

South of Scotland Enterprise

Standard Grant Terms and Conditions



Version dated 26 January 2022

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”.

1.2 IN THESE TERMS:

Agreement on Agriculture means the World Trade Organisation Agreement on Agriculture (AoA) which was implemented on 1 January 1995 and part of Annex 1A to the WTO Agreement (as modified from time to time);

Agreement on Subsidies and Countervailing Measures means the World Trade Organisation Agreement on Subsidies and Countervailing Measures (ASCM), which came into force in 1995;

De Minimis Aid means State aid falling within the NI Protocol or EU Scheme which is exempt pursuant to the European Commission Regulation (EU) No 1407/2013 De Minimis Aid and 717/2014;

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

GBER means the Commission Regulation (EU) N°651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, as amended by Commission Regulation (EU) 2020/972 of 2 July 2020 amending Regulation (EU) No 1407/2013 as regards its prolongation and amending Regulation (EU) No 651/2014 as regards its prolongation and relevant adjustments;

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

IPR means 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;

NI Protocol 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 as amended on 31 January 2020 by the European Union (Withdrawal Agreement) Act 2020);

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 or bodies including Scottish Government, Scottish Funding Council, Competition and Markets Authority (CMA), Department for Business, Energy and Industrial Strategy (BEIS), 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 scope of Article 10 of the NI Protocol and/or, for awards of funding that include contributions from EU Structural Funds, aid 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), and all prior funding constituting aid before 1 January 2021.

State aid temporary framework means the EU State aid Temporary Framework as adopted on 19 March 2020 (C(2020) 1863) and its amendments C(2020) 2215 of 3 April 2020, C(2020) 3156 of 8 May 2020, C(2020) 4509 of 29 June 2020, C(2020) 7127 of 13 October 2020, and C(2021) 564 of 28 January 2021.

Subsidy means funding constituting a subsidy within the meaning of Chapter 3 of Title XI of the TCA, or which falls within the WTO Agreement on Agriculture for agriculture funds, or the WTO ASCM for fisheries and aquaculture funds, and does not constitute State aid, since 1 January 2021.

Subsidy Control means the United Kingdom's international commitments on subsidy control arising from, amongst others, the TCA, World Trade Organisation Membership and commitments arising from international treaties and agreements to which the United Kingdom is a party.

Subsidy Schemes means the funding schemes adopted from time to time by us and available at: <https://www.southofscotlandenterprise.com/who-we-are/accessing-our-information/stateaid> including: (i) SEDSS and Covid 19 Resilience under the TCA, (ii) EDSS and Covid 19 Resilience under the NI Protocol, (iii) PASS and FASS under WTO AoA and WTO ASCM, and (iv) ESIF under the EU Structural Funds.

Small Subsidy Allowance means a Subsidy falling within the TCA which is exempt pursuant to Article 364.4 of Title XI of the TCA;

TCA 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);

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

Withdrawal Act means the European Union (Withdrawal) Act 2018 as amended on 31 January 2020 by the European Union (Withdrawal Agreement) Act 2020);

Withdrawal Agreement means the UK-EU Withdrawal Agreement agreed on 17 October 2019 (as implemented by section 7A of the European Union (Withdrawal) Act 2018) and as amended on 31 January 2020 by the European Union (Withdrawal Agreement) Act 2020);

WTO means the World Trade Organisation. UK-EU

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 5.1.6, 5.1.7, 5.1.8, 5.1.9, and 5.1.10.

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 and you are not subject to any insolvency proceedings or are at risk of being placed in insolvency proceedings;
 - 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 have provided us with full details of all offers of any Subsidy/State aid which you have received or accepted from any public sector body (including SOSE) over the last 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 Grant only in relation to the Project and in accordance with your application for grant funding;
 - 2.1.7 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;
 - 2.1.8 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 Grant 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 provide any other information that the Scottish Ministers may reasonably require to satisfy themselves that the Project/Programme is consistent with the TCA. The Grantee shall provide the Scottish Ministers with prompt access to any information they reasonably require to ensure compliance with these Conditions.
- 2.3 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, and where relevant ensure the use of, the Grant for the purposes of the Project and in accordance with this Agreement;
- 3.1.3 not use the Grant 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 or institution with your skill and experience;
- 3.1.6 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;
- 3.1.7 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 or 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 for the duration of the Project and until 31 December 2035 or 10 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 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 and/or funded by the Grant out of the SOSE area of operation, substantially reduce the scale of your operations at and/or change the Project Location without our consent;
- 3.1.14 where you prepare accounts and where requested by us (i) give us your monthly management accounts in a form to be approved by us within 6 weeks of the end of the period to which they relate, and, (ii) in each year, also give us an annual audited statement of accounts of your business within 6 months of the date to which that statement is made up.
- 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 publicise the Grant and include information relating to the Grant and the Project on our website and in public records and other documents.
- 3.4 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 Subject to you complying with the terms and conditions of the Agreement, we will pay the Grant (including any instalment) to you by electronic bank transfer.
- 4.2 No payment of the Grant will include any element of VAT unless agreed by us.
- 4.3 We are entitled to set off any amount you owe us which has fallen due and payable against any amount due to you under this Agreement.
- 4.4 We are not obliged to pay the 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 5.1.15 (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 5.1.15 (inclusive) has occurred.

