



## Loan terms and conditions dated February 2022

### 1. About our terms

1.1 These terms apply if you have received a loan award from SOSE which is subject to our standard loan terms and conditions. In these terms, your loan award is referred to as the Offer. When you sign and return the Offer, you are entering into a contract with us which is made up of the Offer and these terms. This contract is referred to in these terms as the Agreement.

In these terms...
<b>Confidential Information</b> is any information disclosed by one of us to the other under or pursuant to this Agreement, whether verbally or written (including in electronic format), which is designated as confidential or which should reasonably be regarded as confidential.
<b>De Minimis Subsidy</b> means a Subsidy exempt from the TCA pursuant to Article 3.2.4 of Title XI of the TCA and/or exempt aid for the purposes of European Commission Regulation (EU) No 1407/2013.
<b>FOISA</b> means the Freedom of Information (Scotland) Act 2002 and/or the Environmental Information (Scotland) Regulations 2004 and any amendment, update or replacement.
<b>Group</b> means you and any enterprise or other business in which (a) you have a majority of the shareholders' or members' voting rights; (b) you have the right to appoint or remove a majority of the members of any administrative, management or supervisory body; (c) you have the right to exercise a dominant influence pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association; and/or (d) you are a shareholder in or member of and control alone, pursuant to an agreement with other shareholders or members of that enterprise, a majority of shareholders' or members' voting rights.
<b>IPR</b> means all patents, inventions, trade marks, service marks, logos, get up, trade names, goodwill, internet domain names, rights in designs, copyright and related rights (including rights in computer software), moral rights, topography rights, database rights, rights in know-how, trade secrets and other intellectual property rights, in each case whether registered or unregistered and including renewals, extensions, applications for registration, rights to apply and rights of action in relation to the foregoing, and all rights or forms of protection having equivalent or similar effect anywhere in the world.
<b>Loan</b> is as described in the Offer.
<b>Loan Release Date</b> is as described in the Offer.
<b>Loan Repayment</b> means the amount of capital and/or interest which you are due to repay us under this Agreement, as set out in the Repayment Schedule.
<b>NI Protocol</b> means the Northern Ireland Protocol to the UK-EU Withdrawal Agreement agreed on 17 October 2019 (as implemented by section 7A of the European Union (Withdrawal) Act 2018).

<p><b>Offer</b> means (a) the loan offer letter issued by us setting out the details of the Loan and the Project. The Offer refers to these terms and sets out any other conditions which apply; and/or (b) a letter issued by us amending the Agreement after the offer referred to in (a) has been accepted by you.</p>
<p><b>Party</b> means SOSE or you, <b>Parties</b> means SOSE and you.</p>
<p><b>Project</b> is the project which is described in the Offer.</p>
<p><b>Regulatory Bodies</b> means all national and supra national government and regulatory authorities including Scottish Government, Scottish Funding Council, UK Government, European Commission, Auditor General, Accounts Commission and/or the European Court of Auditors.</p>
<p><b>Repayment Schedule</b> means the schedule with that title outlining the Repayment Schedule enclosed in the Offer letter. You must satisfy the requirements set out in “Things you need to give us” , any Drawdown Criteria and any other Loan Conditions, and any amendment to that schedule which we make if we are entitled to recalculate the Loan in accordance with the Offer.</p>
<p><b>Subsidy</b> means funding constituting a subsidy within the meaning of Chapter 3 of Title XI of the TCA or aid within the scope of Article 10 of the NI Protocol and/or, for awards of funding that include contributions from EU Structural Funds within the scope of Article 138 of the UK-EU Withdrawal Agreement agreed on 17 October 2019 (as implemented by section 7A of the European Union (Withdrawal) Act 2018).</p>
<p><b>Tax Haven</b> means a jurisdiction included in the EU list of non-cooperative jurisdictions for tax purposes listed here <a href="https://www.consilium.europa.eu/en/policies/tax-cooperation/">Taxation: EU list of non-cooperative jurisdictions - Consilium (europa.eu)</a>.</p>
<p><b>TCA</b> means the UK-EU Trade and Cooperation Agreement signed on 30 December 2020 (as implemented by section 29 of the European Union (Future Relationship) Act 2020).</p>
<p><b>we, us, our</b> and <b>SOSE</b> means South of Scotland Enterprise, established under the South of Scotland Enterprise Act 2019 and having its principal office at Carmont House, The Crichton, Bankend Road, Dumfries, DG1 4TG.</p>
<p><b>you</b> means the entity awarded a Loan, described as Borrower in the Offer. Where more than one entity is described in the Offer, “you” includes all of those entities. Each of those entities will be liable on a joint and several basis for the matters set out in this Agreement. “You” includes your parent company or parent institution for the purposes of Conditions 5.1.6, 5.1.7, 5.1.8, 5.1.9, 5.1.10.</p>

