

250804 (185) FOI Investment Monitoring

From: [Freedom of Information](#)
To: [REDACTED]
Cc: [Freedom of Information](#)
Subject: FOI Request - Investment Monitoring, Job Creation Verification and Drawdown Conditions
Date: 04 August 2025 16:36:34
Attachments: [REDACTED]

Dear [REDACTED]

Thank you for your Freedom of Information request of 7 July 2025. We are responding to you under the Freedom of Information (Scotland) Act 2002 [FOISA].

FOI REQUEST (7 July 2025)

Under the Freedom of Information (Scotland) Act 2002, I am requesting access to information regarding how your agency manages, monitors, and audits grant and loan investments into private sector companies.

This request focuses on job creation verification, drawdown mechanisms, and post-investment oversight processes. The information is sought to better understand how public money is safeguarded, and to enable comparison across Scotland's enterprise agencies.

1. Investment Drawdown Conditions

- a. Copies of standard operating procedures (SOPs), guidance, or internal policy documents outlining how grant or loan drawdowns are approved, monitored, and released.
- b. Typical performance or milestone conditions attached to staged funding (e.g. employment targets, delivery milestones).
- c. Any standard contract templates used with recipient companies that include conditions for drawdowns.

2. Job Creation Verification

- a. Internal guidance, templates, or monitoring tools used to verify that job creation commitments have been met by recipient companies.
- b. Description of how job figures are validated – e.g. through monthly reporting, payroll checks, or audited accounts.
- c. Any internal review documents or policies on how job outcome data is used in annual reporting or communications.

3. Oversight, Risk, and Follow-up

- a. Policies or SOPs outlining post-investment review, including what happens if milestones are missed or a company enters financial difficulty.
- b. Any internal audit, governance, or risk documents relating to general investment

monitoring.

- c. High-level statistics on how many companies:
 - i. Received staged investments based on job creation,
 - ii. Were subject to clawback,
 - iii. Entered administration while holding active funding commitments (past 5 years if available).

RESPONSE

1. Investment Drawdown Conditions

- a) We do not have Standard Operating Procedures and the formal guidance and performance measurement framework in SOSE is currently under review and development and therefore this is not available for inclusion in this response at this time. The current Grant Claims Process summarising the internal procedure is attached. Please note that that this may be subject to review, amendment and update. [Appendix A]
- b) Performance and other milestone conditions are set for individual cases as part of case-specific grant offers and individual terms and conditions and include different criteria and conditions for different clients and cases such as employment targets and/or other outputs. These are specific to each case and therefore there is no typical set for release as part of this request.
- c) A copy of our Grant Offer Letter template is attached [Appendix B]. This may be subject to amendment for individual cases with specific conditions of draw down prepared separately.

2. Job Creation Verification

- a) Where creation or safeguarding jobs is an output of any project, and a condition of grant, officers require evidence before authorising any associated payments. Monitoring checks will be carried out where any commitments of job creation or retention apply and a SOSE team member will go back to the client to obtain the required evidence. The client record is not complete until this information is obtained and is the same for all outcome measures.
- b. Description of how job figures are validated – e.g. through monthly reporting, payroll checks, or audited accounts. Job creation and/or retention figures are validated before any payment can be approved. Validation includes submission by the client of relevant payroll records and financial records. There is also a procedure around evidence of fair work – attached [Appendix C].
- c. We do not have policies on how job outcome data is used. We report job outcome data in our annual reporting and other communications. Information on job outcome data is drawn from our database systems using reporting tools.

3. Oversight, Risk, and Follow-up

- a. Any post investment review required in individual cases is part of the terms and conditions for each award and are different and specific for separate cases. There

are no SOPs or policies.

- b. We apply exemption under Section 33(1)(b) of FOISA as this may substantially prejudice the commercial interests of SOSE as this information is commercially restricted and for internal use only.
- c. (i)(ii) and (iii) The performance measurement framework in SOSE is currently under development and we are currently in the early stages of information gathering and analyses and this is not yet finalised and so is not available for inclusion in this response. We apply Section 17 of FOISA.

You have the right to request a review of the way in which this request has been processed. Should you wish to exercise this right, you will need to contact us within 40 working days of receipt of this email.

