

1. About our terms

1.1 When you sign the Participant Information Document you are entering into a contract which includes these terms. In these terms the contract is referred to as the Agreement.

In these terms...

we, us, our and **HIE** means Highlands and Islands Enterprise, established under the Enterprise and New Towns (Scotland) Act 1990 and having its principal office at An Lòchran, 10 Inverness Campus, Inverness, IV2 5NA.

Participant or you is as described in the Participant Information Document.

Parties means HIE, the Contractor, and the Participant.

Participant Information Document means the document with that title issued by us setting out the details of the Participant, the Contractor and the Programme. The Participant Information Document refers to these terms and sets out any other conditions which apply.

Contractor is as described in the Participant Information Document.

Intellectual Property Rights means all patents, inventions, trademarks, service marks, logos, get up, trade names, business names, product names, internet domain names, goodwill, rights in designs, copyright and related rights (including rights in computer software – object code and source code), moral rights, topography rights, database rights, rights in know-how, trade secrets, inventions, discoveries and other intellectual or industrial 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.

Programme is the programme which is described in the Participant Information Document.

Real Living Wage means the hourly rate known as the 'real Living Wage' as calculated by the Resolution Foundation and overseen by the Living Wage Commission, adjusted annually to reflect the cost of living.

Regulatory Bodies means all national and supra national government and regulatory authorities including Scottish Government, UK Government, Auditor General, Accounts Commission and to the extent applicable, European Commission and/or the European Court of Auditors.

Confidential Information means any information disclosed by one Party to any other Party under or pursuant to this Agreement and/or during the course of the Programme, whether verbally or written (including in electronic format), which should reasonably be regarded as confidential.

Services means the services described in the Participant Information Document. We may vary the Services from time to time at our sole discretion.

Subsidy Control means the rules governed by the Subsidy Control Act 2022.

2. Participant Confirmations and Obligations

2.1 The Participant confirms it:

- 2.1.1 has the capacity and authority to enter into this Agreement;
- 2.1.2 will pay any Charges detailed in the Participant Information Document within 14 days of receipt of invoice;
- 2.1.3 will participate in the Programme in compliance with this Agreement, the law, and

the information submitted by it and approved by HIE;

2.1.4 will not use the Services for any illegal, immoral, obscene or defamatory purpose; and

2.1.5 will comply with all reasonable requests from us and/or the Contractor relating to the Programme. This may include providing us with information which we may require in order to assess whether the provision of the Services complies with Subsidy Control or complying with instructions aimed at achieving the outputs of the Programme.

2.2 The Participant represents and warrants that all information provided to HIE in or in connection with its application to the Programme is true, accurate and correct and agrees to notify HIE promptly in writing of any changes to such information immediately upon becoming aware of them.

3. Intellectual Property Rights

3.1 The Participant will not own any Intellectual Property Rights in any materials and/or methodologies issued or made available by us or the Contractor during the Programme and/or as part of the Services. The Participant may not use any Intellectual Property Rights owned by us or the Contractor without our or the Contractor's prior written consent (as the case may be).

3.2 We shall not be liable to the Participant or to any third party whether in contract and/or delict or otherwise for any loss, cost or liability arising from the use of materials and/or methodologies issued or made available in connection with the Services and/or the Programme (including but not limited to any infringement or alleged infringement of any third party Intellectual Property Rights). This Condition will continue to apply after the termination or expiry of this Agreement.

3.3 If the Participant creates any Intellectual Property Rights during the Programme, the Participant will retain the right to exploit those Intellectual Property Rights.

4. Provision of the Services

4.1 In performing the Services, the Contractor shall exercise the skill, care, and diligence that a competent and experienced contractor providing services of a similar nature would reasonably be expected to exercise, and shall do so in accordance with good industry practice.

