

RDPE LOCAL ACTION GROUP PROJECT OFFER AND CONTRACT



THIS AGREEMENT is made on day of 2009
BETWEEN

WILTSHIRE COUNCIL of County Hall Trowbridge Wiltshire BA14 8JN ('the Accountable Body') and
[PROJECT ORGANISATION] of [ADDRESS]

RECITALS

1. Wiltshire Council is the Accountable Body for [insert name] Local Action Group under the Rural Development Programme for England ('the RDPE')
2. Wiltshire Council has approved an application for investment by the Project Organisation subject to the terms and conditions contained in this Agreement.

LETTER OF OFFER

<Name of project applicant> <Project Organisation> <Organisation Address>	2 September 2009
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Re: <Given name for approved project>

Preamble

Wiltshire Council is pleased to inform <Project Organisation> (“the Project organisation”) that Plain Action Local Action Group has approved your application under the Rural Development Programme for England (the “RDPE”). It has approved investment of total of up to, but not exceeding £<amount> <amount in words> (the “Investment”) The Investment will be a total contribution of <RDPE percentage of project funds>% towards the agreed Eligible Expenditure in the Application and Business Plan.

The terms and conditions contained in this offer are made by Wiltshire Council which is Accountable Body to the RDPE for the Local Action Group (“LAG”). It acts as delegated agent to the Rural Payments Agency (the “RPA”) and the funders, the Regional Development Agency.

The offer of Investment is made by the Accountable Body with the intention to create a binding contract (“the agreement”) with the Project organisation for the investment and control of expenditure of public funds under the Rural Development Programme for England 2007-2013 (RDPE). On signing both parts of the offer letter, the Project Organisation enters into an agreement with the Accountable Body. Please check that all details contained in these documents are correct and are understood by the project management within the Project organisation.

The contract is in two parts. The first part, herein, contains a summary of key terms and conditions, and particular details of the purpose, activity, value of investment and obligations for your project. The second part (also enclosed) contains details of the standard terms and conditions for the operation and control of the project. Together they form the offer of contract.

It is expected that the Project organisation will cooperate closely with the Plain Action LAG on all aspects of the project. The LAG management team will be your first point of contact in all instances, and especially where there is any prospect of the project failing to perform to the terms and conditions contained within this agreement.

It is recommended that before commencing with the project activity you read the Project Holders handbook available from the LAG management team.

Once you have agreed to the terms and conditions of the offer, please return a signed copy to Janice Bailey, Wiltshire Council, County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN. Please retain a signed copy of the agreement for your own reference.

Project Title	<Given name for approved project>
Accountable Body Agreement Number	<Wiltshire Council agreement reference>
Local Action Group	Plain Action
Funding Body (“the Regional Development Agency”)	South West Regional Development Agency
Name of Project Organisation	<Project Organisation>
Project Organisation Address	<Organisation Address>
Project Organisation contact	<Name of project applicant>
Project Manager (if different)	<Project manager if known>
Telephone No	<Telephone number>
Email	<email address>
Accountable Body Supervising Officer	<name of Wiltshire Council officer>
Rural Payments Agency reference	<RPA reference>
Project commencement date (Start Date)	<p>This will be considered the date which the offer is accepted by the project and signed by the project organisation.</p> <p>Please note: Do not start work or commit to any costs (instructing builders, paying deposits, ordering equipment) before we have received a signed copy of the agreement from you. To start before the offer is agreed will invalidate the investment and no funding will be payable towards your project.</p>
Project Completion Date	<insert date>
Project End date	<insert date>

Summary points of the offer of Agreement

Basic details

1. This offer is made by “the Accountable Body”, Wiltshire Council and the <Project Organisation>which has been approved to carry out the project activity <Given name of approved project>
2. The offer is for management and delivery of the project activity funded by an Investment made under Rural Development Programme for England 2007-2013.
3. Investment funding and project expenditure is only available for the project activity between the start date and end date specified above.
4. The Project Completion date is the date when the project activity is complete, usually following the submission of an evaluation report.
5. The Project End date is the last date on which any claim for financial reimbursement can be made.
6. In the first instance, the LAG management team will seek to ensure that your organisation fulfils the obligations agreed for the project activity.
7. In all circumstances, the organisation’s allotted project manager should contact the LAG management team directly where there are any difficulties with operation of the project activity.

Reporting requirements

8. There are a number of profiles here in this letter of offer. These detail what is expected to be achieved by the Project organisation in carrying out the project activity. These are:
 - 8.1. Milestones profile – a timetable of achievements that the project activity will be reported against.
 - 8.2. Measure codes – this stipulates what type of Rural Development investment is being made available to your organisation for the project activity.
 - 8.3. Outputs indicators – these quantify the performance of the project activity and will be subject to regular reports made by the Project Organisation.
 - 8.4. Result indicators – these indicate how the project activity is benefitting the local community and rural economy.
 - 8.5. Budget profile - this outlines the proposed spending for each quarter and annually.
9. All the profiles are binding elements of the agreement and deviation from profiles should be discussed with the LAG management team at first instance.

Amendments to the Offer

10. Where there are irresolvable issues that arise from carrying out the project activity, it may be necessary to amend the terms of this agreement. Amendments will be due:
 - 10.1. Where there are significant changes to the delivery of the project activity.
 - 10.2. Where outputs, results or milestones set out in this offer cannot be fulfilled.

- 10.3. When start or end dates for the project vary from those set out in this offer.
- 10.4. When there are variations to the funding of the project activity.
- 10.5. When there are variations to the costs and expenditure of the project activity.

