

# Withdrawn

**This publication is withdrawn.**

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**KICKSTART SCHEME TERMS AND CONDITIONS  
FOR GATEWAYS AND EMPLOYERS**

**NOVEMBER 2021**

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## 1. INTRODUCTION

- 1.1. DWP has created the Kickstart Scheme which allows employers and gateways to bid for grant funding to create new employment opportunities for the public benefit based on eligibility criteria specified by DWP (**Kickstart Scheme**). The Gateway was successful in applying to become a Kickstart gateway and DWP has awarded it a grant to support the Gateway and the employers it represents, including the Employer, in providing employment for 16-24 year olds claiming Universal Credit and referred by DWP.
- 1.2. This Kickstart Employer Agreement sets out the terms and conditions which apply to the Gateway sharing a portion of this grant funding with the Employer and the Employer taking part in the Kickstart Scheme.
- 1.3. The Gateway is acting as the lead organisation for a group of employers, including the Employer, who wish to receive grant funding to take part in the Kickstart Scheme. The purpose of this Kickstart Employer Agreement is to ensure sound financial management of the funding provided by the Gateway to the employers it represents. The Parties acknowledge and agree that, in providing grant funding to the Employer, neither Party is providing goods, works or services under a contract for goods, works or services to the other Party.
- 1.4. The Parties acknowledge that DWP may, pursuant to clause 27, enforce any of the terms of this Kickstart Employer Agreement as if it was the Gateway.
- 1.5. 16 – 29 year olds claiming Universal Credit, who are registered to Job Centres in areas as determined by the DWP will be eligible to participate in the Kickstart Scheme where referred by the DWP. Further detail is provided in Annex 5. Details of the Jobcentre(s) may be updated by the DWP at its discretion.

## 2. DEFINITIONS AND INTERPRETATION

- 2.1. In this Kickstart Employer Agreement, unless the context otherwise requires, capitalised terms have the meanings given in Annex 1 (Definitions) or the Funding Letter.
- 2.2. In this Kickstart Employer Agreement, unless the context otherwise requires:
  - (1) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
  - (2) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
  - (3) the words "including", "other", "in particular", "for example" and similar words will not limit the generality of the preceding words and will be construed as if they were immediately followed by the words "without limitation";
  - (4) references to "writing" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing will be construed accordingly; and

- (5) references to “representations” will be construed as references to present facts, to “warranties” as references to present and future facts and to “undertakings” as references to obligations under this Kickstart Employer Agreement.

- 2.3. Where there is any conflict between the documents that make up this Kickstart Employer Agreement, the conflict shall be resolved in accordance with the following order of precedence:

- 2.3.1. Annex 5 to the Conditions
- 2.3.2. the Funding Letter
- 2.3.3. the main body of the Conditions;
- 2.3.4. the Annexes to the Conditions; and
- 2.3.5. any other documents incorporated by reference in, or developed in accordance with, this Kickstart Employer Agreement.

### **3. DURATION/PURPOSE OF THE FUNDING**

- 3.1. This Kickstart Employer Agreement will start on the Commencement Date and continue for the duration of the Funding Period unless terminated earlier in accordance with its terms.
- 3.2. Grant funding is being provided by DWP to support the Gateway and the Employer to create new employment opportunities, for the public benefit, for young people at risk of long-term unemployment.
- 3.3. The Employer shall use the Kickstart Scheme Funding it receives solely for the delivery of the Funded Activities. The Employer must not, without the prior written consent of the Gateway, make any changes to the Funded Activities.
- 3.4. The Gateway and the Employer each acknowledges and agrees that:
- 3.4.1. the provision of the Grant is subject to the proper discharge of DWP’s duties, and the exercise of its discretions, as a Crown Body; and
  - 3.4.2. DWP may at its entire discretion vary the Grant (including the Funding) and the terms and conditions on which the Grant (including the Funding) is provided (for example, by increasing or decreasing the Grant or removing Funded Activities from the Grant) for any reason.

