

## **Workforce Development Fund for Individual Employers Grant Terms 2021/22**

### **Contents**

#### Background

- 1 Introduction
- 2 Duration and Purpose of the Grant
- 3 Payment of Grant
- 4 Monitoring, Reporting, Internal Audit and Assurances
- 5 Accounts and Records
- 6 Financial Management and Prevention of Bribery, Corruption, Fraud and other Irregularity
- 7 Conflicts of Interest
- 8 Data Protection Act 2018 and UK GDPR
- 9 Assignment
- 10 Clawback, Events of Default, Termination and Rights Reserved for Breach and Termination
- 11 Dispute Resolution
- 12 Limitations of Liability
- 13 VAT
- 14 Code of Conduct for Grant Recipients
- 15 Notices
- 16 Governing Law

## AGREEMENT – TERMS AND CONDITIONS

### BACKGROUND

- (A) The Grant is made pursuant to section 67 of the Care Standards Act 2000. If the payment of the Grant is subject to the satisfaction of conditions, those conditions precedent and the date for satisfaction are set out in the Grant Funding Letter.
- (B) The terms and conditions set out in this document, together with the offer letter, and accompanying annexes together comprise the “Agreement” pursuant to which financial assistance (in the form of the grant) is given by Skills for Care (“The Authority”) to the Grant Recipient.
- (C) the Grant Recipient will use the Grant for the Funded Activities.

The conditions collectively (the **Conditions**) are as follows:

### 1. INTRODUCTION

- 1.1. This Grant Funding Agreement sets out the conditions which apply to the Grant Recipient receiving the Grant from the Authority **up to the Maximum Sum**.
- 1.2. The Authority and the Grant Recipient have agreed that the Authority will provide the Grant up to the Maximum Sum as long as the Grant Recipient uses the Grant in accordance with this Grant Funding Agreement.
- 1.3. The Parties confirm that it is their intention to be legally bound by this Grant Funding Agreement.

### CONDITIONS

#### 2. DURATION AND PURPOSE OF THE GRANT

- 2.1. The Funding Period starts on 1 April 2021 (the **Commencement Date**) and ends on 31 March 2022 unless terminated earlier in accordance with this Grant Funding Agreement.
- 2.2. The Grant Recipient shall use the Grant solely for the delivery of the Funded Activities. The Grant Recipient may not make any changes to the Funded Activities.
- 2.3. If the Authority wants to make a change to the Funded Activities, it may do so on one month’s written notice to the Grant Recipient.

#### 3. PAYMENT OF GRANT

- 3.1. The Grant Recipient must complete part 4 Bank details and sign Part 5 Conditions of the Grant, as part of their acceptance of the Grant. No payment can be made in advance of receipt of a correctly completed and signed form.
- 3.2. The Grant represents the Maximum Sum the Authority will pay to the Grant Recipient under the funding agreement. The Maximum Sum will not be increased in the event of any overspend by the Grant Recipient in its delivery of the funded activities.

- 3.3. The Authority will have no liability to the Grant Recipient for any Losses caused by a delay in the Grant Payment howsoever arising.
- 3.4. The Grant Recipient shall promptly notify and repay immediately to the Authority any money incorrectly paid to it either because of an administrative error or otherwise. This includes (without limitation) situations where the Grant Recipient is paid in error before it has complied with its obligations under the Grant Funding Agreement. Any sum, which falls due under this paragraph 3.1 shall fall due immediately. If the Grant Recipient fails to repay the due sum immediately or within 30 Days, the sum will be recoverable summarily as a civil debt.
- 3.5. The Grant Recipient may not retain any Unspent Monies without the Authority's prior written permission.
- 3.6. If at the end of the relevant Financial Year there are Unspent Monies, the Grant Recipient shall repay such Unspent Monies to the Authority no later than 30 days of the Authority's request for repayment.
- 3.7. The Authority reserves the right not to pay any Grant claims within the period which are incomplete, incorrect, or submitted without full supporting documentation where required or which are not submitted within the time period set out in the grant offer letter.
- 3.8. The Grant will be paid into a separate bank account in the name of the Grant Recipient.

