

The Chief Executive Officer
Respiratory Innovation Wales
C/O Bevan & Buckland Limited
Langdon House
Langdon Road
Swansea
SA1 8QY



Llywodraeth Cymru
Welsh Government

[] November 2018

Dear

Award of Funding to Respiratory Innovation Wales

1. Award of Funding

- (a) We are pleased to inform you that the Application from Respiratory Innovation Wales has been successful and funding of up to £2,500,000 (*two million and five hundred thousand pounds*) (“the Funding”) is awarded to you for the Purposes (as defined in Condition 4(a)).
- (b) The Funding relates to the period August 2018 to March 2021. The first instalment of the funding must be claimed by **7 December 2018** otherwise any unclaimed part of the Funding will cease to be available to you. The funding must be claimed in full by **31 March 2021**.
- (c) If you have any queries in relation to this award of Funding or the Conditions please contact the Welsh Government Official who will be happy to assist you.

2. Statutory authority and State Aid

- (a) This award of Funding is made on and subject to the Conditions and under the authority of the Cabinet Secretary for Health and Social Services, one of the Welsh Ministers, acting pursuant to sections 70 and 71(1) of the Government of Wales Act 2006.
- (b) You must comply with the European Commission’s State Aid Rules.

3. Interpreting these Conditions

Any reference in these Conditions to:

‘you’, ‘your’ is to

Respiratory Innovation Wales
(a company limited by guarantee)
(Registration Number:11577645)

we, **us**, **our** is to the Welsh Ministers;

Welsh Government Official is to

REDACTION – WELSH GOVERNMENT OFFICIAL
Head of Regional Partnerships
Health and Social Services Group
Welsh Government
4th Floor, Cathays Park 2
Cardiff
CF10 3NQ
Tel: REDACTED
Email: REDACTED

or such other Welsh Government official as we may notify you.

Project Manager is to

Kevin Smith
Chief Executive Officer
Respiratory Innovation Wales
C/O Bevan & Buckland Limited
Langdon House
Langdon Road
Swansea
SA1 8QY

Tel: XXXX
Email: XXXX

Application is to the Respiratory Innovation Wales Business Plan for the period 2018-2022 (dated March 2018) (the “Business Plan”);

Assurance Statement is to the Assurance Statement: Counter Fraud and Governance contained in Schedule 5;

Conditions is to the terms and conditions set out in this letter;

Costs Incurred is the cost of goods and services incurred by you in relation to the Purposes and amounts transferred by you to the company limited by guarantee established to deliver the Purposes;

'Notification Event' is to any of the events listed in Schedule 3;

'Payment Profile' is to the payment profile set out in Schedule 4;

'Personnel' is to your management/employees and suppliers or any other person appointed or engaged by you in relation to the Purposes;

'Schedule' is to the schedules attached to this letter;

'State Aid Rules' is to the rules set out in Articles 107 to 109 of the Treaty on the Functioning of the European Union (or in those Articles that may succeed Articles 107 to 109), secondary legislation such as frameworks, guidelines and block exemptions produced by the European Commission derived from Articles 107 to 109, case law of the European Courts and decisions of the European Commission regarding the application of Articles 107 to 109; and

any reference to any legislation whether domestic, EU or international law will include all amendments to and substitutions and re-enactments of that legislation in force from time to time.

4. What you must use the Funding for

- (a) You must use the Funding solely for the purposes set out in Schedule 1 (the "**Purposes**").
- (b) You must use all reasonable endeavours to ensure that Respiratory Innovation Wales achieves the targets and outcomes set out in Schedule 2 (the "**Targets**").
- (c) Any change to the Purposes or Targets will require our written consent which must be obtained from us in advance of implementing any change. Please note that we are not obliged to give our consent but we will consider all reasonable written requests.
- (d) You must not use any part of the Funding for: (1) party political purposes; (2) the promotion of particular secular, religious or political views; (3) gambling; (4) pornography; (5) offering sexual services; (6) purchasing capital equipment (other than as specified in the Purposes); (7) your legal fees in relation to this letter; (8) Costs Incurred or costs incurred and defrayed by you in the delivery of the Purposes prior to the period referred to in Condition 1 (b); (9) any kind of illegal activities; or (10) any kind of activity which in our opinion could bring us into disrepute.

