copy of its annual accounts, when requested, within six months (or such lesser period as the Funder may reasonably require) of the end of the relevant financial year in respect of each year in which the Grant is paid.
- 5.5 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 The Recipient or its sub-contractor shall provide the Funder with an annual report on its use of the Grant and delivery of the Project in such formats as the Funder may reasonably require. The first report shall be due on 1<sup>st</sup> April 2023 and annually thereafter.
- 6.3 Where the Recipient has obtained funding from a third party for its delivery of part of the Project, the Recipient shall include the amount of such funding in its financial reports together with details of what that funding has been used for.
- 6.4 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.
- 6.5 The Recipient shall permit any person authorised by the Funder such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Recipient's fulfilment of the conditions of this Agreement and shall, if so required, provide appropriate oral or written explanations from them.
- 6.6 The Recipient shall permit any person authorised by the Funder for the purpose to visit the Recipient once every quarter to monitor the delivery of the Project. Where, in its reasonable opinion, the Funder considers that additional visits are necessary to monitor the Project, it shall be entitled to authorise any person to make such visits on its behalf.

- 6.7 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 shall acknowledge the Grant in its annual report and accounts, including an acknowledgement of the Funder as the source of the Grant.
- 7.2 The Recipient shall not publish any material referring to the Project or the Funder without the prior written agreement of the Funder. The Recipient shall acknowledge the support of the Funder in any materials that refer to the Project and in any written or spoken public presentations about the Project. Such acknowledgements (where appropriate or as requested by the Funder) shall include the Funder's name and logo (or any future name or logo adopted by the Funder) using the templates provided by the Funder from time to time.
- 7.3 In using the Funder's name and logo, the Recipient shall comply with all reasonable branding guidelines issued by the Funder from time to time.
- 7.4 The Recipient agrees to participate in and co-operate with promotional activities relating to the Project that may be instigated and/or organised by the Funder.
- 7.5 The Funder may acknowledge the Recipient's involvement in the Project as appropriate without prior notice.
- 7.6 The Recipient shall comply with all reasonable requests from the Funder to facilitate visits, provide reports, statistics, photographs and case studies 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.
- 8.2 Where the Funder has provided the Recipient with any of its Intellectual Property Rights for use in connection with the Project (including without limitation its name and logo), the Recipient shall, on termination of this Agreement, cease to use such Intellectual Property Rights immediately and

shall either return or destroy such Intellectual Property Rights as requested by the Funder.

## **9. CONFIDENTIALITY**

- 9.1 Subject to clause 10 (Freedom of Information) and the Funder's transparency obligations, 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:
- 9.2.1 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;
  - 9.2.2 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
  - 9.2.3 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. 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 and shall assist and co-operate with the Funder (at the Recipient's expense) as set out in this Agreement to enable the Funder to comply with these information disclosure requirements.
- 10.2 Where the Funder receives a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 in relation to information that the Recipient is holding on its behalf, the Funder shall transfer to the Recipient such request for information that it receives as soon as practicable at no cost to the Funder.
- 10.3 The Recipient shall;
- 10.3.1 provide the Funder with confirmation as to whether it holds the information subject to the request within 2 (two) Business Days of the

request and if then requested by the Funder provide a copy of all such information in the form that the Funder reasonably requires within 5 (five) Business Days of the request (or such other period as the Funder may specify) of the Funder request; and

10.3.2 provide all necessary assistance as reasonably requested by the Funder in connection with any such information to enable the Funder to respond to the request for information within the time for compliance set out in the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

10.4 The Funder shall be responsible for determining at its absolute discretion:

10.4.1 whether information is exempt from disclosure under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004; and

10.4.2 whether the existence of information is to be confirmed or denied, and whether information is to be disclosed in response to a request for information,

and in no event shall the Recipient respond directly to a request for information unless expressly authorised in writing to do so by the Funder.

10.5 Without prejudice to the rest of this clause 10, the Funder will consult with the Recipient to ascertain whether the Recipient believes that information provided by or relating to the Recipient is exempt from disclosure under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004. The decision of the Funder as to whether or not an exemption does, in fact, apply, is deemed to be final.