- 11. Any amendment deemed necessary will be communicated by the LAG management team to the Accountable Body.
- 12. All amendments must be mutually agreed and made in writing between the Project organisation and the Accountable Body.
- 13. Unless specifically agreed in writing, the Investment is made to the Project organisation for use solely on the Project Activity. This Investment should not be assigned, contracted-out, transferred or disposed of to any other party other than where proposed in the approved application and business plan. This applies to delivering the project activity or with regard to the benefits that should derive.

Regulatory Requirements

- 14. You will need to produce the following in order to satisfy the Rural Development regulatory requirements:
 - 14.1. Quarterly claims with full details of expenditure.
 - 14.2. Quarterly progress reports with details of progress against the proposed milestones
 - 14.3. The quarterly progress report will also include details of outputs, results, beneficiaries and any other conditions agreed.
- 15. You may be required to do the following:
 - 15.1. Take part in an evaluation scheme in accordance with Government or European bodies
 - 15.2. Produce a completion report to evaluate the Project after the end of the Project activity.

Enforcement of the Agreement

- 16. Where there has been a breach of the agreement through an irregularity, the Rural Development Regulations make provision for penalties to be imposed to rectify, and if necessary clawback the Investment.
- 17. Enforcement of the agreement, due to the breach of any terms contained in this offer, and where deemed appropriate, will be made by the Accountable Body, following a determination made by the Local Action Group.
- 18. A right to appeal allows your Project Organisation to make representations where it wishes to challenge the determination of action proposed by the Local Action Group to be taken following consideration of any irregularity or breach.
- 19. From time to time your organisation will be required, on reasonable request, to provide information to ensure the Investment is satisfactorily expended and is not subject to any misuse. This is to ensure that the Project Activity complies with the terms of the offer and does not contravene Rural Development Regulations. Your organisation will be spot-checked, or be subject monitoring visit or audit exercise or visited for a combination of these purposes. Bodies who will carry out these duties are:

- 19.1. The Accountable Body (Wiltshire Council)
- 19.2. Funding Body (South West Regional Development Agency – EU Monitoring Team or South East England Development Agency, dependent on your location)
- 19.3. Managing Authority (Rural Payments Agency)
- 19.4. Local Action Group - Plain Action
- 19.5. Defra (Department of Environment, Food and Rural Affairs)
- 19.6. National Audit Commission
- 19.7. European Commission
- 19.8. European Court of Auditors

20. Each of the above bodies has recourse through England Rural Development Programme (Enforcement) Regulations 2000 (SI 2000/3044), as amended by the England Rural Development (Enforcement) (Amendment) Regulations 2001 (SI 2001/431) to allow authorised persons to inspect, check and monitor progress of the project. This includes action that investigates matters with beneficiaries, capital investments and sub-contracts.

Publicity requirements

21. You will ensure that, where appropriate, publicity is given to the Project Activity by drawing attention to the benefits and opportunities afforded by it. The Project Organisation must comply with any guidance on publicity provided by or on behalf of the relevant Regional Development Agency, Defra or the European Commission and any promotional activity including but not limited to media statements and website publication.

22. You will install and maintain at each location where the project is publicised or operates signage such explanatory plaques, billboards, signage and other promotional material indicating the involvement of the relevant Regional Agency , Defra, and the European Union logos on all literature and signs.

State Aid	There are no State Aid issues <i>Where a State Aid notification is attached, it should be read, signed and returned with the contract, with a copy retained for the project organisation reference.</i>
Method of reimbursement	Payment of the Investment will be made in arrears and only upon production of a satisfactorily completed Quarterly Report. This should contain full supporting evidence of expenditure, including invoices and details of both expenditure and outputs. This should be accompanied by a valid invoice from the project so that reimbursement can be made to the Project Organisation. Please ensure that all invoices submitted for reimbursement have the Accountable Body Agreement Number (see above) clearly stated on them and are addressed to Janice Bailey, Wiltshire Council, County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN.
Glossary of terms	A glossary of key terms in this Offer letter is contained in the Terms and Conditions that follow.

Project Description - This is the brief overview of the project activity
 <insert text from application form>

RDPE Measures and Indicators – This information tells us for what type of rural development the investment is made and the type and number of outputs that are expected from the investment.

Measure Code	Output indicators	Value / Amount
311 Diversification into non-agri activities	311 No. of beneficiaries	
311 Diversification into non-agri activities	311 No. of beneficiaries	
311 Diversification into non-agri activities	311 No. of beneficiaries	
311 Diversification into non-agri activities	311 No. of beneficiaries	
311 Diversification into non-agri activities	311 No. of beneficiaries	
311 Diversification into non-agri activities	311 No. of beneficiaries	

Outputs evidence: These are measures of the project activity's products

<insert text>
(LAG programme management may determine to record these details at the Project Engagement Visit)

Results indicators	Predicted value	Information Required from Project
311 Increase of non-agri GVA in supported business	<Insert value, hectarage or number>	<Describe method of collection>
311 Increase of non-agri GVA in supported business	<Insert value, hectarage or number>	<Describe method of collection>
311 Increase of non-agri GVA in supported business	<Insert value, hectarage or number>	<Describe method of collection>
311 Increase of non-agri GVA in supported business	<Insert value, hectarage or number>	<Describe method of collection>
311 Increase of non-agri GVA in supported business	<Insert value, hectarage or number>	<Describe method of collection>

Overall Project Budget Profile This budget profile has been devised from the proposal submitted and approved by the Local Action Group.