The Gateway may vary the Funding or the terms and conditions on which the Funding is provided as a result of variations made to the Grant by DWP. The Gateway will notify the Employer in writing of any such variations.

- 3.5. The Employer must not, without the prior written consent of the Gateway, exceed the maximum number of employment opportunities to be funded as stated in the Funding Letter and varied from time to time in accordance with this Kickstart Employer Agreement.
- 3.6. The Employer will ensure that none of the jobs advertised or funded under this Kickstart Employer Agreement are also part of another Kickstart Scheme grant agreement or application. The Employer acknowledges and agrees that DWP may choose not to provide any Grant funding for any job that it considers to be part of another Kickstart Scheme grant agreement or application and that the maximum number of employment opportunities to be funded under this Kickstart Employer Agreement may be reduced accordingly.
- 3.7. A Participant may not commence a Kickstart Scheme job after 31 March 2022. If any Participant commences any job after 31 March 2022, they shall not be classed as a Participant under this

Kickstart Employer Agreement and no Funding or any other payment will be due to the Employer under this Kickstart Employer Agreement with respect to that individual.

#### **4. PAYMENT**

- 4.1. Subject to the other terms of this Kickstart Employer Agreement, the Gateway will provide the Employer with Funding in accordance with the payment schedule in Annex 3. The amount of Funding provided to the Employer will be determined by the Eligible Expenditure incurred by the Employer during the Funding Period.
- 4.2. The Gateway and the Employer each acknowledges that:
  - 4.2.1. the DWP Grant is a contribution only;
  - 4.2.2. the Gateway and the Employer are responsible for sourcing or providing the resources required for the Funded Activities; and
  - 4.2.3. the amount of Funding provided will not be increased in the event of any overspend in the delivery of the Funded Activities.
- 4.3. The Gateway will not make any payment until it is satisfied that the Employer has paid for and delivered the Funded Activities or provided sufficient assurance that the Funding will be used for Eligible Expenditure only.
- 4.4. The Employer may request payment of the first Funding instalment once the Participant has commenced their employment with the Employer (see note 5 of Annex 3 for more detail on what this means). The Employer must not request payment of the first Funding instalment before the Participant has commenced employment with the Employer. The Employer will provide any information or documentation requested by the Gateway from time to time to evidence that the Participant has started and continues in work with the Employer as part of the Kickstart Scheme. The Employer acknowledges that DWP will not release Grant funding for the first Funding instalment until DWP is satisfied that the Participant has started employment with the Employer.
- 4.5. Following the first Funding instalment, the Gateway will provide subsequent instalments of the Funding in accordance with the payment schedule in Annex 3.
- 4.6. Without prejudice to its other rights, the Gateway may at any time suspend Funding payments and/or terminate this Kickstart Employer Agreement by written notice to the Employer in circumstances where DWP is for any reason unable or not permitted to provide the funds.
- 4.7. The Employer agrees that:
  - 4.7.1. It will not apply for or obtain Duplicate Funding in respect of any part of the Funded Activities which have been paid for in full using funding provided under this Kickstart Employer Agreement; and
  - 4.7.2. the Gateway may exercise its rights under clause 22.3 and/or refer the Employer to the police should it dishonestly and intentionally obtain Duplicate Funding for the Funded Activities.
- 4.8. The Employer shall promptly notify and repay immediately to the Gateway any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes situations where the Employer is paid in error before it has complied with its obligations under this Kickstart Employer Agreement. If the Employer fails to repay the due sum immediately or within any other timeframe specified by the Gateway, the sum may be recoverable as a debt.

- 4.9. Wherever under this Kickstart Employer Agreement any sum of money is recoverable from or payable by the Employer, the Gateway may unilaterally deduct that sum from any sum then due, or which at any later time may become due, to the Employer under this Kickstart Employer Agreement or under any other agreement or contract with the Gateway.

## **5. ELIGIBLE AND INELIGIBLE EXPENDITURE**

- 5.1. The Gateway will only provide Funding in respect of Eligible Expenditure incurred by the Employer to deliver the Funded Activities.

