



European Union



The Scottish Government
Riaghaltas na h-Alba

EUROPE & SCOTLAND
European Regional Development Fund
Investing in a Smart, Sustainable and Inclusive Future

Draft Heads of Terms

Green Infrastructure Fund

Guidance for Applicants

July 2016



Disclaimer

Applicants should be aware that as the Green Infrastructure Fund is a new programme, the guidance will be reviewed as the programme evolves and therefore may be subject to change. The European Union and Scottish Ministers reserve the right to amend the National Rules and SNH reserves the right to amend the published guidance during the period of the programme. Decisions to fund Projects will be based on the availability of funding, how well the project matches the Green Infrastructure Fund priorities and its contribution to outcomes as part of the whole Strategic Intervention. These priorities may change during the course of the Strategic Intervention to take into account gaps in meeting priorities in previously funded Projects and not to fund at all. The Scottish Government reserves the right not to award any support at all under this programme.

Version Control

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1. Purpose

The purpose of this Draft Heads of Terms is to set out the key topics expected to be covered by Delivery Contracts with successful applicants. These contracts will be agreed after an Intention to Award letter has been issued and before any eligible activity can commence.

This Draft may be subject to amendment in line with guidance from the Managing Authority (The Scottish Government) and the list of topics to be addressed may vary between Projects. The Draft also provides some explanation of the purpose of the section and links to the relevant Green Infrastructure Fund Guidance. The draft draws on the Offer of Grant between the Scottish Government as the Managing Authority and SNH as the Lead Partner. A list of relevant definitions is provided at the end and reference can also be made to the Glossary published within the Fund guidance for any terms not covered.

2. Draft Heads of Terms

Head	Explanation and draft content	Green Infrastructure Fund Applicant Guidance
Purpose of funding	<p>The Grant is made to enable the Grantee to carry out the Project.</p> <p>The allocated Grant shall only be used for the purposes of the approved Project and for no other purpose whatsoever.</p> <p>No part of the Grant shall be used to fund any activity or material which is party political in intention, use, or presentation or appears to be designed to affect support for a political party.</p> <p>As per the approved Project [title], in line with the approved application, the following provides details of the Grant profile:</p> <ul style="list-style-type: none"> • Total eligible costs: • Total income: • Total new revenue: • Net eligible costs: • Total match funding: • Intervention Rate (%): • Operation Start Date: • Operation End Date: <p>As agreed and monitored by the Lead Partner, the targets of the allocated Grant are as per the final approved project Application form dated [xx]</p> <p>The eligible costs for which the Grant can be used are defined individually as per the final approved Application. It is the responsibility of the grantee to</p>	National Rules

	<p>ensure that these are in line with the published National Rules and Green Infrastructure Fund eligibility guidance.</p> <p>All funds connected to the Grant monies must be defrayed by [date] in line with the Strategic Intervention. Failure to do so may result in funds being returned to The Scottish Government for reallocation.</p> <p>There can be no monetary carry over into subsequent phases of a project.</p>	
Project summary	<i>[Insert detailed summary of Project for which funding has been awarded, including key milestones, as per the application]</i>	Overview & Summary Policy Background
Funding and Financial Summary	Prior to release of the Grant or any part of it, the Grantee must have unconditional approval of all match funding required to complete the Works and, throughout the terms of the contract, must notify the Lead Partner of any changes in the overall scheme funding. Written confirmation of match funding must be provided to the Lead Partner before Approval to Start can be issued.	Application Form
Outcomes and horizontal themes	<i>[Summary of the outcomes and horizontal themes, as specified in the application, agreed in the approved application.]</i>	Blueprint & Outcomes Horizontal Themes
Activities (the approved purposes of the Project)	<p>The Grantee must carry out (or procure the carrying out of) the Works which the Lead Partner has approved as part of the application process within the timeframes set out in an agreed programme for completion of the Works. The Lead Partner must be informed immediately of any slippage in the Programme.</p> <p>Variations to the Works will only be permitted with the consent of the Lead Partner. Material changes must be actioned via the Change Process.</p> <p>The approved purposes, including all physical works, must be achieved by December 2018.</p>	Application Form
Compliance	<p>It is the responsibility of the Grantee to comply with all relevant laws and statutory requirements, policies and guidance in relation to the Green Infrastructure Fund and, in particular must comply with:-</p> <ul style="list-style-type: none"> • All ERDF Rules and Regulations; • Planning Acts; 	ERDF Regulations – 1303/2013 and 1301/2013 Eligibility Guidance