If you remain dissatisfied on completion of the review, you have the right to appeal to the Office of the Scottish Information Commissioner and thereafter to the Court of Session on a point of law only:

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS
Telephone: 01334 464610

www.foi.scot

or for online appeals:

www.foi.scot/appeal

Regards,
SOSE Corporate Relations
FOI@sose.scot



www.southofscotlandenterprise.com

Finance Guidance Note – (FGN4-23): Grant claims



Grants – The default rule is a grant claim should be made in arrears, only once the client has provided evidence that they have satisfied the grant terms, and that the expenditure and relating payments have been made (plus any further requirements specified in the offer letter have been fully satisfied).

There may however be limited exceptions to this general rule (subject to advanced Panel / Finance Director approval), including for example Communities who require cashflow to progress a project. Cashflow should never be in advance of need but there may be occasions where the spend is approved based on prefunding with evidence being provided later. This requires careful monitoring to ensure evidence is received as the project progresses.

Grant claim

Prior to paying a grant claim it is essential that appropriate checks are carried out by the appraiser responsible for the project.

The below information outlines the process and checks that must be completed before an invoice is verified and approved. Invoices must not be passed for payment without evidence of the process and checks being completed.

Information from client

A client will send a claim along with evidence to claims@sose.scot

The information required to make a claim includes the following:

- A completed signed claim form, including the value of evidence provided at the intervention rate permitted in the grant offer letter (GOL) and the value of the claim
- The claim will be excluding VAT, unless VAT is irrecoverable by the client. Irrecoverable VAT must have been detailed in the appraisal and part of the value approved and the reason noted for paying VAT, e.g. Community project not VAT registered
- An invoice from the client detailing the grant, including SOSE's internal grant reference number. The invoice should be addressed to:
South of Scotland Enterprise
c/o SDS Finance Department
Monteith House
11 George Square
Glasgow
G2 1DY

This invoice will be outside the scope for VAT. If irrecoverable VAT is included in the claim this is part of the grant value and should not be shown as a standard rated VAT on the invoice.

Checks to be completed

The appraiser must carry out and evidence their checks* to show the terms of the grant have been satisfied and that evidence has been provided to support the claim. All documentation should be stored in the relevant project folder within the claim folder.

Terms of grant

- The appraiser should satisfy themselves that the claim meets the criteria as outlined in the grant offer letter
- The appraiser should satisfy themselves that the claim is in line with the project draw down timelines

Evidence

Supporting evidence should be received in line with the terms detailed in GOL and appropriate for the project. The project expenditure must be dated after the date of the grant approval.

Essential evidence:

- Documents (invoices, payslips etc) are required to support the project expenditure
- Evidence of the physical payment (bank statements).
- Evidence of payment of the real Living Wage
- Evidence of the existence of effective employee voice (individual and, where appropriate, collective)
- SMART, timebound Fair Work Action Plan

Always refer to the grant offer letter for any additional requirements specific to the grant.

Invoices

- Invoices need to be received to the value of the project (ie. If the project is £150k @ 30% intervention rate, the claim will be £45k. Expenditure evidence is required for the full £150k)
- A claim should not be against a pro-forma invoice without area head and finance consent. If a proforma is approved this must be evidenced with the actual invoice in case of need of adjustment.

Staff costs

- If the project includes staff costs, payroll reports or payslips must be provided to evidence this spend

Evidence of payments

- ALL expenditure invoices / staff costs **MUST** be supported by evidence of the physical payment being made (regardless of whether this is specifically mentioned in the GOL, this is essential evidence)
- A copy of the relevant bank statement must be received.
- Where the invoice was part of a payment run, we need evidence to tie the invoice amount to the amount paid through the bank (remittance advice, copy of payment run etc)
- Note - claims **CANNOT** be made against invoices funded by asset finance as the client does

not own the asset

Potential other criteria as outlined in the grant offer letter may include (not an exhaustive list)

- Construction projects may require valuation reports, Quantity Surveyor/Architect reports
- Sale and purchase agreements
- Progress reports and meeting minutes
- Tender reports
- Other as noted on the grant offer letter

Exceptional – where claim is in advance – Communities

Where a project has been approved on an advanced basis, a claim can be made in line with the terms set out in the GOL. The checks outlined above should be completed as the project progresses and prior to future payments being made.