#### **4. MONITORING, REPORTING, INTERNAL AUDIT AND ASSURANCES**

- 4.1. The Grant Recipient must provide the Authority with all reasonable assistance and co-operation in relation to any ad-hoc information requests made by the Authority in relation to the Funded Activities.
- 4.2. The Grant Recipient will permit any person authorised by the Authority such reasonable access permitted by law with or without notice to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Grant Recipient's fulfilment of the conditions of this Agreement and will, if so required, provide appropriate oral or written explanations from them.
- 4.3. The Grant Recipient will notify the Authority as soon as reasonably practicable of:
  - i. any financial, administrative, managerial difficulties that may hinder or prevent the Grant Recipient from fulfilling its obligations under the Agreement;
  - ii. any actual or potential material failure to meet any of the Terms and Conditions of the Agreement;
- 4.4. The Grant Recipient will represent and undertake that the reports and information it gives pursuant to this clause 4 are accurate and that it has diligently made full and proper enquiry of the matter pertaining of the reports and information given.
- 4.5. Throughout the Grant Period, the Grant Recipient will maintain a proportionate internal audit function which will operate in accordance with the International Standards on Auditing (UK and Ireland) in force from time to time.

- 4.6. The Grant Recipient will comply with (and facilitate the Authority's compliance with) all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Authority.
- 4.7. The Grant Recipient must present an income and expenditure report of the funded activities to their external auditors/accountants for certification. The external auditors/accountants' report should state whether, in their opinion, the grant paid to the Grant Recipient, was applied in accordance with the Agreement.
- 4.8. The systems in place to govern the Grant funding should be appropriate to the size of Grant Recipient organisation. These arrangements may be reviewed by the Authority.
- 4.9. The Grant Recipient (and any person acting on behalf of the same) will at the request of the Authority permit the Authority or its Representatives access at all reasonable times to all documents (including computerised documents and data) and other information as are connected to the Grant payable under this Agreement for the purpose of the Funded Activities.

## **5. ACCOUNTS AND RECORDS**

- 5.1. The Grant Recipient will keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of Grant monies received from the Authority.
- 5.2. The Grant will be shown in the Grant Recipient's separate account as a restricted fund and will not be included or mixed with the Grant Recipient's general funds or other monies.
- 5.3. The Grant Recipient will keep all original accounting records relating to the Funded Activities, including invoices, receipts, VAT records, accounts and any other relevant documents relating to the expenditure of the Grant for a period of at least six years following receipt of any Grant monies to which they relate.
- 5.4. Where the Grant Recipient is a company registered at Companies House, the Grant Recipient must file their annual return and accounts by the dates specified by Companies House.
- 5.5. Where the Grant Recipient is a registered charity, the Grant Recipient must file their charity annual return by the date specified by the Charity Commissioner.
- 5.6. The Grant Recipient must provide the Authority with copies of their annual return, accounts and charity annual return (as applicable) within five days of filing them at Companies House and/or the Charity Commissioner.

## **6. FINANCIAL MANAGEMENT AND PREVENTION OF BRIBERY, CORRUPTION, FRAUD AND OTHER IRREGULARITY**

- 6.1. The Grant Recipient will at all times comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act.
- 6.2. The Grant Recipient must have a sound administration and audit process, including internal financial controls to safeguard against fraud, theft, money laundering, counter terrorist financing or any other impropriety, or mismanagement in connection with the administration of the Grant. The Grant Recipient shall require that the internal/external auditors report on the adequacy or otherwise of that system.
- 6.3. All cases of fraud or theft (whether proven or suspected) relating to the Funded Activities must be notified to the Authority as soon as they are identified and explain to the Authority what steps are being taken to investigate the irregularity and keep the Authority informed about the progress of such investigation. The Authority may then request their referral (which the Grant Recipient is obliged to carry out) to external auditors or other third parties as required.
- 6.4. The Authority will have the right, at its absolute discretion, to insist that Grant Recipient take additional measures to address any actual or suspected fraud, theft or other financial irregularity and/or to suspend future payment of the Grant to the Grant Recipient. Any grounds for suspecting financial irregularity includes what the Grant Recipient, acting with due care, should have suspected as well as what is actually proven.
- 6.5. The Grant Recipient agrees and accepts that it may become ineligible for grant support and be required to repay all or part of the Grant if it engages in tax evasion or aggressive tax avoidance in the opinion of Her Majesty's Revenue and Customs.
- 6.6. For the purposes of paragraph 6.4 "financial irregularity" includes (but is not limited to) potential fraud or other impropriety, mismanagement, and the use of the Grant for any purpose other than those stipulated in the Grant Funding Agreement. The Grant Recipient may be required to provide statements and evidence to the Authority or the appropriate organisation as part of pursuing sanctions, criminal or civil proceedings.

