

**DATED** **2020**

**COLLABORATION AGREEMENT**

between

**THE CORNWALL COUNCIL**

and

**LISKEARD TOWN COUNCIL**

Legal Services  
New County Hall  
Treyew Road  
Truro  
Cornwall  
TR1 3AY

Ref: 061163

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This Agreement is dated the                      day of                      2020

## Parties

- (1) **THE CORNWALL COUNCIL** of New County Hall, Treyew Road, Truro, Cornwall TR1 3AY (“the Council”); and
  - (2) **LISKEARD TOWN COUNCIL** of 3-5 West Street, Liskeard, Cornwall PL14 6BW (“LTC”)
- each a “Party” and together the “Parties”.

## BACKGROUND

- (A) The Parties are working together to regenerate the former cattle market site in Liskeard which plays a key role in the regeneration of Liskeard town centre. The regeneration of the site will provide an uplift in the economy of Liskeard including through the provision of workspace. This regeneration includes the installation of small-scale workspace and business and skills support provision targeted at makers and creative businesses through the CLLD Programme known as the “Cattle Market Makers Project”.
- (B) The Parties to this Agreement wish to establish a framework to govern their respective rights and obligations in relation to the procurement and installation of this workspace at the Liskeard cattle market site.
- (C) This Agreement sets out the terms and conditions upon which the Parties have agreed to deliver the workspace.

## Agreed terms

### 1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Charges:** the charges payable by LTC to the Council in respect of the Workspace as set out in the Project Schedule.

**Commencement Date:** has the meaning set out in clause 2.1.

**Community Local Led Development Programme (CLLD):** is an EU funded programme making positive change in core neighbourhoods across Cornwall by supporting businesses and people to gain funding for projects that will make a difference to their communities and the local economy; creating jobs and opportunities, helping individuals to gain skills and confidence, and enabling businesses to grow. CLLD is funded by both the European Regional Development Fund (ERDF) and the European Social Fund (ESF).

**Cornwall Council Match Fund:** means the £3.5 million match fund approved by Cornwall Council's Cabinet in June 2019 in order to ensure the CLLD Programme is delivered in Cornwall's most deprived communities.

**Data Protection Legislation:** means all applicable data protection legislation in force from time to time in the UK including the General Data Protection Regulation; the Data Protection Act 2018 and any other applicable national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK.

**Force Majeure Event:** means any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, epidemic, pandemic or disaster but excluding any industrial dispute relating to the Parties or their staff or any other failure in a Party's supply chain.

**Funding:** means the monies received from the Community Local Led Development Programme and Cornwall Council Match Fund to fund the procurement and installation of the Workspace.

**Funding Agreement:** means the following funding agreements between Cornwall Development Company and LTC:

*(1) [Cornwall Development Company and LTC dated [INSERT] in respect of ERDF]*

*(2) [Cornwall Development Company and LTC dated [INSERT] in respect of ESF]*

*(3) [Cornwall Development Company and LTC dated [INSERT] in respect of the CC match funding].*

**Indirect Losses:** means loss of profits (other than profits directly and solely attributable to the provision of the Services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis.

**Input:** in relation to a Party, the services, resources, workforce or other tangibles or intangibles that such Party provides in accordance with this agreement in relation to a Project, as set out in the Project Schedule.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and

**Commented [CJ1]:** Detail to be added once these agreements are in place.

domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Lease:** means the lease between The Cornwall Council and Liskeard Town Council to be entered into on completion of the Project in respect of the Workspace.

**Losses:** means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) and proceedings, demands and charges whether arising under statute, contract or at common law but excluding Indirect Losses.

**Project:** the Cattle Market Makers Project including the procurement and installation of Workspace at the former Liskeard cattle market site, as further described in the Project Schedule.

**Project Period:** subject to earlier termination in accordance with this agreement, the period from the start date to the end date for the Project, as set out in the Project Schedule.

**Project Schedule:** the document providing the particulars of the Project attached at Schedule 1.

**Workspace:** means small-scale workspace to be delivered through the Cattle Market Makers Project, funded through CLLD and CC match funding and intended for use by makers and creative businesses.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 The Schedule forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedule and any Project Schedule agreed in accordance with clause **Error! Reference source not found.**
- 1.4 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the Schedule.
- 1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.6 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 A reference to any **party** shall include that party's personal representatives, successors and permitted assigns.
- 1.10 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.11 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.12 A reference to **writing** or **written** includes email.
- 1.13 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.
- 1.15 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.16 Any reference to this Agreement terminating shall, where the context requires, include a reference to this Agreement terminating by expiry.