5. Funding pre-conditions

- (a) We will not pay any of the Funding to you until you have provided us with the following information:
- (i) this letter signed by you together with documentary evidence that the signatories who have signed this letter are duly authorised to do so;
 - (ii) documentary evidence that you have in place a suitable financial and legal structure to allow for the draw down of funding from us to facilitate the delivery of the Purposes;
 - (iii) the signed Assurance Statement, **and**
 - (iv) **confirmation that the Purposes of the company and the voting arrangements set out in an annex to this letter have been included in the company documents as registered with companies house;**
 - (v) **confirmation that you have appointed an independent organisation approved by us to undertake the role of a 'Nominated Advisor' (providing business advice to you and assurance advice to us).**
- (b) Where you are required to provide information and documentation to us as evidence that you have satisfied a particular pre-condition, Condition or in support of a claim, the information and documentation must be in all respects acceptable to us. We reserve the right to reject any information and documentation which is for any reason not acceptable to us.

6. How to claim the Funding

The Funding will be paid to you in advance, by instalments, based on the Costs Incurred by you and **satisfactory** progress in the delivery of the Purposes as detailed in the Payment Profile.

- (a) You must claim the Funding in accordance with the dates set out in the Payment Profile. You must claim the Funding promptly. We reserve the right to withdraw any part of the Funding that you do not claim promptly.
- (b) You must submit your claims for payment of Funding to the Welsh Government Official.
- (c) You must use our current claim pro-forma (which is available from the Welsh Government Official) and attach the following information

and documentation to each claim specified in the Payment Profile:

- i) A report of activity detailing progress against the Purposes and delivery of the Targets;
 - ii) Copies of approved company documents including Board Minutes, financial statements and forecasts together with the current version of the business plan; **and**
 - iii) **A report from the Nominated Advisor.**
- (e) We will aim to pay all valid claims as soon as possible and typically within 28 days.

7. Your general obligations to us

You must:

- (a) safeguard the Funding against fraud generally and, in particular, fraud on the part of your Personnel and notify us immediately if you have reason to suspect that any fraud within your organisation whether or not it relates to the Funding has occurred or is occurring or is likely to occur. You must also participate in such fraud prevention initiatives as we may require from time to time;
- (b) comply with all applicable domestic, EU or international laws or regulations or official directives;
- (c) maintain adequate insurances to cover against the risks which may arise in connection with any property or any activity undertaken in delivery of the Purposes. We reserve the right to require you to provide proof of your insurance;
- (d) put in place and maintain appropriate systems to undertake due diligence before utilising any part of the Funding to provide a grant to or procure any goods or services from third parties;
- (e) co-operate fully with the Welsh Government Official and with any other employee of the Welsh Government or consultant appointed by us to monitor your use of the Funding and your compliance with these Conditions, and

- (f) inform us immediately if any of the declarations made in Condition 8 is incorrect in any respect or, if repeated at any time with reference to the facts and circumstances then existing, would be incorrect.

8. Declarations

You declare that:

- (a) you have the power to enter into and to perform the obligations set out in these Conditions and you have taken all necessary action to authorise the entry into and performance of the obligations under these Conditions;
- (b) no litigation or arbitration is current or pending or, so far as you are aware, threatened, which have or could have an adverse effect on your ability to perform and comply with any of these Conditions;
- (c) the information contained in your Application is complete, true and accurate;
- (d) you have disclosed to us all material facts or circumstances which need to be disclosed to enable us to obtain a true and correct view of your business and affairs (both current and prospective) or which ought to be provided to any person who is considering providing funding to you;
- (e) you have discussed and agreed the Targets with us and you are confident that they are realistic and achievable, and
- (f) the information contained in the Assurance Statement is complete, true and accurate.

