



Grant Agreement xx-xx

Between

The Berry Burn Community Fund

and

Named Person, on behalf of Applicant

Berry Burn Community Fund
c/o Forres Area Community Trust
Forres Town Hall
High Street
Forres
IV36 1PB

admin@berryburncommunityfund.co.uk

www.berryburncommunityfund.co.uk

Grant Agreement

between

1. XX and YY in their respective capacities as Chair/Vice Chair/Treasurer of the Berry Burn Community Fund, (the “**Funder**”), whose principal address is c/o Forres Community Area Trust (FACT), Forres Town Hall, High Street, Forres, IV36 1PB; and
2. [NAME OF RECIPIENT], [RELEVANT DETAILS OF LEGAL STRUCTURE] whose principal address is at [ADDRESS] (the “**Recipient**”).

Whereas

- (A) The Funder has agreed to pay the Grant to the Recipient to assist it in carrying out the Project.
- (B) This Agreement sets out the terms and conditions on which the Grant is made by the Funder to the Recipient.
- (C) These terms and conditions are intended to ensure that the Grant is used for the purpose for which it is awarded.

It is agreed as follows:

1 Definitions

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

“**Bribery Act**” means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

“**Commencement Date**” means [START DATE];

“**Governing Body**” means the governing body of the Recipient including its directors or trustees (and for the avoidance of doubt, provisions relating to a Governing Body are not applicable if the Recipient is an individual);

“**Grant**” means the sum of £[AMOUNT] to be paid to the Recipient in accordance with this Agreement;

“**Grant Period**” means the period for which the Grant is awarded starting on the Commencement Date and ending on [DATE BY WHICH THE GRANT MUST BE SPENT];

“**Prohibited Act**” means:

- (a) offering, giving or agreeing to give to any servant of the Funder any gift or consideration of any kind as an inducement or reward for:
 - (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Funder; or

- (ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Funder;
- (b) entering into this Agreement or any other contract with the Funder where a commission has been paid or has been agreed to be paid by the Recipient or on its behalf, or to its knowledge, unless before the relevant 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;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Funder; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Funder; and

“**Project**” means the project, activity or purpose described in Schedule Part 1.

2 Purpose of Grant

- 2.1 The Recipient shall use the Grant only for the delivery of the Project and in accordance with the terms and conditions set out in this Agreement. The Grant shall not be used for any other purpose without the prior written agreement of the Funder.
- 2.2 The Recipient shall not make any significant change to the Project without the Funder’s prior written agreement.
- 2.3 Where the Recipient intends to apply to a third party for other funding for the Project, it will notify the Funder in advance of its intention to do so and, where such funding is obtained, it will provide the Funder with details of the amount and purpose of that funding. The Recipient agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Project or any related administration costs that the Funder is funding in full under this Agreement.

3 Payment of Grant

- 3.1 Subject to clause 9, the Funder shall pay the Grant to the Recipient in accordance with Schedule Part 2, 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.
- 3.2 No payment of the Grant shall be made by the Funder otherwise than on receipt of a claim or claims in writing submitted within such period as the Funder may determine and accompanied by evidence of expenditure incurred and discharged by payment and such other supporting evidence as the Funder may require. If requested by the Recipient, agreed with the Funder and so indicated in Schedule Part 2, the Funder may make payment of some or all of the Grant in advance of receipt by the Funder of evidence of expenditure incurred and discharged by payment and other supporting evidence. To the extent that the Funder does so, the Recipient shall provide the Funder with all such

evidence as soon as reasonably possible and in any event not later than 60 days from the date of such expenditure.

3.3 The amount of the Grant shall not be increased in the event of any overspend by the Recipient in its delivery of the Project, unless specifically agreed by the Funder at a meeting of the Funder subsequent to that at which the original Grant was approved.

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

4 Use of Grant

4.1 The Grant shall be used by the Recipient for the delivery of the Project in accordance with the agreed budget set out in Schedule Part 3. For the avoidance of doubt, the amount of the Grant that the Recipient may spend on any item of expenditure listed in column 1 of Schedule Part 3 shall not exceed the corresponding sum of money listed in column 2 without the prior written agreement of the Funder.

