

# South of Scotland Enterprise Standard Grant Terms and Conditions

Version dated 5<sup>th</sup> January 2021

## 1. ABOUT OUR TERMS

1.1 These terms apply if you have received a grant award from South of Scotland Enterprise which is subject to our standard grant terms and conditions. In these terms, your grant 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**”.

### 1.1 In these terms:

**Grant, Project and Project Location** are as described in the Offer;

**FOISA** means the Freedom of Information (Scotland) Act 2002 and/or the Environmental Information (Scotland) Regulations 2004 and any amendment, update or replacement;

**IPR** means patents, inventions, trademarks, 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;

**Offer** means the Grant award letter issued by us setting out the details of the Grant and the Project. The Offer refers to these terms and sets out any other conditions which apply;

**Party or Parties** means SOSE and you;

**Regulatory Body or Bodies** means all competent national and supra-national government and regulatory authorities including without limitation Scottish Government, UK Government, Auditor General, Accounts Commission and to the extent applicable European Commission and /or the European Court of Auditors;

**State Aid** means funding constituting aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union and/or any equivalent law or regulation from time to time forming part of Scots law;

**we, us, our** and **SOSE** means South of Scotland Enterprise, established under the South of Scotland Enterprise Act 2019;

**you** means the entity awarded a Grant, as described as the Grant Recipient 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 for the purposes of Conditions 5.1.8, 5.1.9, 5.1.10, 5.1.11, 5.1.13 and 5.1.16.

## 2. YOUR CONFIRMATIONS

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

- 2.1.1 the information you submitted to us (including financial details) in support of your application for grant funding for the Project was and remains true and accurate;
- 2.1.2 you have the 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 hold and will maintain all necessary consents, licences, permits and/or authorisations required to carry out the Project and your obligations under the Agreement;

- 2.1.5 you will use the Grant only in relation to the Project and in accordance with your application for grant funding;
  - 2.1.6 you own or have the right to use any and all rights in and to any IPR required to enable you to carry out the Project;
  - 2.1.7 any assets which will be wholly or partly funded by the Grant are and will continue to be free from liens, claims, taxes and encumbrances of any kind and nature;
  - 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;
  - 2.1.9 you are not in receipt of any financial assistance or State Aid that has been granted in breach of any applicable statutory provisions or regulations or any decisions adopted by any Regulatory Body; and
  - 2.1.10 you are not subject to any outstanding recovery order or other proceeding in respect of any State Aid.
- 2.2 You must also meet any conditions set out in the Offer where they are to be satisfied before any Grant is paid.

### **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 the Grant for the purposes of the Project and in accordance with this Agreement;
  - 3.1.3 undertake the Project with all the skill and care which can reasonably be expected from a business or organisation or institution with your skill and experience;
  - 3.1.4 undertake the Project and your business and/or undertaking in such a manner as (i) not to detract from or damage the image and reputation of SOSE and/or Scottish Government and/or (ii) not to unreasonably impede, prevent or increase the cost to us of discharging our obligations, duties, and statutory functions;
  - 3.1.5 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 or endorsed on all relevant insurance policies;
  - 3.1.6 ensure that consultants, contractors and/or suppliers engaged in the Project are paid on time;
  - 3.1.7 provide us with regular reports on the progress of the Project in such form and at such intervals as we may reasonably require;
  - 3.1.8 provide us with any other information and documentation relating to the Project as we may request from time to time;
  - 3.1.9 maintain well-ordered, complete and up-to-date records in connection with the Project including in relation to funding for the duration of the Project and until 31 December 2035 or 10 years after completion of the Project, whichever is later; and
  - 3.1.10 give us and our auditors and representatives access to your business premises and to all records 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.
- 3.2 You must not issue any press release or make any announcement or statement regarding the Grant and/or the Project without our prior written consent.
- 3.3 We may publish details of the Grant, including information set out in the Offer, on our website and in public records and other documents.

- 3.4 You must not move your business or any plant, equipment or other assets acquired in connection with the Project and/or funded by the Grant out of the SOSE area of operation.
- 3.5 You must not change the Project, including its timescale or budget, without our prior written consent. You must keep us informed of any possible changes to the Project and, if we request, meet with us to consider the extent to which any changes may affect the eligibility of the Project for ongoing support from us.