In all circumstances expenditure should align with this profile. Variations will be generally be acceptable where the variation is within the same budget line and to the extent that it does not impinge on the progress of the Project Activity. Should deviation become significant, please discuss this at first instance with the LAG management team and refer to Section 6 of the main Agreement below.

Consolidated expenditure	2009	2010	2011	2012	2013	Total expenditure
CAPITAL						
Equipment and supply of goods (IT, machinery, tools)	0	0	0	0	0	0
Investment (purchase of land, buildings etc) and construction costs	0	0	0	0	0	0
Value of in-kind contributions/non monetary goods	0	0	0	0	0	0
Other capital costs (please specify)	0	0	0	0	0	0
REVENUE						
Staff costs (salary, NI, pension contributions)	0	0	0	0	0	0
Administration costs and overheads	0	0	0	0	0	0
Events, Marketing and Publicity	0	0	0	0	0	0
External costs, consultancy and suppliers of services	0	0	0	0	0	0
Value of in-kind contributions/non monetary services	0	0	0	0	0	0
Other revenue cost (please specify)	0	0	0	0	0	0
Total Project costs	0	0	0	0	0	0

Milestones - Any significant variation from this timetable should be communicated at first instance to the LAG management team and reported at relevant quarterly claim.

<insert milestone table from application form>

Local Action Group conditions: In addition to the RDPE measures and indicators detailed above, this offer is made on the following conditions set by the Local Action Group decision-making body. These are as follows:

Declaration - Please note that this offer is valid for a period of one month from the date of this Agreement. If the offer is not accepted within that period it will lapse but Wiltshire County Council may, in its absolute discretion, agree to extend the period if it is satisfied that circumstances justify it.

AS WITNESS the hands of the parties the day and year first before written

signed on behalf of **WILTSHIRE COUNCIL**

PRINT NAME

DATE

Signed on behalf of [**PROJECT ORGANISATION**]

PRINT NAME

DATE

TERMS AND CONDITIONS OF OFFER

1. DEFINITIONS

1.1 The Accountable Body

The Accountable Body is Wiltshire Council or its successor bodies as may be directed by any Government Department. For the purposes of this Agreement, the Accountable Body is acting as delegated body of the Regional Development Agency and is agent of the Rural Payments Agency.

1.2 Agreement

This Agreement and the attached Schedules and documents

1.3 Application Form

The application and supporting information made by the Project Organisation on which the Local Action Group based their Approval decision.

1.4 Approval

The decision by the Local Action Group to approve the Proposal made in the Application and supporting documents.

1.5 Business Plan

A document made by the Project Organisation, supporting its Application, containing detailed information of the Project Organisation's plan for the Proposal.

1.6 Claim Form

The document provided by the Accountable Body to be used to convey all evidence of expenditure made each Quarter.

1.7 Clawback

The Accountable Body's right to recover the whole or any part of the Investment including any relevant interest as may be applicable.

1.8 Commercially Sensitive Information

All information which relates to, or could have an impact upon, a commercial activity without limitation. This may include commercial activities conducted in a competitive environment, or information whose release could damage reputation or business confidence.

1.9 Completion Date

The date by which the work outlined in the Proposal is to be completed

1.10 Defra

Department for Environment, Food & Rural Affairs

1.11 Eligible Expenditure

The costs which the Accountable Body is satisfied have been wholly and necessarily incurred and paid by the Project Organisation in undertaking the Project Activity and the Proposal which without limitation, and for the avoidance of doubt, does not include any finance charges, but does include any non-recoverable VAT and professional fees in connection with the design supervision and implementation of the Proposal.

1.12 Eligible Expenditure Evidence

The evidence required to support Eligible Expenditure will be either:

- (1) Original receipted invoices or documents of equal probative value such as bank statements and accountant's reports (should documents of equal probative value to submitted, the Accountable Body reserves the right to request that original receipted invoices be supplied)
- (2) Audit Opinions will be required for offers of Investment over £250,000.

1.13 End Date

The date by which the Project Activity ceases and until which, the Accountable Body may exercise any Clawback provision.

1.14 Funding Body

These are the Regional Development Agencies.

1.15 Intellectual Property

Includes, without limit, all copyright (and future copyright), patents, trademarks and service marks (whether registered or not), design rights, registered designs, database rights, moral rights and know-how together with the right to register, protect, enforce and exploit the above anywhere in the world.

1.16 Investment

The financial contribution to be made by the Funding Body for and on behalf of the Rural Payments Agency in the form of grant funding to the Project Organisation under this Agreement.

1.17 Insolvency

This shall be interpreted as occurring where:

- (1) The Project Organisation is unable to pay its debts as they fall due
- (2) Insolvent (within the meaning of s.123[1] of the Insolvency Act 1986 in the case of a company, or s.268 of the Insolvency Act 1986 in the case of an individual)
- (3) The Project Organisation enters into any arrangement with creditors, or a liquidator, trustee in bankruptcy, receiver, administrator, administrative receiver or similar is appointed,
- (4) Possession or enforcement or any other similar process is taken against the Project Organisation or any of its assets.

1.18 Local Action Group – “LAG”

The body contracted to devise and deliver a Local Delivery Strategy under Axis 4 of the RDPE (Rural Development Programme for England 2007-2013). In this instance, the Local Action Group will manage the Project Organisation’s delivery of the Approved Proposal.

1.19 LIBOR

London Interbank Offered Rate – the international rate at which banks borrow from other banks.