	<ul style="list-style-type: none"> • Public Procurement Regulations; • Data Protection; • Freedom of Information; • Intellectual Property Rights; • The Bribery Act 2010 in relation to this or any other grant. The grantee shall ensure that adequate controls are in place to prevent bribery; and • Principles of best value. 	Monitoring Guidance
Management and Control	<p>Grantees are responsible for ensuring that they conform to the general principles of management and control namely:</p> <ul style="list-style-type: none"> • compliance with the principle of separation of duties, particularly between delivery of works and monitoring and reporting of works activity; • procedures for ensuring the correctness and regularity of expenditure declared; • computerised systems for accounting, for the storage and transmission of financial data and data on indicators, for monitoring and for reporting; • systems and procedures to ensure an adequate audit trail; • the prevention, detection and correction of irregularities, including fraud, and the recovery of amounts unduly paid, together with any interest on late payments. 	Article 72 of Regulation 1301/2013
State Aid	Projects must adhere to current State Aid rules. It is the responsibility of the grantee to ensure compliance with State Aid rules.	National Rules
Procurement	Grantees must ensure they comply with the requirements of ERDF funding, meeting the European Union Directives, Scottish public sector legislation and the regulatory framework and any internal procedures and policy regarding procurement in force at the time of tender and as such are required to follow procurement principles (Open or Restricted tender or suitable Framework Agreement) for all elements of the work including the provision of works, materials and/or services. Procured contracts below the EU thresholds must adhere to the principles of the Treaty of Rome, ensuring that they are advertised and are fairly and equally treated.	Eligibility Guidance National Rules
Payment of Grant	<p>The Grant must be claimed by the Grantee in accordance with the ERDF Rules.</p> <p>All grant funding will be paid in arrears.</p> <p>The total Grant allocation shall be payable over the financial year[s] [20xx to 20xx]. The Managing Authority shall not be bound to pay any instalment of</p>	Eligibility Guidance Claims Process Guidance

	<p>the Grant which has not been claimed by the grantee by the financial end date of the project in line with the Strategic Intervention as set out in the approved Strategic Intervention Application.</p> <p>Each claim for Structural Funds shall be based on eligible costs and intervention rates as set out in the approved Application and based on reasonable and proper eligible costs as set out in the National Rules and the specific Green Infrastructure eligibility guidance and incurred in respect of the approved works.</p> <p>Payment of the Grant or any instalment of it will be conditional on the Grantee having complied with the terms of the Delivery Contract, including provision of all supporting documentation, receipts and proof of defrayment.</p> <p>Claims Reports must be submitted by the Lead Partner on EUMIS following the completion of a series of required checks by the Lead Partner against Grantee activity and the associated evidence and audit trail as required by the Managing Authority. Details of required checks will be contained in Scottish Government Claims Guidance and Scottish Government Verification Guidance. These checks will include reporting against the following areas:</p> <ul style="list-style-type: none"> • Expenditure against milestones; • Participant/Recipients supported; • Outputs/Results achieved. <p>Prior to payment of any Funds, the Lead Partner and Scottish Government will be entitled to inspect the Works and the Grantee will be required to submit photographs of the Works, at key stages, to ensure compliance with the Delivery Contract.</p> <p>Following receipt of a Claim, the Lead Partner must submit the Claim to the Scottish Government for approval and payment. Grant money will only be paid by the Lead Partner to the Grantee following receipt of the funds by the Lead Partner from the Scottish Government.</p> <p>All grants must be claimed by 30 June 2019</p>	
<p>Default and Recovery etc. of Grant</p>	<p>The Lead Partner or Managing Authority may re-assess, vary, make a deduction from, withhold, or require immediate repayment of the Grant, or any part of it, awarded under this Offer of Grant in the event that:</p>	<p>Eligibility Guidance</p>