## **7. CONFLICTS OF INTEREST**

- 7.1. Neither the Grant Recipient nor its Representatives shall engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to the Grant Funding Agreement.
- 7.2. The Grant Recipient must have and will keep in place adequate procedures to manage and monitor any actual or perceived bias or conflicts of interest.

## **8. DATA PROTECTION ACT 2018 AND UK GDPR**

- 8.1. The Grant Recipient must observe its obligations under UK GDPR and the Data Protection Act 2018 (DPA), and under the common law duty of confidentiality, and shall comply with all applicable laws, regulations, best practice and codes of practice (and shall notify the Authority immediately of any significant departure from such legislation, regulations or codes).

- 8.2. On request from the Authority, the Grant Recipient will provide the Authority with all such relevant documents and information relating to the Grant Recipient's data protection policies and procedures as the Authority may reasonably require.
- 8.3. The Grant Recipient agrees that it is the data controller of any personal data processed by it pursuant to the Funded Activities. It will comply fully with the UK GDPR and the Data Protection Act 2018 to the extent that they are applicable to it and with the Information Commissioners Office public guidance for data controllers.
- 8.4. The Grant Recipient agrees that the Authority and its employees may use and process personal data which the Grant Recipient provides about any participants involved in the Funded Activities to administer and evaluate the funded programme, and to exercise the Authority's rights under this Agreement.
- 8.5. The Grant Recipient will notify the Authority of any change to its constitution, legal form, membership structure (if applicable) or ownership, and of any complaint or investigation by any regulatory body or the police into its activities or those of its staff or officers or volunteers.

## **9. ASSIGNMENT**

- 9.1. The Grant Recipient will not transfer, assign, novate or otherwise dispose of the whole or any part of the Grant Funding Agreement or any rights under it, to another organisation or individual, without the Authority's prior approval.

## **10. CLAWBACK, EVENTS OF DEFAULT, TERMINATION AND RIGHTS RESERVED FOR BREACH AND TERMINATION**

- 10.1. Without prejudice to the Authority's other rights and remedies, if the Grant Recipient fails to comply with any of its obligations in the Grant Funding Agreement the Authority may in preference to the standard notice period set out in paragraph 10.17 and at its discretion, reduce, suspend, or terminate payments of Grant, or require any part or all of the Grant to be repaid.
- 10.2. Where the Authority requires any part or all of the Grant to be repaid in accordance with paragraph 10.1 above, the Grant Recipient shall repay this amount no later than 30 days of the date it received the demand for repayment. If the Grant Recipient fails to repay the Grant within 30 days of a demand from the Authority for payment, the sum will be recoverable summarily as a civil debt.
- 10.3. The Authority may exercise its rights set out in paragraph 10.1 if, in particular, any of the following events occurs:
  - 10.3.1. the Grant Recipient uses the Grant for a purpose other than the Funded Activities or fails to comply with any of the other obligations of the Grant Funding Agreement;
  - 10.3.2. the Grant Recipient uses the Grant for ineligible expenditure;
  - 10.3.3. the Grant Recipient is, in the opinion of the Authority, delivering the Funded Activities in a negligent manner (in this context negligence includes but is not limited to failing to prevent or report actual or anticipated fraud or corruption);
  - 10.3.4. the Grant Recipient in the opinion of the Authority, undertakes activities that are likely to bring the reputation of the Funded Activities or the Authority into disrepute;

- 10.3.5. the Grant Recipient provides the Authority with any materially misleading or inaccurate information and/or information any of the information provided in their grant application or in any subsequent supporting correspondence is found to be incorrect or incomplete to an extent which the Authority considers to be significant;
- 10.3.6. the Grant Recipient commits or committed a Prohibited Act or fails to report a Prohibited Act to the Authority, whether committed by the Grant Recipient or a Third Party, as soon as they become aware of it;
- 10.3.7. the Authority determines (acting reasonably) that any director or employee of the Grant Recipient has:
- (i) acted dishonestly or negligently at any time during the term of the Grant Funding Agreement and to the detriment of the Authority; or
  - (ii) taken any actions which unfairly bring or are likely to unfairly bring the Authority's name or reputation and/or the Authority into disrepute. Actions include omissions in this context;
  - (iii) transferred, assigns or novates the Grant to any Third Party without the Authority's consent;
  - (iv) ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
  - (v) become Insolvent as defined by section 123 of the Insolvency Act 1986, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due;
  - (vi) incurred expenditure on activities that breach the Law;
- 10.3.8. the European Commission or the Court of Justice of the European Union requires any Grant paid to be recovered by reason of a breach of State Aid Law through its application under Article 10 of the Northern Ireland Protocol.
- 10.3.9. the Grant Recipient breaches the Code of Conduct for Grant Recipients (the **Code of Conduct**) and/or fails to report an actual or suspected breach of the Code of Conduct by the Grant Recipient or its Representatives in accordance with paragraph 14.2.