- 5.2. The following costs/payments will be classified as Eligible Expenditure if incurred for the purposes of the Funded Activities:

5.2.1. set up costs for IT equipment and software licences, administration and management time and support with helping Participants develop work skills and experience (employability support);

5.2.2. any uniform, equipment and Personal Protective Equipment as required; and

5.2.3. payment of the relevant National Minimum Wage (or the National Living Wage depending on the age of the Participant) for 25 hours a week of work for six months by each Participant, plus the associated employer National Insurance contributions and employer minimum automatic enrolment contributions.

‘employability support’ may include on-the-job training, work search support, skills development, mentoring, careers advice and other related support to help the Participants find sustained employment after they have completed the Kickstart Scheme.

Eligible Expenditure also includes fees charged or to be charged to the Employer by external auditors/accountants for reporting/certifying that the funding received was applied for its intended purposes.

- 5.3. The Employer may make additional wage payments and pension contributions to its Participants above the amount described in clause 5.2.3. Any such additional payments are not supported by, or Eligible Expenditure of, the Funding.
- 5.4. The Employer must not use any Crown funding provided for a different purpose to fund Kickstart Scheme activities in conjunction with Kickstart Scheme Grant payments.
- 5.5. If the Employer is party to any contract for goods, works or services or any funding agreement with any Crown Body, whether national, local or devolved, the Employer must not use Kickstart Scheme funding to replace or duplicate the funding provided by that Crown Body for the purpose of that contract or funding agreement.
- 5.6. While the Employer is in receipt of Funding for a Participant in connection with the Kickstart Scheme, the Employer must not claim or receive any other Crown funding for that Participant, including reimbursement of Statutory Sick Pay or payments under the Coronavirus Job Retention Scheme or Job Support Scheme.
- 5.7. The Gateway will share with the Employer any further guidance it receives from DWP on what constitutes Eligible Expenditure.
- 5.8. The Employer must not in any circumstance claim the following non-exhaustive list as Eligible Expenditure (the list below does not override activities which are deemed eligible under clause 5.2 of these Conditions):

- 5.8.1. paid for lobbying, which means using the Funding to fund lobbying (via an external firm or in-house staff) in order to undertake activities intended to influence or attempt to influence Parliament, government or political activity or attempting to influence legislative or regulatory action;
  - 5.8.2. using the Funding to directly enable one part of government to challenge another on topics unrelated to the agreed purpose of the Grant;
  - 5.8.3. using the Funding to petition for additional funding;
  - 5.8.4. expenses such as for entertaining, specifically aimed at exerting undue influence to change government policy;
  - 5.8.5. input VAT reclaimable by the Employer from HMRC;
  - 5.8.6. payments for activities of a political or exclusively religious nature; and
  - 5.8.7. payments reimbursed or to be reimbursed by other public or private sector grants.
- 5.9. Other examples of expenditure, which are prohibited, include the following (unless deemed to be eligible under clause 5.2 of these Conditions):
- 5.9.1. contributions in kind;
  - 5.9.2. interest payments or service charge payments for finance leases;
  - 5.9.3. gifts;
  - 5.9.4. statutory fines, criminal fines or penalties, civil penalties, damages or any associated legal costs;
  - 5.9.5. payments for works or activities which the Employer has a statutory duty to undertake or that are fully funded by other sources;
  - 5.9.6. bad debts to related parties;
  - 5.9.7. payments for unfair dismissal or other compensation;
  - 5.9.8. advertising, communications, consultancy or marketing spend;
  - 5.9.9. depreciation, amortisation or impairment of assets owned by the Employer;
  - 5.9.10. the acquisition or improvement by the Employer of any land, buildings, plant, equipment or any other assets; and
  - 5.9.11. liabilities incurred before the commencement of this Kickstart Employer Agreement unless agreed in writing by the Gateway.