	<ul style="list-style-type: none"> • The Grantee commits a Default; • The Lead Partner or Managing Authority considers that any change or departure from the purposes for which the Grant was allocated warrants an alteration in the amount of the Grant; • The Grantee fails to carry out the approved project or associated works; • In the Managing Authority's opinion, the progress on the project is not satisfactory; or • If any capital works are not fully completed by 31 December 2018. <p>In the event that the amount of the Grant paid by the Lead Partner or Managing Authority to the Grantee at any point in time is found to exceed the amount due, based on the approved application and the expenses reasonably and properly incurred and required by the Grantee in connection with the Project, the Grantee shall be responsible for repayment to the Managing Authority the amount of such excess within 14 days of receiving a written demand for it from or on behalf of the Managing Authority.</p> <p>If, in the Lead Partner or Managing Authority's opinion, the Grant or any part of it is State Aid and they consider that they are required to recover such sum in order to ensure compliance with their obligations under EU law, the Managing Authority may require immediate repayment of the Grant paid out under this Operation or any part of it.</p> <p>The Lead Partner or Managing Authority may withhold the payment of the Grant if at any time within the duration of the Agreement:</p> <ul style="list-style-type: none"> • The Grantee passes a resolution that it be wound up, or a court makes an order that the Lead Partner/Delivery Agent be wound up, in either case otherwise than for the purposes of reconstruction or amalgamation, or circumstances arise which would enable a court to make such an order or the Grantee is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or • A receiver, manager, administrator or administrative receiver is appointed to the Grantee, or over all or any part of the Grantee's property, or circumstances arise which would entitle a court or a creditor to appoint such a receiver, manager, administrator or administrative receiver. <p>In the event that the Grantee becomes bound to pay any sum to the Managing Authority in terms of clause</p>	
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	<p>xxx, the Grantee shall pay the Managing Authority the appropriate sum within 14 days of a written demand for it being given by or on behalf of the Managing Authority to the Grantee.</p> <p>Notwithstanding the provisions of this clause, in the event that the Grantee is in breach of any of the Conditions, the Managing Authority may, provided that the breach is capable of a remedy, postpone the exercise of their rights to recover any sum from the Grantee in terms of clause 12 for such period as they see fit, and may give written notice to the Grantee requiring it to remedy the breach within such period as may be specified in the notice. In the event of the Grantee failing to remedy the breach within the period specified, the Grantee shall be bound to pay the sum to the Managing Authority in accordance with the foregoing provisions.</p> <p>Any failure, omission or delay by the Managing Authority in exercising any right or remedy to which they are entitled by virtue of clauses xx to xx shall not be construed as a waiver of such right or remedy.</p>	
De-commitment / Disallowance	<p>Conditions for the assigning and apportionment of any De-commitment or Disallowance will be defined in the Delivery Contract. This will address circumstances for where a retrospective irregularity is identified through audit, which results in the de-commitment of funds in relation to the Project.</p>	
Access to Information and Inspection	<p>The grantee shall provide any information that the Lead Partner or the Managing Authority may reasonably require to satisfy themselves that delivery of the Projects are consistent with the approved applications. The grantee shall provide the Lead Partner or the Managing Authority with prompt access to any information they reasonably require to ensure compliance with this delivery contract or with requests from the European Commission.</p> <p>The Grantee shall provide any information that the Lead Partner may reasonably require to satisfy themselves that the Project is consistent with the Application and this accepted Delivery Contract. The Grantee shall provide the Lead Partner with prompt access to any information they reasonably require to ensure compliance with this Contract.</p> <p>In the event of the Grantee becoming aware of or suspecting any irregular or fraudulent activity that may have any impact on the Project or on the use of the Grant, or any part of it, the Grantee shall immediately notify the Lead Partner of such activity and provide such other information as the Lead Partner may reasonably require in relation to the impact on the Operation and the use of the Grant.</p>	<p>Data and Information Management Statement</p>

	<p>The Grantee shall immediately inform the Lead Partner of any change in its constitution for example, but not limited to, a change in status from one type of body corporate to another.</p> <p>The Lead Partner may inform the Managing Authority of any information received under this clause related to the project</p>	
Confidentiality and Data Protection	<p>Grantees, Lead Partners and Delivery Agent(s) must respect the confidentiality of any commercially sensitive information to which they have access through the activities funded within the Strategic Intervention and associated Operations. However, this will not preclude the Grantees or Lead Partner providing any information that is reasonably requested by the Managing Authority (or other bodies as referenced in 6.2) with regards to fulfilling compliance or audit requirements.</p> <p>Notwithstanding the above, the Grantees, Lead Partner or Delivery Agent(s) may disclose any information as required by law or judicial order or as and when required by the Managing Authority. The Managing Authority may disclose information in compliance with the Freedom of Information (Scotland) Act 2002, any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure.</p>	<p>Data and Information Management Statement</p>
Monitoring, Evaluation & Reporting	<p>The Grantee will be required to comply with all audit and record keeping requirements of the Lead Partner and supply the Lead Partner with copies of all documentation in relation to the project and permit the Scottish Government, EU organisations and auditors to review all such information. Data and information about the project must be retained in an accessible format for the auditable period to 2030.</p> <p>The Grantee will be required to submit Quarterly Progress Reports as well as on-going financial forecast data and Monitoring Reports, including Performance Indicators throughout the monitoring period which assesses the success of the Project against the project outcomes.</p> <p>The Grantee shall, on completion of the Project, submit a final claim to the Lead Partner summarising the outcomes and performance of the Project. Such a report shall include statistical and other information relating to the impact of the Project as shall be required by the Lead Partner.</p> <p>Following completion of the works, an annual report of the project outputs and results must be submitted to the Lead Partner until 2023.</p>	<p>Eligibility Guidance</p> <p>Blueprint & Outcomes</p> <p>Horizontal Themes</p> <p>Monitoring Guidance</p>