#### **Rights reserved for the Authority in relation to an Event of Default**

- 10.4. Where, the Authority determines that an Event of Default has or may have occurred, the Authority may by written notice to the Grant Recipient take any one or more of the following actions:
- 10.4.1. suspend the payment of Grant for such period as the Authority shall determine; and/or
  - 10.4.2. reduce the Maximum Sum in which case the payment of Grant shall thereafter be made in accordance with the reduction and notified to the Grant Recipient; and/or
  - 10.4.3. cease to make payments of Grant to the Grant Recipient under the Grant Funding Agreement and (in addition) require the Grant Recipient to repay the Authority the whole or any part of the amount of Grant previously paid to the Grant Recipient. Such sums shall be recovered as a civil debt; and/or

10.4.4. terminate the Grant Funding Agreement.

### **Opportunity for the Grant Recipient to remedy an Event of Default**

- 10.5. If the Authority gives written notice to the Grant Recipient pursuant to paragraph 10.4 to suspend payment of Grant, such notice shall specify the relevant Event of Default and give the Grant Recipient an opportunity to rectify the relevant Event of Default by submitting a Draft Remedial Action Plan for approval by the Authority.
- 10.6. Where the Grant Recipient is required to submit a draft Remedial Action Plan in accordance with paragraph 10.4.1, the draft Remedial Action Plan shall be submitted to the Authority for approval, within 5 Working Days of the Grant Recipient receiving notice from the Authority.
- 10.7. The draft Remedial Action Plan shall set out:
- 10.7.1. full details of the Event of Default; and
  - 10.7.2. the steps which the Grant Recipient proposes to take to rectify the Event of Default including timescales for such steps.
- 10.8. On receipt of the draft Remedial Action Plan and as soon as reasonably practicable, the Authority will submit its comments on the draft Remedial Action Plan to the Grant Recipient.
- 10.9. The Authority shall have the right to accept or reject the draft Remedial Action Plan. If the Authority rejects the draft Remedial Action Plan, the Authority shall confirm, in writing, the reasons why they have rejected the draft Remedial Action Plan and will confirm whether the Grant Recipient is required to submit an amended Remedial Action Plan to the Authority.
- 10.10. If the Authority directs the Grant Recipient to submit an amended draft Remedial Action Plan, the Parties shall agree a timescale for the Grant Recipient to amend the draft Remedial Action Plan to take into account the Authority's comments.
- 10.11. If the Authority does not approve the draft Remedial Action Plan the Authority may at its absolute discretion terminate the Grant Funding Agreement.
- 10.12. The Authority shall not by reason of the occurrence of an Event of Default which is, in the opinion of the Authority, capable of remedy, exercise its rights under either paragraph 10.4.3 or 10.4.4 unless the Grant Recipient has failed to rectify the default pursuant to paragraph 10.5 to the satisfaction of the Authority.

### **Change of Control**

- 10.13. The Grant Recipient shall notify the Authority immediately in writing and as soon as the Grant Recipient is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.
- 10.14. The Grant Recipient shall ensure that any notification made pursuant to paragraph 10.13 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
- 10.15. If the Authority, acting reasonably, considers that:



- 10.15.1. the Change of Control will be materially detrimental to the Funded Activities and/or;
- 10.15.2. the new body corporate cannot continue to receive the Grant because they do not meet the Eligibility Criteria used to award the Grant to the Grant Recipient;
- 10.15.3. the new body corporate intends to make fundamental change(s) to the purpose for which the Grant was given;

the Authority shall be entitled to exercise its rights under paragraph 10.1 of these Conditions to reduce, suspend, or terminate payments of Grant, require any part or all of the Grant to be repaid and/or terminate the Grant Funding Agreement by providing the Grant Recipient with notification of its proposed action in writing within three (3) months of:

- (i) being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or
- (ii) where no notification has been made, the date that the Authority becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

- 10.16. The Authority shall not be entitled to terminate where an Approval was granted prior to the Change of Control.