These projects require careful monitoring. Any projects with an advanced element should be notified to your Finance Business Partner

***How to evidence your checks**

Finance have created a spreadsheet* that can be used to verify claims, appraisers can also use their own but this must include evidence of the following checks as this will now form part of the formal audit trail in Agresso and approval process.

*Finance grant claims spreadsheet can be found on the Finance Directorate page on the hub – in the Finance Guides and Documents – Claims testing folder.

Appraiser checks:

The total project costs at the intervention rate will equal the grant approved

- The evidence needs to support the **total project costs**
- Evidence should be broken down to match expenditure criteria as listed on the GOL
 - e.g. If the GOL states expenditure is permitted for x2 Washing machines, x1 Driers – the evidence must be broken down to show the project expenditure incurred corresponds with the criteria in the GOL
 - If any expenditure carries over to another spend category the change control process needs to be completed/approved before the invoice can be approved for payment
- Payment evidence should be matched to invoice and payment date noted in the working file
- All relating invoices and bank statements must be saved in the appropriate project folder.

This spreadsheet must be sent to support when confirming the invoice is acceptable to be approved. This will be loaded to Agresso to form part of the review process.

Files for Agresso / Sharepoint

Prior to verifying an invoice in Agresso the following files must be loaded to Agresso:

- Invoice from client
- Completed and signed claim form
- Completed evidence check spreadsheet

Project folders on SharePoint:

- Appraisal
- Fair work
- Grant offer letter
- Change control and grant amendment letters
- Claims - with a further folder for each claim, Claim 1 –mm yy, Claim 2 –mm yy

Should you have any queries with the guidance please reach out to a member of the Support team or your Finance Business Partner.

Prepared – [REDACTED]

XX XXXX 2025

Name
Organisation
Address
Address
Postcode

Dear [●]

South of Scotland Enterprise Grant Award
GRANT REFERENCE: SOSE

On behalf of South of Scotland Enterprise (“**SOSE**”), we would like to offer grant funding to [CLIENT] **for the Project as set out below.**

SOSE is pleased to work with you going forward in providing support to your enterprise.

Details of Grant Award

Grant Recipient(s)	[Organisation Name]
Grant Recipient(s) Registered Number	[●]
Grant Recipient(s) Registered Office	[●]
Amount of Grant	[●] (Up to) £XX,XXX (amount in words) referred to as the Grant . [●] The intervention rate of the Grant is XX%
Project	[●] You will use the Grant to: [insert activities that will be funded via that Grant and which are outlined in the Project Appraisal] The above activities together are the Project .
Project Outputs and Outcomes	[●] [This section is important to ensure SOSE can legally monitor the Grant. Please include as much detail as possible. The outputs and outcomes should be SMART (Specific, Measurable, Achievable, Realistic, Timebound). These should be included in the Appraisal and this section should be completed by the Project Appraiser]
Project Location(s)	[●] [Location of activity/project location as opposed to registered office, if different]
Project costs Grant can be claimed for	[●] [Eligible costs to deliver the Project]
Subsidy	[●] [Ad Hoc Subsidy - Seven Principles (and where applicable Energy and Environment Principles)] The subsidy basis for the Grant is the Ad Hoc Seven Principles as referenced in section 1 of the Subsidy Control Act 2022 and set out in full at Schedule 1 of the same piece of legislation, along with the Energy and Environment Principles outlined in Schedule 2 of the same legislation.

South of Scotland Enterprise

Carmont House, The Crichton
Bankend Road, Dumfries
DG1 4TA | southofscotlandenterprise.com