4.2 Where the Recipient has obtained funding from a third party in relation to its delivery of the Project (including without limitation funding for associated administration and staffing costs), the amount of such funding shall be included in the budget in Schedule Part 3 together with a clear description of what that funding shall be used for.

4.3 The Recipient shall not use the Grant to:

4.3.1 make any payment to members of its Governing Body or to itself;

4.3.2 purchase buildings or land; or

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

unless this has been approved in writing by the Funder.

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

4.5 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 or, if agreed in writing by the Funder, shall be entitled to retain the unspent monies to use for charitable purposes as agreed between the parties.

4.6 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.

5 Accounts and records

5.1 The Grant shall be shown in the Recipient's accounts as a restricted fund and shall not be included under general funds.

- 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 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 shall provide the Funder with appropriate financial statements and an operational report on its use of the Grant and delivery of the Project every quarter and in such formats as the Funder may reasonably require. The Recipient shall provide the Funder with each report within three months of the last day of the quarter to which it relates.
- 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 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 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 Confidentiality

- 8.1 Each party shall during the term of this Agreement and thereafter keep secret and confidential all intellectual property rights and 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.
- 8.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any intellectual property rights and other business, technical or commercial information which:
- 8.2.1 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;
- 8.2.2 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
- 8.2.3 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.

9 Withholding, suspending and repayment of Grant

- 9.1 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:

- 9.1.1 the Recipient does not accept in writing the Terms of the Grant Agreement within 4 weeks of the date of the Grant Agreement being issued;
 - 9.1.2 the Recipient uses the Grant for purposes other than those for which they have been awarded;
 - 9.1.3 the delivery of the Project does not start within 6 months of the Commencement Date and the Recipient has failed to provide the Funder with a reasonable explanation for the delay;
 - 9.1.4 the Funder considers that the Recipient has not made satisfactory progress with the delivery of the Project;
 - 9.1.5 the Recipient is, in the reasonable opinion of the Funder, delivering the Project in a negligent manner;
 - 9.1.6 the Recipient obtains duplicate funding from a third party for the Project;
 - 9.1.7 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;
 - 9.1.8 the Recipient provides the Funder with any materially misleading or inaccurate information;
 - 9.1.9 the Recipient commits or committed a Prohibited Act;
 - 9.1.10 the Recipient, any member of its Governing Body, or 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;
 - 9.1.11 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);
 - 9.1.12 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
 - 9.1.13 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.
- 9.2 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.

- 9.3 The Recipient shall make any payments due to the Funder without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 9.4 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.

10 Limitation of liability

- 10.1 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.
- 10.2 Subject to clause 10.1, the Funder's liability under this Agreement is limited to the payment of the Grant.

11 Warranties

- 11.1 The Recipient warrants, undertakes and agrees that:
- 11.1.1 it has all necessary resources and expertise to deliver the Project (assuming due receipt of the Grant);
 - 11.1.2 it has not committed, nor shall it commit, any Prohibited Act;
 - 11.1.3 it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Funder immediately of any significant departure from such legislation, codes or recommendations;
 - 11.1.4 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;
 - 11.1.5 it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
 - 11.1.6 it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
 - 11.1.7 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;
 - 11.1.8 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;

11.1.9 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

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

12 Duration

12.1 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.

12.2 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.

13 Termination

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

14 General

14.1 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.

14.2 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.

14.3 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.

14.4 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.

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

Schedule Part 1

The Project

Summary

Schedule Part 2

Payment Schedule

Amount of Grant Payable	
	Advance payment on receipt of pro forma invoice
	Payment upon completion of project, expected [DATE]
	Total Grant Payable

Pursuant to clause 3.2, the Funder agrees to make the payment of [AMOUNT OF ADVANCE] in advance of receipt by the Funder of evidence of expenditure incurred and discharged by payment.

Schedule Part 3

Breakdown of Grant

Item of Expenditure	Budget