



EB Scotland Limited (EBS)

Funding Terms and Conditions

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Most of these terms and conditions apply to all funding offers. Some, however, apply to certain categories of funding or to co-funded projects. The left-hand column shows which terms and conditions apply to which categories of project.

Clause headings and the use of bold type in these terms and conditions are for ease of reference only and do not affect the interpretation of any provision.

Application	Terms and Conditions
	1. PRE-CONDITIONS AND REPRESENTATION
1.1. All	1.1 We shall not be under any duty to begin to provide any funding to you until we are satisfied that the pre-conditions have been met.
1.2. All	1.2 If we do decide to begin to provide any funding before we are satisfied that the pre-conditions have been met this will not in any way affect our right to refuse to release any further funding before we are satisfied that the pre-conditions have been met.
1.3. All	1.3 The pre-conditions are:- 1.3.1 that the project has been registered by ENTRUST through the LCF, or enrolled by EBS through the SLCF 1.3.2 that all consents are in place and a copy has been forwarded to us . 1.3.3 that any information reasonably requested by us has been provided and is satisfactory.
1.3.4 co-funded projects only	1.3.4 where relevant that you shall have produced satisfactory evidence that all co-funding for the project as set out in Schedule Four is in place.
1.3.5 Contributing Third Party Projects Only	1.3.5 where relevant that you have identified a Contributing Third Party and the donation that they have agreed to make has been received by us .
1.3.6. All	1.3.6 that you shall (if so requested) have granted to us a first legal charge over the project assets .

1.4. All 1.4 **You** represent and warrant to **us** that all information (including the information set out in the Schedules) supplied to **us** in contemplation of this **agreement** was true as at its date and does not omit anything material and that no change has occurred since the date of the information already supplied which renders it untrue or misleading and all projections and statements of belief and/or opinion given by **you** to **us** have been made in good faith and after careful enquiry.

1.5 Registered Environmental Bodies Only 1.5 **You** will record all **income derived** from funding provided to **you** by **us** in the manner laid down by **Entrust** in their guidance. **You** will report such income on an annual basis to **Entrust**

1.6 All 1.6 **You** will confirm that any **income** resulting from our funding to **you** will only be spent in the furtherance of the project for which the funding was awarded and **you** will keep records of such income which we may inspect on request

2.1. All 2 **Legislation**

2.1 **We** shall not be under any duty to provide any **funding** to **you** at any time when:-

2.1.1. it would be unlawful to do so for any reason;

2.1.2. **we** are no longer enrolled as an **environmental body**;

2.1.3. a **default event** has occurred;

2.1.4. **we** have insufficient funds available to **us** from amounts received pursuant to the **regulations** to enable **us** to do so having regard to our determination (made at our absolute discretion) of the relative priorities of all applications for **funding**; or

2.1.5. any of the **pre-conditions** are not continuing to be met.

2.2. All 2.2 it is your responsibility to ensure that your arrangements with any contractors and/or sub-contractors take into account the provisions of the above.

3.1 3 **Procedures for making a claim for Funding**

3.1 When a **milestone** identified in **Schedule One** has been achieved **you** must make a claim for **funding** using the form set out in **Schedule Two**.

3.2. All 3.2 Upon receipt of an application for an amount of **funding** which

must be supported by satisfactory evidence that **you** have incurred that expenditure **we** will with reasonable speed make such enquiries and inspections as may be necessary to satisfy ourselves that the relevant **milestone** has been achieved. When **we** are satisfied we will pay to **you** the amount of **funding** applied for.

4. All **4 Your duties until the submission of a completion statement.**

You accept the following obligation which begins on the date of acceptance of the offer and which lasts until a completion statement in the form set out in **Schedule Five** has been submitted and accepted by **us**:-

you will undertake the **project** in accordance with the **project description** and **Schedule One**;

4.1

4.2 **you** will not grant any right(s) to anyone else over all or any **project assets** without prior written consent;

4.3 **you** will not without our prior written consent make or permit any amendment or addition to or variation of any contract for the **project** and shall enforce each such contract in accordance with its terms:

4.4 **you** will obtain maintain in force and comply with an insurance policy or policies which is/are necessary or advisable to obtain for the purposes of the **project**;

4.5 **you** will obtain maintain in force and comply with all **consents**;

4.6 **you** will give **us** full access to the **project** at all reasonable times;

4.7 **you** will promptly inform **us** of any **default event** as set out in clause 8 below and of anything which might result in any **default event** occurring;

4.8 **you** will submit to **us** a report on the progress of the **project** every three months or at such other intervals as **we** shall required; and

4.9 only applies if there are project assets

4.9 **you** will create and maintain an up to date ledger of all project assets in the form set out in Schedule Three. **You** will send a copy of the ledger to **us** whenever **you** apply for funding or on demand;

4.10 **you** will provide to **us** prior to our making the final payment set out in Schedule One a completion statement in the form set out in Schedule Five together with any further information which **we** may reasonably request.