9. Notification Events and their consequences

- (a) You must notify us immediately if a Notification Event has occurred or is likely to occur but we also reserve the right to notify you where we believe a Notification Event has occurred or is likely to occur.
- (b) We will either:
 - (i) notify you that we consider that the Notification Event is not capable of remedy, or
 - (ii) if we consider that the Notification Event is capable of being remedied seek to discuss the Notification Event with you with a view to agreeing a course of action to be taken to address the Notification Event.

- (c) We will be entitled to take any of the actions listed in Condition 9(d) if:
 - (i) despite our reasonable efforts we have been unable to discuss the Notification Event with you; or
 - (ii) we notify you that the Notification Event is not capable of remedy; or
 - (iii) a course of action to address the Notification Event is not agreed with you; or
 - (iv) a course of action to address the Notification Event is agreed with you but you fail to follow it, or any conditions attached to it are not met (including without limitation the timescale for such course of action); or
 - (v) the course of action fails to remedy the Notification Event to our satisfaction.
- (d) If any of the circumstances set out in Condition 9(c) occurs we may by notice to you:
 - (i) withdraw the award of Funding; and/or
 - (ii) require you to repay all or part of the Funding immediately; and/or suspend or cease all further payment of Funding;
 - (iii) make all further payments of Funding subject to such conditions as we may specify; and/or
 - (iv) deduct all amounts owed to us under these Conditions from any other funding that we have awarded or may award to you; and/or
 - (v) exercise any other rights against you which we may have in respect of the Funding.
- (e) All repayments of Funding must be made to us within 28 days of the date of our demand. If applicable, you must pay interest on any overdue repayments (on a compound basis) in accordance with the State Aid Rules.

10. Monitoring requirements

You must:

- (a) provide us with such documents, information and reports which we may reasonably require from time to time in order for us to monitor your compliance with the Conditions including without limit:
- (i) the latest approved business plan;
 - (ii) quarterly reports to include cumulative progress against the Purposes and delivery of the Targets;
 - (iii) minutes of company meetings including members, directors and management meetings;
 - (iv) key company documents including members agreements and contracts;
 - (v) financial management documents including management and audited accounts, and
 - (vi) an independent report from the Nominated Advisor providing assurance on:
 - the competence of the appointed directors (in the first report and following any change of appointments or on becoming aware of any material issues or concerns);
 - continued delivery of the approved business plan and operational plan;
 - adequacy of performance and reporting arrangements;
 - quality of management accounts and financial forecasts, and
 - compliance with these Conditions.
- (b) invite us to nominate an individual to attend relevant Directors' meetings and Members' meetings as an observer (the "observer"). For the avoidance of doubt, that individual may not be the Welsh Government official and will have no authority to vary the terms and conditions of this letter which you acknowledge in accepting this Funding;
- (c) meet with the Welsh Government Official and such other of our representatives as we may from time to time reasonably require;

- (d) ensure that your Project Manager (or such other person as we may agree) together with any other person we may require attends all meetings with the Welsh Government Official.

11. Audit Requirements

- (a) You must:

- (i) maintain clear accounting records identifying all income and expenditure in relation to the Purposes;

- (ii) without charge, permit any officer or officers of the Welsh Government and Wales Audit Office or European Commission at any reasonable time and on reasonable notice being given to you to visit your premises and/or to inspect any of your activities and/or to examine and take copies of your books of account and such other documents or records howsoever stored as in such officer's reasonable view may relate in any way to your use of the Funding. This undertaking is without prejudice and subject to any other statutory rights and powers exercisable by the Welsh Government, Wales Audit Office or the European Commission or any officer, servant or agent of any of the above;

- (iii) retain this letter and all original documents relating to the Funding until we inform you in writing that it is safe to destroy them, and

- (iv) provide us with an audit certificate in accordance with the requirements set out in Schedule 6.

- Under paragraph 17 of Schedule 8 to the Government of Wales Act 2006 the Auditor General for Wales has extensive rights of access to documents and information relating to monies provided by the Welsh Government. He and his officials have the power to require relevant persons who control or hold documents to give any assistance, information and explanation that they may require; and to require those persons to attend before them for such a purpose. The Auditor General and his staff may exercise this right at all reasonable times.