	<p>Following completion of the Works the Lead Partner and Scottish Government will be entitled to inspect the Property so as to monitor compliance with the continuing obligations of the Delivery Contract.</p> <p>The interplay of Equal Opportunities, Environmental Sustainability and Social Inclusion continue to be at the centre of European Union, United Kingdom and Scottish Government policy priorities. Grantees have demonstrated that these horizontal themes have been considered and integrated into their projects. Evidence must be retained to demonstrate consideration, how baselines were determined and how targets were set for the project. Consideration and monitoring of horizontal themes will form part of the checks undertaken by the Managing Authority under Article 125 of EU Regulation 1303/2013.</p>	
Publicity	<p>The Grantee must acknowledge the support given through the Green Infrastructure Fund in all publicity relating to the Fund and must erect such signage as required by the ERDF Rules and the Green Infrastructure Fund Communications Toolkit.</p> <p>Copies of all publicity material and press releases and press articles must be sent to the Lead Partner. Press articles should be held in hard copy.</p>	<p>Eligibility Guidance</p> <p>Communications Toolkit</p>
Intellectual Property Rights	<p>All Intellectual Property Rights are hereby assigned to and shall vest in the Crown or its assignees.</p> <p>The Grantee and Lead Partner shall ensure that nothing contained in any materials produced or submitted to the Managing Authority by the Grantee or Lead Partner or anyone acting on its behalf nor the reproduction of such materials, shall constitute an infringement of any third party copyright or intellectual property right and shall indemnify the Managing Authority against all actions, proceedings, claims and demands made by reason of any such infringement.</p>	
Community engagement	<p>Meaningful community engagement throughout the life of the Project is required. Evidence of participation should be planned through the monitoring and evaluation plan, including collection of postal codes affected by addressing Horizontal Themes</p>	<p>Community Engagement Guidance</p> <p>Monitoring and Evaluation Framework</p>
Maintenance & Repair	<p>Following Completion of the Works, the Grantee will be responsible for maintaining the Works in a good and substantial condition in perpetuity. Changes of use within the auditable period to 2030 may result in repayment of grant.</p>	<p>Application Form Guidance</p> <p>Eligibility Guidance</p>

Public Access Arrangements & Charging	Following completion of the Works, the Grantee must ensure that the Property is open to the public and must not charge the public to access the Property without the prior approval of the Lead Partner.	
Disposal of Assets	<p>In the case of the disposal of an asset which has received European Structural Fund support the Grantee shall not, without prior written consent of the Managing Authority, dispose of any asset funded, in part or in whole, with Grant funds. This should be sought, in writing, 4 weeks prior to any sale being advertised.</p> <p>The Managing Authority shall be entitled to the proceeds of the disposal – or the relevant proportion of the proceeds based on the percentage of grant funding used in connection with the acquisition or improvement of the asset against the whole proceeds. The Managing Authority shall also be entitled to the relevant proportion of any proceeds resulting from any provision included as a condition of sale.</p>	
Risk Management	The Grantee must have a plan, agreed with the Lead Partner, for the on-going monitoring and management of risks associated with delivery of the Project.	Risk Management Guidance
Change Management	<p>Revisions to targets, milestones or costs during the delivery of project may impact upon the wider achievement of objectives or outcomes associated with this Strategic Intervention. These will be monitored by the Lead Partner and Managing Authority and may be subject to the EUMIS change control. Specific information will be required for each change proposed and the Change Process must be followed</p> <p>The Grantee must comply with the change process guidance as stated in the Delivery Contract in the event of either or both:</p> <p>(1) Any changes between the Application and Approval;</p> <p>(2) Any changes to the Approved Project as set out in the Delivery Contract must be communicated to the Lead Partner for Approval.</p> <p>If there is any change in the function of the site which has been improved under the Green Infrastructure Fund, the Lead Partner must be made aware. In such circumstances the grant may be repayable.</p>	Change Guidance
Continuation	The terms of this Delivery Agreement shall continue to apply for a period of 3 years after the Final Payment from the European Commission under the ERDF and ESF Programmes except where timescales are specifically indicated in clauses.	