10.6 The Recipient shall ensure that all information produced in the course of or relating to this Agreement is retained for disclosure and shall permit the Funder to inspect such records as requested from time to time.

10.7 The Recipient acknowledges that the Funder may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of the Freedom of Information Act 2000 (issued under section 45 of the Freedom of Information Act 2000, November 2004), be obliged under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 to disclose information:

10.7.1 without consulting with the Recipient; or

10.7.2 following consultation with the Recipient and having taken its views into account

provided always that where clause 10.7.1 applies the Funder shall, in accordance with any recommendations of the Secretary of State for Constitutional Affairs' Code, take reasonable steps, where appropriate, to give the Recipient advanced notice, or failing that, to draw the disclosure to the Recipient's attention as soon as possible after any such disclosure.

## **11. DATA PROTECTION**

- 11.1 Both Parties shall comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 11.2 The Parties shall comply with their respective obligations set out in Schedule 2.
- 11.3 Each Party shall ensure that it does nothing knowingly or negligently which places the other Party in breach of Data Protection Legislation.
- 11.4 The provisions of this clause and Schedule 2 shall apply during the term of this Agreement and indefinitely after its expiry.

## **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:
  - 12.1.1 the Recipient uses the Grant for purposes other than those for the Project;
  - 12.1.2 the delivery of the Project does not start within 4 months of the Commencement Date and the Recipient has failed to provide the Funder with a reasonable explanation for the delay;
  - 12.1.3 the Funder reasonably considers that the Recipient has not made satisfactory progress with the delivery of the Project;
  - 12.1.4 the Recipient is, in the reasonable opinion of the Funder, delivering the Project in a negligent manner;
  - 12.1.5 not used;
  - 12.1.6 the Recipient obtains duplicate funding from a third party for the Project and either (a) the Recipient has not complied with its obligations under clause 2.3; or (b) the Recipient has complied with its obligations under clause 2.3 and the Funder objected at the time to the Recipient's notified intention to apply for other funding;

- 12.1.7 the monies used by the Funder to pay the Grant to the Recipient (or any part thereof) is subject to clawback by a third party funder;
  - 12.1.8 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 and either (a) the Recipient has not complied with its obligations under clause 2.3; or (b) the Recipient has complied with its obligations under clause 2.3 and the Funder objected at the time to the notified intended third-party funder;
  - 12.1.9 the Recipient provides the Funder with any materially misleading or inaccurate information;
  - 12.1.10 the Recipient commits or committed a Prohibited Act;
  - 12.1.11 any 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;
  - 12.1.12 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);
  - 12.1.13 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
  - 12.1.14 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 Wherever under the Agreement any sum of money is recoverable from or payable by the Recipient (including any sum that the Recipient is liable to pay to the Funder in respect of any breach of the Agreement), the Funder may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Recipient under the Agreement or under any other agreement or contract with 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.

- 12.5 If the Grant constitutes Unlawful Subsidy then the Funder shall be entitled to recover from the Recipient the amount of Unlawful Subsidy together with such interest as it is required by law to recover and the Recipient must pay such amount(s) promptly to the Funder within ten (10) Business Days of the Funder requesting payment.

### **13. ANTI-DISCRIMINATION**

- 13.1 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.
- 13.2 The Recipient shall take all reasonable steps to secure the observance of clause 13.1 by all servants, employees or agents of the Recipient and all suppliers and sub-contractors engaged on the Project.

### **14. HUMAN RIGHTS**

- 14.1 The Recipient shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement as if the Recipient were a public body (as defined in the Human Rights Act 1998).
- 14.2 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.

### **15. SAFEGUARDING**

- 15.1 Everyone has a responsibility for safeguarding and promoting the welfare of children and safeguarding adults at risk. In the event that the Recipient has concerns that a child or adult at risk is experiencing, or is at risk of, abuse (whether financial, physical, sexual, emotional or neglect) this should be reported in the following ways:
- 15.1.1 if a child or adult at risk is in immediate danger or left alone, contact the police or call an ambulance on 999;
  - 15.1.2 in all other cases involving children, referrals should be made to Wiltshire social care services via Wiltshire Council's 'Multi-Agency

Safeguarding Hub' (MASH) on 0300 456 0108 (or out of hours via the 'Emergency Duty Service' on 0300 456 0100);

- 15.1.3 in all other cases involving adults, referrals should be made to Wiltshire Council's customer advisers on 0300 456 0111 (or out of hours via the 'Emergency Duty Service'), e-mail AdviceandContact@wiltshire.gov.uk.