## 2. Commencement and duration

- 2.1 This Agreement shall commence on [Date of the approval of the ERDF / ESF application].

**Commented [CJ2]:** Propose this is the date on which the Project commences – to be confirmed.

2.2 This Agreement shall continue, unless terminated earlier in accordance with this Agreement, until [the ending of the ERDF/ESF funding ] when it shall terminate automatically without notice.

**Commented [CJ3]:** This agreement should remain in place until the end of the funded project – date TBC once the application has been approved.

### 3. Collaboration and co-operation

3.1 The Parties shall co-operate in accordance with the terms of this Agreement in relation to the Project.

### 4. Existing arrangements

4.1 Nothing in this Agreement shall restrict either Party's right to continue to conduct its business activities or arrangements that existed on the Commencement Date or that otherwise come into being outside the scope of this Agreement.

4.2 However, as the Parties will be working together in relation to the Project where each Party may have access to information or Intellectual Property Rights of the other, each Party acknowledges that the other Party will need to protect such information and Intellectual Property Rights in accordance with clause 9 and clause 12.

### 5. Obligations

5.1 Each Party shall in relation to the obligations allocated to it in the Project Schedule:

- (a) perform such obligations, including by providing the Inputs in accordance with timeframes or milestones (if any) specified in the Project Schedule;
- (b) use reasonable care and skill in performing such obligations;
- (c) comply with good industry practice;
- (d) comply with all laws applicable to it;
- (e) obtain and maintain consents, licences and permissions (statutory, regulatory, contractual or otherwise) that are necessary to enable it to comply with such obligations;
- (f) ensure that the Inputs it provides conform with descriptions and specifications (if any) set out in the applicable Project Schedule; and
- (g) if on the other Party's premises, comply with that Party's health and safety and site regulations made known to it.

5.2 Each Party shall ensure that it uses employees or agents in performing its obligations under the Project Schedule who are suitably qualified and experienced.

5.3 LTC shall use the Funding in accordance with the terms of the Funding Agreements.

## 6. Information flow and Project management

6.1 To enable the Parties to maximise the benefits of their collaboration, each Party shall:

- (a) keep the other Party informed about its own progress in relation to the Project in accordance with the Project Schedule; and
- (b) facilitate regular discussions between appropriate members of its personnel and those of the other Party in relation to the Project, including in relation to:
  - (i) performance and issues of concern;
  - (ii) new developments and resource requirements;
  - (iii) compliance with deadlines; and
  - (iv) such other matters as may be agreed between the Parties from time to time.

6.2 Each Party shall:

- (a) supply to the other Party information and assistance reasonably requested by it relating to the Project as is necessary to enable that other Party to perform its own obligations in relation to the Project; and
- (b) review documentation, including draft specifications or service descriptions or other technical documentation, for use when performing its obligations in relation to the Project (if any), as soon as reasonably practicable at the request of the other Party, and notify it of any errors or incorrect assumptions made in any such documents so far as it is aware.

## 7. Funding and Charges

7.1 LTC warrants, undertakes and agrees that in respect of the Funding:

- (a) As a party who potentially benefits from the Funding, and where relevant and applicable, it will as required by the Funding Agreements comply with all legal obligations and statutory requirements in relation to the Project, where relevant, and including, but not limited to:
  - (i) EU and UK Planning and Environmental legislation;

- (ii) State Aid Law
- (iii) 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;
- (iv) Modern slavery;
- (v) Employment legislation;
- (vi) Equal opportunities (in relation to race, sex, disability, faith and sexuality);
- (vii) Financial regulations and legislation; and
- (viii) Copyright and Data Protection Legislation.

7.2 The Parties acknowledge that the Council shall be entitled to benefit from or to recover the Charges from LTC.

7.3 LTC shall pay to the Council the Charges set out in the Project Schedule.

7.4 The Council may issue invoices for such Charges in accordance with the Project Schedule.

7.5 Unless otherwise provided in the Project Schedule, the Charges specified are exclusive of VAT.

7.6 LTC shall pay any invoice issued to it in accordance with this Agreement within 30 days of receipt unless agreed otherwise in writing by the Parties.

7.7 All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7.8 The Parties agree to monitor any income generated by the use of the Workspace by third parties and will ensure any such income is reinvested into the Project.

