

DATED

2024

THE TRUSTEES OF THE NATIONAL HERITAGE
MEMORIAL FUND

- and -

PLYMOUTH CITY COUNCIL

CONTRACT

relating to
OL-19-03781
HHA2019 Plymouth Sound National Marine Park

Programme Application Guidance – the document setting out the scope of the programme and how to apply.

Project – the project referred to in your Application that consists of, or includes, the Approved Purposes.

Project Completion Date – the date of the letter we send you letting you know that the Project is recorded as complete.

Programme Application Guidance – the document setting out the scope of the programme and how to apply.

Property – the property referred to in your Application and any property that you buy, create, receive or restore, or property that is otherwise funded by the Grant including Digital Outputs, intellectual property rights and any documents that you produce or order as part of the Approved Purposes.

Receiving a Grant – the guidance we publish to explain how we will pay the Grant, monitor your Project and agree changes to the Grant.

Standard Terms of Grant – the standard terms set out in this Grant Contract.

Term of the Grant Contract – the Grant Contract will last from Permission to Start and run for a term of 20 years after the Project Completion Date.

UK Subsidy Control Law – means the applicable laws in the UK concerning the award of subsidies in the UK as at the date of this Agreement and subsequently, including but not limited to the Subsidy Control Act 2022 and relevant implementing regulations, statutory guidance and caselaw.

Achieving the Approved Purposes

1. You must use the Grant only for the Approved Purposes, unless you get our approval beforehand.
2. You must not start work to achieve the Approved Purposes without our approval beforehand or before we give you Permission to Start.
3. You must achieve the Approved Purposes and make your final Grant drawdown by the Grant Expiry Date.
4. You must use the Property, or allow it to be used, only for the Approved Usage during the Term of the Grant Contract.
5. As well as this Grant Contract, you must address any issues we identify in the course of monitoring, and meet the requirements set out in the Programme Application Guidance, Receiving a Grant and any Other Guidance.
6. You must carry out the Approved Purposes in line with current best practice in your area of heritage and to a standard that is appropriate to a project of importance to the national heritage.

7. You must follow all legislation and regulations that apply. You must have appropriate policies and procedures in place and act in accordance with them at all times to ensure compliance with any relevant law, government requirement and best practice including but not limited to UK Subsidy Control Law, data protection, freedom of information, equal opportunities, employment law, harassment and bullying and safeguarding vulnerable people.

Project Monitoring

8. You must give us any financial or other information and records we may need from time to time on the Grant, the Property, the Approved Purposes (and achieving them) and the Approved Usage.
9. You must allow us (or anyone we authorise) to have any access we may need to:
 - (a) inspect the Property and any work to it;
 - (b) monitor the conduct and progress of the Approved Purposes; and
 - (c) monitor the Approved Usage.

In these cases we will give you notice. You will report on the progress of your Project at times agreed with us.

10. We may ask you to provide proof that you have taken action to reduce the risk of fraud. We may ask you to let us examine your accounting processes and procedures to check the effectiveness of anti-fraud measures.
11. We will monitor the progress of your Project and will carry out checks during, at and after the end of the Project to confirm that it is delivering the outcomes expected. If we (or anyone we authorise) make any recommendations on the matters set out in clause 9 you must take those recommendations into account when meeting your obligations to us.
12. You must take appropriate steps to monitor your own success in achieving the Approved Purposes and in using the Property for the Approved Usage. On completing the Project, you must submit your Evaluation Report before we will release the final Grant payment.
13. You must provide us with the web address or addresses (URL/s) of the site or sites that will host your Digital Outputs for the specified length of time, and update these if materials are relocated. For projects where materials are located across a range of sites, the URL of an online index page is required.

Subsidy Control

14. You acknowledge that the Grant comes from public funds. You must continue throughout the Approved Purposes to ensure the Grant is compatible with UK Subsidy Control Law.