1.20 Milestones

Key events and stages as agreed between the Project Organisation and the Accountable Body in the implementation of the Proposal.

1.21 Outputs

Specific targets identified in the Proposal and agreed between the Project Organisation, the Local Action Group and the Accountable Body as set out in the RDPE Guidance.

1.22 Pre-Conditions

Conditions set out in a Schedule (where applicable) which must be met by the Project Organisation to the satisfaction of the Accountable Body in connection with the Proposal.

1.23 Project Activity

The actions made by the Project Organisation in the pursuit of the objectives set out in the Proposal.

1.24 Proposal

All documents setting out full details of the proposed venture approved by the Local Action Group and agreed with the Accountable Body.

1.25 Regional Development Agency (“RDA”)

This refers to either South West of England Regional Development or South East England Development Agency (SEEDA).

- (1) For projects approved by the Plain Action and Sowing SEEDS Local Action Groups the RDA is South West Regional Development Agency
- (2) For projects approved by the North Wessex Downs Local Action Group the RDA is South East England Development Agency

1.26 Rural Development Programme for England (“RDPE”)

The Rural Development Programme for England is jointly funded by the EU, through the European Agricultural Fund for Rural Development, and the Government. The Funding is split into three Axes:

- Axis 1 - Improving the competitiveness of the farming and forestry sectors.

Axis 2 - Improving the environment and countryside mostly to be invested in existing national schemes such as Environmental Stewardship and English Woodland Grant Scheme.

Axis 3 - Improving the quality of life in rural areas and promoting diversification of the rural economy.

1.27 Rural Payments Agency

The accredited paying the Accountable Body for European Agricultural & Rural Development subsidies for England.

1.28 Start Date

The date by which the work outlined in the Proposal is to be started.

1.29 Unauthorised Use

Any use of a building, land or other fixed asset other than as described in the Proposal, and/or any use for which the necessary consents have not been granted. by the Accountable Body.

1.30 The Project Organisation

The body or individual to which the Investment will be paid, that is accountable for the legal and financial conduct of the Proposal and for adherence to all the conditions contained in this Agreement.

2. INTERPRETATION

2.1 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated and all statutory instruments or orders made pursuant to it.

2.2 Words denoting the singular number may include the plural and vice versa.

2.3 Words denoting any gender include all genders and words denoting persons shall include firms and corporations and vice versa.

2.4 Unless the context otherwise requires reference to any clause, sub-clause or schedule is to a clause, sub-clause or schedule (as the case may be) of or to this agreement.

2.5 The headings in this agreement are inserted for convenience only and shall not affect the construction or interpretation of this agreement.

3. PROJECT OFFER AND ACCEPTANCE

3.1 The Accountable Body has offered to provide the investment in accordance with the terms and conditions of the 'Letter of Offer' dated [INSERT DATE] a copy of which is proceeds this agreement and subject to the terms and conditions of this Agreement together with all schedules and annexes attached hereto.

3.2 The Project Organisation has accepted the investment in accordance with the terms and conditions of the 'Letter of Offer' dated [INSERT DATE] a copy of which proceeds this agreement and subject to the terms and conditions of this Agreement together with all schedules and annexes attached hereto.

3.3 On acceptance of the Accountable body's offer, the Project Organisation will be bound by the terms and conditions of this Agreement.

4. THE INVESTMENT

The Project Organisation will comply at all times with the terms and conditions of Investment as set out in this Agreement.

5. DURATION

This Proposal must be begun after the Start Date and must be completed by the End Date.

6. VARIATIONS TO THE PROPOSAL

6.1 The Project Organisation must advise the Accountable Body via the Local Action Group immediately if it needs to make any changes, or any changes are required, to the Proposal including but not limited to changes to:

- a. Objectives
- b. Outputs, Results and Milestones
- c. Start, End and Completion Dates
- d. Project Delivery Arrangements
- e. Project Costs and Funding (including any new, additional, European or other national funding secured)

6.2 Any changes must be agreed, in writing, with the Accountable Body before being put into effect.

6.3 The Project Organisation may not transfer funds within the budget for Project Activities. (For example, funds allocated in the budget profile for staff costs must not be used to fund the purchase of equipment.) Should the need arise for transfer of funds within the budget paragraph 6.2 above will apply.

7. ASSIGNMENT

7.1 The benefit of the Investment is not assignable to any other company, organisation or individual.

7.2 Unless otherwise approved by the Accountable Body.

7.3 Before approving any assignment of the Investment, the Accountable Body will seek approval from the Funder.

8. MAKING A CLAIM AND PAYMENT

8.1 The Accountable Body will make the Investment in arrears as profiled in the tables in Part 1 of the Offer letter. This will be in Quarterly instalments calculated against fully evidenced Eligible Expenditure detailed on the Claim Form.

8.2 Each instalment will be made direct to the Project Organisation's nominated bank account (subject to the general Clawback and other provisions of this Agreement), within 45 days of receiving your completed Claim Form.

8.3 The Accountable Body may delay payment of an instalment if, following receipt of the Claim Form, it requires further information from the Project Organisation. In these circumstances, the Accountable Body and/ or Local Action Group will write to the Project Organisation within 14 days of receipt of the Claim Form setting out what further information it requires and the time period within which that information must be provided.

8.4 The Accountable Body reserves the right to withhold payment of the final claim until the project has been audited and the payment approved.

8.5 Payment is dependent on satisfactory progress being made in achieving the Outputs indicators set out in the Letter of Offer annexed to this Agreement.