## 2. YOUR CONFIRMATIONS

2.1 By accepting the Offer, you confirm and undertake to us that:

- 2.1.1 the information you submitted to us (including financial details) in support of your application for a loan for the Project was and remains true and accurate and you are not subject to any insolvency proceedings or are at risk of being placed in insolvency proceedings;
- 2.1.2 you have capacity to and authority to enter into the Agreement;
- 2.1.3 you will comply with and/or discharge your obligations under the Agreement;
- 2.1.4 you have provided us with full details of all offers of any Subsidy which you have received or accepted from any public sector body (excluding SOSE) over the last three (3) calendar years;

- 2.1.5 you hold and will maintain all necessary consents, licences, permits and/or authorisations required to carry out the Project and your obligations under the Agreement;
  - 2.1.6 you will use and where relevant ensure the use of, the Loan only in relation to the Project and in accordance with your application for the Loan;
  - 2.1.7 you own or have the right to use all any and all rights in and to any IPR required to enable you to carry out the Project;
  - 2.1.8 you will own or have the right to use all IPR generated by you or by any third party (including subcontractors or consultants) engaged to work on the Project and you will take all steps necessary to protect this IPR;
  - 2.1.9 any assets which will be wholly or partly funded by the Loan are and will continue to be free from liens, claims, taxes and encumbrances of any kind and nature;
  - 2.1.10 you are not in receipt of any financial assistance or Subsidy that has been granted in breach of any applicable statutory provisions or regulations or any decisions adopted by any Regulatory Body; and
  - 2.1.11 you are not subject to any outstanding recovery order or other proceeding in respect of any Subsidy.
- 2.2 You must also meet any conditions set out in the Offer where they are to be satisfied before any Loan is paid. If any of those conditions are of a continuing nature, you shall continue to comply with them until the Loan is repaid.

### **3. YOUR OBLIGATIONS**

#### 3.1 You will:

- 3.1.1 carry out the Project in compliance with the Agreement, the law, and the information submitted by you and approved by us, and ensure that any party acting on your behalf does the same;
- 3.1.2 only use and where appropriate ensure the use of, the Loan for the purposes of the Project and in accordance with this Agreement and you will not use the Loan to meet expenditure incurred before the date of the Offer;
- 3.1.3 not use the Loan to fund the costs of improving export performance of goods or services;
- 3.1.4 not be obliged to favour UK suppliers and goods in carrying out the Project;
- 3.1.5 undertake the Project with all the skill and care which can reasonably be expected from a business or organisation with your skill and experience and carry on your business in an efficient and proper manner;
- 3.1.6 undertake the Project in a manner which does not (i) in our reasonable opinion detract from or damage the image and reputation of SOSE and/or Scottish Government and/or (ii) unreasonably impede, prevent or increase the cost to us of discharging our obligations, duties, and statutory functions;
- 3.1.7 maintain (and make sure that any contractors and consultants you appoint maintain) adequate insurance in respect of the Project at all times and, if required by us, ensure that our interest is noted / endorsed on all relevant insurance policies;
- 3.1.8 ensure that consultants, contractors and/or suppliers engaged in the Project are paid on time;