15. You acknowledge that you have undertaken your own independent assessment of the compatibility of the Project with Subsidy Control Law and confirm to us that the Project is structured so that it may be compliant with UK Subsidy Control Law. We have taken into account your representations on UK Subsidy Control Law compliance in deciding to offer the Grant.
16. We have reasonably determined in our view and following our own analysis in conjunction with the information supplied by you that the Grant will be provided in accordance with UK Subsidy Control Law, and we have made relevant records to enable us to defend any challenge from a third party to the Grant based on UK Subsidy Control Law as may arise.
17. You agree to maintain appropriate records of compliance with UK Subsidy Control Law and agree to take all reasonable steps to assist us to comply with UK Subsidy Control Law requirements and respond to any investigation(s) instigated by a Government Department or third-party challenge in the national courts.
18. You acknowledge and accept that the finding of subsidy control non-compliance in respect of the Project by a Government Department or a Court of competent jurisdiction, may lead to the Grant being ordered to be repaid with interest.
19. We shall undertake relevant transparency publication requirements in relation to the Grant under UK Subsidy Control Law within not more than three months following the date of this Grant Contract.

Procurement

20. Before you start any phase of the work needed to achieve the Approved Purposes, you must put in place all necessary contracts with appropriately qualified contractors and professional advisers to allow you to finish that phase of the work. Building contracts must contain a clause which allows you to retain part of the contractors' fees until ~~on~~ practical completion of the works. If you want any contracts to be on different terms, you must get our approval beforehand.
21. If the Approved Purposes involve buying goods or services or getting work done, you must carry out a tendering exercise in line with the requirements set out in Receiving a Grant and any Other Guidance.

Property

22. You must continue to own the Property and keep exclusive control over what happens to it provided that ownership or control by a partner to the Project (who has signed a Collaboration Agreement) will be permitted. Other than as permitted under clause 31 (Digital Outputs), from the date hereof you must not sell, let or otherwise part with it or any interest in it, or give any rights over it to anyone else (or take any steps to do so) without our approval beforehand, save those parts of the Property which are already let as at the date hereof and

which leases fall to be renewed during the Term of the Grant Contract. If we give you our approval, it may depend on any of the following requirements:

- (a) that you pay us a share of the net proceeds of selling or letting the Property within one month of parting with the assets or other goods;
- (b) that you sell or let the Property at its full market value;
- (c) any other conditions we think fit.

We may claim from you an amount in the same proportion to the sale price as the Grant is to the original cost of the Approved Purposes, or the portion of the Grant spent on the assets or goods concerned, whichever is the greater. You must pay whatever we decide is appropriate in the circumstances. We may decide not to ask you to repay the Grant (or any part of it as we think fit) for any reason but it is for us to decide that.

- 23. You must maintain the Property in good repair and condition, unless such repairing liability is the responsibility of a leaseholder or third party. If the Approved Purposes include creating, repairing or restoring property, you must maintain or ensure that the Property is maintained in good repair and condition after the work has been done. If the Approved Purposes include the preparation of a maintenance and management plan or a conservation management plan, you must maintain, manage or conserve the Property or ensure that the Property is maintained, managed or conserved in accordance with the version of the relevant plan that we have approved.
- 24. You must insure the Property to the standard set out in (and use any proceeds of the insurance in line with) the Programme Application Guidance and Receiving a Grant unless such insurance and reinstatement is the responsibility of a leaseholder or third party.
- 25. You must keep any objects or fixtures that form part of the Property in a physically secure and appropriate environment unless this is the responsibility of a leaseholder or third party.
- 26. You must tell us, in writing, within five working days about any significant loss or damage to the Property of which you are made aware by a leaseholder or third party in occupation.
- 27. You must arrange for or use reasonable endeavours to ensure that the general public to have appropriate access to the Property. You must make sure that no person is unreasonably denied access to the Property.

Publicity and Acknowledgement

- 28. Once we have announced the Grant, you must acknowledge the Grant publicly in line with the requirements set out in the guidelines on our website and this Grant Contract. You must meet any other acknowledgement or publicity requirements we may tell you about from time to time. Before we make any public announcement of the Grant, you must not issue any public statement, press release or other publicity in relation to the Grant or which refers to us,

other than in a form we have approved beforehand. We may make the purpose and amount of the Grant public in whatever way we think fit.