12. Third party obligations

- (a) Nothing in the Conditions imposes any liability on us in respect of any liability incurred by you to any third party (including, without limit, employees and contractors).
- (b) You must indemnify us against any liabilities, claims, proceedings, demands, losses, costs and expenses suffered or incurred by us directly or indirectly arising as a result of or in connection with any failure by you to perform fully or in part any obligation you may have to a third party.

13. Intellectual property rights and publicity

- (a) Nothing in these Conditions transfers to us any rights in any intellectual property created by you as a result of the Purposes.
- (b) You must acknowledge our support in relation to the Purposes. Such acknowledgement(s) must be in a form approved by us and must comply with the Welsh Government's branding guidelines.
- (c) You must provide the Welsh Government Official with details of all the acknowledgement(s) referred to in Condition 13(b) for our approval before any such acknowledgements are used and you may not use such acknowledgments without our prior written approval. We will endeavour to respond to all written requests for approval within 10 working days.
- (d) You agree that from the date of this letter until 5 years from the date of the final payment of Funding we may include details about your organisation and business, the Funding and the Purposes in Welsh Government promotional materials and you further agree to cooperate with our reasonable requests to achieve the production of such materials.

14. Information

- (a) You acknowledge that we are subject to the requirements of the Freedom of Information Act 2000 (the "FOIA"), the Environmental Information Regulations 2004 (the "EIR") and the Data Protection Act 1998 (the "DPA").
- (b) You acknowledge that we are responsible for determining in our absolute discretion whether:
 - (i) to disclose any information which we have obtained under or in connection with the Funding to the extent that we are required to disclose such information to a person making a

You must apply a policy of equal opportunities as employers, as users of volunteers, and as providers of services, regardless of race, gender/gender identification, sexual orientation, religion and belief, age or any disability.

18. Welsh language

Where the Purposes include or relate to the provision of services in Wales they must be provided in such a way as to not treat the Welsh language less favourably than English, in accordance with the Welsh Language (Wales) Measure 2011.

19. Sustainability

Your use of the Funding must (where reasonably practicable) meet the Welsh Government's current agenda for sustainable development and the environment.

20. Welsh Ministers' functions

You acknowledge that the Welsh Ministers have a range of functions which will continue to accrue and be amended and that decisions in relation to each such function are obliged to be taken in the light of all relevant and to the exclusion of all irrelevant considerations. You agree that nothing contained or implied in , or arising under or in connection with, these Conditions will in any way prejudice, fetter or affect the functions of the Welsh Ministers or any of them nor oblige the Welsh Ministers or any of them to exercise, or refrain from exercising, any of their functions in any particular way.

21. General

- (a) If at any time any of these Conditions is deemed to be or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.
- (b) No failure or delay on our part to exercise any power, right or remedy under these Conditions will operate as a waiver of any such power, right or remedy or preclude its further exercise or the exercise of any other power, right or remedy. The powers, rights or remedies hereby provided are cumulative and not exclusive of any powers, rights or remedies provided by law.
- (c) Any amendment or variation to these Conditions must be in writing and signed by us and you in the same manner as this letter.

- (d) You may not assign or otherwise dispose of in any way your rights, benefits, obligations or duties under these Conditions.
- (e) Conditions 7, 9, 11, 13, 14, and 21(e) and such other Conditions which by implication need to continue in force beyond the final payment of Funding will so continue in full force and effect.
- (f) The award of the Funding is to you alone and no one else is entitled to make any claim in respect of the Funding or seek to rely on or enforce any of these Conditions.
- (g) These Conditions are to be governed by and construed in accordance with the laws of Wales and England as applied in Wales and the parties hereto submit to the exclusive jurisdiction of the courts of Wales and England.

22. How to accept this offer of Funding

- a) To accept this award of Funding you must sign and return a copy of this letter to the Welsh Government Official. None of the Funding will be paid to you until we have received your signed letter.
- b) We must receive your signed letter within 28 days of the date of this letter, or this award of Funding will automatically be withdrawn.