Success Starts Here

	<p>[SOSE Economic Development Subsidy Scheme] The subsidy basis for the Grant is the SOSE Economic Development Subsidy Scheme [Insert Chapter and Measure] thereby satisfying as relevant and/or necessary: (i) the subsidy control principles as referenced in section 1 of the Subsidy Control Act 2022 and set out in full at Schedule 1 of the same piece of legislation; and (ii) Article 10 of the Windsor Framework to the EU (Withdrawal Agreement) Act 2018, section 7A, as amended by the EU (Withdrawal Agreement) Act 2020. This scheme was registered on the subsidy transparency database on 1 January 2022.</p> <p>OR [Minimal Financial Assistance] The subsidy basis for the Grant is as 'minimal financial assistance' under the Subsidy Control Act 2022 ("SCA"). The SCA has a threshold of £315,000 for this type of subsidy over a three-year fiscal period, which is the elapsed part of the current financial year (that is, from 1 April), and the two financial years immediately preceding the current financial year. This includes any minimal financial assistance awards since 01 April 2023 from UK public authorities.</p> <p>OR [SOSE Agriculture, Food and Drink Subsidy Scheme] The subsidy basis for the grant is the SOSE Agriculture, Food and Drink Subsidy Scheme, [Insert Chapter and Measure], thereby satisfying as relevant and/or necessary: (i) the subsidy control principles as referenced in section 1 of the Subsidy Control Act 2022 and set out in full at Schedule 1 of the same piece of legislation; (ii) Article 10 of the Windsor Framework to the EU (Withdrawal Agreement) Act 2018, section 7A, as amended by the EU (Withdrawal Agreement) Act 2020 and (iii) the World Trade Organisation ("WTO") Agreement on Agriculture ("AoA"). This scheme was registered with DEFRA.</p> <p>AND/OR Windsor Framework To be added when using the Windsor Framework: [and/or the European Commission Regulation (EU) No 1407/2013 as applied by paragraph 3.4 of Annex 5 of the Windsor Framework to the EU (Withdrawal Agreement) Act 2020.]</p> <p>OR The Grant is made on a no subsidy basis.</p>
Standard terms	<p>This Offer is subject to the terms and conditions set out in this letter and our standard grant terms and conditions, a copy of which are enclosed with this letter in annex 1 (version dated June 2024) (the "Terms and Conditions"). Any terms with a specific meaning in the Terms and Conditions mean the same in this letter.</p>
Fair Work	<p>Condition 9 of the Terms and Conditions sets out your obligations to comply with Fair Work First criteria, and certain rights we have regarding information and audit in relation to compliance with those criteria.</p> <p>{FOLLOWING STATEMENT TO BE DELETED UNLESS AN EXCEPTION TO REAL LIVING WAGE CONDITIONALITY HAS BEEN GRANTED BY DIRECTOR OF FINANCE AND CORPORATE RESOURCES}</p> <p>Your obligation to comply with Condition 9.1.1 of the Terms and Conditions is varied as follows:</p> <p>*Delete as appropriate and as per agreement</p> <ul style="list-style-type: none"> • *Pay all apprentices and under 18s real Living Wage • *Pay all staff the real Living Wage <p>Please note that this variation or waiver to comply with Condition 9.1.1 of the Terms and Conditions is specific to this Agreement. We may not agree to vary or waive the requirement to comply with Condition 9 in respect of any future support or funding from SOSE.</p>

Project Specific Conditions	For the period of [●][weeks/months/years] after the Project Approval Date you shall:
SOSE contact details	Contact: [●] Telephone: [●] Email address: [●]

Payment of your Grant Award

We understand this Grant is important to you and we want to make the process as simple as possible to ensure you can access this Grant timeously to deliver the Project.

Once the acceptance of this Offer has been signed by both signatories and a completed New Supplier Form (that accompanies this Offer as a separate document) has been returned, a Purchase Order (PO) number will be issued and should be quoted on all claim forms and invoices along with the Grant Reference number [●] [INSERT GRANT REFERENCE].