29. All grant recipients must acknowledge our support publicly and make it clear the funding has been made possible thanks to National Lottery players. Your acknowledgement must be prominent, visible and proportionate to the size of Grant.
- (a) Acknowledgement includes, but is not limited to, displaying our 'Made possible' stamp or logo prominently in your project, and using the message 'Thanks to National Lottery players'.
 - (b) All grant recipients must acknowledge our support publicly for the Term of the Grant Contract. Where permanent or long-lasting spaces, places or items (in-person or virtual) have been created, permanent acknowledgement should be used.
 - (c) We also ask recipients with publicly accessible space to provide special access and/or offers for National Lottery players as part of National Lottery Open Week.
 - (d) Full details on how to acknowledge your funding, and use of The National Lottery Heritage Fund branding within your Project and across your communications are available on our [website](#).
 - (e) To support our work to promote National Lottery funding and demonstrate the value of heritage, we may ask you to contribute to publicity activities and share learning from your project.
 - (f) We expect you to let us know about milestones and other newsworthy aspects of your projects, so that we can consider opportunities for joint publicity.
 - (g) Our communications team may also request your involvement in UK national, country and/or regional PR. This will require you to provide photographic/film assets and a spokesperson for quotes and interviews.
 - (h) We expect you to amplify any stories in the media via your website, social media and other relevant platforms and networks.
30. Photographs and film footage really help us maximise the reach and impact of our funding through the media. Please share with us any high-quality imagery you produce in your project. If your imagery includes people, you must gain their permission (or that of parents or guardians for children under 16) before you submit them to us. You agree to ensure that you have the written consent of the copyright owner of any assets you send to us so that we may use any of them to represent the Project across our own digital channels and in the media. It is a condition that all Digital Outputs produced with grant funding, including photographs, are shared under our default open licence (Creative Commons Attribution 4.0 or CC-BY 4.0), except where an agreement has been put in place. You can find out more about our licensing requirement on our website: [Digital guide: working with open licences | The National Lottery Heritage Fund](#).

Digital Outputs

31. You agree to:

- (a) grant us a non-exclusive, royalty free licence to use, copy, keep and disseminate the Digital Outputs as we see fit and to grant sub-licences of the same kind for the Term of the Grant Contract.
- (b) apply a Creative Commons Attribution 4.0 International (CC BY 4.0) Open Licence or equivalent, to all grant funded Digital Outputs, with the exception of code and metadata, and not including public domain assets or non-original digital reproductions of public domain assets (see below).
- (c) clearly identify and apply Creative Commons 0 1.0 Universal (CC0 1.0) Public Domain Dedication, or equivalent to:
 - (i) code and metadata created in the course of the project; and
 - (ii) public domain assets or non-original digital reproductions of public domain assets.
- (d) obtain and maintain in force all authorisations of any kind required for you to apply the relevant Open Licence or Public Domain Dedication (CC BY 4.0 or CC0 1.0).
- (e) contract to the effect that any creation by you or on your behalf of material which forms Digital Outputs is undertaken on terms that either the copyright in the digital material is assigned to you or that the copyright owner agrees that material may be shared under a CC BY 4.0 Open Licence or equivalent.
- (f) ensure that the Digital Outputs are kept up-to-date, function as intended and do not become obsolete before the twentieth anniversary of the Project Completion Date.
- (g) comply with this Grant Contract in relation to the digital files that make up the Digital Outputs for the Term of the Grant Contract. For the avoidance of doubt, this includes ensuring free and unfettered online access to the Digital Outputs. You must not release your project's Digital Outputs on other terms without our prior written consent.