- 3.1.9 provide us with regular reports on the progress of the Project in such form and at such intervals as we may reasonably require;
  - 3.1.10 provide us with any other information and documentation relating to the Project as we may request from time to time;
  - 3.1.11 maintain well-ordered, complete and up to date records in connection with the Project including in relation to funding in accordance with the Offer for the duration of the Project and for either 3 years after the completion of the Project or ten (10) calendar years after completion of the Project, whichever is later;
  - 3.1.12 give us and our auditors and representatives access to your business premises and to all records, reports, analysis and books of account relating to the Project during normal business hours on two (2) days written notice and you will give all reasonable assistance to anyone exercising this right of access;
  - 3.1.13 not move your business or any plant, equipment or other assets acquired in connection with the Project out of the SOSE area of operation without our prior approval in writing, substantially reduce the scale of your operations at and/or change the Project Location without our consent;
  - 3.1.14 keep all of your property, buildings, plant, equipment and other assets in a good state of repair and in good condition (to our reasonable satisfaction) and let us inspect them on reasonable notice;
  - 3.1.15 not without our consent sell, lease, grant security over or otherwise dispose of or remove (i) your property or buildings or (ii) any plant, equipment or other assets used in connection with the Project and in each case as acquired or improved with all or any part of the Loan;
  - 3.1.16 where property, buildings, plant, equipment and/or other assets are or have been acquired or improved with all or any part of the Loan, you will only use these for the Project unless you have our consent in advance; and
  - 3.1.17 (unless otherwise specified in the Offer) give us your quarterly management accounts in a form to be agreed, within four (4) weeks of the end of the period to which they relate and an annual statement of accounts of your business within six (6) months of the date to which that statement is made up. Whereby law your annual statement is required to be audited, you must provide us with the audited annual statement.
- 3.2 You must not issue any press release or make any public announcement or statement regarding the Loan and/or the Project without our prior written consent.
- 3.3 We may publicise the Loan and include information relating to the Loan and the Project in public records and other documents.
- 3.4 You must not change the Project, including its timescale or budget, or discontinue or dispose of it or make any alteration that we consider to be a material alteration to its character without our prior written consent. You must keep us informed of any possible changes to the Project and, if we request it, meet with us and our advisers to consider the extent to which any changes may affect the eligibility of the Project for ongoing support from us.
- 3.5 You agree to indemnify us against any claims, costs, losses, expenses, actions, suits, demands and liabilities whatsoever arising out of or in connection with the Project and/or any failure by you to comply with any of your obligations under this Agreement.

#### 4. PAYMENT

- 4.1 Before we will pay the Loan to you, you must complete and sign the Offer and send it, and all necessary supporting information (see Condition 4.2 below), to the address in Condition 1 for the attention of your SOSE Project Manager. Your SOSE Project Manager is the person whose name is included at the end of your Offer.
- 4.2 With the terms and conditions of the Agreement, we will issue you with a Repayment Schedule and pay the Loan to you by electronic bank transfer on the Loan Release Date.
- 4.3 If we agree to pay any part of the Loan before we have received all necessary supporting information from you, you must give us the missing information as soon as possible, and in any event not later than 30 days after the payment. If you do not do this, we may demand the immediate repayment of all or part of the Loan.
- 4.4 No payment of Loan will include any element of VAT unless agreed by us.
- 4.5 We shall be entitled to set off any amount you owe us which has fallen due and payable against any amount due to you under this Agreement.

