

PORTSMOUTH WATER

BIODIVERSITY GRANT SCHEME

TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1 “Application Form” shall mean the application form for funding pursuant to the Biodiversity Grant scheme (in the format prescribed by Portsmouth Water from time to time) and in relation to which the Contract Agreement was issued by Portsmouth Water.
- 1.2 “Portsmouth Water” shall mean Portsmouth Water Ltd including all their successors and assigns.
- 1.3 “Applicant” shall mean the person, firm or company specified as the applicant in the Contract Agreement.
- 1.4 “Contract” shall mean the Application Form, the Contract Agreement and these Terms.
- 1.5 “Contract Agreement” shall mean the contract agreement relating to the Portsmouth Water’s Biodiversity Grant Scheme between Portsmouth Water and the Applicant
- 1.6 “Deliverables” shall mean the supply of measure(s)/service(s) specified in the Contract Agreement.
- 1.7 “Evidence” shall mean supporting documentation to support and evidence the implementation of the agreed measure(s)/service(s) in accordance with the Contract.
- 1.8 “Booklet” shall mean the Portsmouth Water Biodiversity Grant Scheme Booklet.

- 1.9 “Terms” shall mean these Terms and Conditions.
- 1.10 “Grant” shall mean the agreed amount of payment to the Applicant as stated in the Contract Agreement (and, as the case may be, the Booklet).
- 1.11 “Purchase Order” shall mean Portsmouth Water formal purchase order with a bespoke purchase order number.

2. THE CONTRACT

- 2.1 Subject to the following provisions of this clause 2, the Contract shall constitute the entire agreement between Portsmouth Water and the Applicant in relation to the Deliverables.
- 2.2 These Terms apply to the Contract to the exclusion of any other terms or conditions that the Applicant seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. No terms or conditions endorsed upon, delivered with, or contained in documentation provided by the Applicant (including, but not limited to, any quotation, acknowledgement or acceptance of a Purchase Order or specification) will form part of the Contract and the Applicant waives any right which it otherwise might have to rely on such terms and conditions.
- 2.3 If Applicant requires Portsmouth Water to accept a specific term, condition or particular responsibility, not included in, or in variance of, these Terms, the Applicant must obtain Portsmouth Water’s prior written agreement, referring expressly to these Terms. No such term, condition or particular responsibility shall be binding on Portsmouth Water or form part of the Contract unless the Portsmouth

Water has given its prior written agreement thereto.

- 2.4 If any of the provisions of the Contract conflict with or contradict each other, those provisions will over-ride each other in the following order of priority: (1) any express written agreement from Portsmouth Water under clause 3.3 (2) the Contract Agreement (3) the Application Form (4) the Terms.
- 2.5 The Applicant cannot assign or transfer any rights or obligations under the Contract to any third party without the prior written consent of Portsmouth Water which consent shall be in the absolute discretion of Portsmouth Water.

3. PAYMENTS

- 3.1 Following the submission and approval of the application, Portsmouth Water shall pay the Applicant 85% of the sum of the application.
- 3.2 The Applicant must produce a short final report including before and after photos, accounts and how objectives have been met to be submitted within 1 month of project completion. Once this has been received the final part of the funding (15% of total grant awarded) will be paid.

4. SPECIFICATIONS

- 4.1 The description, specification, quantity, quality and performance of Deliverables must be as specified in the Contract and the Booklet.
- 4.2 All Deliverables will comply with all applicable statutory regulations and other regulatory requirements.
- 4.3 Portsmouth Water may carry out inspection of Contract after completion, but also during implementation subject to reasonable notice. If, as a result of the inspection. Portsmouth Water is not satisfied that the quality conforms with the Contract and the Booklet, the Applicant will take such steps as are necessary to provide justification and where possible ensure compliance. If, after all reasonable opportunities are taken, Portsmouth Water is still not satisfied; Portsmouth Water may terminate the Contract without liability to the Applicant.
- 4.4 Due to regulatory requirements of Portsmouth Water's business, the Applicant will provide, if requested, information as to how Deliverables were performed. The Applicant will keep adequate records, including full traceability where goods are deemed safety critical or conform to legal or regulatory requirements, for that purpose for at least two years after completion of Performance.

