

**DATED [24] DECEMBER 2020**  
**FUNDING AGREEMENT**

**Between:**

**THE MINISTER FOR PUBLIC EXPENDITURE AND REFORM**

**and**

**BENEFACTS**

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**THIS AGREEMENT** is made on the \_\_\_ day of December 2020 **BETWEEN**

**(1) THE MINISTER FOR PUBLIC EXPENDITURE AND REFORM,  
Government Buildings, Upper Merrion Street, Dublin 2 (the “Minister”);**

and

**(2) BENEFACTS, a company registered in Ireland No. 553387 having its  
registered office at 6 Merrion Square, Dublin 2 (the “Company”).**

(each a “Party” and together the “Parties”)

#### **WHEREAS**

- A) The Minister and the Company previously entered into funding agreements dated 3<sup>rd</sup> March 2015 and 17th December 2017 concerning the funding and delivery by the Company of the project described in those agreements over the period 3<sup>rd</sup> March 2015 to 31 December 2020.
- B) It has been agreed that Minister will provide funding for the Project on the terms set out below.
- C) The rationale for grant funding is to provide for further innovation in promoting public trust and confidence in non-profits, to promote greater transparency in public expenditure and support greater policy coherence in public policy vis-à-vis the work of non-profits.
- D) This Agreement sets out the terms and conditions under which the Company will receive the grant from the Minister. These terms and conditions are intended to ensure that the said grant is used for the purpose for which it has been awarded.

#### **AGREED TERMS**

##### **1. DEFINITIONS**

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

**Benefacts Database:** the extensive database of regulatory, governance and financial information about non-profit organisations in Ireland, created and maintained by the Company.

**Board:** the Board of Directors of the Company

**Commencement Date:** 1<sup>st</sup> January 2021

**DPER:** The Department of Public Expenditure & Reform

**DPER Circular:** The circular of the Department of Public Expenditure and Reform No. 13/2014 concerning management of and accountability for grants from Exchequer Funds.

**Grant:** the sum of €950,000 (nine hundred and fifty thousand euro) to be paid to the Company by the Minister subject to the conditions set out in this Agreement.

**Grant Period:** the period from the Commencement Date of 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2021.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including Know-How and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Know-How:** information, data, know-how or experience and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale.

**Project:** Activities as set out in this Agreement in order to promote the visibility, transparency and accountability of Irish non-profit organisations.

**Project Advisory Committee:** the committee convened by the Minister in accordance with clause 9.2.

1.2 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

2. **AGREEMENT**

The Company has agreed to observe and comply with the conditions herein contained.

3. **DURATION**

This Agreement shall commence on the Commencement Date and continue in force, unless terminated in accordance with this Agreement, for the Grant Period.

#### **4. PAYMENT OF GRANT**

- 4.1 Subject to and in consideration of the terms of this Agreement, the Minister shall pay the Grant to the Company during the Grant Period on the basis of vouched expenditure in accordance with DPER Circular 13/2014 or any superseding circular.
- 4.2 The Grant monies shall be paid into a separate bank account in the name of the Company, which shall be an ordinary business bank account.
- 4.3 The Minister shall be under no obligation to pay the Grant or any funding under this Agreement and the availability and amount of any funding made available under this Agreement is subject to change at the Minister's sole discretion at any time and for any reason including (but not limited to) the general availability of exchequer funds, provided, however, that the Minister shall give at least three months' written notice to the Company of his or her intention to invoke this provision.
- 4.4 Payment of the Grant or any part thereof shall at all times be conditional on and subject to:
- 4.4.1 the Minister being satisfied that such payment will be used for proper expenditure for the delivery of the Project.
  - 4.4.2 the Company being in possession of a valid tax clearance certificate and in compliance with all relevant taxation law.
  - 4.4.3 compliance by the Company with the terms of this Agreement.
  - 4.4.4 use by the Company of the Grant solely for the purposes of the Project.
- 4.5 The Company shall comply at all times with all applicable laws including without limitation all employment legislation, data protection legislation, freedom of information and all requirements of law pertaining to its legal status.
- 4.6 The Minister shall have no further or other financial obligation under this Agreement.