## **5. WHEN WE CAN STOP PAYING OR SEEK REPAYMENT**

- 5.1. We may withhold payment of, or reclaim (together with interest) all or any part of, the Loan:
  - 5.1.1. if you breach any of the terms of this Agreement or any other agreement in place between us;
  - 5.1.2. if we are required to do so by any Regulatory Body, or if a consent from a Regulatory Body is required in relation to you or in relation to the Project, your assets or assets used or to be used in connection with or for the delivery of the Project and the consent has not been obtained;
  - 5.1.3. to the extent necessary to ensure that the Loan, either on its own or when taken together with other financial assistance given or likely to be given in respect of the Project, (i) is within the rules on Subsidy laid down any Regulatory Body from time to time and (ii) is not in breach of any other applicable statute or regulation;
  - 5.1.4. if you fail to progress with, carry out or complete the Project to our satisfaction;
  - 5.1.5. if you apply for or receive notice of entitlement to or an offer of or you actually receive any contribution in connection with the Project, either in cash or in kind, from any public sector body without our prior written approval;
  - 5.1.6. if at any time you provide us with information which is fraudulent, misleading or incorrect;
  - 5.1.7. if you become unable or admit inability to pay your debts as they fall due, you suspend making payment of any of your debts as they fall due, or you commence negotiation with one or more creditors with a view to rescheduling any of your indebtedness;
  - 5.1.8. if you become insolvent or make any arrangement with your creditors or are liquidated or wound up, or take any steps preparatory to liquidation or winding up or to the appointment of a liquidator, receiver or administrator, or you commit or suffer any act analogous to the foregoing in any jurisdiction;
  - 5.1.9. if you have a change of ownership or control or a material change in your constitution and/or management or the nature of your business and/or activities, as carried out at the date of this Agreement, changes (in our opinion) to a material extent or an event occurs which, in our opinion, has or may have a material adverse effect on your ability to comply with this Agreement;
  - 5.1.10. where you have a parent company, any of the events listed in Condition 5.1.9 occur in respect of that parent company;

- 5.1.11. if you wholly or substantially cease to or threaten to cease to carry on business or to own or use any of the assets which are required for the Project;
- 5.1.12. if the nature of the Project changes such that it is no longer eligible for support under the relevant Subsidy regulations;
- 5.1.13. if you confirm to us in writing that you no longer wish to proceed with the Project;
- 5.1.14. if there is any withdrawal of third party funding for the Project or there are any changes which we consider to be material or detrimental to the Project or your ability to perform your obligations under this Agreement;
- 5.1.15. if any guarantee and/or other form or instrument of security provided by you or your parent company or parent institution or other party as referred to in the Offer becomes ineffective;
- 5.1.16. if you fail to make any repayment of Loan and/or interest within ninety days (90) of the relevant date set out in the Repayment Schedule or;
- 5.1.17. if we consider that the future of the Project is in jeopardy.
- 5.2. You must tell us as soon as any of these things happen, or as soon as you become aware that any of them are likely to happen.
- 5.3. If we become aware of one or more of the events listed in Condition 5.1.1 to 5.1.17 happening, either because you tell us or otherwise, we may by written notice to you at any time:
  - 5.3.1. vary or withhold any or all remaining payments of Loan;
  - 5.3.2. where it is remediable, require you to remedy the event within whatever time period we consider to be reasonable;
  - 5.3.3. terminate this Agreement on whatever date we decide;
  - 5.3.4. declare that all sums previously paid by way of Loan (together with interest and expenses) are immediately due and payable to us and our notice shall operate as a demand for payment of all such sums; and/or
  - 5.3.5. take any action available to us at law and/or under common law,  
and our right to take the steps set out in Conditions 5.3.4 and/or 5.3.5 will continue for a minimum of ten (10) years from the last date of payment of any instalment of Loan, irrespective of whether this Agreement has already terminated.
- 5.4. Where we reclaim sums from you, you must pay these sums within fourteen (14) days of receipt of our written notice.
- 5.5. You agree that, save in the event of manifest error, a certificate signed by any duly authorised officer of SOSE shall be sufficient to ascertain conclusively and fix all sums due resting and owing by you to us including any amount of Loan made over to you and repayable to SOSE by virtue of the provisions contained in this Agreement.

## **6. BRINGING THE AGREEMENT TO AN END**

- 6.1. This Agreement may be terminated at any time by agreement between us.
- 6.2. Termination of this Agreement will be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination.
- 6.3. Termination of this Agreement shall not affect Conditions: 5.3.4, 5.3.5, 5.4, 5.5; 6.2, 7; 8; and 10.