5. DELIVERY AND RISK

- 5.1 Deliverables must be completed before or by the date(s) stated in the Contract unless otherwise agreed by Portsmouth Water in writing.
- 5.2 The date of delivery, and the performance of any Deliverables, will be of the essence of this Contract unless otherwise stated and agreed.
- 5.3 If the Applicant is delayed in completing the contract by any omission by Portsmouth Water then the Applicant will inform Portsmouth Water of resultant delay. Portsmouth Water will agree with the Applicant a revised delivery/completion date.
- 5.4 If the Applicant cannot complete the Deliverables by the date(s) stated in the Contract due to circumstances beyond the Applicants reasonable control, the Applicant must give written notice without undue delay to Portsmouth Water of such circumstances, the likely extent of the delay, the steps the Applicant is taking to mitigate the delay and any other details or information that Portsmouth Water may reasonably request. Portsmouth Water (in its sole discretion) may agree an extension of the date for the completion of the Deliverables or it may elect to terminate the Contract without further liability to the Applicant.
- 5.5 The Applicant must have management control of the land intended for the carrying out of the Deliverables for the relevant period for undertaking and completing the Deliverables. If the Applicant does not have sufficient management control of the land, the Applicant must procure that appropriate persons countersign a declaration to confirm they agree to fulfil the terms of the Contract.
- 5.6 The Applicant must notify Portsmouth Water as soon as possible, or in any event within 30 days of there being a change of occupation of the land during the period for undertaking and completing the Deliverables (including sales, termination of tenancies and death or incapacity of current owners). The Applicant must notify prospective future owners/tenants of the land concerned of the Deliverables planned, ongoing and undertaken (including any ongoing maintenance obligations that may have been agreed with Portsmouth Water).

6. WARRANTIES AND LIABILITY

- 6.1 The Applicant agrees that:
 - 6.1.1 any service will be performed by appropriately qualified and trained personnel;

- 6.1.2 the Deliverables will be implemented within the timeframe provided in the Contract;
- 6.1.3 it will have all rights, permissions, licences and authorisations required to undertake and complete the Deliverables in accordance with the contract and the Booklet;
- 6.1.4 the undertaking and completion of the Deliverables will not breach or be in conflict with any other agreement, arrangement or understanding binding on the Applicant; and
- 6.1.5 the Deliverables will be completed in accordance with all applicable laws.
- 6.2 All warranties, conditions and other terms implied by statute or common law in favour of Portsmouth Water will apply to any Deliverables to the extent applicable.
- 6.3 It is the Applicants responsibility to find out from Portsmouth Water the purpose for which the Deliverables are intended. The Applicant promises that they will be suitable for those intended purposes, save only for any unsuitability which Applicant has expressly notified to Portsmouth Water.
- 6.4 The Applicant will indemnify Portsmouth Water against any loss of profit, loss of business, loss of goods, loss of contract, loss of use or any indirect, special or consequential or pure economic loss, costs, damages, charges, or expenses which arise out of or in connection with this Contract or the Deliverables.
- 6.5 Without limiting the generality of the preceding clause, the Applicant shall indemnify Portsmouth Water against all and any liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses) and all interest, penalties and legal and other professional costs (calculated on a full indemnity basis) suffered or incurred by Portsmouth Water arising out of or in connection with any claim demand or proceedings made against Portsmouth Water by a third party to the extent that such claim arises out of any act or omission by you or any of your its employees, agents or contractors arising out of or in connection with the Contract or the Deliverables.
- 6.6 If The Applicant fails to comply with any obligation under the contract Portsmouth Water will be entitled, to reject any Deliverable and the Applicant will not be entitled to receive final payment for that Deliverable.
- 6.7 Portsmouth Water will not be liable to the Applicant for any delay or failure to perform any of Portsmouth Water's obligations under the Contract if the delay or failure was due to a cause beyond Portsmouth Water's reasonable control.

- 6.8 Portsmouth Water shall not be liable for any loss of profit, loss of business, loss of goods, loss of contract, loss of use or any indirect, special or consequential or pure economic loss, costs, damages, charges, or expenses which arise out of or in connection with the Contract or the Deliverables.
- 6.9 Subject to the two preceding clauses, the maximum liability of Portsmouth Water howsoever arising under or in connection with the Contract or the Deliverables, shall be limited to the amount of the Grant in relation to the Deliverables concerned.

7. RIGHTS

- 7.1 The Applicant gives permission for Portsmouth Water to use deliverable outputs in studies, analysis and reports. Such outputs may be disseminated to third parties outside of Portsmouth Water for the purpose of Portsmouth Water wider catchment works. This will not include any Personal Data as defined in the Data Protection Act 2018.

8. TERMINATION

- 8.1 Portsmouth Water may terminate contract in the event the Applicant:
 - 8.1.1 Fails to provide the Deliverables or perform any other material obligation on it in accordance with the contract
 - 8.1.2 Becomes bankrupt, insolvent or has receiving or administration order against it.
 - 8.1.3 causes Portsmouth Water any loss or damage in relation to or in connection with this Contract.