Yours faithfully

Signed by Ifan Evans

Director of Technology and Transformation

Under authority of the Cabinet Secretary for Health and Social Services, one of the Welsh Ministers

SCHEDULE 1 The Purposes

The Purpose of the Funding is to support the establishment and early start up phase of Respiratory Innovation Wales in accordance with the Company's agreed objects and purposes together with the business plan dated March 2018 attached at Annex 1.

The purposes of the company limited by guarantee established to deliver these Purposes shall be as follows or as otherwise agreed by us:

For public benefit, through the advancement of respiratory health and related wellbeing outcomes for people in Wales, particularly through:

- (a) the improvement of treatment, diagnostic and prevention services;
- (b) advancing research and innovation activity;
- (c) advancing education, and
- (d) working in partnership and promoting activities complementary to these purposes in Wales.

To provide excellent respiratory health and wellbeing services and to promote the improvement of services delivered by others in Wales, particularly the NHS.

To advance research and innovation activity in Wales, in particular through undertaking and promoting such activity in partnership with others including the NHS, industry and universities.

To advance the education of health and care professionals and the public, in particular relating to respiratory health and wellbeing.

To advance partnership working and activities complementary to these purposes in Wales, particularly through promoting Wales as a preferred destination and partner for research and innovation, for education, and for the development and manufacture of products and services by businesses.

The Purposes shall be delivered through a company limited by guarantee which shall have governance and operational arrangements to be approved by us and giving due regard particularly to:

Ensuring that any surplus is retained by the company for the further advancement of its objects and purposes;

Ensuring that the balance of member interests is protected through an having four 'classes' of membership (NHS Wales and Local Authorities; universities and colleges; businesses; and individual members of the public), and each class of membership exercising 25% of the voting rights of the company.

Ensuring that the Board of Directors has the capability and authority to lead the company, including commercial expertise and representation from beyond Wales.

SCHEDULE 2

The Targets

2018-19

Complete the establishment of the company limited by guarantee, including its company documents, guarantor members and appointment of directors, in accordance with the Purposes.

Secure premises and appointment of initial staff and commence operations.

Complete first revision of business plan and report on start up phase.

2019-20

Report on delivery and performance targets as included in the business plan, including particularly: industry projects; NHS projects; trials; gross revenue; net surplus/deficit; devices and products developed and sold.

Evidence plan/forecasts to achieve operating surplus by 2021-2022.

2020-21

Report on delivery and performance targets as included in the business plan, including particularly: industry projects; NHS projects; trials; gross revenue; net surplus/deficit; devices and products developed and sold.

Demonstrate progress towards achieving operating surplus by 2021-2022.

2021-22

Report on delivery and performance targets as included in the business plan, including particularly: industry projects; NHS projects; trials; gross revenue; net surplus/deficit; devices and products developed and sold.

Achieve operating surplus.

SCHEDULE 3

Notification Events

The Notification Events referred to in Condition 9 are listed below:

1. repayment of any part of the Funding is required under European Law (whether under State Aid Rules or otherwise);
2. you fail to comply with any of the Conditions;
3. the Funding, in full or in part, is not being used for the Purposes;
4. you fail to achieve any or all of the Targets;
5. there is unsatisfactory progress towards completing the Purposes, including meeting the Targets;
6. you fail to provide information about the Purposes requested by us, the European Commission or the European Court of Auditors, or any of their auditors, agents or representatives;
7. we have reason to believe that you and/or any of your Personnel are involved in fraudulent activity or have been involved in fraudulent activity [whilst the Purposes are/were being carried out];
8. we have made an overpayment of Funding to you;
9. any declaration made in Condition 8 is incorrect in any respect or, if repeated at any time with reference to the facts and circumstances then existing, would be incorrect;
10. any petition is presented or resolution passed or other action taken for your bankruptcy or winding-up or a petition is presented for an administration order against you;
11. a receiver or an administrative receiver is appointed in respect of you or in respect of all or any part of your assets;
12. a moratorium in respect of all or any of your debts or a composition or an agreement with your creditors is agreed, applied for, ordered or declared;
13. you are unable, or admit in writing your inability, to pay your debts as they fall due;
14. any distress, execution, attachment or other process affects any of your assets;

15. a statutory demand is issued against you;
16. you cease, or threaten to cease, to carry on all or a substantial part of your business;
17. there is a change in your constitution, status, control or ownership and/or your external auditors resign;
18. there is a change in your shareholders, directors, trustees or partners;
19. any event occurs or circumstances arise which in our opinion gives reasonable grounds for believing that you may not, or may be unable, to perform or comply with any of your obligations under these Conditions.