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 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 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 Subsidy laid down any Regulatory Body from time to time;
 - 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 any contribution in connection with the Project, either in cash or in kind, from any public sector body (excluding SOSE);
 - 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 comparable 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;
 - 5.1.10 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;
 - 5.1.11 if the nature of the Project changes such that it is no longer eligible for support under the relevant Subsidy regulations;
 - 5.1.12 if you confirm to us in writing that you no longer wish to proceed with the Project;

- 5.1.13 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 financing or resourcing of the Project;
- 5.1.14 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; or
- 5.1.15 if we consider that the future of the Project is in jeopardy.
- 5.2 You must tell us as soon as any of the events listed in Conditions 5.1.1 to 5.1.15 (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 5.1.15 (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 the 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 the 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 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 the following Conditions: 5.3.4, 5.3.5, 5.4, 5.5, 6.2, 7, 8 and 11.

7. CONFIDENTIALITY

- 7.1 In this part:

Confidential Information means 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 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 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.

- 7.4 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 us 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, Highlands and Islands Enterprise and Scottish Enterprise 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 work towards ensuring 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 work towards not using 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;

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 AND STATE AID 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 If the Grant (or any part or condition thereof) does not comply with applicable Subsidy and State aid control obligations, 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 in accordance with law.

10.3 Until such time as the UK adopts a domestic subsidy control regime, SOSE is required to comply with the provisions on Subsidy and State aid control as provided for in Chapter 3 of Title XI of the TCA, the AoA, the ASCM and/or Article 138 of the UK-EU Withdrawal Agreement in respect of EU structural funds and/or the NI Protocol (as relevant).

10.4 If your Offer says the Grant is made under the terms of one of our Schemes, we consider it to have been made on terms consistent with one of the following: (i) the principles of Article 3.466 of Title XI of the TCA for Covid 19 Resilience and EDAA Schemes, (ii) the NI Protocol/EU State aid rules for (as relevant) any award which may benefit an NI company, and ongoing EU ESIF Schemes, and (iii) the WTO AoA or ASCM for PASS and FASS Schemes.

10.5 If your Offer says the Grant 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 364.3 and 366 of Title XI of the TCA.

10.5 If your Offer refers to one of our Schemes, the Grant is not made as a De Minimis Subsidy.

10.6 If your Offer says the Grant is made as a Small Subsidy Allowance pursuant to Article 364.4 of Title XI of the TCA there is a ceiling of 325,000 Special Drawing Rights to any single economic actor over any period of three fiscal years (including prior State aid awards). The Grant will be relevant if you or any other entity or entities which form a single economic actor with you wish or wishes to apply, or have or has applied, for any other Small Subsidy Allowance or De Minimis State aid 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 Grant is made as a De Minimis State aid pursuant to the European Commission Regulations (EU) No 1407/2013 and (EU) No 717/2014 there is a ceiling of €200,000 for all de minimis aid provided to a single economic undertaking over a 3-year period (including prior State aid awards). The Grant will be relevant if you or any other entity or entities which form a single economic undertaking with you wish or wishes to apply, or have or has applied, for any other De Minimis State aid or Small Subsidy Allowance 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.

11 OTHER IMPORTANT INFORMATION

- 11.1 If there is any inconsistency between the Offer and these terms, the Offer shall prevail.
- 11.2 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.
- 11.3 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.
- 11.4 You cannot transfer, subcontract or sublet any of your rights and/or obligations under the Agreement to anyone else.
- 11.5 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.
- 11.6 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.
- 11.7 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.
- 11.8 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.
- 11.9 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.
- 11.10 This Agreement may be executed in counterparts. Where executed in counterparts:
- 11.10.1 this Agreement shall not take effect until all of the counterparts have been delivered; and
- 11.10.2 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.

End of Document