**Commented [CJ4]:** This provision will need to be reviewed and amended once the draft funding agreements have been reviewed to ensure that the provisions of this agreement and those marry up.

## 8. Freedom of Information and Transparency

8.1 The Parties acknowledge that they are subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs).

8.2 The Parties shall:

- (a) Provide all necessary assistance and cooperation as reasonably requested by the other Party to enable the other Party to comply with its obligations under FOIA and EIRs;
- (b) Notify the other Party of all requests for information relating to this Agreement that it receives as soon as practicable and, in any event, within 2 Business Days of receipt; and
- (c) Provide the other Party with a copy of all information belonging to it requested in the request for information which is in its possession or control in the form that the other Party requires within 5 Business Days of that Party's request.

8.3 LTC shall not respond directly to a request for information unless authorised in writing to do so by the Council.

8.4 The Parties acknowledge that a Party may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the other Party. The Parties shall take reasonable steps to notify the other Party of such a request for information to the extent that it is permissible and reasonably practicable for it to do so.

8.5 The Council shall be responsible for determining at its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## 9. Confidentiality

9.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a Party or its employees, officers, representatives or advisers (together its **Representatives**) to the other party and that Party's Representatives whether before or after the date of this Agreement in connection with the Project, including information which:

- (a) relates to the existence and terms of this Agreement or any agreement entered into in connection with the Project;
- (b) would be regarded as confidential by a reasonable business person relating to:
  - (i) the business, assets, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party; and
  - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- (c) is developed by the parties in the course of carrying out this Agreement or the Project; and
- (d) is specified as confidential in the Project Schedule.

- 9.2 Subject to clause 8, each Party shall keep the other Party's Confidential Information confidential and shall not:
- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement in relation to the Project (**Permitted Purpose**); or
  - (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.
- 9.3 A Party may disclose the other Party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
  - (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this Agreement,
- and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause.
- 9.4 A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 9.4, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.
- 9.5 A Party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.
- 9.6 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Agreement are granted to the other party, or to be implied from this Agreement.
- 9.7 On termination of this Agreement, unless such things are needed by it to perform its obligations under the Project Schedule (and only until the end of such time), each Party shall:

- (a) return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;
- (b) erase all the other Party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable); and
- (c) certify in writing to the other Party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party.

## 10. Announcements

- 10.1 Subject to clause 10.2, no Party shall make, or permit any person to make, any public announcement, communication or circular (**announcement**) concerning the existence, subject matter or terms of this Agreement, the wider transactions contemplated by it, or the relationship between the Parties, without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed). The Parties shall consult together on the timing, contents and manner of release of any announcement.
- 10.2 Where an announcement is required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange), or by any court or other authority of competent jurisdiction, the Party required to make the announcement shall promptly notify the other Party. The Party concerned shall make all reasonable attempts to agree the contents of the announcement before making it.

## 11. Data protection

Both Parties will comply with all applicable requirements of and all their obligations under the Data Protection Legislation which arise in connection with this Agreement, the Project and the Funding Agreement.

## 12. Intellectual property

- 12.1 This Agreement does not transfer any interest in Intellectual Property Rights. All Intellectual Property Rights developed or created by a Party pursuant to this Agreement shall be owned by that Party (**Created IPR**).
- 12.2 Each Party grants to the other Party a non-exclusive, personal, royalty-free licence during the Project Period to use its Created IPR in relation to the Project to the extent necessary for the other Party to carry out its obligations in relation to the Project.
- 12.3 On expiry or termination of this Agreement, a Party licensed to use Created IPR under clause 12.2 shall cease to use that Created IPR and shall return any physical embodiment of the Created IPR (including any copies) in its possession or control to the other Party.
- 12.4 Each Party shall immediately give written notice to the other Party of any actual, threatened or suspected infringement of any party's Intellectual Property Rights (including Created IPR) used in connection with a Project of which it becomes aware.

## 13. Anti-bribery

- 13.1 Each Party shall in relation to this Agreement and the Project:
- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
  - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - (c) comply with the other Party's Ethics, Anti-bribery and Anti-corruption Policies and as updated from time to time (**Relevant Policies**);
  - (d) have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 13.1(b), and will enforce them where appropriate;
  - (e) promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this Agreement.