## 7. CONFIDENTIALITY

- 7.1. You and we agree to only use Confidential Information for the purposes of the Project and the performance of this Agreement.
- 7.2. You and we agree not to disclose Confidential Information to any third party (which does not include our employees, officers, contractors, agents, representatives or public partners) without obtaining the prior written consent of the other Party.
- 7.3. Conditions 7.1 and 7.2 do not apply:
- 7.3.1. to the extent Confidential Information is public knowledge or already known to the third party at the time of disclosure, other than by breach of this Agreement, or where required to be disclosed by law or applicable regulatory requirement or code, including FOISA and you will provide such assistance as we may reasonably require in relation to such disclosure. If FOISA applies to you, SOSE will provide such assistance as you may reasonably require in relation to such disclosure;
  - 7.3.2. to the publication or disclosure by us of details of the Loan. You waive all rights to prevent or restrict publication or disclosure on the grounds of commercial confidentiality or otherwise;
  - 7.3.3. to the disclosure of Confidential Information or information relating to this Agreement and the Project to Regulatory Authorities.
- 7.4. You will cooperate with and assist us by providing such information as we or such Regulatory Body may require. You may identify information you consider commercially confidential together with an explanation as to why you consider it commercially confidential. We will consider your representations and both Parties shall act reasonably in seeking to agree the extent to which such information may be shared.

## 8. DATA PROTECTION

8.1.

In this Condition....
<b>Personal Data</b> means the personal data (as such term is defined in Data Protection Law) being processed by either you or us pursuant to the terms of the Agreement.
<b>Controller, Process and Processing</b> have the same meanings as they do in Data Protection Law.
<b>Data Protection Law</b> means any applicable law relating to data protection and the processing of personal data from time to time under the Agreement, including: <ul style="list-style-type: none"> <li>(a) the Data Protection Act 2018;</li> <li>(b) the UK GDPR;</li> <li>(c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); and</li> <li>(d) any legislation that, in respect of the United Kingdom, replaces, or enacts into United Kingdom domestic law, the proposed Regulation on Privacy and Electronic Communications or any other law relating to</li> </ul>

data protection, the processing of personal data and privacy as a consequence of the United Kingdom leaving the European Union.

**UK GDPR** means the terms of the General Data Protection Regulation (EU) 2016/679 as transposed into UK law as a consequence of the United Kingdom leaving the European Union.

8.2. You and we agree that any transfer of Personal Data between you and SOSE is on a Controller to Controller basis. You and we shall each comply with our respective obligations under all Data Protection Law. You and we shall each comply with our obligations under all Data Protection Law and shall provide each other with any information reasonably requested and necessary to enable that other Party to meet the requirements of Data Protection Law.

8.3. You agree that:

- 8.3.1. where you disclose Personal Data to us in relation to the terms of the Agreement, such disclosure must be fair, transparent and lawful and not contravene Data Protection Law;
- 8.3.2. we will Process that Personal Data as a Controller in accordance with our published privacy statement from time to time. This privacy statement is on the SOSE website; and
- 8.3.3. we may share such Personal Data with Regulatory Bodies, Highlands and Islands Enterprise and/or Scottish Enterprise and in accordance with our legal requirements, as detailed in our published privacy statement.

## 9. FAIR WORK PRACTICE

9.1. You:

- 9.1.1. will ensure that all of your employees are paid at least the Real Living Wage as outlined by the Living Wage Foundation (registered charity number 1107264);
- 9.1.2. will not use zero hours contracts in relation to any jobs relating to the Project and/or supported by the Loan where it is inappropriate to do so. Whether or not it is “appropriate” will depend on the nature, type and/or location of the particular job;
- 9.1.3. must, if you have a duty under the Equality Act 2020 (Gender Pay Gap Information Regulations 2017) (the “2017 Regulations”), to publish an annual report, make available a copy of such report to SOSE; and
- 9.1.4. undertake to calculate any gender pay gap using the formula in the 2017 Regulations even if the 2017 Regulations do not apply to you. We will support you in making this calculation.

## 10. SUBSIDY CONTROL

- 10.1. Following the expiry of the Brexit transition period on 31 December 2020, the UK is no longer subject to EU State aid rules. The only exceptions to this are for aid that is caught by the NI Protocol and for awards of funding that include contributions from EU Structural Funds.
- 10.2. Until such time as the UK adopts a domestic subsidy control regime, SOSE is required to comply with the provisions on subsidy control as provided for in Chapter 3 of Title XI of the TCA and/or the NI Protocol (as relevant).