8.6 Satisfactory progress will be determined at the absolute discretion of the Accountable Body.

8.7 Subject to the other provisions of this Agreement, payment will be made at a rate equivalent to the % Investment of total project value as set out in Letter of Offer annexed to this Agreement, for the quarter in quarterly instalments in arrears within 45 days subject to:

8.7.1 Receipt of a completed quarterly claim and progress report and accompanying invoice(s) and other appropriate evidence.

8.7.2 The Accountable Body being satisfied that no breaches of the terms and conditions of this Agreement have occurred and have not been remedied.

8.7.3 Receipt of suitable evidence of capital and revenue expenditure.

8.7.4 Where any part of a claim is for in-kind support, verification that the support has been received by the Project Organisation and details of support retained.

9. EXPENDITURE

The Project Organisation will comply at all times with the requirements of Schedule 4 in respect of project expenditure.

10. WARRANTIES AND REPRESENTATIONS

In entering this Agreement the Project Organisation warrants and confirms to the Accountable Body, the Rural Payments Agency, the Regional Development Agency, DEFRA and the European Commission and for the purposes of money laundering regulations, that:

- 10.1 The Project Organisation is a legally constituted body and it has the full capacity and authority and all necessary consents to enter into and perform the obligations on it under this Agreement.
- 10.2 The Project Organisation acknowledges that the acceptance of the offer constitutes valid, legal and binding obligations of and upon it and which are enforceable against the Project Organisation.
- 10.3 All information, documents and accounts provided by the Project Organisation or on its behalf, from time to time are and will be true, valid and correct.
- 10.4 The Project Organisation is not in breach of any law or regulation, agreement or obligation which affects or may affect its ability to commit to this Agreement.
- 10.5 The Project Organisation is not under any statutory obligation to carry out the Proposal and Project Activity or any part of it.
- 10.6 The Project Organisation will ensure that all the necessary consents are in place and maintained for the duration of the Project without limitation.
- 10.7 The Project Organisation must obtain all necessary planning consents and licences for the Proposal. If any consents or licences are varied it must inform the Local Action Group in writing immediately.

11. CONDUCT OF THE PROJECT ORGANISATION

The Project Organisation must adhere to the following conduct in its activities under Rural Development:

- 11.1 The Project Organisation must not grant any lender security over assets funded, or part-funded, by this Investment unless it has first obtained the Accountable Body's written consent.
- 11.2 In undertaking the Proposal the Project Organisation must not act in any way that will bring the Accountable Body into disrepute.
- 11.3 The Project Organisation must inform the Accountable Body immediately if any of its directors or partners become
 - 11.3.1 Disqualified, or
 - 11.3.2 Subject to investigation or challenge which may have a detrimental effect upon the Accountable Body and/or the Proposal.
- 11.4 The Project Organisation must advise the Accountable Body immediately of any threat of or any notice or any resolution in respect of any Insolvency.
- 11.5 The Accountable Body will report any cases of suspected fraud to the relevant authorities.

12. REPORTING AND EVALUATION REQUIREMENTS

The Project Organisation will comply with the Reporting and Evaluation Requirements as set out in the Letter of Offer of this Agreement

13. EVALUATION PLAN

The Project Organisation will prepare an Evaluation Plan as set out in the Schedule 1 of this Agreement

14. PUBLICITY

- 14.1 The Project Organisation will ensure that, where appropriate, publicity is given to the Proposal by drawing attention to the benefits and opportunities afforded by it. In acknowledging the contribution and Investment made by the Regional

Development Agency on behalf of the Defra, the Project Organisation must comply with any guidance on publicity provided by or on behalf of these bodies and any promotional activity including but not limited to media statements and website publication.

14.2 You will install and maintain at each location where the project is publicised or operates signage such explanatory plaques, billboards and other promotional material indicating the involvement of the Regional Development Agency, Defra, and the European Union by logos on all literature and signs. Further detailed guidance is available at [****www.southwestrda.org.uk/rdpe/publicity_guidance](http://www.southwestrda.org.uk/rdpe/publicity_guidance) **CHECK LINK****** and also available from your Local Action Group Programme Manager.

14.3 Subject to its confidentiality obligations agreed herein, the Regional Development Agency reserves the right to use all data provided by the Project Organisation in relation to the Investment for publicity or promotional purposes.

15. CLAWBACK ON DEFAULT

The Clawback provisions contained in Schedule 2 shall apply to the Investment

16. CLAWBACK OF SURPLUSES, RECEIPTS FROM THE SALE OF ASSETS OR FOR UNAUTHORISED USE

The Clawback provisions contained in Schedule 2 shall apply to the Investment

17. INSURANCE AND INDEMNITY

17.1 The Project Organisation must take out and maintain with a reputable insurance company adequate insurance of the type and level of cover which it is reasonable to expect from a business such as that operated by the Project Organisation.

17.2 The Project Organisation must produce a schedule of all appropriate insurance cover and copies of all relevant cover notes and insurance policies to the Accountable Body within 10 days of any such request being made by the Accountable Body.

17.3 The Project Organisation shall indemnify and keep indemnified the Accountable Body from and against any and all loss, damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by the Accountable Body resulting from any act, neglect, default, breach of any duty or breach of any obligation under this Agreement by the Project Organisation except to the extent that such liability or loss arises from any default by the Accountable Body.

18. CONFIDENTIALITY

18.1 The Project Organisation acknowledges that the Accountable Body is subject to the requirements of the Freedom of Information Act 2000 (the "Act") and related legislation and the Environmental Information Regulations 2004 ("the Regulations")

18.2 The Project Organisation will assist and cooperate with the Accountable Body to enable it to comply with its information disclosure requirements.