## **16. PREVENTION OF BRIBERY AND COMPLIANCE WITH ANTI SLAVERY LAWS**

### **16.1 The Recipient:**

- 16.1.1 shall not, and shall procure that any employees, staff, other workers, agents or sub-contractors shall not, in connection with this agreement commit a Prohibited Act;
- 16.1.2 shall have all reasonable arrangements in place which prevent any employees, staff, other workers, agents or sub-contractors from committing a Prohibited Act;
- 16.1.3 warrants, represents and undertakes that:
- a) it is not aware of any financial or other advantage being given to any person working for or engaged by the Funder, or that an agreement has been reached to that effect, in connection with the execution of this agreement, excluding any arrangement of which full details have been disclosed in writing to the Funder before execution of this agreement;
  - b) it has not engaged in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the United Kingdom;
  - c) shall, if requested, provide the Funder with any reasonable assistance, at the Funder's reasonable cost, to enable the Funder to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010 (including 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);
  - d) shall, if requested, certify to the Funder in writing compliance with this clause 16, the Recipient shall provide such supporting evidence of compliance as the Funder may reasonably request; and
  - e) shall notify the Funder in the event of any known or suspected breach of this Clause 16 and co-operate fully with any enquires



and/or investigation in respect of such known or suspected breach.

- 16.2 The Funder may terminate this Agreement by written notice with immediate effect if the Recipient breaches clause 16.1. In determining whether to exercise the right of termination under this clause 16.2, the Funder shall give all due consideration, where appropriate, to action other than termination of this agreement. Any notice of termination under this clause 16.2 must specify (a) the nature of the Prohibited Act, (b) the identity of the party whom the Funder believes has committed the Prohibited Act; and (c) the date on which this agreement will terminate.
- 16.3 Clause 16.1 shall survive termination of this agreement for a period of six years.

## **17. HEALTH AND SAFETY**

- 17.1 The Recipient shall perform its obligations under this Agreement (including those in relation to the Project) in accordance with the requirements of the Health and Safety at Work Etc. Act 1974 (as may be amended from time to time) and any other Legislation, or applicable policies of the Funder, relating to the health and safety of employees and others who may be affected by the provision of the Project. The Recipient shall provide to the Funder any information relating to the Recipient's compliance with this clause 17.1 that the Funder may reasonably request from time to time.
- 17.2 The Recipient shall procure that the Funder is permitted access to any premises used by the Recipient for the purpose of carrying out an inspection of health, safety and welfare standards.
- 17.3 The Recipient shall co-operate fully with the reasonable requests of the Funder and provide access to all relevant areas, health and safety documentation, welfare facilities, accident records, training records and certificates, equipment inspection records, statutory registers and notices, plant and equipment used in or associated with the provision of the Project for the purposes of inspection. The Funder shall be entitled to take any photographs, measurements, samples, or copies of such documents that the Funder reasonably deems necessary to determine compliance with this clause 17.3, and with best practice.
- 17.4 The Recipient shall provide to the Funder, within 2 (two) Business Days of receipt, copies of any communication which the Recipient receives from any statutory or regulatory body concerning the health, safety, welfare, environmental or fire safety standards of the Project.
- 17.5 The Recipient shall notify the Funder immediately in the event of any incident occurring in the delivery of the Project where that incident causes any personal

injury or damage to property where such damage might be considered to be a cause for complaint.