SCHEDULE 4 Payment Profile

Instalment Number	Amount of Instalment	Earliest Date for claim	Last date for claim	Documents which must accompany claim pro-forma
0	£300,000	7 December 2018	21 December 2018	As set out in Conditions 6(c) and 10(a) above
1	£350,000	11 January 2019	1 February 2019	As set out in Conditions 6(c) and 10(a) above
2	£350,000	1 March 2019	29 March 2019	As set out in Conditions 6(c) and 10(a) above
3	£250,000	1 June 2019	28 June 2019	As set out in Conditions 6(c) and 10(a) above
4	£250,000	1 September 2019	26 September 2019	As set out in Conditions 6(c) and 10(a) above
5	£300,000	1 December 2019	20 December 2019	As set out in Conditions 6(c) and 10(a) above
6	£300,000	1 March 2020	27 March 2020	As set out in Conditions 6(c) and 10(a) above
7	£200,000	1 June 2020	25 June 2020	As set out in Conditions 6(c) and 10(a) above
8	£200,000	1 September 2020	25 September 2020	As set out in Conditions 6(c) and 10(a) above

SCHEDULE 5
Assurance Statement

Assurance Statement: Counter fraud and Governance

The Welsh Government has a duty to protect public funds, ensuring they are handled with probity and in the public interest. It is important that people in Wales are able to have confidence in the Welsh Government and the organisations it funds. Welsh Government officials require assurance that reasonable and adequate governance and counter fraud procedures exist in the organisations funded by the Welsh Government.

<p>Are you in receipt of any other funding from any other organisation to support the plans for Respiratory Innovation Wales. If so please provide details including amounts of other funding, posts funded and source of funding. This includes applications that are pending.</p>	<p style="text-align: center;">Yes No</p> <p>Further details can be provided in the table below</p>
<p>Please name the personnel within your organisation who has/have specific responsibility for financial management in respect of Respiratory Innovation Wales.</p>	<p>Name:</p> <p>Position:</p>
<p>Who is responsible for the supervision of the personnel named above?</p>	<p>Name:</p> <p>Position:</p>
<p>You declare that your employees, officials, directors, trustees and board members:</p> <ul style="list-style-type: none"> • where applicable, fully understand their duties and responsibilities under the relevant legislation relating to companies and charities; • have sufficient knowledge about governance issues to carry out their roles in a manner which is fully compliant with the relevant legislation; • properly scrutinise and oversee the work of those with primary responsibility for your financial management. 	

Please provide details of **any other** funding, both capital and revenue, (including other Welsh Government funding streams) from any organisation to support Respiratory Innovation Wales as detailed in Schedule 1. You must include details of capital items, posts funded, amounts of other funding and source of funding. This includes applications that are pending.

Type of Funding and Purpose	Amount of funding received (including pending applications) £	% of post cost/capital item	Source of funding
<i>e.g. 3 full time development officer posts</i>	<i>£150,000</i>	<i>100%</i>	<i>Big Lottery</i>
<i>e.g. Purchase of capital equipment</i>	<i>£30,000</i>	<i>70%</i>	<i>Barclays Bank</i>

TWO SIGNATORIES ARE REQUIRED

We hereby accept the award of Funding for Respiratory Innovation Wales and the Conditions relating to the Funding

_____ Signature
An authorised signatory of

_____ Name

_____ Job Title

_____ Date

_____ Signature
An authorised signatory of

_____ Name

_____ Job Title

_____ Date