5. All

5 Your duties at the expiry of the period of time or on the occurrence of a default event under clause 8

You agree either to (at our option):-

5.1 procure as soon as reasonably practicable the sale of any

project asset which is not intended for use by the public following completion of the **project** at the best price reasonably obtainable including taking into account but not limited to any value attributable to goodwill attaching to the **project asset**. Before selling any project asset **we** shall reach agreement with **you** as to the proposed selling price. If **we** cannot agree on the proposed selling price either party may have the selling price determined by the independent valuer appointed by agreement or by the Chairman of the Royal Institution of Chartered Surveyors on the application of either of **us**. **You** will upon sale of any **project asset** remit to **us** the proceeds of such sale (or in the case of a **project asset** partly funded by **us** a fair proportion calculated by reference to the proportion which the **funding** bears to the **total project funding**) net of any reasonable sale costs and net of VAT for which **you** will account directly to H.M. Revenue & Customs within 21 days of receipt; or

5.2 deliver up to **us** (free of charge) possession and ownership of any project asset wholly funded by **us** free of any rights granted to any third party. **You** shall if and when called upon to do so execute any document or take all such action as may be necessary to vest ownership of the project asset in **us**.

6. All **6 Your duties which continue after the submission of a completion statement**

You accept the following obligations which being on the date of acceptance of the offer and which continue to apply after the submission of a completion statement in the form of **Schedule Five** during the **period of time** set out in your **offer letter**:-

- 6.1. All 6.1 **you** shall not disclose to any third party any **confidential information** without our written consent.
- 6.2 **you** shall maintain in reasonable condition (fair wear and tear excepted) all **project assets** for the **period of time** specified in your **offer letter**.
- 6.3 **you** shall procure that any **project asset** purchased using **funding** and intended for use by the public remains open for use by the public for the **period of time** specified in your **offer letter**.
- 6.4 if the **project asset** having been purchased using **funding** ceases to be available for use by the public before the expiry of the **period of time** specified in the **offer letter** then this will constitute a **default event** and will be dealt with under clause 8.4 below

7. All **7 Intellectual Property Rights**

7.1 All **background intellectual property** will belong to the

- party who owned it prior to the date of this **agreement**.
- 7.2 Each party grants to the other a royalty free non-exclusive licence to use that party's **background intellectual property** for the purposes of the **project** only.
- 7.3 Except to the extent otherwise required by the **Regulations** all **intellectual property** rights (other than **background intellectual property** rights) shall vest in **us**. **We** shall grant a royalty free non-exclusive licence to **you** to use such **intellectual property** for the purposes of the project only. **You** shall if and when called upon to do so execute all deeds documents or take all other actions as may be necessary to vest such **intellectual property** rights in **us**.
- 7.4 **We** shall not unreasonably withhold our consent to the grant of a licence to **you** to use and exploit the **intellectual property** rights for commercial purposes subject to such terms (including the payment of licence fees and/or royalties) and conditions as may be agreed between the parties acting reasonably or in default by an independent valuer appointed by agreement or by the Chairman of the Royal Institution of Chartered Surveyors on the application of either of **us**.
- 7.5 **You** shall ensure that work on the project shall only be undertaken by persons who are either employed by **you** under a contract of service or are contractors under a contract for services which provides in either case for the assignment to **you** by such persons of all rights in **intellectual property** created by them during the course of their duties.
- 7.6 Information and findings resulting from the **project** will be Published in the manner and at the times specified in **Schedule One**.

8. All

8 Default Events

- 8.1 The following are **default events** entitling **us** to demand immediate repayment of the **funding**:-
- 8.1.1 a material breach of any duty representation warrant or undertaking by **you** in this **agreement** unless remedied within 10 working dates of notification by **us** to **you** or such other period as shall be agreed between ourselves acting reasonably and taking account of the seriousness of the **default event**.
- 8.1.2 the issue of a statutory demand against **you** and **you** are unable to pay your debts under Section 123 (1) Insolvency Act 1986;
- 8.1.3 the appointment of a receiver administrative receiver or manager of **you** or of a material part of your assets undertakings rights or revenues;
- 8.1.4 the execution of a distress sequestration or other legal process upon the whole or material part of your assets undertakings rights or revenues; or
- 8.1.5 the presentation of an application or petition to a court for an

administration order liquidation winding up or dissolution of **you**.

- 8.1.6 the **project** stops or becomes incapable of delivering its original objectives throughout the **period of time**.
- 8.2 **You** must notify **us** immediately if a **default event** occurs or appears like to occur.
- 8.3 If a **default event** occurs **we** will usually want to discuss with **you** its seriousness and whether it may be remedied. However there is no obligation on **us** to do so.
- 8.4 If a default event occurs at any point during the **period of time** we will be entitled to:-
 - 8.4.1 make all further provisions of **funding** subject to such conditions as **we** may reasonably specify; or
 - 8.4.2 suspend all further provision of **funding**; or
 - 8.4.3 demand immediate repayment of all or any part of the **funding**; or
 - 8.4.4 send to **you** a written request requiring **you** to procure as soon as reasonably practicable the sale of the **project assets** as the case may be to account to **us** for the net proceeds of the sale in accordance with clause 6.5; or
 - 8.4.5 any combination of these up to the maximum value of any **funding** previously provided.