### **General Termination rights**

- 10.17. Notwithstanding the Authority's right to terminate the Grant Funding Agreement pursuant to paragraph 10.4.4 above, either Party may terminate the Grant Funding Agreement at any time by giving at least 3 months written notice to the other Party.
- 10.18. If applicable, all Unspent Monies (other than those irrevocably committed in good faith before the date of termination, in line with the Grant Funding Agreement and approved by the Authority as being required to finalise the Funded Activities) shall be returned to the Authority within 30 days of the date of receipt of a written notice of termination from the Authority.
- 10.19. If the Authority terminates the Grant Funding Agreement in accordance with paragraph 10.17 Authority may choose to pay the Grant Recipient's reasonable costs in respect of the delivery of the Funded Activities performed up to the termination date. Reasonable costs will be identified by the Grant Recipient and will be subject to the Grant Recipient demonstrating that they have taken adequate steps to mitigate their costs. For the avoidance of doubt, the amount of reasonable costs payable will be determined solely by the Authority.
- 10.20. The Authority will not be liable to pay any of the Grant Recipient's costs or those of any contractor/supplier of the Grant Recipient related to any transfer or termination of employment of any employees engaged in the provision of the Funded Activities.

## **11. DISPUTE RESOLUTION**

- 11.1. The Parties will use all reasonable endeavours to negotiate in good faith, and settle amicably, any dispute that arises during the continuance of the Grant Funding Agreement.

- 11.2. All disputes and complaints (except for those which relate to the Authority's right to withhold funds or terminates the Grant Funding Agreement) shall be referred in the first instance to the Parties Representatives.
- 11.3. If the dispute cannot be resolved between the Parties Representatives within a maximum of 30 days, then the matter will be escalated to formal meeting between the Authority (Director of Operations) and the Grant Recipient's chief executive (or equivalent).

## 12. LIMITATION OF LIABILITY

- 12.1. The Authority accepts no liability for any consequences, whether direct or indirect, that may come about from the Grant Recipient running the Funded Activities, the use of the Grant or from withdrawal, withholding or suspension of the Grant. The Recipient shall indemnify and hold harmless the Authority, its Representatives with respect to all actions, claims, charges, demands Losses and proceedings arising from or incurred by reason of the actions and/or omissions of the Grant Recipient in relation to the Funded Activities, the non-fulfilment of obligations of the Grant Recipient under this Grant Funding Agreement or its obligations to Third Parties.
- 12.2. Subject to this paragraph 12, the Authority's liability under this Grant Funding Agreement is limited to the amount of Grant outstanding.

## 13. VAT

- 13.1. If VAT is held to chargeable in respect of the Grant Funding Agreement, all payments shall be deemed to **be inclusive of all VAT** and the Authority shall not be obliged to pay any additional amount by way of VAT.
- 13.2. All sums or other consideration payable to or provided by the Grant Recipient to the Authority at any time shall be deemed to be exclusive of all VAT payable and where any such sums become payable or due or other consideration is provided the Grant Recipient shall at the same time or as the case may be on demand by the Secretary of State in addition to such sums or other consideration pay to the Secretary of State all the VAT so payable upon the receipt of a valid VAT invoice.

## 14. CODE OF CONDUCT FOR GRANT RECIPIENTS

- 14.1. The Grant Recipients acknowledges that by signing the Grant Funding Agreement it agrees to take account of the Code of Conduct for Grant Recipients (the **Code of Conduct**) and that it will ensure that its Representatives undertake their duties in a manner consistent with the principles set out in the Code of Conduct.
- 14.2. The Grant Recipient shall immediately notify the Authority if it becomes aware of any actual or suspected breaches of the principles outlined in the Code of Conduct.
- 14.3. The Grant Recipient acknowledges that a failure to notify the Authority of an actual or suspected breach of the Code of Conduct may result in the Authority immediately suspending the Grant funding, terminating the Grant Funding Agreement and taking action to recover some or all of the funds paid to the Grant Recipient as a civil debt in accordance with paragraph 10.3.8.

## 15. NOTICES

15.1. All notices and other communications in relation to this Grant Funding Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, e-mailed, or mailed (first class postage prepaid) to the address of the relevant party, as referred to in Appendix 1 in the main grant letter or otherwise notified in writing. All notices and other communications must be marked for the attention of the contact specified in Appendix 1 (Contact Details). If personally delivered or if e-mailed all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any Working Day they shall be deemed received on the next Working Day) and if mailed all such communications shall be deemed to have been given and received on the second Working Day following such mailing.

## **16. GOVERNING LAW**

16.1. These Conditions will be governed by and construed in accordance with the law of England and the Parties irrevocably submit to the exclusive jurisdiction of the English courts.