#### **5. PURPOSES OF THE GRANT**

- 5.1 The Company shall use the Grant solely for the delivery of the Project. The Grant shall not be used for any other purpose without the prior written consent of the Minister.
- 5.2 The Company warrants to the Minister that it shall apply the Grant funds wholly and exclusively for the purposes of the Project.

- 5.3 Under the terms of a policy to be adopted by the Board, the Company will make prudent provision in its annual budgets for operating reserves.
- 5.4 The Company shall not use the Grant to:  
a) make any payment to members of the Board except by way of reimbursement of expenses necessarily incurred for the purposes of the Project b) purchase buildings or land; or c) pay for any expenditure commitments of the Company entered into before the Commencement Date, unless this has been approved in writing by the Minister.
- 5.5 The Company shall not spend any part of the Grant after the Grant Period.
- 5.6 Should any part of the Grant remain unspent at the end of the Grant Period, the Company shall ensure that any unspent monies are returned to the Minister, unless otherwise agreed in writing between the Parties.

## **6. ACCOUNTS AND RECORDS**

- 6.1 The Company shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of all of grants and donations received by it, from whatever source.
- 6.2 The Company shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of all grants and donations received by it for a period of at least six years following receipt of the same.
- 6.3 The Company shall comply with all applicable statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns.
- 6.4 The Company shall provide to the Minister a copy of its annual accounts within 6 months (or such lesser period as the Minister may reasonably require) of the end of the relevant financial year in respect of the year in which the grant was paid.
- 6.5 The Grant shall be shown in the Company's accounts as restricted funds and shall not be included under general funds.

## **7. FINANCIAL REPORTING**

- 7.1 The Company shall on request provide the Minister with such further information, explanations and documents as the Minister may reasonably require in order to establish that the Grant monies have been used properly in accordance with this Agreement.
- 7.2 The Company shall permit the Minister to review, at the Minister's reasonable request, the Company's accounts and records that relate to the application of the Grant monies and to take copies of such accounts and records.

- 7.3 The Company shall make its financial records available for inspection to the Comptroller and Auditor General, as and when required, in accordance with the provisions of the DPER Circular.
- 7.4 The Company shall closely monitor the delivery and success of the Project throughout the Grant Period to ensure that its aims and objectives are being met and that this Agreement is being adhered to.
- 7.5 The Company shall keep minutes of all meetings relating to this Agreement and certified copies of such minutes shall be sent to the Minister.

## **8. ADDITIONAL REVENUES AND GRANTS**

- 8.1 The Company is committed to securing additional revenues and shall use its best endeavours to secure such revenues so that these are available as and when required, in order to conduct its activities during the Grant Period.
- 8.2 It is agreed that revenues from Government agencies and other third parties other than for the core activities listed in clauses 10.1 (a) - (e) will be treated as additional to the Grant and will not be offset against or otherwise act to reduce the Grant.

## **9. GOVERNANCE OF THE COMPANY**

- 9.1 The Company has been incorporated as a company limited by guarantee without a share capital. The Company shall deliver the Project in accordance with its constitution.
- 9.2 A Project Advisory Committee shall be convened by the Minister, whose purpose will be to monitor the Project.
- 9.3 Without prejudice to the generality of the foregoing, the Board of the Company shall be responsible for its direction and general governance, as specified in the Company's constitution.

## **10. PROJECT ACTIVITIES**

10.1 The purpose of the Project during the Grant Period is:

- a) The Continued updating of the Benefacts Database;
- b) The continued public availability of the Benefacts Database on a website;
- c) The provision of a quarterly updated file to the Central Statistics Office;

- d) The provision of a web service linking data from the Benefacts Database to the analysis screens of officials of the Revenue Commissioners;
  - e) The publication of a daily-updated file listing all of the non-profits in the Benefacts Database of Irish non-profits and providing machine-readable files on the Irish Government's Open Data portal [www.data.gov.ie](http://www.data.gov.ie)
- 10.2 During the Grant Period, the Company shall provide the Minister, and other Government Departments or agencies nominated by the Minister, with any information requested concerning its activities associated with the Project, described at 10.1, required to facilitate the potential undertaking of similar activities by a public body.
- 10.3 During the Grant Period, the Company shall endeavour to secure additional revenues and grants as provided for in clause 8.