#### **4. PAYMENT**

- 4.1 We are not obliged to pay Grant where, as at the due date for payment, an event allowing us to stop paying or seek repayment of the Grant as set out at Conditions 5.1.1 to 5.1.17 (inclusive), or any event which, with the giving of notice or lapse of time or other condition may constitute an event allowing us to stop paying or seek repayment of the Grant as set out at Conditions 5.1.1 to 5.1.17 (inclusive) has occurred.
- 4.2 No payment of Grant will include any element of VAT unless agreed by us.
- 4.3 We are entitled to offset 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, or decide not to make any future payments of the Grant:
- 5.1.1 if we are required to do so by any Regulatory Body;
  - 5.1.2 to the extent necessary to ensure that the Grant, either on its own or when taken together with other financial assistance given or likely to be given in respect of the Project, is within the rules on State Aid laid down by any Regulatory Body from time to time;
  - 5.1.3 if you breach any of the terms of this Agreement or any other agreement in place between us;
  - 5.1.4 if you fail to progress with, carry out or complete the Project to our satisfaction;
  - 5.1.5 if you change the Project Location without our consent;
  - 5.1.6 you cease or substantially reduce the scale of your operations at the Project Location or any of your other business premises in Scotland;
  - 5.1.7 if you apply for or receive notice of entitlement to or an offer of any contribution in connection with the Project, either in cash or in kind, from any public sector body (excluding SOSE);
  - 5.1.8 if at any time you provide us with information which is fraudulent, misleading or incorrect;
  - 5.1.9 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;
  - 5.1.10 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 comparable to the foregoing in any jurisdiction;
  - 5.1.11 if you have a change of ownership or control, or the nature of your business, as carried out at the date of this Agreement, changes (in our opinion) to a material extent;
  - 5.1.12 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;
  - 5.1.13 if the nature of the Project changes such that it is no longer eligible for State Aid ;

- 5.1.14 if you confirm to us in writing that you no longer wish to proceed with the Project;
  - 5.1.15 if there is any withdrawal of funding for the Project or there are any changes which we consider to be material or detrimental to the financing or resourcing of the Project;
  - 5.1.16 if we consider that the future of the Project is in jeopardy; or
  - 5.1.17 if any guarantee and/or other form or instrument of security provided by you or your parent company or institution as referred to in the Offer becomes ineffective.
- 5.2 You must tell us as soon as any of the events listed in Conditions 5.1.1 to 5.1.17 (inclusive) 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 at Conditions 5.1.1 to 5.1.17 (inclusive) 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 Grant;
  - 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 Grant are immediately due and repayable to us and our notice shall operate as a demand for repayment 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 10 years from the last date of payment of any instalment of the Grant, irrespective of whether this Agreement has already terminated.
- 5.4 You agree that, save in the event of manifest error, a certificate signed by any duly authorised officer of SOSE will be sufficient to ascertain conclusively and fix all sums due resting and owing by you to us including any amount of Grant made paid to you and repayable to us by virtue of this Agreement.
- 5.5 Any amount due to us under this Agreement shall be repaid by you within thirty (30) days (or such other time period as we may specify) of receipt of our written notice.

## 6. BRINGING THE AGREEMENT TO AN END

- 6.1 The Agreement may be terminated at any time by agreement between us.
- 6.2 Termination of the 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 the following Conditions: 5.3.4, 5.3.5, 5.4, 5.5, 7, 8 and 10.

## 7. CONFIDENTIALITY

- 7.1 In this part:  
**Confidential Information** means any information disclosed by one Party to the other under or pursuant to the Agreement, whether verbally or written (including in electronic format) which is designated as confidential or which should be reasonably regarded as confidential.
- 7.2 You and we agree not to use Confidential Information for any purpose other than the Project and the performance of this Agreement.
- 7.3 Both Parties 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.

- 7.4 Conditions 7.2 and 7.3 do not apply:
- 7.4.1 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, we will provide such assistance as you may reasonably require in relation to such disclosure;
  - 7.4.2 to the publication or disclosure by use of details of the Grant. You waive all rights to prevent or restrict publication or disclosure on the grounds of commercial confidentiality or otherwise;
  - 7.4.3 to the disclosure of Confidential Information or information relating to the Agreement and the Project to Regulatory Bodies.
- 7.5 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 and provide us with an explanation as to which you consider it commercially confidential. We will consider your representations and both you and we will act reasonably in seeking to agree the extent to which such information may be shared.

## 8. DATA PROTECTION

- 8.1 In this part:

**Controller, Process** and Processing have the same meanings as they do in Data Protection Law.

**Data Protection Law** means any applicable law relating to data protection and the processing of personal data from time to time under this Agreement, including:

- (a) the Data Protection Act 2018;
- (b) the UK GDPR;
- (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); and
- (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 data protection, the processing of personal data and privacy as a consequence of the United Kingdom leaving the European Union.

**Personal Data** means the personal data (as such terms is defined in Data Protection Law) being processed by either you or us pursuant to the terms of this Agreement.

**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 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 this 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 notice from time to time. This privacy notice is on [SOSE website](#); and
  - 8.3.3 we may share such Personal Data with Regulatory Bodies, and in accordance with our legal requirements, as detailed in our published privacy notice.

## 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 Grant 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 OTHER IMPORTANT INFORMATION

- 10.1 If there is any inconsistency between the Offer and these terms, the Offer shall prevail.
- 10.2 The laws of Scotland apply to these terms and the 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.
- 10.3 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.
- 10.4 You cannot transfer, subcontract or sublet any of your rights and/or obligations under the Agreement to anyone else.
- 10.5 This 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.
- 10.6 If any provision of this Agreement is or becomes illegal or invalid it will not affect the legality or validity of any other part of this Agreement.
- 10.7 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 Grant.
- 10.8 This Agreement may be executed in counterparts. Where executed in counterparts:
  - 10.8.1 this Agreement shall not take effect until all of the counterparts have been delivered; and
  - 10.8.2 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.

**End of Document**