## **6. REVIEW**

- 6.1. DWP and the Gateway may each review the Employer's use of the Funding during the Funding Period. Each review will take into account the delivery of the Funded Activities against the agreed outputs set out in Annex 4.
- 6.2. Each review may result in DWP or the Gateway deciding that:
- 6.2.1. the Funded Activities and this Kickstart Employer Agreement should continue in line with existing plans;
  - 6.2.2. there should be an increase or decrease in the Funding and the number of Participants supported for the remainder of the Funding Period;
  - 6.2.3. the outputs should be re-defined and agreed;
  - 6.2.4. the Employer should carry out remedial activity to improve delivery of the Funded Activities;
  - 6.2.5. the Kickstart Employer Agreement be terminated in accordance with clause 22 of these Conditions; and/or
  - 6.2.6. any other action deemed reasonable in the circumstances should be taken.
- 6.3. If remedial activity is required pursuant to clause 6.2.4, the Employer will submit a plan to the Gateway setting out the steps it proposes to take to rectify the areas identified by the review and the timetable for taking those steps.



## **7. MONITORING AND REPORTING**

- 7.1. The Employer shall closely monitor the delivery and success of the Funded Activities throughout the Funding Period to ensure that the aims and objectives of the Funded Activities are achieved. The Employer shall provide the Gateway and DWP with all reasonable assistance and co-operation to establish if the Employer has used the Funding in accordance with this Kickstart Employer Agreement.
- 7.2. The Employer shall notify the Gateway as soon as possible if:
- 7.2.1. a Participant ceases or will cease to be engaged by the Employer at any point during his or her six month Kickstart Scheme employment; or
  - 7.2.2. any Participant is unable to carry out regular, meaningful work at any point during the six month Kickstart Scheme employment. This could be because the Employer is unable to provide work due to recommended or mandatory measures introduced by the Crown to prevent or delay the spread of Coronavirus, a change in circumstances for the Participant, special leave or for any other reason. DWP may then decide to take any action deemed reasonable in the circumstances, including extending the period of Grant funding and making changes to Grant payments with respect to that Participant.
- 7.3. The Employer will permit any person authorised by the Gateway or DWP reasonable access, with or without notice, to its employees, agents, premises and facilities for the purpose of discussing, monitoring and evaluating the fulfilment of the Funded Activities and will, if so required, provide appropriate oral or written explanations to such authorised persons as required during the Funding Period.
- 7.4. The Employer will notify the Gateway as soon as possible and in any event within two (2) Working Days of becoming aware of:
- 7.4.1. any actual or potential failure to comply with any of its obligations under this Kickstart Employer Agreement, which includes those caused by any administrative, financial or managerial difficulties; or
  - 7.4.2. any event which materially affects the continued accuracy of information it provided to the Gateway for inclusion in the Gateway's Grant application.
- 7.5. The Employer acknowledges and agrees that any data it provided as part of the Gateway's Grant application, or provides under this Kickstart Employer Agreement, may be shared with DWP for any purpose or within the powers conferred by legislation with other organisations for the purpose of preventing or detecting crime.

## **8. AUDITING AND ASSURANCE**

- 8.1. The Gateway and/or DWP may request, and the Employer will provide, independent assurance that the Funding has been used for delivery of the Funded Activities. To satisfy this requirement, the Employer will provide, if reasonably requested by the Gateway or DWP (including where DWP suspects that Funding has been misused), a report from an independent and appropriately qualified auditor certifying whether the Funding paid to the Employer was applied in accordance with this Kickstart Employer Agreement.
- 8.2. The Gateway and/or DWP may, at any time during and up to six years after the end of this Kickstart Employer Agreement, conduct audits and reviews of the delivery and performance of the Funded Activities and / or request additional information related to the Funded Activities or the performance of this Kickstart Employer Agreement where the Gateway or DWP considers it necessary. The Employer grants the Gateway and its Representatives, and DWP and its

representatives, full access, as required, to all Funded Activities' sites, accounts and relevant records. Copies of such accounts and records may be taken.

- 8.3. If the Gateway or DWP reasonably requires further information, explanations and documents to establish that the Funding has been used properly in accordance with this Kickstart Employer Agreement, the Employer will, within 5 Working Days of a request, provide the requested information, explanations and documents free of charge.
- 8.4. The Employer shall keep accurate and up-to-date accounts and records of the receipt and expenditure of the Funding received by it. The Employer shall retain all invoices, receipts, accounting records and any other documentation (including correspondence) relating to the Eligible Expenditure during the Funding Period and for a period of six years from the date on which the Funding Period ends.