## **11. ACCOUNTABILITY**

- 11.1 The Company shall closely monitor the delivery and success of the Project throughout the Grant Period to ensure that its aims and objectives are being met and that this Agreement is being adhered to.
- 11.2 The Company shall comply with its obligations under Directives 2014/24 EU on public procurement as implemented in Ireland by SI 284/2016 the European Union (Award of Public Authority Contracts) Regulations 2016 and will all guidance notes and circulars published by the Office of Government Procurement.

## **12 ACKNOWLEDGMENT AND PUBLICITY**

- 12.1 The Company shall acknowledge the Grant in its annual report and accounts, and in any written or spoken public presentations. Such acknowledgements (where appropriate or as requested by the Minister) shall, with the prior written approval of the Minister, include the Minister's name and logo using such templates as may be provided by the Minister from time to time.
- 12.2 The Company agrees to participate in and co-operate with promotional activities relating to its work that may be instigated and/or organised by the Minister.
- 12.3 The Minister may acknowledge the Company's work in an appropriate manner without prior notice.
- 12.4 The Company shall comply with any reasonable requests from the Minister to facilitate reports, statistics and case studies compiled or conducted by the Company.



### **13 INTELLECTUAL PROPERTY RIGHTS**

- 13.1 All Intellectual Property Rights, Know-How, and all right, title and interest in or to any information, data, reports, documents, procedures, forecasts and technology howsoever generated by the Company or in which the Company has secured an interest for the purposes of the Project, shall belong to the Company.
- 13.2 Notwithstanding the provisions of 13.1, the Company agrees that in the event of non-continuance its work after the Grant Period, the Company shall give the Minister free access to all of the data generated from regulatory (public) disclosures and data voluntarily disclosed by public service bodies.

### **14 CONFIDENTIALITY**

- 14.1 Subject to clause 15 (Freedom of Information), each party shall during the term of this Agreement and thereafter keep secret and confidential all Intellectual Property Rights or Know-How or other business, technical or commercial information disclosed to it as a result of the Agreement and shall not divulge 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 disclosing party.
- 14.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to information which 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.

### **15 FREEDOM OF INFORMATION**

The Company acknowledges that the Minister is subject to the provisions of the Freedom of Information Act 2014. In the event of the Minister receiving a request for information related to the Company, the Minister shall take reasonable steps to consult with the Company in respect of such information and the Company shall cooperate with the Minister in relation to the processing of the request, notifying the Minister of any information which the Company considers to be confidential or commercially sensitive. The Minister shall however determine in his/her sole discretion whether any information should be disclosed under the Freedom of Information Act.

### **16 OPEN DATA**

The Company will facilitate initiatives and assist public bodies in giving expression to the Open Data policies.

## **17 DATA PROTECTION**

Each party shall, at its own expense, ensure that it complies with and assists the other party to comply with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018 as well as (ii) the General Data Protection Regulation ((EU) 2016/679), any other directly applicable European Union regulation relating to data protection.

## **18. LIMITATION OF LIABILITY**

- 18.1 The Minister accepts no liability for any consequences, whether direct or indirect, that may come about from the Company delivering the Project or using the Grant, or from any withdrawal, suspension termination or amendment of the Grant or part thereof.
- 18.2 Notwithstanding anything herein contained, the Minister shall not be liable for any claim howsoever arising as a result of the negligence, breach of duty, breach of statutory duty or breach of contract on the part of the Company, its servants, agents, licensees or invitees in its operation of this Agreement.
- 18.3 The Company shall indemnify and hold harmless the Minister, his servants and agents against all claims, demands, expenses, actions, costs, expenses, losses, damages and all other liabilities and proceedings arising directly or indirectly from any breach of contract, negligence, act, omission, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of the Company, its employees, subcontractors or agents or from any death of or injury to any person or damage to property arising directly or indirectly from the carrying out by the Company of its obligations and activities under this Agreement.

