

South of Scotland Enterprise Standard Grant Terms and Conditions

Version dated 6 April 2020

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**”.

In these terms...
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 such entities. Each of those entities shall be liable on a joint and several basis for the matters set out in this Agreement. “You” shall include 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.
Party or Parties means SOSE and you.
Grant, Project and Project Location are as described in the Offer.
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.
Regulatory Body or Bodies means all national and supra-national government and regulatory authorities including without limitation Scottish Government, UK Government, European Commission, Auditor General, Accounts Commission and the European Court of Auditors.
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.

2. Before the Project

- 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; and

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.

2.2 You must also meet any conditions set out in the Offer where they are to be satisfied before any Grant is paid.

3. During the Project

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 the Agreement;

3.1.3 undertake the Project with all the skill and care which can reasonably be expected from a business or organisation with your skill and experience;

3.1.4 undertake the Project 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;

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;

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 shall refrain from issuing any press release or making 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.

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 it, 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 shall have no obligation to make any payment of 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 5.1.1 to 5.1.17 (inclusive) has occurred, 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 5.1.1 to 5.1.17 (inclusive).
- 4.2 No payment of Grant will include any element of VAT unless agreed by us.
- 4.3 We shall be 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 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 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 the opinion of SOSE) 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 support under the relevant state aid scheme;
 - 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 provided by your parent company as referred to in the Offer becomes ineffective.
- 5.2 You must tell us as soon as any of the events listed in 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 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 the Agreement on whatever date we decide;
 - 5.3.4 declare that all sums previously paid by way of Grant are immediately due and payable to SOSE 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 ten (10) years from the last date of payment of any instalment of the Grant, irrespective of whether the 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 shall be sufficient to ascertain conclusively and fix all sums due resting and owing by you to SOSE including any amount of Grant made over to you and repayable to SOSE by virtue of the provisions contained in the Agreement.
- 5.5 Any amount due to us under the 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 the Agreement as at the date of termination.
- 6.3 Termination of the Agreement shall not affect the following Conditions: 5.3.4, 5.3.5, 5.4, 5.5, 7, 8 and 9.

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 the 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 the Freedom of Information (Scotland) Act 2002 and you will provide such assistance as SOSE may reasonably require in relation to such disclosure;

7.4.2 to the publication or disclosure by SOSE 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 Each Party will cooperate with and assist the other Party by providing such information as the other Party or such Regulatory Body may require. Where information is to be disclosed to a third party pursuant to FOISA, the Party whose information is to be disclosed may identify information it considers commercially confidential together with an explanation as to why it considers the information commercially confidential. The Party intending to disclose the information shall have regard to such 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 part...

Personal Data means the personal data being processed by either you or us pursuant to the terms of the Agreement.

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

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

- (a) the Data Protection Act 2018;
- (b) the 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 GDPR, 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.

GDPR means the General Data Protection Regulation (EU) 2016/679.

- 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 obligations under all Data Protection Law.
- 8.3 You agree that:
- 8.3.1 where you disclose Personal Data to SOSE 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 [SOSE shall Process that Personal Data as a Controller in accordance with SOSE's published privacy notice from time to time. This privacy notice is at []; and
 - 8.3.3 SOSE may share such Personal Data with Regulatory Bodies, and in accordance with our legal requirements, as detailed in SOSE's published privacy notice]

9. State aid

- 9.1 If the Offer states that the Grant is provided on a no aid basis, you are still responsible for complying with state aid rules.
- 9.2 If the Offer refers to one of our state aid schemes, please note that our state aid schemes operate under Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the common market in application of Articles 107 and 108 of the Treaty as published in the Official Journal of the European Union on 26 June 2014.
- 9.3 The UK legal basis for our state aid scheme(s) is the European Communities Act 1972 and the Enterprise and New Towns (Scotland) Act 1990, as amended.
- 9.4 If your Grant is €500,000 or more, we are obliged to make information about the Grant award publicly available on the EU Competition database website.
- 9.5 If your Offer refers to one of our state aid schemes, the Grant is **not** de minimis aid.
- 9.6 If your Offer says the Grant is de minimis aid, the Grant is awarded under Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (publication in the Official Journal on 24 December 2013) ("**the Regulation**"). There is a ceiling of €200,000 for all de minimis aid provided to a "single undertaking" (as defined in the Regulation) over a 3-year period. The Grant will be relevant if you or any other enterprise forming part of the same single undertaking wish or wishes to apply, or have or has applied, for any other de minimis aid from a public body or other source of public funds in the UK. For the purposes of the Regulation, 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.

9.7 If your Offer says the Grant is fisheries de minimis aid, the Grant is awarded under Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (publication in the Official Journal on 28 June 2014) (“the Fisheries De Minimis Regulation”). There is a ceiling of €30,000 for all fisheries de minimis aid provided to a “single undertaking” (as defined in the Fisheries De Minimis Regulation) over a 3-year period. The Grant will be relevant if you or any other enterprise forming part of the same single undertaking wish or wishes to apply, or have or has applied, for any other fisheries de minimis aid from a public body or other source of public funds in the UK. For the purposes of the Fisheries De Minimis Regulation, 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. Fair Work Practice

- 10.1 You:
- 10.1.1 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);
 - 10.1.2 shall 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;
 - 10.1.3 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
 - 10.1.4 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.

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 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.
- 11.6 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 the 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 The Agreement may be executed in counterparts. Where executed in counterparts:

- 11.8.1 the Agreement shall not take effect until all of the counterparts have been delivered; and
- 11.8.2 delivery will take place when the date of delivery is agreed between the parties after execution of the Agreement as evidenced by the date inserted at the end of the Offer.

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