

8.4 The Scottish Ministers understand and acknowledge that (i) ownership of the Brand vests in the Board of Trustees of the Victoria and Albert Museum; and (ii) the licence granted in Clause 8.2 does not include a right or licence to use the Brand. Where the Scottish Ministers wishes to use the Brand, it shall notify DDL's Marketing Manager accordingly. The Grantee shall liaise with the Board of Trustees of the Victoria and Albert Museum and respond to such request within fourteen (14) days of receipt.

8.5 The Grantee shall ensure that nothing contained in any materials produced or submitted to the Scottish Ministers by the Grantee 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 Scottish Ministers against all actions, proceedings, claims and demands made by reason of any such infringement.

8.6 The terms of Clause 8.1-8.6 (inclusive) shall survive termination of this Agreement.

## 9. Default and Recovery etc. of Grant

9.1 The Scottish Ministers may re-assess, vary, make a deduction from, withhold, or require immediate repayment of the Grant or any part of it in the event that:

9.1.1 The Grantee commits a Default;

9.1.2 The Scottish Ministers consider that any change or departure from the purposes for which the Grant was awarded warrants an alteration in the amount of the Grant;

9.1.3 The Grantee fails to carry out the Project;

9.1.4 In the Scottish Ministers' opinion, the progress on the Project is not satisfactory; or

9.1.5 In the Scottish Ministers' opinion, the future of the Project is in jeopardy.

9.2 If, in the Scottish Ministers' 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 Scottish Ministers may require immediate repayment of the Grant or any part of it together with interest at such rate and on such basis as may be determined from time to time by the Commission of the European Union.

9.3 The Scottish Ministers may withhold the payment of the Grant if at any time within the duration of the Agreement:

9.3.1 The Grantee passes a resolution that it be wound up, or a court makes an order that the Grantee 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;

9.3.2 Where the Grantee is an individual, if a petition is presented for the Grantee's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Grantee; or the Grantee makes any composition or arrangement with or

for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage his affairs; or

9.3.3 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.

9.4 In the event that the Grantee becomes bound to pay any sum to the Scottish Ministers in terms of clause 9.1, the Grantee shall pay the Scottish Ministers the appropriate sum within 14 days of a written demand for it being given by or on behalf of the Scottish Ministers to the Grantee. In the event that the Grantee fails to pay the sum within the 14 day period, the Scottish Ministers shall be entitled to interest on the sum at the rate of 2 per cent per annum above the Bank of England base lending rate prevailing at the time of the written demand, from the date of the written demand until payment in full of both the sum and interest.

9.5 Notwithstanding the provisions of this clause 9, in the event that the Grantee is in breach of any of the Conditions, the Scottish Ministers 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 9 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 Scottish Ministers in accordance with the foregoing provisions.

9.6 Any failure, omission or delay by the Scottish Ministers in exercising any right or remedy to which they are entitled by virtue of clauses 9.1 to 9.3 shall not be construed as a waiver of such right or remedy.

## 10. 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 Scottish Ministers.

## 11. Termination

The Agreement may be terminated by the Scottish Ministers giving not less than 3 months' notice in writing from the date of the notice being sent.

## 12. Corrupt Gifts and Payments of Commission

The Grantee shall ensure that its employees shall not breach the terms of 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.

## 13. Continuation of Conditions

## SCHEDULE 1

### PART 1: THE PROJECT

The main objectives and expected outcomes of the grant are expressly to support the operational costs of Design Dundee Ltd to:

- Enable the completion of construction of the new V&A Dundee museum;
- Deliver a high quality exhibitions programme with regular provision of a range of free to access activity and displays, widening public access and participation levels;
- Deliver inclusive learning and outreach programmes, inspiring learners' creativity and developing future skills for design and business innovation;
- Develop dynamic and interactive digital learning opportunities, evidencing increasing levels of public digital interaction;
- Develop a national programme for design led business innovation which supports companies from across Scotland;
- Provide support for Scotland's creative industries, enabling them to innovate, grow, showcase their work and fulfil their economic potential;
- Strengthen Scotland's economy and international profile by building on our external relationships, attracting increased numbers of visitors from both home and abroad and opening opportunities in new markets;
- Achieve and maintain BREEAM excellent rating;
- Ensure that in delivering and operating the Museum, consider steps that might promote fair working practices, including payment of the Living Wage as this relates to the Grantee's areas of responsibility; and
- Ensure that in delivering and operating the Museum, consider steps that might further promote and protect the rights of children and young people, consistent with the requirements of the United Nations Conventions on the Rights of the Child (UNCRC) as this relates to the Grantee's areas of responsibility.

### PART 2: PAYMENT OF GRANT

1. The total Grant of £1,361,000 shall be payable by the Scottish Ministers to the Grantee quarterly (unless otherwise agreed in writing with Ministers) on receipt of a completed claim for Grant in the form set out in Schedule 2 together with the associated monitoring information set out in paragraph 4.1 of the Offer of Grant.

2. The total Grant shall be payable over the financial year 2018-19. The Scottish Ministers shall not be bound to pay any instalment of the Grant which has not been claimed by the Grantee by 31 March of the applicable financial year, unless otherwise agreed in writing by the Scottish Ministers.

3. The Grantee shall provide a profile of expenditure of the Grant before the start of the financial year. Any change to the profile or to the overall costs of the Project shall be notified to the Scottish Ministers at the earliest opportunity via the claims for Grant and monitoring reports.