Grant Payment and Repayment

32. We will, up to the Grant Expiry Date, pay you the Grant or any instalment of it in line with this Contract and the procedures explained in Receiving a Grant as long as:

- (a) the National Lottery continues to operate under the National Lottery etc. Act 1993 (as amended from time to time), and enough funds are made available to us under the Act; and

- (b) we are satisfied that you are achieving (and will continue to achieve) or have achieved the Approved Purposes in line with this Contract and that you are spending the Grant in proportion to any other funds you receive from other sources for the Approved Purposes.
- 33. You acknowledge that the Grant is the total amount of funds we will provide and will not be increased as the result of you overspending or for any other reason.
- 34. You must repay to us immediately any Grant that we have paid you (and we will stop any future instalments of the Grant) if:
 - (a) you no longer operate, or you are declared bankrupt or placed into receivership or liquidation;
 - (b) you have, in our opinion, given us fraudulent, incorrect or misleading information;
 - (c) you have acted negligently in any significant matter or fraudulently in connection with the Approved Purposes or the Approved Usage;
 - (d) any competent authority directs the repayment of the Grant;
 - (e) there is a significant change in your status;
 - (f) you knowingly withhold information that is relevant to the content of your Application and Project;
 - (g) you do or fail to do anything that brings us or the National Lottery into disrepute or which we consider for any reason puts public funds at risk or we terminate or suspend any other grant we have given you;
 - (h) you fail to make good progress with the Project or are unlikely in our view to complete the Project or achieve the outcomes agreed with us:
or
 - (i) you fail to keep to any of the terms of this Grant Contract.
- 35. In the event of breach of any of the terms of this Grant Contract, it shall be for us, acting reasonably:
 - (a) to determine whether the breach is capable of remedy;
 - (b) if the breach is considered by us to be capable of remedy, to notify you of the period within which the breach must be remedied to avoid the Grant becoming repayable in accordance with clause 34.
- 36. If you achieve the Approved Purposes without spending the full amount of the Grant, you must pay back the part of the Grant you have not spent. We will treat you as spending the Grant in proportion to other funds you were due to receive from other sources for the Approved Purposes.

37. If you sell or otherwise part with all or part of the Property without our permission under clause 22 or you receive money in some other way as a result of not complying with this Grant Contract, you may have to pay us immediately a share of the net proceeds if that share is more than the amount we would otherwise be entitled to under clause 22.

Freedom of Information

38. You acknowledge that we are subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 and shall assist and co-operate with us (at your expense) to enable us to comply with these information disclosure requirements.

Data Protection

39. You shall (and shall procure that any of your staff or partners involved in connection with the Project) comply with all relevant obligations under the UK General Data Protection Regulations and Data Protection Act 2018 which arise in connection with this Grant Contract.

General Terms

40. You may not, and must not claim to, transfer the Grant or any rights under this Grant Contract.
41. You must take all steps and sign and date any documents as may be necessary to carry out your obligations under this Grant Contract and to give us the rights granted to us under them.
42. If there is more than one of you, any liability under this Grant Contract will apply to you all together and separately.
43. We may rely on any of our rights under this Grant Contract at any time, even if we do not always choose to do so immediately. If we decide not to rely on one right, we may still rely on any of our other rights under this Grant Contract.
44. If you need our approval for anything, you must write to us to ask for it. You may only rely on any approval needed under this Grant Contract if we (or anyone we authorise) give it to you in writing.
45. Any documents you need to send us under this Grant Contract are for our own purposes only. If we approve or accept any documents, this does not mean that we have approved or accepted them for any other purpose.
46. The terms of this Grant Contract cannot be enforced by anybody other than you or us.
47. You will follow a whistleblowing process to report if the dignity, safety, security and well-being of end-users is not met.

48. You will behave ethically by following the [7 principles of public life](#) and make sustainable choices to reduce the Approved Purposes' impact on the environment.
49. You will follow the government [Code of Conduct](#) that sets out standards of behaviour for people or organisations that receive government grants.
50. You must tell us in writing as soon as possible of any investigation concerning your organisation, trustees, directors, employees or volunteers carried out by the Police, Charity Commission, H M Revenue & Customs or any other regulatory body.
51. You must tell us in writing as soon as possible if any legal claims are made or threatened that would adversely affect the Approved Purposes and Approved Usage (including any claims made against members of your governing body or employees).
52. Our staff, Trustees and advisers cannot give you professional advice and cannot be held responsible for any action you take, any action you fail to take, or for your debts or liabilities. You will be fully responsible for every part of the Approved Purposes and Approved Usage, your organisation and the decisions taken about it.
53. We reserve the right to introduce new requirements, guidance and/or additional conditions and to amend this Grant Contract.