- 13.2 Each Party shall ensure that any person associated with it who is performing obligations 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 that party in this clause 13 (**Relevant Terms**). Such Party shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the other party for any breach by such persons of any of the Relevant Terms.
- 13.3 Breach of this clause 13 shall be deemed a material breach under clause **Error! Reference source not found.**
- 13.4 For the purpose of this clause 13, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 13<sup>13</sup>, a person associated with a Party includes but is not limited to any subcontractor of that Party.

#### 14. Warranties

- 14.1 Each Party warrants that:
- (a) it has full power and authority to carry out the actions contemplated under this Agreement;
  - (b) its entry into and performance under the terms of this Agreement will not infringe the Intellectual Property Rights of any third party or cause it to be in breach of any obligations to a third party; and
  - (c) so far as it is aware, all information, data and materials provided by it under this Agreement will be accurate and complete in all material respects, and it is entitled to provide the same to the other without recourse to any third party.
- 14.2 Except as expressly provided in this Agreement, there are no conditions, warranties or other terms binding on the Parties with respect to the actions contemplated by this Agreement. Any condition, warranty or other term in this regard that might otherwise be implied or incorporated into this Agreement, whether by statute, common law or otherwise, is, to the extent that it is lawful to do so, excluded by this Agreement.

#### 15. Indemnity

- 15.1 The Parties agree the due and punctual performance of all present and future obligations of each Party in connection with this Agreement, the Project and the Funding Agreement.

15.2 The Council undertakes and agrees to indemnify and keep indemnified LTC from and against all and any interest, penalties, losses, costs and/or expenses suffered or incurred by LTC arising out of, or in connection with:

- (a) any failure of a Party to perform or discharge its obligations under this Agreement, the Project Schedule
- (b) any breach by a Party of any term or condition, warranty, undertaking or representation it has provided under or in connection with this Agreement or the Project Schedule;

except where:

- (i) the Council's failure to perform or discharge its obligations results from LTC's failure to comply with its obligations under this Agreement;
- (ii) any of the Council's obligations are or become totally or partially unenforceable by reason of illegality, incapacity, lack or exceeding of powers, ineffectiveness of execution or any other matter.

15.3 LTC undertakes and agrees to indemnify and keep indemnified the Council from and against all and any interest, penalties, losses, costs and/or expenses suffered or incurred by the Council arising out of, or in connection with:

- (a) any failure of a Party to perform or discharge its obligations under this Agreement, the Project Schedule or the Funding Agreement;
- (b) any breach by a Party of any term or condition, warranty, undertaking or representation it has provided under or in connection with this Agreement, the Project Schedule or the Funding Agreement;

except where:

- (i) LTC's failure to perform or discharge its obligations results from the Council's failure to comply with its obligations under this Agreement;
- (ii) any of LTC's obligations are or become totally or partially unenforceable by reason of illegality, incapacity, lack or exceeding of powers, ineffectiveness of execution or any other matter.

## 16. Insurance

During the term of this Agreement the Parties shall maintain in force, with a reputable insurance company, insurance policies against all risks that would normally be insured against by a prudent businessman in connection with the risks associated with this Agreement, the Project and the Funding and shall produce to the other on demand full particulars of that insurance.

## 17. Limitation and exclusion of liability

17.1 Nothing in this Agreement shall limit or exclude a Party's liability:

- (a) for death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;
- (b) for fraud or fraudulent misrepresentation;
- (c) for breach of any obligation as to title or quiet possession implied by statute; or
- (d) for any other act, omission, or liability which may not be limited or excluded by law.

17.2 Subject to clause 17.1, neither Party shall have any liability to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Agreement.

17.3 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement, including any losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.

## 18. Termination of Agreement

18.1 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party:

- (a) if the other Party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 90 days after being notified in writing to make such payment;
- (b) if the other Party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

- (c) if the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- (d) if any warranty given by the other party in clause 14 of this Agreement is found to be untrue or misleading.
- (e) in accordance with clause 20.

18.2 For the purposes of clause 18.1(b), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

- (a) a substantial portion of this Agreement; or
- (b) any of the obligations set out in clause 5.1. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

18.3 Without affecting any other right or remedy available to it, either Party may terminate this Agreement on giving not less than three (3) months' written notice to the other party.