## **18. WHISTLEBLOWING**

18.1 The Funder is committed to conducting its business with honesty and integrity and expects all staff (including the Recipient's personnel) to maintain high standards. The Funder requires the Recipient to encourage openness and support any Whistleblowers who raise genuine concerns, even if they turn out to be mistaken. The Recipient must not subject Whistleblowers to any detrimental treatment (including threats or retaliation) as a result of raising a genuine concern. However, if the Recipient reasonably concludes that a Whistleblower has made false allegations maliciously or with a view to personal gain, the Whistleblower may be subject to disciplinary action. The Funder requires the Recipient to comply with the Funder's Whistleblowing policy (as may be updated, amended and/or replaced from time to time) which is available on Wiltshire Council's website. Any breach of this clause shall be considered a material breach.

## **19. EQUALITY REQUIREMENTS**

19.3 The Recipient shall, throughout the term of this Agreement, ensure that the Project are provided in such a manner as to comply with the Equalities Legislation and the Human Rights Act 1998.

19.2 The Recipient (including its agents and employees) shall not, and shall procure that Recipient Parties shall not:

19.2.1 discriminate directly or indirectly, or by way of victimisation or harassment, against any person on Prohibited Employment Grounds; and/or

19.2.2 discriminate directly or indirectly or by way of victimisation or harassment against any person on Prohibited Grounds; and/or

19.2.3 contravene Part 8 (Prohibited Conduct: Ancillary) of the Equality Act 2010.

19.3 The Recipient (including its agents and employees) shall, and shall procure that Recipient Parties shall in relation to delivery of the Project and staff engaged in the provision of Project observe as far as possible the provisions of:

19.3.1 the Funder's equal opportunity policy as notified to the Recipient from time to time;

19.3.2 the Equalities and Human Rights Commission's Codes of Practice on Employment and Service Provision;

19.3.3 any other relevant code of practice introduced by a commission or other body set up by Parliament to promote, monitor and enforce Equalities Legislation,

including, but not limited to, those provisions recommending the adoption, implementation and monitoring of an equal opportunities policy.

19.4 Where in connection with this Agreement the Recipient (including its agents and employees) or any Recipient Party are required to carry out work on the Funder's premises or alongside the Funder's employees on any other premises, they shall comply with the Funder's own employment policy and codes of practice relating to equal opportunities.

19.5 The Recipient shall, and shall procure that Recipient Parties shall, notify the Funder forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Recipient or any Recipient Party under the Equalities Legislation.

19.6 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Recipient's performance of its obligations under this Agreement being in contravention of the Equalities Legislation, the Recipient shall, and shall procure that the Recipient Parties shall, free of charge:

19.6.1 provide any information requested in the timescale allotted;

19.6.2 attend any meetings as required and permit any of its staff to attend;

19.6.3 promptly allow access to and investigation of any documents or data deemed to be relevant;

19.6.4 allow itself and any of its staff to appear as witness in any ensuing proceedings; and

19.6.5 cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

## **20. LIMITATION OF LIABILITY**

20.1 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.

20.2 Subject to clause 20.1, the Funder's liability under this Agreement is limited to the payment of the Grant.

## **21. WARRANTIES**

The Recipient warrants, undertakes and agrees that:

- 21.1.1 it has all necessary resources and expertise to deliver the Project (assuming due receipt of the Grant);
- 21.1.2 it has not committed, nor shall it commit, any Prohibited Act;
- 21.1.3 it shall at all times comply with all relevant legislation (including Subsidy Control) 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;
- 21.1.4 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;
- 21.1.5 it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- 21.1.6 it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- 21.1.7 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;
- 21.1.8 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;
- 21.1.9 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
- 21.1.10 since the date of its last accounts there has been no material change in its financial position or prospects.

## **22. INSURANCE**

22.1 The Recipient shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Recipient, arising out of the Recipient's performance of the Agreement, including death or

personal injury, loss of or damage to property or any other loss (the **Required Insurances**).

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

22.2.1 public liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Service; and

22.2.2 employer's liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims arising from the Service.

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

### **23. DURATION**

23.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until the anniversary of expiry of the Grant Period or for so long as any Grant monies remain unspent by the Recipient, whichever is longer.

23.2 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.

### **24. TERMINATION**

24.1 The Funder may terminate this Agreement at any time with immediate effect if the Grant is contingent on the Funder's receipt of sufficient funding from a third party, and such third party does not make sufficient funding available to the Funder.