Key Dates	<ul style="list-style-type: none">• The Project Approval Date is [DD Month YYYY OF PANEL APPROVAL].• The first claim must be submitted by [DD Month YYYY]. We will have no obligation to make any payment of the Grant if you have not submitted your first claim and satisfied the Preconditions and any Project Specific Conditions set out in this letter and our Terms and Conditions by this date.• The Project is anticipated to be completed by [DD Month YYYY – project specific].• The final claim must be submitted by [DD Month YYYY Eg Three months after project completion – project specific].• The Period of Obligation is [project specific]• We will have no obligation to make any payment of the Grant to you after [DD Month YYYY Usually six months after project completion – project specific.].						
Preconditions to Agreement	[This is different to Project Specific Conditions which are SOSE’s way of monitoring the Project. This section is for preconditions before first payment of Grant e.g. Evidence of planning permission provided to SOSE before first claim will be paid or most recent cashflow provided to SOSE before first claim will be paid.]						
Documents required to evidence achievement of drawdown criteria	[This will be dependent on the Project and eligible costs. For example, for capital expenditure on equipment, SOSE requires receipted invoices and bank statements and Fair Work documents].						
Payment Schedule	<p>We anticipate paying the Grant in accordance with the following claim profile. No payments will be made until you demonstrate to our satisfaction that you have met the relevant drawdown criteria for that claim – these are listed in the table below:</p> <table><tr><th>Claim date</th><th>Drawdown Criteria Description</th><th>Payment</th></tr><tr><td></td><td></td><td>£</td></tr></table> <p>Any contracts committed or expenditure incurred by you before the Project Approval Date cannot be included in a claim.</p> <p>You must submit your first claim and your last claim by the dates indicated in the Key Dates section above. If you do not, you run the risk of not being paid.</p>	Claim date	Drawdown Criteria Description	Payment			£
Claim date	Drawdown Criteria Description	Payment					
		£					

Payment and how to claim	<p>Subject to you complying with this Offer the Grant (including any instalments of the Grant) will be paid as set out in the Payment Schedule above by electronic bank transfer within ten (10) days of receipt by us of a validly completed claim form, invoice, and required supporting documentation to our satisfaction.</p> <p>Delete as required:</p> <p>* The claim form sets out how to submit a claim. Please use the claim form accompanying this Offer.</p> <p>* To claim you must use the My SOSE client portal, instructions to follow in due course.</p> <p>When submitting a claim, you must comply with the evidence requirements as set out above.</p> <p>From time to time, we may also contact you to let you know that further supporting evidence in addition to that set out above is required.</p> <p>In addition, we may contact you to publicise the Grant and/or the Project. You must not issue your own press release or make any announcement statement regarding the Grant and/or the Project without our prior written consent (see Condition 3.2 of the Terms and Conditions).</p>
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Post Project Evaluation

SOSE reserves the right to request you submit a post-project evaluation within 12 months of receipt of the final instalment of the Grant. This evaluation should assess and provide evidence of your achievement of Project Outputs and Outcomes (summarised above). This will allow us (and a wider network) to share and build on the good work of your Project and the positive impact it will have on the South of Scotland.

How to accept

If you wish to accept this Offer, please read, and accept our terms and conditions, sign the document, and return it within ten working days after the date of this Offer. If we don't receive your signed acceptance by then, this Offer will expire, and we may need to ask you to submit a revised application for support. Please also complete and return the new supplier form attached. This must be processed before any Grant payments can be made.

Yours faithfully/sincerely



South of Scotland Enterprise

[See our Standard Grant Terms and Conditions - Annex 1]

Acceptance

[GRANT RECIPIENT] accepts the Offer on the terms set out above.

Signature	
Name	
Job Title	
Address	
On (date of signature)	

Authorised Second Signatory on behalf of **[GRANT RECIPIENT]**:

Second Signature	
Name	
Address	
On (date of signature)	

If you want to accept this offer of Grant, please sign the letter where indicated by AdobeSign. The fully signed document will be emailed to you and us by AdobeSign as a PDF. This should happen automatically without you needing to take additional action. The completed Agreement will be accompanied by a system generated Audit trail, please keep a copy of both for your records.

Date of delivery of Agreement: _____

Annex 1: South of Scotland Enterprise – Standard Grant Terms and Conditions

Version June 2024

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.

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.

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

Fair Work First means the obligations set out in Condition 9 and the Scottish Government’s Fair Work First criteria.

GBER means the Commission Regulation (EU) N°651/2014 of 17 June 2014 and Commission Regulation (EU) 2023/1315 of 23 June 2023 amending Regulation (EU) No 651/2014 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.

Gender Pay Gap Report means a report or information to be provided pursuant to regulation 2 of The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017, Schedule 1 of The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 or regulation 7 of The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012.

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.

Law means (a) any applicable statute or proclamation or any delegated or subordinate legislation; (b) any applicable guidance or determination with which you are bound to comply to the published and publicly available or the existence or contents of them have been notified to you by SOSE; and (c) any applicable judgment of a relevant court of law which is a binding precedent in Scotland, in each case in force in Scotland.