4. Each claim shall be for an amount equal to the actual reasonable and proper costs and expenses incurred by the Grantee in connection with the Project since the submission by it of the last claim for an instalment of the Grant or the estimated amount of the Grant required to meet

the reasonable and proper costs and expenses of the Grantee in connection with the Project until the next claim is due to be submitted.

5. Each claim shall be submitted together with such explanatory or supplementary material as the Scottish Ministers may from time to time require whether before or after submission of the claim.

6. On receipt of each claim (and any required documentation and information), the Scottish Ministers shall determine the amount of expenditure which they consider the Grantee has reasonably and properly incurred or shall reasonably and properly incur in connection with the Project having regard to that claim. The determination shall be based on the information provided by the Grantee in accordance with this Schedule. The Scottish Ministers shall use their best endeavours (but shall be under no obligation or duty) to pay the amount determined to the Grantee within 2 weeks of receiving a claim and any required documentation and information relevant to the claim.

7. In order to facilitate the accrual of expenditure of the Grant for the financial year the Grantee shall, where appropriate, advise the Scottish Ministers in writing by 10 April the amount of the Grant actually expended up to and including 31 March.



## SCHEDULE 2

### GRANT CLAIM FORM

Organisation: *Design Dundee Limited*

Bank details: *[Name and address, sort code, account number]*

Project: *[Name / Description]*

Total agreed grant for 2018-19: £1,361,000

Latest forecast of expenditure of grant for 2018-19: *[Amount]*

Grant claimed to date: £0

[Unexpended grant: *where grant is paid in advance*] *[Amount]*

[Claim for grant] *or* [Estimate of grant required] for the period [from *xxxx* to *xxxx*] *or* [to *xxxx*]:  
*[Amount]*

We hereby claim [total] grant of [£            ] in respect of the above period in accordance with the terms and conditions of the offer of Grant dated [            ] and the Schedules attached thereto.

Completed by:

Position:

Contact Details:

Date:

**Items of Expenditure**

Please list in the table below all discrete items of expenditure relevant to the above period and the type of documentary evidence that will be made available on request to substantiate each amount.

A Item	B Amount (£)	C Paid Invoice [Y/N]	D Other (please specify, e.g. certificate of payment in kind)
<b>TOTAL*</b>			

\* Note the total should add up to the total expenditure claimed for the period.



### SCHEDULE 3

#### STATEMENT OF COMPLIANCE WITH CONDITIONS OF GRANT

##### Design Dundee Limited

This is to confirm that the grant claimed by Design Dundee Limited in relation to the above Project during the financial year ended 31 March 2019 was properly due and was used for its intended purpose(s) in accordance with the terms and conditions of the Grant. This statement is supported by the records of Design Dundee Limited.

Signed:

Name in block capitals:

Position:

Date:

## SCHEDULE 4

### DEFINITIONS

**“Agreement”** means the agreement constituted by the Scottish Ministers’ invitation to apply for a grant, the Grantee’s Application, these Conditions and the Grantee’s acceptance of these Conditions;

**Brand** means the "V&A Museum of Design Dundee" brand including the trade names, logos, domain names V&A Dundee.org and any other name or stylised or graphic version of that name or associated insignia incorporating 'V&A' or 'Victoria and Albert Museum' but specifically not including the general V&A brand used by V&A (London);

**“Conditions”** means these grant conditions;

**“Default”** means:

- (a) 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);
- (b) Any failure to perform or the negligent performance of any obligation under this Agreement;
- (c) Any breach of any legislation; or
- (d) Any negligence or negligent or fraudulent miss-statement or misappropriation of Grant, or any other default,

In all cases by either party, its employees, agents or representatives;

**“Financial Year”** means a period from 1 April in one year until 31 March in the next;

**“Grant”** means the grant offered by the Scottish Ministers to the Grantee as specified in the Award Letter, as varied from time to time in accordance with these Conditions;

**“Grantee”** means the person, organisation or body to which the Grant will be payable as specified in these Conditions. Where two or more persons, organisations or bodies are the Grantee, references to the “Grantee” are to those persons, organisations or bodies collectively and their obligations under the Agreement are undertaken jointly and severally;

**“Intellectual Property Rights”** means all rights of ownership, including, but not limited to, all copyright, moral rights, patents and rights in inventions, trade marks, trade names, domain names, rights to goodwill, registered designs, unregistered designs, confidential information (including know-how and trade secrets), software (including object code and source code), database rights and other intellectual property rights in each case whether registered or unregistered produced as part of the Project by or on behalf of the Grantee using the Grant, and including all applications (or rights to apply) for, and renewals or extensions of, such rights and similar or equivalent rights which subsist or will subsist now or in the future in any part of the world.

**“Project”** means the purpose for which the Grant has been awarded as described in the Offer of Grant;

**“Payment”** means each of the payments specified in Schedule 1 hereto.

Annex A

DESIGN DUNDEE LIMITED – 2018-19 GRANT PROFILE

TITLE	GRANT OFFER 2018-19	Apr 18	May 18	Jun 18	Jul 18	Aug 18	Sep 18	Oct 18	Nov 18	Dec 18	Jan 19	Feb 19	Mar 19
Revenue funding	£1m	0.5m			0.5m	0.361m							
<b>TOTAL</b>	<b>£1m</b>	<b>0.5m</b>			<b>0.5m</b>	<b>0361m</b>							
Date of Claim													

Date -