### **25. ASSIGNMENT**

The Recipient may not, without the prior written consent of the Funder, 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.

### **26. 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.

## **27. TRANSPARENCY REQUIREMENTS**

27.1 The Recipient hereby confirms that it:

27.1.1 understands that the Funder routinely publishes local spending data in relation to invoices, grant payments, expenses payments and other transactions over £500, including details of contracts and tenders over £500, in accordance with the Government's transparency programme and guidance, the 'Local Government Transparency Code' and the Local Government (Transparency Requirements) (England) Regulations 2015 and is required to publish information on 'Contracts Finder' in accordance with Part 4 of the Public Contracts Regulations 2015 (together the **Transparency Requirements**); and

27.1.2 agrees that the Funder may therefore publish details (in accordance with the Transparency Requirements) of the Agreement with the Recipient and will comply with any reasonable request from the Funder in order to assist the Funder in complying with its transparency obligations under this clause 27.

## **28. NOTICES**

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

## **29. DISPUTE RESOLUTION**

29.1 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 should first be referred for resolution to the Project Manager or any other individual nominated by the Funder from time to time.

29.2 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the Project Manager or other nominated individual, as the case may be, either party may refer the matter to the Associate Director of Leisure, Culture and Communities (or relevant successor) of the Funder and the Director 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 Funder and the Recipient.

29.3 In the absence of agreement under clause 29.2, 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.

**30. 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.

**31. 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.

**32. 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.

**33. 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.

In witness whereof this Agreement is executed as a deed and delivered on the date stated at the beginning of this Agreement.

## **Schedule 1 The Project**

### **1. PROJECT DESCRIPTION**

The aim of the Project is to establish a new electric car club at the Salisbury Street Car Park in Mere which will be operated by Co-Cars Limited. Co-Cars will make electric vehicles available to the public for hire (on the standard Co-Cars membership terms) for a minimum period of three (3) years. The grant funding will be used to establish this. Co-Cars shall ensure the installation, operation and maintenance of two charging units including one 120 kWh Rapid charging unit.

Co-Cars have partnered with EconetiQ, who will supply the car chargers. Any financial arrangements/margins in respect of the chargers will be agreed between Co-Cars and EconetiQ.

The Salisbury Street Car Park is owned by Wiltshire Council and currently leased to Mere Town Council. Co-Cars is responsible for agreeing all arrangements and access to the site.

The site shall be operational by 1<sup>st</sup> March 2023 at the latest.



## Schedule 2 Data Protection

### 1 Data Processing

- 1.1 As at the Commencement Date, the Funder has determined that the performance of this Agreement does not require disclosure of Personal Data.
- 1.2 Neither party shall disclose any Personal Data to the other party in connection with this Agreement.
- 1.3 The parties acknowledge that each of them retains the role of Controller only for their respective organisation in connection with this Agreement.
- 1.4 In the event that either party determines that disclosure of Personal Data is required for the proper performance of this Agreement, before either party makes any such disclosure:
  - 1.4.1 the parties shall co-operate in good faith to review relevant requirements;
  - 1.4.2 should either party determine that changes to the terms of this Schedule 2 are necessary to ensure compliance with Data Protection Legislation (the **Required Changes**), that party will provide at least one month's written notice to the other party of the Required Changes (such notice to be given in accordance with clause 28 (Notices)). That other party will upon receipt of such notice confirm that it will accept these changes; and
  - 1.4.3 each party shall enter into such further agreements relating to compliance with Data Protection Legislation as the other party may reasonably require.

**Execution Page**

EXECUTED as a DEED and delivered  
on the date stated above  
By affixing of the COMMON SEAL of  
WILTSHIRE COUNCIL  
in the presence of:

.....  
Authorised Officer

EXECUTED as a DEED and delivered  
on the date stated above by [NAME OF  
COMMITTEE  
MEMBER/DIRECTOR/AUTHORISED  
SIGNATORY] for and on behalf of CO-  
CARS LIMITED

.....  
[SIGNATURE]

[Committee member OR Director OR  
Authorised signatory]

.....  
[SIGNATURE]

[Committee member OR Director OR  
Authorised signatory]