- 10.3. If your Offer says the Loan is made under the terms of one of our Subsidy Schemes, we consider it to have been made on terms consistent with the principles of Article 3.4 of Title XI of the TCA and/or the NI Protocol (as relevant).
- 10.4. If your Offer says the Loan is made in response to a national or global economic emergency, we consider it to have been made on terms consistent with the principles of Article 3.2.3 and 3.4 of Title XI of the TCA.
- 10.5. If your Offer refers to one of our Subsidy Schemes, the Loan is not made as a De Minimis Subsidy.
- 10.6. If your Offer says the Loan is made as a De Minimis Subsidy pursuant to Article 3.2.4 of Title XI of the TCA there is a ceiling of 325,000 Special Drawing Rights to your Group over any period of three fiscal years. The Grant will be relevant if you or any other entity or entities which form your Group wish or wishes to apply, or have or has applied, for any other De Minimis Subsidy from a public body or other source of public funds in the UK. For these purposes, you must retain details of the Grant for at least 10 years from the date on which you receive the last instalment of the Grant and produce it on request by any Regulatory Body.
- 10.7. If your Offer says the Loan is made as a De Minimis Subsidy pursuant to European Commission Regulation (EU) No 1407/2013 there is a ceiling of €200,000 for all de minimis aid provided to your Group over a 3-year period. The Loan will be relevant if you or any other entity or entities which form your Group wish or wishes to apply, or have or has applied, for any other De Minimis Subsidy from a public body or other source of public funds in the UK. For these purposes, you must retain details of the Loan for at least 10 years from the date on which you receive the last instalment of the Loan and produce it on request by any Regulatory Body.

## 11. Tax Havens

- 11.1. We will not pay you the Loan if your business:
  - 11.1.1. is incorporated in a Tax Haven;
  - 11.1.2. is resident, for tax purposes, in a Tax Haven;
  - 11.1.3. is a Subsidiary of another enterprise which is based in a Tax Haven;
  - 11.1.4. has a Subsidiary based in a Tax Haven;
  - 11.1.5. participates in a tax arrangement that results in some or all of its profits being taxed in a Tax Haven.
- 11.2. If it is later found that you have breached the Tax Haven conditions you must repay any part of the Loan which we have already paid you, plus interest, and any we will not be obliged to pay you any further Loan.

## 12. Other important information

- 12.1. If there is any inconsistency between the Offer and these terms, the Offer shall prevail.
- 12.2. The laws of Scotland apply to these terms and our Agreement and any non-contractual obligations arising from or in connection with them. The Scottish courts will have exclusive jurisdiction over any dispute arising out of or connected with this Agreement.
- 12.3. If we do not enforce one of more of our rights or remedies straight away, this does not mean that we will not do so in future. We will give up our right to enforce the Agreement only if we tell you in writing.

- 12.4. You cannot transfer, subcontract or sublet any of your rights and/or obligations under the Agreement to anyone else.
- 12.5. The Agreement does not confer a right on any other person to enforce any term of this Agreement under the Contract (Third Party Rights) (Scotland) Act 2017 or otherwise.
- 12.6. If any provision of the Agreement is or becomes illegal or invalid it will not affect the legality or validity of any other part of this Agreement.
- 12.7. We will not be responsible for the quality of any work being produced or undertaken because of or in connection with the Project or for any professional advice or services funded wholly or partly by the Loan.
- 12.8. No amendments to this Agreement can be made unless they are in writing and have been signed by or on behalf of both of us.
- 12.9. Any notice given under this agreement must be in writing and addressed to the party at its principal place of business (or such other address as that party may have specified to the other party in writing) and be delivered personally, sent by pre-paid first-class post or recorded delivery or sent by email.
- 12.10. This Agreement may be executed in counterparts. Where executed in counterparts:
  - 12.10.1. this Agreement shall not take effect until all of the counterparts have been delivered;  
and
  - 12.10.2. delivery will take place when the date of delivery is agreed between the Parties after execution of this Agreement as evidenced by the date inserted at the end of the Offer.