APPENDIX 1

Additional Grant Conditions

For the purposes of these Additional Grant Conditions, “the Property” means:

- Mount Batten Peninsula registered under title number DN342637
- The Garden Battery, Mount Edgcumbe Estate registered under title number CL307856
- Tinside Lido registered under title numbers DN543815 and DN192619

1. Local-Authority Grantee

(a) Within 28 days of the date of the Grant Notification Letter, you must send us a certified copy (signed to confirm it is a true copy) of the document recording your decision (or the decision of the relevant properly constituted committee, executive or authorised officer) authorising you to accept the Grant Contract, together with a statement containing the information set out below. The statement must include the following information:

- i. the power (statutory or otherwise) you have and which you have used to accept the Grant Contract;
- ii. an extract of that part of your policy framework under which you have accepted the terms of the Grant Contract;
- iii. the executive arrangements under which your decision to accept the Grant Contract was made;
- iv. the considerations that you took into account in using the powers and the procedure under which any consultation took place and the decision was made;
- v. the authority under which the declaration forming part of the Application has been signed on your behalf.

(b) You must (if we think it is necessary) confirm your decision in whatever way we direct. Within seven days of confirming, you must send us evidence of this.

(c) We may withdraw the Grant (after considering the matters referred to above) if we are not satisfied that the Grant Contract is valid and binding on you.

(d) Within 21 days of sending us the document and information needed under paragraph 1(a) (or evidence of the confirmation of the decision in line with paragraph 1(b)), we may ask that you get the written opinion of a barrister, in a form satisfactory to us, asking for their opinion on whether:

- i. the powers you are relying on in accepting the Grant Contract do allow you to enter into these arrangements;

- ii. you have followed correctly all procedural requirements in using those powers and have acted in a reasonable and proper way; and
- iii. you have taken account of only, and all, relevant considerations in using those powers.

You must send us the barrister's opinion and make sure that it is addressed to us as well as to you. You must also make sure that the barrister confirms we may rely on his or her opinion for our own purposes.

- (e) You acknowledge that neither any documents or information that you send us, nor the fact that we may then have paid you part of the Grant, will affect our right to rely on the promise in paragraph 1(f) below.
- (f) You promise that:
 - i. you have the authority to accept the terms of the Grant Contract;
 - ii. in using that authority you have acted in good faith, in a reasonable and proper way, for a proper purpose, without breaking any procedural requirement and in considering only (and all) relevant considerations; and
 - iii. your decision to accept the terms of the Grant Contract is one that any reasonable local authority (applying the laws that are relevant to it) could have reached.
- (g) Within one month of the end of each of the 10 years after you finish the Project, you must send us detailed accounts, certified by your chief finance officer, showing the funding and resources you used on the Property in the year before.

2. Restriction on Title

- (a) Within 28 days of the date of Permission to Start, you must apply to the Land Registry, or ensure that each partner to the Project (who has signed a Collaboration Agreement) applies to the Land Registry for a restriction to be entered against each Property listed in these Additional Grant Conditions using the following wording:

“No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the Trustees of the National Heritage Memorial Fund of 4th Floor, Cannon Bridge House, 25 Dowgate Hill, London EC4R 2YA or their conveyancer.”

- (b) Your solicitor must forward us updated Office Copies as soon as the restriction has been registered at HM Land Registry.

3. Letting Clause

- (a) Despite clause 22 of the Grant Contract, you may lease or let part or parts of the Property (save parts of the Property which are already let as at the

date of this Grant Contract) for purposes which are consistent with the Approved Usage and for any periods we have first approved. However, the leases or lets must always be at a full market rent (unless they are lease renewals at a previously agreed nominal rent) and you must use the rental income for the purpose of carrying out the Approved Purposes or generally for the benefit of the Property.

.....
Signed on behalf of the Trustees of The National Heritage Memorial Fund

.....
(please print your name and give your job title)

.....
Signed on behalf of Plymouth Council

.....
(please print your name and give your job title)