Minimal Financial Assistance or MFA means a Subsidy which is exempt by falling under the threshold set out in Section 36 of the SCA.

Offer means (a) 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; and/or (b) a letter issued by us amending the Agreement after the letter referred to in (a) has been accepted by you.

Party or Parties means SOSE and you.

Period of Obligation means the period referred to in the Offer or, where no period is set out, the period commencing

on the date which you signed the Offer and ending on the anticipated Project completion date.

Regulatory Body or Bodies means all competent national and supra-national government and regulatory authorities or bodies including but not limited to Scottish Government, Scottish Funding Council, Competition and Markets Authority (CMA), Department for Energy Security and Net Zero, Department for Science, Innovation and Technology and Department for Business and Trade, UK Government, Auditor General, Accounts Commission and to the extent applicable, European Commission and/or the European Court of Auditors.

SCA means the Subsidy Control Act 2022

State aid means funding constituting aid within the scope of Article 10 of the Windsor Framework.

Subsidy means funding constituting a subsidy within the meaning of Section 2 of the Subsidy Control Act 2022 or an award of financial assistance which falls within the scope of AoA or the Windsor Framework or which constitutes EU State Aid.

Subsidy Control means the SCA and the United Kingdom’s international commitments on Subsidy control arising from, amongst others, the TCA, the Windsor Framework, 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: [Subsidy Schemes \(southofscotlandenterprise.com\)](https://southofscotlandenterprise.com) including: (i) EDSS, under the TCA, , (ii) SAFDSS under the WTO AoA, and (iii) any other scheme that may be registered in the UK subsidy transparency register by SOSE going forward.

Tax Haven means a jurisdiction included in the EU list of non-cooperative jurisdictions for tax purposes listed here: <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/>;

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, and as ratified and entered into force on 1 May 2021).

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).

Windsor Framework means the former 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) and the Windsor Framework 2023.

WTO means the World Trade Organisation.

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.

2017 Regulations means The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017.

2. YOUR CONFIRMATIONS

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 own or have unrestricted rights to use all buildings, plant, equipment and other assets required to carry out the Project and your obligations under the Agreement;
- 2.1.5 you have provided us with full details of all offers of any Subsidy which you have received or accepted from any public sector body (including SOSE) over the last 3 fiscal years;
- 2.1.6 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;
- 2.1.7 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;
- 2.1.8 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;
- 2.1.9 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;
- 2.1.10 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;
- 2.1.11 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
- 2.1.12 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 Grant is paid. If any of those conditions are of a continuing nature, you must continue to comply with them for the whole Period of Obligation.
- 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 inform us immediately of any change to the information you provided in your application for Grant funding (and any subsequent information requested by us and/or provided by you to us) including but not limited to: any change in your corporate structure, or your ultimate beneficial ownership, and/or whether any company or entity in your corporate or group structure is based or incorporated in a Tax Haven;
- 3.1.3 only use, and where relevant ensure the use of, the Grant for the purposes of the Project and in accordance with this Agreement;
- 3.1.4 not use the Grant to fund the costs of improving export performance of goods or services;
- 3.1.5 not be obliged to favour UK suppliers and goods in carrying out the Project;
- 3.1.6 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;
- 3.1.7 undertake the Project and your business and/or undertaking in such a manner which does not (i) in our reasonable opinion detract from or damage the image and reputation of SOSE and/or the Scottish Government and/or (ii) unreasonably impede, prevent or increase the cost to us of discharging our obligations, duties, and statutory functions;
- 3.1.8 maintain (and make sure that any contractors and consultants you appoint maintain) adequate insurance in respect of the Project at all times and if we require, ensure that our interest is noted or endorsed on all relevant insurance policies;
- 3.1.9 ensure that consultants, contractors and/or suppliers engaged in the Project are paid on time;
- 3.1.10 provide us with regular reports on the progress of the Project in such form and at such intervals as we may reasonably require;
- 3.1.11 provide us with any other information and documentation relating to the Project as we may request from time to time;
- 3.1.12 maintain well-ordered, complete and up-to-date records and accounts 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 completion of the Project or for the Period of Obligation, whichever is longer;
- 3.1.13 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;
- 3.1.14 provide us, Scottish Ministers and any other Regulatory Body any information reasonably required to establish that the Project is consistent with Subsidy Control rules, including prompt access to any information reasonably required to ensure compliance with the Agreement;
- 3.1.15 during the Period of Obligation 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;
- 3.1.16 during the Period of Obligation 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;
- 3.1.17 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 Grant;
- 3.1.18 where the Grant is applied to fund the purchase of assets and the value of an asset is £2,500 or more, maintain during the Period of Obligation an asset register showing which assets have been purchased with the Grant and provide us with a copy when requested;
- 3.1.19 where property, buildings, plant, equipment or other assets have been acquired or improved with any part of the Grant, not sell, lease, grant security or otherwise dispose of, or remove any of them during the Period of Obligation without our prior written consent; and
- 3.1.20 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. Please see our Publicity Policy: <https://www.southofscotlandenterprise.com/support/publicity-policy>
- 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.
- 3.5 If a third party claims against us for costs, losses, damages and/or expenses arising out of, or in connection with the Project and/or any failure by you to comply with your obligations under this Agreement you will indemnify us in