## **19 CONFLICTS, REGISTERABLE INTERESTS & CORRUPT GIFTS**

- 19.1 The Company confirms that it has carried out a conflicts of interest check and is satisfied that it has no conflicts in relation to its obligations undertaken under this Agreement. The Company hereby undertakes to advise the Minister forthwith should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Minister's directions in respect thereof.
- 19.2 Any registrable interest involving the Company and the Minister, the Ceann Comhairle (Speaker), or any member of the Government, or any member of the Oireachtas, or their relatives must be fully disclosed by the Company to the Minister immediately upon such information becoming known to the Company and the Company undertakes to comply with the Minister's directions in respect thereof, to the satisfaction of the Minister. The terms "registrable interest" and

“relative” shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995 (as amended).

- 19.3 The Company shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this clause 19 or the commission of any offence by the Company, any subcontractor, agent or employee under the Criminal Justice (Corruption Offences) Act 2018 shall entitle the Minister to terminate this Agreement forthwith and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Company of the amount or value of any such gift, consideration or commission.

## 20 WARRANTIES

The Company warrants, undertakes and agrees that:

- a) it has all necessary resources and expertise to deliver the outcomes specified in clause 10 herein (assuming due and timely receipt of the Grant),
- b) it shall at all times comply with all relevant legislation and all applicable regulations, and the requirements of the DPER Circular including the requirement where relevant for contracts to be subject to competitive tender, process, which will be discharged honestly, fairly, and in a manner that secures best value for public money and that it shall notify the Minister immediately of any significant departure from any such legislation, regulations or requirements,
- c) it shall comply with the requirements of Health and Safety legislation and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working for it,
- d) it shall comply with data protection legislation, as set forth in clause 17 and any amendments thereto,
- e) it has and shall keep in place adequate procedures for dealing with any conflicts of interest,
- f) it has and shall keep in place systems to oversee financial controls, and to deal with the prevention of fraud and/or administrative malfunction,
- g) all financial and other information concerning the Company which has been disclosed to the Minister is to the best of its knowledge and belief, true and accurate,
- h) 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 under this Agreement.

- i) it has full power and authority to enter into this Agreement and to carry out its obligations and responsibilities under this Agreement.

## **21 INSURANCE**

21.1 The Company shall effect and maintain with a reputable insurance company or companies policies of insurance which shall include:

- public liability insurance with a limit of indemnity of not less than six million five hundred thousand euros (€6,500,000) in relation to any one claim or series of claims arising from the Project,
- employer's liability insurance with a limit of indemnity of not less than twelve million seven hundred thousand euros (€12,700,000) in relation to any one claim or series of claims arising from the Project,
- directors' and officers' Insurance.

21.2 The Company shall (on request) supply to the Minister a copy of such insurance policies and evidence that the relevant premiums have been paid.

## **22 ASSIGNMENT**

The Company may not, without the prior written consent of the Minister, 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 a Grant. The Minister may assign this Agreement to any other Government Minister or public service body.

## **23 NOTICES**

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, e-mailed, 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 or if e-mailed, 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.

## **24 WITHHOLDING, SUSPENSION OR REPAYMENT OF GRANT**

24.1 Subject to the terms of this Agreement, the Minister's intention is that the Grant will be paid to the Company in full.

24.2 The Minister may at its discretion withhold or suspend payment or require repayment of all or part of the Grant or part thereof if:

- 24.2.1 the Company uses the Grant or part thereof for purposes other than those for which it has been granted;
  - 24.2.2 the Company provides the Minister with any materially misleading or inaccurate information;
  - 24.2.3 the Minister considers that the Company has not made sufficient progress with the delivery of the Project.
  - 24.2.4. any member of the Board, employee or volunteer of the Company has acted (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 Minister, being or likely to bring the Minister's name or reputation into disrepute and the effect of the same has not been sufficiently mitigated by the Company.
- 24.3 The funds to be made available pursuant to this Agreement are made available by way of grant and any part of the said funds which are unspent or were not spent on the delivery of the Project shall immediately become repayable by the Company but without interest, charges or other expenses.
- 24.4 Should the Company 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 Minister as soon as possible so that, if possible, and without creating any legal obligation, the Minister will have an opportunity to consider what remedies might be available to resolve the problem or to take action to protect the Minister and the Grant monies.
- 25. REVIEW**
- 25.1 The operation of this agreement will be independently reviewed by each party at the end of March, June and September 2021.
- 25.2 If as a result of his or her review the Minister were to conclude that he or she is dissatisfied with the operation of the agreement and/or the Company concludes that it cannot continue to commit to the obligations in the agreement, either party may give three months' notice of termination to the other, on the expiry of which the agreement terminates.
- 26. TERMINATION**
- 26.1 The Minister may terminate this Agreement and any Grant payments on giving the Company 3 months written notice should it be required to do so by financial constraints or for any other reason.
- 26.2 The Minister may terminate this Agreement and any Grant payments forthwith in the event of a material breach of the terms hereof which is not capable of remedy and, in case the breach is capable of remedy, the Company has failed

upon receipt of notice to remedy the breach within a reasonable period, upon expiry of such notice.

**26.3 This Agreement shall automatically terminate:**

**26.3.1** upon the expiry of the Grant Period;

**26.3.2** in the event that the Company 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);

**26.3.3** in the event that the Company becomes insolvent, or it is declared bankrupt, or it is placed into receivership, examinership 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.

**26.3.4** in the event of termination of this Agreement pursuant to clause 25 and 26 hereof, the Minister shall thereupon be relieved of any further obligation to provide Grant funds to the Company.

**27. CONSEQUENCES OF TERMINATION**

Upon the termination of this Agreement, the following clauses shall continue in force: 6.2 (retention of invoices), 13.2 (access to data) 14 (confidentiality) and 18 (limitation of liability).

**28. DISPUTE AND CONFLICT RESOLUTION**

Subject to the Parties' respective rights to apply to the courts upon any cause of action at any time, the Parties shall seek to resolve any disputes between them, arising out of or relating in any way to the issues covered by the Agreement, amicably.

**29. NO PARTNERSHIP OR AGENCY**

**29.1** This Agreement shall not create any partnership or joint venture between the Minister and the Company, 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.

**29.2** The Company shall at all times be an independent contractor for the purpose of this Agreement and the relationship of principal and agent shall not exist between the Minister and the Company. For the avoidance of doubt it is expressly declared and confirmed that it is not the purpose or intention of this Agreement to create, nor shall the same be construed as creating any commercial or other partnership or fiduciary relationship between the Minister and the Company.

29.3 The employees of the Company are not, and shall not hold themselves out to be (and shall not be held by the Company) as being servants or agents of the Minister for any purposes whatsoever.

29.4 It is an express condition of this Agreement that the responsibility for recruitment and management of staff to work on the Project shall be a matter for the Company. For the avoidance of doubt all employment contracts shall be entered into between the Company as employer and the Company staff as employees. It is hereby acknowledged and confirmed that no employment relationship is hereby created or deemed to be created or shall at any time be created between the Minister and the Company directors, officers, and/or staff arising from or pursuant to this Agreement and the Company shall ensure that this is expressly acknowledged by the Company directors, offices and/or staff within their contract of employment with the Company.

**30. FURTHER ASSURANCES**

Each party shall, and shall use all reasonable endeavors to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

**31. SEVERANCE**

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

**32. VARIATION**

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

**33. WAIVER**

No failure or delay by either Party to exercise any right or remedy under this Agreement shall be construed as a waiver of that or any other right or remedy.

**34. GOVERNING LAW**

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

**35. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding between the parties in relation to the Grant and supersedes any previous agreement or understanding between them in relation to such subject matter.

IN WITNESS of which this Agreement has been signed by duly authorised representatives on behalf of the parties on the day and year first stated above.

SIGNED BY: Lucy Fallon-Pyane

21/12/2020

being an Officer so authorised by the  
**Minister for Public Expenditure and Reform**  
under section 15(4) of the Minister's and Secretaries  
Act, 1924  
[MINISTER]

In the presence of: Emma Pyane  
Witness:

SIGNED BY: Seán Smearay

being an Officer so authorised by the Board of  
**BENEFACTS**

In the presence of: [Signature]  
DIRECTOR