18.3 The Accountable Body will, if required to do so, make all information regarding this Investment accessible to public scrutiny.

18.4 The Accountable Body shall determine in its absolute discretion whether Commercially Sensitive Information or other Confidential Information or other information whether or not defined by the Act or the Regulations.

18.5 Commercially Sensitive Information is exempt from disclosure, but subject to this the Accountable Body will not disclose such information to a third party without the written agreement of the Project Organisation (not unreasonably withheld or delayed) unless:

18.5.1 It becomes publicly available, other than as a result of any breach of the Agreement, or

18.5.2 It becomes lawfully available from any other third party free from any confidentiality restrictions, or

18.5.3 It is ordered to disclose by a Court or other competent authority, or

18.5.4 In the Accountable Body's opinion (having taken the Project Organisation's views into account where practical) the public interest in the disclosure of that information outweighs possible prejudice or harm arising from the disclosure.

18.6 The Project Organisation acknowledges that the Accountable Body may disclose information without consulting it, where required to do so under the Freedom of Information Act and related Regulations.

19. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights arising from the Proposal hereby vest in the Regional Development Agency, other than Pre-existing Intellectual Property Rights, unless specifically detailed and agreed in writing with the Regional Development Agency.

20. DISCLOSURE OF INFORMATION

20.1 The Project Organisation acknowledges the requirement to produce information relating to the Proposal and the Investment.

20.2 The Project Organisation is required to provide the Accountable Body and / or the Regional Development Agency, in writing, any such information about the Investment as it requires for the conduct of its statutory functions or which may be required by the Department for Business Enterprise & Regulatory Reform, Defra, other relevant Government Departments or Agencies, and the European Commission in respect of their regulatory and compliance functions.

20.3 The Project Organisation is required to record for the Accountable Body any such information as may be required to monitor and evaluate the performance of the Agreement.

20.4 The Project Organisation is required to retain this information for access by the Accountable Body, the Department for Business Enterprise & Regulatory

Reform, Defra, other relevant Government Departments or Agencies and the European Commission for a minimum period of 10 years from the End Date.

21. EARLY TERMINATION

This Agreement will automatically lapse if, without the Accountable Body's written consent, either:

- 21.1 The Start Date is delayed by more than 6 months, or
- 21.2 The Project Organisation makes no claim against this Investment within 12 months of the date of your acceptance of this offer, or
- 21.3 You fail to return your acceptance of the Letter of Offer within 30 days of the date of the offer.

22. COMMUNICATIONS

The initial contact for all enquiries at the Accountable Body, including return for acceptance of the Letter of Offer is Janice Bailey, Wiltshire Council, County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN or janicebailey@wiltshire.gov.uk or to such other case officer as notified from time to time.

23. AMENDMENTS TO THE AGREEMENT

- 23.1 The Accountable Body may amend or vary the Agreement where Mandatory changes are required by the UK or EC laws or Regulations, or
- 23.2 This Agreement may be amended or varied by mutual written consent between the Project Organisation and the Accountable Body.

24. TERMINATION

The Accountable Body reserves the right to terminate this Agreement by notice in writing and / or to implement the provisions of Schedule 2 of this Agreement with immediate effect where:

- 24.1 The Project Organisation undergoes a change of control which impacts adversely and materially on the Agreement.
- 24.2 The Project Organisation becomes Insolvent or is dissolved or is subject:

- 24.2.1 To the appointment of an administrator or receiver.
- 24.2.2 Of a proposal for a voluntary agreement or has a petition for an administration order or a winding up order brought against it or arrangement, conveyance or assignment for the benefit of its creditors or purports to do so.
- 24.3 The Project Organisation being a company is struck from the register at Companies House.
- 24.4 The Project Organisation being an individual has an interim order or a bankruptcy order made against it.
- 24.5 The Project Organisation fails to achieve any Objective, Output or Milestone.
- 24.6 The Project Organisation fails to remedy any breach of this Agreement which is capable of remedy within 14 days of the Accountable Body requesting it to do so.
- 24.7 The Project Organisation commits a breach of this Agreement which is incapable of remedy.
- 24.8 There is a failure to keep and maintain records required by this agreement.
- 24.9 The Investment has not been used for the purpose for which it was given.
- 24.10 Insufficient measures are being taken to investigate and resolve any reported irregularity.
- 24.11 Any European Community obligation which restricts the payment of Investment or limits the amount of Investment payable under the State Aid rules is breached.

24.12 Any other European Community obligation which applies to the delivery of the Proposal or related activity, is not complied with.

24.13 A decision of the Commission of the European Communities requires repayment of all or part of the Investment or a reduction in the amount of Investment.

25. DISPUTE RESOLUTION

The Dispute Resolution Procedures contained at Schedule 3 will apply to this Agreement.

26. PUBLIC PROCUREMENT

The Project Organisation must comply with all applicable public procurement regulations and use reasonable endeavours to achieve best value for money when purchasing any goods or services from the Investment.

27. REQUIREMENT TO NOTIFY THE LOCAL ACTION GROUP

The Project Organisation will notify the Local Action Group Management team immediately in the following instances of:

- a. Any material changes in the level of costs of the Proposal.
- b. Any changes to the dates on which the Proposal is started and finished.
- c. Any financial irregularity (including fraud or other impropriety, mismanagement, or use of funds for purposes other than in accordance with this Agreement) in the use of the Investment is suspected and the steps being taken in response.
- d. Any approvals, consents or authorities necessary for the Proposals (legislative or otherwise) are withdrawn or not renewed.
- e. Any conflict of interest likely to prejudice its independence and objectivity in performing its obligations under this Agreement.