- respect of any costs, losses damages and/or expenses which we incur, including the cost and/or expense of defending such a claim.
- 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 The Key Dates section of the Offer sets out the last date by which Grant can be claimed. You will not be entitled to claim any Grant and we will be under no obligation to pay any Grant to you after this date even if where we receive an invoice and/or Claim Form from you after this date.
- 4.3 If we agree to pay any part of the Grant before we have received from you any appropriate evidence of expenditure and payment on Eligible Costs, you must give us the missing information as soon as possible and in any event not later than 30 days from the date of such expenditure. If you do not do this, we may demand the immediate repayment of all or part of the Grant.
- 4.4 No payment of the Grant will include any element of VAT unless agreed by us.
- 4.5 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.
- 4.6 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 5.1.16 (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 5.1.16 (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 or an event occurs which, in our opinion, has or may have a material adverse effect on your ability to comply with this Agreement (including but not limited to any change in your corporate structure, or your ultimate beneficial ownership, and/or whether any company or entity in your corporate or group structure is based or incorporated in a Tax Haven);
- 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 Law and 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 financing or resourcing of the Project;
- 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; or
- 5.1.16 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 You and we agree not to use Confidential Information for any purpose other than 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, we 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 Grant. 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 the Agreement and the Project to Regulatory Bodies.
- 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 and provide us with an explanation as to which you consider it commercially confidential. We will consider your representations and both Parties 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 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:
- 8.3.1 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
 - 8.3.2 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 will:
- 9.1.1 ensure that all of your employees employed in Scotland (including apprentices and those aged 16 and over), and any UK based workers who are not directly employed by you but are directly engaged in delivering the Project are paid at least the Real Living Wage rate as calculated and published by the Living Wage Foundation an initiative of Citizens UK (registered charity number 1107264) for the duration of the Project;
 - 9.1.2 not employ anyone using zero hours contracts in 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 and/or type of the particular job;
 - 9.1.3 undertake to calculate any gender pay gap using the formula in the 2017 Regulations where required to by the 2017 Regulations. If the 2017 Regulations do not apply we encourage you to undertake the calculation. We will support you in making this calculation.
- 9.1.4 work towards actively reducing and/ or removing any gender pay gap and take positive steps to create a more diverse and inclusive workplace;
- 9.1.5 make available a copy of such Gender Pay Gap Report to SOSE if there is a legal requirement for your organisation to produce one;
- 9.1.6 ensure that there are appropriate communication channels in your organisation to support employee feedback and engagement and provide supporting evidence of this;
- 9.1.7 work towards investing in and developing your workforce;
- 9.1.8 offer flexible and family friendly working practices for all workers from day one of their employment;
- 9.1.9 work towards opposing the use of fire and rehire practices;
- 9.1.10 develop a Fair Work action plan, identifying appropriate milestones and timeframes for action for your organisation and share the results (and any updates) during the Period of Obligation with us. You may wish to consider using the tool available at <https://fairworktool.scot/>; and
- 9.1.11 if you have or operate a website, include a statement on your website confirming your commitment to Fair Work First you must maintain this statement until the last date by which you are able to claim Grant in accordance with this Agreement. You will provide a link to this statement at our request; and
- 9.1.12 provide us, on request with any information, evidence, certificate and/or document we may request from time to time to monitor and demonstrate your compliance with this Condition 9. We might need to audit your compliance and Condition 3.1.13 will apply.
- 9.2 If you are a public sector body directly responsible to the Scottish Government for complying with Fair Work First, you are not required to:
- 9.2.1 provide us with evidence that you are paying all staff the Real Living Wage in terms of Condition 9.1.1 and/or that you have appropriate communication channels in terms of Condition 9.1.6;
 - 9.2.2 make a copy of your Gender Pay Gap report available to us in terms of Condition 9.1.5;
 - 9.2.3 provide us with your Fair Work Action Plan (and the results) in terms of Condition 9.1.10; or
 - 9.2.4 provide us with a link to your website in terms of Condition 9.1.11.
- 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 Windsor Framework.
- 10.2 If the Grant (or any part or condition thereof) does not comply with applicable Subsidy control obligations, Scottish Ministers or other Regulatory Bodies 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 SOSE is required to comply with its Subsidy Control obligations under the SCA and may also be required to comply with commitments arising from international treaties and agreements to which the United Kingdom is a party including EU State Aid Law pursuant to the Windsor Framework, the AoA, the ASCM and any guidance from Regulatory Bodies as may be updated from time to time.
- 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 Subsidy Control rules.
- 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 Section 44 of the SCA.
- 10.6 If your Offer refers to one of our Schemes, the Grant is not made as MFA.
- 10.7 If your Offer says the Grant is made as a MFA there is a ceiling of £315,000 for your Group over the applicable period. The applicable period is the elapsed part of the current financial year (that is, from 1 April), and the two financial years immediately preceding the current financial year. For the purposes of calculating your MFA allowance you need to