9. All **9 PUBLICITY**

- 9.1 **We** have no objection to **you** publicising the **project**.
- 9.2 If **you** do publicise the **project you** may use the relevant logo in accordance with the approved protocol for its use a copy of which will be made available to **you** at your request.
- 9.3 **We** may make reasonable requests for information from **you** for our own publicity and/or statistical purposes.

10. All **10 OFFER PERIOD**

Unless previously signed by you and returned to **us** the offer constituted by our signing of the **offer letter** remains in force until the expiry of one month from the date on which it is sent to **you** provided it has not been withdrawn before then.

11. All **11 General**

- 11.1 The **agreement** is governed by the Law of Scotland.
- 11.2 Nothing in this **agreement** shall have the effect of creating a relationship of contractor and customer between **us**.
- 11.3 Nothing in this **agreement**:-
 - 11.3.1 will act to impose any obligation or liability on **us** with respect to any actions obligations or liabilities of **you**; or
 - 11.3.2 creates a partnership between **you** and **us**.
- 11.4 The parties acknowledge that no person who is not a party to this **agreement** is intended to benefit from it or to use any right to enforce its terms.

- 11.5 **We** may but **you** may not assign the benefit of this **agreement**.
- 11.6 Notices required to be given under this **agreement** shall be sent by first class post to the relevant address at the head of the **offer letter** and shall be deemed to have been delivered two days after first class posting.

12. All **12 Definitions**

agreement	Is the agreement constituted by the offer letter and your acceptance of that letter and these terms and conditions.
background intellectual property	means any intellectual property which is in the possession of any party to this agreement prior to the date hereof.
co-funding	means the other funds for the project which is to be provided to you by other funders as set out in Schedule Four .
confidential information	is any information of whatever nature relating to the project which is either (a) obtained by you , your partners, employees, agents or advisers in written pictorial or oral form from or pursuant to discussions with any of the partners, employees, agents or advisers of us or (b) prepared by you , your partners, employees, agents or advisers and which contains or otherwise reflects or is generated from the information specified in paragraph (a) above but no information which:- (i) at the time of disclosure is within the public domain; or (ii) after disclosure comes into the public domain other than by reason of breach of any of the undertakings below; or (iii) is already lawfully in your possession.
completion	the date by which your project should have made and received payment for the final claim, unless an extension has been agreed and granted by us and/or the Regulator.
completion statement	a statement of completion of the project to be submitted to us as set out at clause 4.10 and in Schedule Five .
consents	means all consents required without limitation whether under statute any lease contract or charge or otherwise in order to achieve successful completion of the project .
contributing third party (CTP)	someone who makes a payment or undertakes to make a payment to a landfill operator to encourage the operator of contribute to an Environmental Body. A CTP may not benefit uniquely from LCF or SLCF funds.
default event	events of a default as set out at clause 8.

ENTRUST	means the Regulator of Environmental Bodies under the regulations approved by H.M. Revenue & Customs or any successor.
environmental body	means an organisation which is enrolled with ENTRUST under the provisions of Regulation 33 of the regulations .
funding	means any interim payment made by us not exceeding the funding offer.
funding offer	means the maximum sum defined in the offer letter .
income	income resulting from funding awarded to you
income derived	if you are a registered environmental body , you must record any income derived from funds we provide to you and report that to Entrust annually as per their guidance
intellectual property	means any rights (whether registered or not) to technical information, engineering data and samples, biological data and samples, chemical data and samples, material data and samples, computer software, oral and written instructions, diagrams, patents, copyrights and similar information arising directly from the project owned, developed or acquired by any party to this agreement after the date hereof.
LCF	the Landfill Communities Fund
milestone	means the details of a stage of the project set out in Schedule One .
offer letter	the offer letter to which these terms and conditions are attached.
period of time	the number of years specified in the offer letter and as described in clause 6. This means the duration of the project . For other categories this will mean the number of years that the project must remain available to the public. In some cases this will be in perpetuity.
pre-conditions	means the matters about which we must be satisfied before we will be under any obligation to provide any funding as set out in clause 1.3.
project	means the details as defined in the offer letter .
project assets	means all assets (including land and buildings) purchased wholly or in part using funding or monies derived directly or

indirectly from **funding** as set out in **Schedule Three** from time to time.

Regulations	means the Landfill Tax Regulations 1996 or the Scottish Landfill Tax (Administration) Regulations 2015 and any subsequent amendment or re-enactment thereof.
Schedule One	means the Schedule One attached to the offer letter and setting out the milestones for staged funding payments
Schedule Two	means the Schedule Two attached to the offer letter containing information for making claims for funding
Schedule Three	means the Schedule Three attached to the offer letter identifying project assets and as required by clause 4.9 of these terms & conditions.
Schedule Four	means the Schedule Four attached to the offer letter identifying co-funders.
Schedule Five	means the Schedule Five attached to the offer letter requiring the submission of a completion statement .
SLCF	the Scottish Landfill Communities Fund
total project funding	means the total of the funding and any co-funding and any other amount received by you needed for the project .
You	as defined in the offer letter
We/us	as defined in the offer letter