28. HEALTH AND SAFETY AND EQUAL OPPORTUNITIES

The Project organisation shall ensure that it, and anyone acting on its behalf, complies with the law in force in the United Kingdom, and in particular:

- 29.1 Takes all the necessary steps to secure the health, safety and welfare of all persons involved in the project
- 29.2 Does not unlawfully discriminate against any person on the grounds of sexual orientation, race, gender, disability, religion or belief.
- 29.3 The Equality and Human Rights Commission have issued Codes of Practice giving guidance on these laws and equal opportunities good practices in employment and provision of services.

29. NO PARTNEERSHIP OR AGENCY

Nothing in this Agreement shall be deemed to constitute a partnership between the parties nor constitute any party the agent of the other party.

30. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior negotiations, representations and undertakings whenever occurring.

31. APPLICABLE LAW

This Agreement is governed and interpreted in accordance with English Law and subject to the jurisdiction of the courts of England and Wales. If any provision of this Agreement is found to be invalid, illegal or unenforceable by a court of competent jurisdiction such provision shall be severed from it and the remainder of the provisions of this Agreement shall otherwise remain in full force and effect.

SCHEDULE 1

OPERATIONAL DETAILS

1. Reporting & Evaluation Requirements

You will provide the Accountable Body with the following reports:

1.1 Claim Submission

1.1.1 The Claim Form shall be completed and submitted to the Local Action Group in accordance with the Budget Profiles in Part 1 of this Offer.

1.1.2 The first claim will be due at the first Quarterly interval after the Start Date and the final return is to be submitted within 14 days of the End Date.

1.2 Quarterly Progress Reports on a date instructed by the Local Action Group management team covering:

1.2.1 Actual Expenditure against approved Eligible Expenditure,

1.2.2 Achievement of Outputs, Results, Milestones and Objectives.

1.3 Annual Progress Report to be submitted to the Local Action Group within 30 days of the first anniversary of the Start Date then annually thereafter. This will include:

1.3.1 Annual Expenditure against approved Eligible Expenditure

1.3.2 Annual Achievement of Outputs, Results, Milestones and Objectives.

1.3.3 List of Beneficiary Data for compliance with European Commission Regulations.

1.3.4 Qualitative reports on:

- Operations
- Conditions met
- Other benefits achieved
- Profile of expenditure for remainder of project programme to End Date

1.4 Completion Report

1.4.1 This will comprise the following minimum elements and is to be completed and sent to the Local Action Group within 3 months of the

End Date, or at an alternative date stipulated by the Local Action Group:

- 1.4.1.1 A summary account of the achievement of Outputs, Result and Objectives to End Date:
- 1.4.1.2 A commentary highlighting lessons learnt, key successes achieved during project and disappointments or failures encountered to End Date:
- 1.4.1.3 A financial statement showing actual expenditure against approved expenditure, both annually and in total.
- 1.4.2 The reports should also show any capital elements of the Project, any income or capital receipts derived by summary of the overall funding Investment as approved and as was achieved.

Evaluation Plan

- 2 The Project Organisation may be required to participate in an evaluation scheme in accordance with any Government or European evaluation of the scheme.
- 2.1 Access, Compliance, Auditing Requirements & Inspection Visits
 - 2.1.1 You are required to provide the Regional Development Agency (and or its Agents), the Rural Payments Agency, the Accountable Body, Defra, the European Commission, the European Court of Auditors, the National Audit Office and regional Government Office at reasonable request, access to all and any information about the Project Activity including building, site, project, outcomes business and beneficiaries who have been supported by this Investment.
 - 2.1.2 The Regional Development Agency (and or its Agents), the Rural Payments Agency, the Accountable Body, Defra, the European Commission, the European Court of Auditors, the National Audit Office and regional Government Office or their any of their representatives, shall have the right to inspect at any reasonable hour the project and/or such further information as they think fit and to be provided with copies of such documents or items as they shall require. There must be sufficiently robust management and financial systems to ensure that all documents relating to the implementation of the project and its financing are available for the period of ten years after the final payment of grant. These documents must demonstrate that the amount of grant claimed is in respect only of Eligible Expenditure.
 - 2.1.3 In addition, the Accountable Body and any of the aforementioned bodies under paragraph 11.1 (above) and their representatives and

advisors shall have the right to call and attend meetings with you if necessary.

- 2.1.4 In order to comply with European Commission regulations, the Project Organisation will be required to provide to the Accountable Body detailed Beneficiary Data as may be required.

Monitoring and Evaluation

- 3 The Project Organisation shall provide monitoring reports covering Financial Claim and Progress Reports in the form to be provided by the Accountable Body via the Local Action Group.
 - 3.1 Monitoring reports must be submitted at the time instructed by the Local Action Group Programme Management which will be at regular quarterly intervals.
 - 3.2 The project organisation shall submit original copies of invoices, receipts and other appropriate proof of expenditure to the Local Action Group Programme Management.
 - 3.3 Cash payments cannot be claimed as Expenditure.
 - 3.4 Cash expenditure will not be reimbursed regardless of purpose of the expenditure.
- 4 The Project Organisation shall submit regular Progress reports and other documents and illustrative material produced by the Project Organisation in connection with the Proposal adequate to show progress against the Milestones agreed when the approval of the Proposal was made.
- 5 The Project Organisation shall co-operate with any audit or review by the Accountable Body or any body authorised listed in paragraph 18, at Part 1 and at paragraph 11.1 of Part 2 of the Agreement.