## 19. Consequences of termination

19.1 On termination of this Agreement, the following clauses shall continue in force:

- (a) clause 1 (Interpretation);
- (b) clause 8 (Set-off);
- (c) clause 9 (Confidentiality);
- (d) clause 11 (Data protection);
- (e) clause 122 (Intellectual property);
- (f) clause 14.1(b) and clause 14.2 (Warranties);
- (g) clause 155 (Indemnity);
- (h) clause 6 (Insurance);
- (i) clause 17 (Limitation and exclusion of liability);
- (j) clause 19 (Consequences of termination);
- (k) clause 20 (Force majeure);
- (l) clause 23 (Notices);
- (m) clause 24 (Severance);

- (n) clause 25 (No partnership or agency);
- (o) clause 26 (Rights and remedies);
- (p) clause 17 (Inadequacy of damages);
- (q) clause 28 (Waiver);
- (r) clause 31 (Third party rights);
- (s) clause 322 (Entire agreement);
- (t) clause 33 (Mediation);
- (u) clause 34 (Governing law); and
- (v) clause 35 (Jurisdiction).

19.2 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

## 20. Force majeure

20.1 Without prejudice to clause 18, neither Party shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Party nor incur any liability to the other Party for any Losses incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out its obligations by the occurrence of that Force Majeure Event.

20.2 A Party may not claim relief if the Force Majeure Event is attributable to its wilful act or omission, neglect or failure to take reasonable precautions or make reasonable effort to prevent against the Force Majeure Event.

20.3 On the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the affected Party, and any action the affected Party proposes to take to mitigate its effect.

20.4 As soon as practicable following the affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

- 20.5 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Parties shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 20.6 The affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.

## 21. Assignment and other dealings

- 21.1 Subject to clause **Error! Reference source not found.**, neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement.

## 22. Variation

- 22.1 No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

## 23. Notices

- 23.1 Any notice or other written communication to be served by one Party upon another pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by prepaid, registered or recorded delivery post to the other Party at its address as may from time to time be notified for the purpose by notice in writing.

## 24. Severance

- 24.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

24.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**25. No partnership or agency**

25.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

25.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

**26. Rights and remedies**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**27. Inadequacy of damages**

Without prejudice to any other rights or remedies that a Party (**first party**) may have, the other Party (**other party**) acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Agreement by the other Party. Accordingly, the first Party shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.

**28. Waiver**

28.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

28.2 A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.

No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## **29. Language**

29.1 This Agreement is drafted in the English language. If this Agreement is translated into any other language, the English language version shall prevail.

## **30. Counterparts**

30.1 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

30.2 No counterpart shall be effective until each party has executed at least one counterpart.

## **31. Third party rights**

31.1 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. [

31.2 This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

31.3 The rights of the Parties to rescind or vary this Agreement are not subject to the consent of any other person.

## **32. Entire Agreement**

32.1 This Agreement 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.

32.2 Each Party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. No Party shall have any claim for innocent or negligent misrepresentation based on any statement in this Agreement.

**33. Mediation**

33.1 If any dispute arises in connection with this Agreement, the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing (**ADR notice**) to the other Party to the dispute requesting a mediation. A copy of the request should be sent to CEDR.

33.2 The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

**34. Governing law**

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

**35. Jurisdiction**

Each Party irrevocably agrees that, subject to clause 33, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the date stated at the beginning of it.

Signed for and on behalf of  
THE CORNWALL COUNCIL

.....  
Authorised Signatory

Signed for and on behalf of  
LISKEARD TOWN COUNCIL

.....  
Authorised Signatory

## Schedule 1 Project Schedule template

### 1. Structure

- 1.1 This Project Schedule forms part of the Agreement.
- 1.2 The terms and conditions of the Agreement apply to this Project Schedule. Each Party agrees that it shall perform its obligations set out in this Project Schedule in accordance with the Agreement.
- 1.3 Unless otherwise defined in this Project Schedule, terms used in this Project Schedule shall have the meaning given to them in the Agreement.

### 2. Description of Project

The 'Cattle Market Makers Project' aims to build a community of makers and provide effective meanwhile use while the longer-term plans for the former Liskeard Cattle Market take shape and bring much needed footfall and activity to the town centre. The 'Cattle Market Makers Project' includes capital and revenue funded activities:

#### **Workspace – The 'Creative Industries Hub'**

The 'Cattle Market Makers Project' will deliver a Creative Industries Hub, which will be a small-scale and modular development of c.100m<sup>2</sup> that will incorporate workspace units, training rooms and a site office. This element of the project will be led by Cornwall Council and is the subject of the Agreement.