Assignment	The Grantee shall not be entitled to assign, sub-contract or otherwise transfer its rights or obligations under the Agreement without the prior written consent of the Lead Partner.	
Termination	The Agreement may be terminated by the Lead Partner giving not less than 3 months' notice in writing from the date of the notice being sent.	
Governing Law	This contract is governed by the Law of Scotland and the parties hereby prorogate to the exclusive jurisdiction of the Scottish Courts.	
Definitions	<p>Applicant - Body submitting an application under the Green Infrastructure Fund, up to the point that their application is approved.</p> <p>Application - Applicant organisation's project application submitted to the Green Infrastructure Fund comprising application form and the requested supporting documents.</p> <p>Application form - form designed by SNH for the Green Infrastructure Fund. This form provides the SNH with the information it requires to assess the ability of the applicant to manage and deliver the project.</p> <p>Approved Purposes - What we award the funding for i.e. the activities and outputs that are approved for funding.</p> <p>Default - Any breach of the obligations of either party under this Agreement (including, but not limited to, any breach of any undertaking or warranty given under or in terms of this Agreement);</p> <ul style="list-style-type: none"> • Any failure to perform or the negligent performance of any obligation under this Agreement; • Any breach of any legislation; or • Any negligence or negligent or fraudulent misstatement or misappropriation of Grant, or any other default. • In all cases by either party, its employees, agents or representatives. <p>Delivery Agent - Organisations who delivers Operation(s) within a Strategic Intervention (Scottish Natural Heritage)</p> <p>Delivery Contract – the contract between SNH and the grantee to deliver the Works specified in the application</p> <p>Defrayed – refers to eligible expenditure which has been incurred and discharged by payment, i.e. transferred from the bank account to the creditor and evinced as per the National Rules.</p> <p>Designated Signatory - The individuals nominated in the Designated Signatory section of this Delivery Contract to sign the claim report(s) in respect of the grantee. These individuals must have the authority to enter into binding contracted agreements for their organisation.</p> <p>Eligible Body - The Grantee must be and remain a</p>	<p>Roles and Responsibilities guidance</p> <p>Eligibility Guidance</p> <p>Glossary</p>

	<p>body eligible to receive EU funding. Any changes to the status must be provided to the Lead Partner Intellectual Property Rights</p> <p>EUMIS - The name given to the Scottish Government's online application, claims and change process system.</p> <p>Financial Year - The European Commission period from 1 January one year until 31 December of that same year.</p> <p>Financial end date – 30 June 2019</p> <p>Funding - The specific value of money offered by the Scottish Ministers to the Grantee in accordance with this delivery contract</p> <p>Grantee - Successful Applicant</p> <p>Intellectual Property Rights - All rights of ownership, including all copyrights and other intellectual property rights in books, leaflets and other printed and published materials in whatever form produced as part of the Strategic Intervention or Operation by or on behalf of the Lead Partner including all reports and any such published materials stored in or made available by means of an information technology system and the computer software relating thereto and all patents, trademarks, registered designs and other rights in the nature of intellectual property.</p> <p>Lead Partner - Scottish Natural Heritage</p> <p>Managing Authority – The Scottish Government European Structural Funds and State Aid Division</p> <p>Match Funding - The amount of funding secured from other sources in order to deliver the project. European funding of any kind cannot be used as Match Funding.</p> <p>Physical end date – 31 December 2016</p> <p>Project - Activities that have received Green Infrastructure Fund funding to deliver approved purposes.</p> <p>Strategic Intervention - Activity which will contribute towards the achievement of Operational Programme financial and indicator targets. It is delivered through one, or more, Operation(s).</p>	
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Scottish Natural Heritage
Dualchas Nàdair na h-Alba

All of nature for all of Scotland
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