SCHEDULE 2

CLAWBACK PROVISIONS

Clawback of Investment

1. If the Project Organisation fails to comply with any of the terms of this Agreement, the Accountable Body acting in its capacity as delegated body and agent of the Rural Payments Agency will be entitled to recover part or all sums paid under this Investment with interest at the rate of LIBOR +1% from the date of notification of any such requirement, plus any appropriate penalties.

Clawback on Default

2. The Accountable Body reserves the right to withhold payment of any instalments and/or recover all or any part of the Investment it has already made if without the Accountable Body's written consent, either:
 - 2.1. The Project Organisation fails to achieve any Objective, Output or Milestone in the Proposal: or
 - 2.2. The Project Organisation breaches any of the terms and conditions of the Agreement (and fail to remedy the breach within 14 days of the Local Action Group Programme Management asking the Project Organisation to do so) or,
 - 2.3. The Project Organisation becomes Insolvent or any steps are taken by any person toward such Insolvency.
 - 2.4. The Project Organisation, or any sub-contractor or any third party who has benefitted from this Investment, has acted fraudulently in any way in relation to the Investment.

Clawback of Surpluses, Receipts from the Sale of Assets or for Unauthorised Use

3. The Accountable Body will be entitled to recover the Clawback sums as detailed in Schedule 2.
 - 3.1. The Accountable Body reserves in its absolute discretion the right to recoup or recover all, or a proportion of the Investment, in the event of:
 - 3.1.1. The Project Activity generating income at or before the End Date above that already agreed with the Accountable Body as set out in the Proposal.

- 3.1.2. A capital receipt at or before the End Date above that in value already agreed with the Accountable Body as set out in the Proposal.
- 3.1.3. Assets resulting from the Investment being disposed of whether by sale or lease or otherwise, before the End Date.
- 3.1.4. Assets resulting from the Investment being put to Unauthorised Use.
- 3.1.5. Any Regulatory provisions invoked relating to Clawback.
- 3.1.6. Any of other conditions of the Investment (where applicable) not being satisfied.

SCHEDULE 3

DISPUTE RESOLUTION

1. Dispute Resolution for Irregularities

1.1 With regard to any disputes regarding the determination of an Irregularity alleged of the Project Organisation, under the European Commission Regulations, the Local Action Group Programme Manager will provide for a standard published procedure allowing representation by the Project Organisation to set out its case against any possible Clawback or Penalty action planned.

1.2 Disputes shall be resolved by adherence to this process

1.3 The published process will be the only dispute resolution available to the parties for the reason of determination of Irregularities.

2. Dispute Resolution for other reasons

2.1 Disputes that are not concerned with Irregularities shall be settled by:

2.1.1 Reference to the terms, conditions, warranties and obligations contained in this Agreement.

2.1.2 Where this does not resolve the dispute, an attempt to resolve shall be made by:

2.2.1 Ordinary negotiations between the Project Organisation, the Local Action Group and its representatives with the Accountable Body within 28 days of the dispute commencing.

2.2.2 Where the dispute remains unresolved, it shall be escalated to the relevant directors of the Council and of the Project Organisation who shall meet in order to attempt to resolve the dispute.

2.3 If the parties are unable to settle any dispute by the escalation at 2.2.2, within 28 days, the parties will refer the matter for mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

2.4 In the event of any dispute remaining unresolved following mediation, the dispute shall stand jointly referred to an arbitrator selected (in default of agreement) by the President for the time being of the Law Society.

SCHEDULE 4

PROJECT EXPENDITURE

1. Activity and Eligible Expenditure

The Investment shall be used only in relation to and for delivery Project Activity detailed in the Proposal.

2. Ineligible Expenditure

Investment will not be paid and may not be used for:

- 2.1 Expenditure on activities of a political or exclusively religious nature.
- 2.2 Expenditure supported from government sources, local authority grants, lottery or any EC Structural Funds, to the extent that the combined RDPE Investment and other support total more than eligible amounts set out by the Rural Development Regulations with regard to State Aid.
- 2.3 Expenditure on works or activities which any person has a statutory duty to undertake, except where there is strong justification in terms of the outputs or impact that will result. (eg: In the case of beneficial activity brought forward, or carried out in a way which best promotes sustainable Rural Development as a result of Investment support.)
- 2.4 Recoverable input VAT incurred (i.e. Where the Project Organisation is VAT registered it should recover VAT directly from the Exchequer. The Investment will not include VAT unless VAT is not recoverable.)
- 2.5 Any liability arising out of negligence.
- 2.6 Payments for redundancy to staff.
- 2.7 Expenditure incurred that is not State Aid compliant.
- 2.8 Expenditure on gap funded private sector developments.
- 2.9 Expenditure on a project not previously approved and for which it is intended that Investment will be claimed, where such expenditure took place before the date of this Agreement.
- 2.10 Payments made in advance of need.
- 2.11 This list is not exhaustive. Other expenditure apart from that mentioned in this paragraph may also be ineligible under the terms of the Rural Development Regulation (Council Regulation) EC 1698/2005.
- 2.12 If there is any doubt as to the eligibility of expenditure the Project Organisation must consult the Local Action Group Management team and refer to the 'Project Holders' Guidance published by DEFRA and the Regional Development Agencies.