4.2 For the purposes of this Condition 4, "Good Industry Practice" means the skill, care, and diligence reasonably expected of a competent and experienced contractor performing services of a similar type and complexity in similar circumstances, in compliance with applicable laws and generally accepted industry standards.

5. Contacts and mentoring

5.1 The Participant may be introduced to contacts with relevant experience who may be in a position to mentor or guide it. If the contact provides the Participant with mentoring or guidance, this will not form part of the Services, the Programme and/or this Agreement and any such arrangement will be between the Participant and the contact and entirely independent of us. We do not warrant the competence or experience of any such contacts, or the accuracy of any information or advice provided by them. If the Participant relies on advice or information from any such contact, it does so entirely at its own risk.

6. Publicity

6.1 The Participant will ensure that any publicity it makes in respect of the Programme contains an acknowledgement of funding support provided to it under this Agreement and will display whatever plaque, sticker or logo we ask it to. The Participant will not issue any press release or make any public announcement or

statement regarding the Programme without obtaining our prior written consent.

6.2 We are allowed to publicise the Programme and to include information relating to the Programme in public records and other documents, including in order to demonstrate how our resources are being used and to give examples of the areas we are able to support.

7. Limitation of Liability

7.1 Nothing in this Agreement limits or excludes HIE's or the Contractor's liability for:

- 7.1.1 death or personal injury caused by its negligence;
- 7.1.2 fraud or fraudulent misrepresentation; or
- 7.1.3 breach of any implied term or any other liability which cannot be limited or excluded by law.

7.2 Subject to Condition 7.1, HIE shall not be liable to the Participant whether in contract or delict (including negligence) or otherwise for any loss, cost or liability arising out of, or in connection with this Agreement, the provision of the Services and/or the Programme, nor any loss, cost or liability arising out of or in connection with any mentoring or guidance provided to the Participant by a contact introduced to the Participant as referred to in Condition 5.1.

7.3 Subject to Condition 7.1, the Contractor's total liability to the Participant under the Contract shall not exceed a sum equal to 200% of the charges paid or payable to the Contractor by HIE for the provision of the Services.

8. Confidentiality

8.1 The Parties agree to use Confidential Information solely for the purposes of the Programme, the performance of this Agreement and the Services.

8.2 The Parties agree not to disclose Confidential Information to any third party without obtaining the prior written consent of each of the other Parties.

8.3 Conditions 8.1 and 8.2 do not apply:

- 8.3.1 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 the Freedom of Information (Scotland) Act 2002 and/or the Environmental Information (Scotland) Regulations 2004, and the Parties will provide such assistance as HIE may reasonably require in relation to such disclosure; and
- 8.3.2 to the disclosure of Confidential Information or information relating to this Agreement and the Programme to any Regulatory Bodies.

8.4 The Participant will cooperate with and assist HIE by providing all such information as HIE or such Regulatory Body may require. The Participant may identify information it considers to be commercially confidential together with an explanation as to why. HIE shall have regard to such representations and all Parties shall act reasonably in seeking to agree the extent to which such information may be shared.

9. Bringing this Agreement to an end

9.1 This Agreement may be terminated at any time by agreement between the Parties.

9.2 If HIE serve a notice on a Participant in the circumstances set out in Conditions 9.2.1 to 9.2.5, this Agreement will terminate with immediate effect:

- 9.2.1 the Participant breaches this Agreement or any other agreement in place between the Participant and HIE; or
- 9.2.2 at any time the Participant provides HIE with information which is fraudulent, misleading or incorrect; or
- 9.2.3 the Participant is insolvent or apparently insolvent, or becomes unable or admits inability to pay its debts as they fall due, the Participant suspends making payment of any