- include any MFA given in the previous three fiscal years under the exemption in the SCA commonly referred to as 'Minimal Financial Assistance'. 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 MFA 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 6 years from the date on which you receive the last instalment of the Grant and produce it on request by any Regulatory Body in the UK.
- 10.8 If your Offer says the Grant is made as a De Minimis Aid within the scope of Article 10 of the Windsor Framework there is a ceiling of €300,000 applied by the European Commission Regulation (EU) No 2023/2831 provided to your Group over any period of three years (including prior State Aid awards, including under Regulation 1407/2013). 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 within the scope of Article 10 of the Windsor Framework. For these purposes, you must retain details of the Grant for at least 6 years from the date on which you receive the last instalment of the Grant and produce it on request by any Regulatory Body in the UK.
- 11. OTHER IMPORTANT INFORMATION**
- 11.1 If there is any inconsistency between the Offer letter and these terms, the Offer letter 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 letter.

End of Document

FAIR WORK EVIDENCE CHECK

The below Fair Work evidence is required and **MUST** be saved into the project's Fair Work file on SharePoint before a requisition can be raised on Agresso.

If the organisation has no paid employees, then they can't provide evidence of paying rLW. However, please make sure it is clear on the IDD that they don't have any employees.

Real Living Wage:	
Under £100k	Self-declaration in IDD is considered enough evidence
£100,000 or over	Must provide anonymised payroll or accountant's certificate or anonymised copy of pay bands confirmed by recipient's Finance Department
Effective Individual Voice:	
All organisations with any number of workers (employees & volunteers)	Must provide 1 form of signed evidence confirming the existence of effective individual voice (declaration within IDD is not enough)
Effective Collective Voice:	
All organisations with 21 or more workers (combined total of both employees &/or volunteers)	In addition to providing evidence of the existence of individual voice, client must provide 1 form of signed evidence confirming the existence of effective collective voice (declaration within IDD is not enough)
Organisations with fewer than 21 workers (combined total of both employees &/or volunteers)	n/a
Fair Work Action Plan:	
SMART, Timebound Fair Work Action plan should be in place for all clients before the requisition is raised	

Further information regarding the type of evidence which is acceptable for individual & collective employee voice can be found on the [Fair Work](#) page on the Hub