Cornwall Council will project manage the delivery of the workspace. This will include:

- Applying for and securing any statutory approvals, including planning permission; and
- Undertaking a procurement process to appoint a contractor to design and construct the workspace along with all associated groundworks and provision of services.

Following delivery, the Workspace will be operated and managed by Liskeard Town Council under a formal lease.

The Creative Industries Hub will also be open to creative industries not intending to be tenants of the Workspace but would benefit from accessing the advice and support and facilities available. The business advice and support will be key in assisting individuals in the creative industries sector to set up or expand their businesses. The team will also work in conjunction with other partners to provide excluded and marginalised individuals with the opportunity to enjoy an interaction with creative activities. The intention being to build their confidence and skills by participating in creative and craft activities and to improve their pathways to vocational training or bring them a step closer to the mainstream economy.

### Advice and Skills Support

*The advice and skills support element of the larger 'Cattle Market Makers Project' does not form part of the Project and is included in this project description for information purposes only.*

The wider 'Cattle Market Makers Project' will provide integrated business advice and skills support that will be mainly delivered on-site at the Creative Industries Hub. This element of the project will be led by Liskeard Town Council.

Advice and support will be provided to start-up businesses to enable them to trial some of their activities in the training rooms with a view to taking one of the small units. Existing small businesses will be supported in their efforts to improve their productivity and thereby expand initially into the larger workspace units and potentially progress into Cornwall Council's workspace development that is expected to become operational during 2022.

### 3. Inputs

The Parties shall each provide the following Inputs in relation to the Project, in accordance with the following timeframes (if any):

Input	Cornwall Council	Liskeard Town Council	Timeframe
Application for ERDF funding		✓	To be submitted by 31 May 2020
Application for ESF funding		✓	To be submitted by 31 May 2020
Application for CC match funding		✓	To be submitted by

			30 June 2020
Submission of planning application(s)	✓ (in conjunction with LTC)		To be submitted by [TBC]
Project manager in post		✓	01/12/20
Management of the project Funding and reporting		✓	
Procurement of the Workspace	✓		
Ownership of Workspace	✓		
Procurement of the groundworks and installation of Workspace	✓		
Maintenance of the Workspace		✓	
Management of the Workspace		✓	
First courses delivered		✓	01/05/21
Provision of business and skills support to business and individuals		✓	01/06/21
First workspace tenanted		✓	01/09/21

#### 4. Payment Schedule

The Charges shown in the table below are indicative and shall be confirmed in writing within [DAYS] of the date of this Agreement, by way of a supplementary Payment Schedule signed by the Parties, following the procurement of the Workspace and associated groundworks.

**Commented [JC5]:** The figures and dates shown in this table will be subject to change depending on the tendered costs. I have added some wording which allows for the exact figures and dates to be incorporated into this schedule once the tender is complete and these are known.

LTC shall pay to the Council the Charges in accordance with clause 7 and this Schedule 1:

Capital Payments:	
Oct-Dec 20	£67,875
Jan-Mar 21	£160,000

Apr-Jun 21	£160,000
Jul-Sept 21	£80,000

### Invoicing procedure

[Invoices to include all information required to enable LTC to reclaim the eligible grant from ERDF, and satisfy VAT requirements.

The Council shall invoice LTC on a [quarterly] basis in accordance with Clause 7 of this Agreement and the supplementary Payment Schedule detailed above.]

**Commented [JC6]:** TBC following application approval. Cashflow and invoicing procedures to be agreed

### 5. Governance, Monitoring and Reporting

Both Parties shall closely monitor the delivery and success of the Project to ensure that the aims and objectives of the Project are being met and that this Agreement is being adhered to.

A Project Board will meet quarterly and will be chaired by LTC and attended by Cornwall Council's nominated representative(s).

LTC shall present to the Project Board a financial and operational report on use of the workspace and delivery of the Project.

#### Reporting Milestones

First quarterly ERDF/ESF claim submitted	31/01/21
Evaluation Commenced	01/04/21
First Annual report to LTC/CC	01/11/21
First Annual report to the community	30/04/22

## 6. Insurance

The Council shall insure the replacement value of the Workspace which is an asset owned by the Council and has a lifespan beyond the 5 years of the Project. This insurance should include covering any reinstatement works to the site as well as the Workspace.

LTC shall be responsible for insuring any of its own internal fittings and equipment in the Workspace.

LTC shall procure its own public liability insurance (for a minimum of £5 million (for any one claim or series of claims) and employers liability insurance.

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