<p>of its debts as they fall due, or the Participant commences negotiation with one or more creditors with a view to rescheduling any of its indebtedness, has a receiver, manager or administrator or administrative receiver or similar officer appointed in respect of the whole or any part of its assets or undertaking; or</p>	<p>(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.</p>
<p>9.2.4 the Participant is sequestered; or</p> <p>9.2.5 HIE consider that the provision of the Services under this Agreement is in conflict with the principles relating to Subsidy Control.</p>	<p>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.</p>
<p>9.3 Termination of this Agreement will be without prejudice to any accrued rights and obligations of a Party under this Agreement as at the date of termination.</p>	
<p>9.4 Termination of this Agreement shall not affect the following Conditions: 1 (Definitions); 6 (Limitation of Liability); 8 (Confidentiality); 10 (Data Protection); 11.2 (Governing Law); 11.3 (Waiver); 11.5 (Rights of Third Parties); 11.6 (Severance) and 11.8 (Disclaimer).</p>	<p>10.2 Any transfer of Personal Data between a Participant and HIE is on a Controller to Controller basis. The Parties shall comply with their respective obligations under all Data Protection Law and shall provide each other with any information reasonably requested and necessary to enable the other Parties to meet the requirements of Data Protection Law.</p>
<p>10. Data Protection</p>	<p>10.3 The Participant agrees that:</p> <p>10.3.1 where it discloses Personal Data to HIE in relation to the terms of this Agreement, such disclosure must be fair, transparent and lawful and not contravene Data Protection Law;</p> <p>10.3.2 HIE shall Process that Personal Data as a Controller in accordance with HIE's published privacy statement from time to time. This privacy statement is at https://www.hie.co.uk/legal/privacypolicy/; and</p> <p>10.3.3 HIE may share such Personal Data with Regulatory Bodies, and in accordance with its legal requirements, as detailed in HIE's published privacy statement.</p>
<p>10.1 In this part...</p> <p>Personal Data means the personal data (as that term is defined in Data Protection Law) being processed by a Party pursuant to the terms of this Agreement.</p> <p>Controller and Process have the same meanings as they do in Data Protection Law.</p> <p>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:</p> <p>(a) the Data Protection Act 2018;</p> <p>(b) the UK GDPR;</p> <p>(c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); and</p>	

- 11.1.2 all staff aged 16 and over, including apprentices, who are directly employed by you and directly engaged in delivering the funded activity but based elsewhere in the UK.
- 11.2 You shall ensure that at least the Real Living Wage is paid to all workers aged 16 and over, including apprentices (in a third party) not directly employed by you who are directly engaged in delivering the funded activity and based anywhere in the UK
- 11.3 You shall demonstrate that all workers employed within their organisation have access to effective workers' voice channel(s), including agency workers. Other important information
- 11.4 You shall provide any and all information reasonably required by the us to satisfy us that the Fair Work First obligations herein, namely, to pay at least the Real Living Wage and providing access to effective workers' voice channels, are being complied with. Guidance is available to support you in meeting and evidencing these conditions.
- 12.5 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.
- 12.6 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.
- 12.7 If a Party is unable to perform its obligations under this Agreement as direct result of war, armed conflict, terrorism, strike, lockout, explosion, fire, lightning or storm, that Party will not be in breach of this Agreement for the duration of the event or circumstance provided that Party takes all reasonable steps to resume performance of its obligations as soon as practicable.
- 12.8 Save to the extent that HIE may amend the Services and/or the Programme, no amendments to this Agreement can be made unless they are in writing and have been signed by or on behalf of all Parties.
- 12.9 Any notice given under this Agreement must be in writing and addressed to the receiving 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.

12. Other Important Information

- 12.1 If there is any inconsistency between the Participant Information Document and these terms, the Participant Information Document shall prevail.
- 12.2 The laws of Scotland apply to this 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.
- 12.3 If a Party does not enforce one of more of its rights or remedies straight away, this does not mean that it will not do so in future. A Party will give up its right to enforce this Agreement only if it tells the other relevant Party in writing.
- 12.4 A Party cannot transfer, subcontract or sublet any of its rights and/or obligations under this Agreement to anyone else.