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

- 9.1. The Employer will at all times comply with all applicable Laws, statutes and regulations relating to anti-bribery and anti-corruption, including the Bribery Act.
- 9.2. The Parties agree that each will have a zero tolerance approach towards financial irregularity that may lead to the misuse of the Funding and the Employer shall provide any assistance required by the Gateway or DWP to recover such funds.
- 9.3. In the event of any credible indication(s) that Grant funds may have been subject to financial irregularity, the Gateway or DWP may, at any time during the Funding Period and up to six years after it, arrange for additional investigations, on-the spot checks and/or inspections to be carried out. These may be carried out by the Gateway, DWP or any of its duly authorised representatives (including Third Parties).
- 9.4. The Gateway will have the right, at its absolute discretion, to insist that the Employer addresses any actual or suspected fraud, theft or other financial irregularity and/or to suspend future payment of the Funding. Any grounds for suspecting financial irregularity include what the Employer, acting with due care, should have suspected as well as what is actually proven.
- 9.5. The Employer agrees and accepts that it may become ineligible for Funding and may be required to repay all or part of the Funding if it engages in tax evasion or aggressive tax avoidance in the opinion of His Majesty's Revenue and Customs.
- 9.6. For the purposes of this clause 9, "financial irregularity" includes potential or actual fraud, corruption, money-laundering or other impropriety, mismanagement, and the use of the Funding for any purpose other than those stipulated in this Kickstart Employer Agreement. The Employer may be required to provide statements and evidence to the Gateway, DWP or the appropriate organisation as part of pursuing sanctions, criminal or civil proceedings.

## **10. CONFLICTS OF INTEREST**

Neither the Employer nor any of its Representatives shall engage in any personal, business or professional activity which conflicts or could conflict with any of its / their obligations in relation to this Kickstart Employer Agreement.

## **11. CONFIDENTIALITY**

- 11.1. Except to the extent set out in this clause 11 or where disclosure is expressly permitted, the Employer shall treat all Confidential Information provided by the Gateway or DWP as confidential and shall not disclose that Confidential Information to any other person without the prior written consent of the Gateway, except to such persons who are directly involved in the provision of the Funded Activities and who need to know the information (**Permitted Recipients**). The Employer shall ensure that its Permitted Recipients are aware of and comply with its obligations as to confidentiality in this Kickstart Employer Agreement.
- 11.2. The Employer shall not, and shall procure that its Permitted Recipients do not, use any of the Gateway's or DWP's Confidential Information received otherwise than for the purposes of the provision of the Funded Activities.
- 11.3. The Employer gives its consent for the Gateway and DWP to publish this Kickstart Employer Agreement in any medium in its entirety (but with any information which is Confidential Information of the Gateway, Employer or DWP redacted), including from time to time agreed changes to this Kickstart Employer Agreement.
- 11.4. Nothing in this clause 11 shall prevent the Gateway or DWP disclosing any Confidential Information obtained (directly or indirectly) from the Employer:
  - 11.4.1. for the purpose of the examination and certification of either's accounts or pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which either of them has used its resources;
  - 11.4.2. to any government department, consultant, contractor or other person engaged by either of them, provided that the discloser only discloses the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate; or
  - 11.4.3. where disclosure is required by Law, including under the Information Acts.

## **12. TRANSPARENCY**

- 12.1. The Gateway and the Employer each acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of the Information Acts, the content of this Kickstart Employer Agreement is not confidential.
- 12.2. The Employer agrees that DWP may share details of the Grant, including the name of the Employer and the Funding received, with the UK Government and that these details may appear on the Government Grants Information System database which is available for search by other funders.

## **13. STATUTORY DUTIES**

- 13.1. The Employer shall carry out its obligations in accordance with all applicable Law, including all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise), employment law, the Information Acts and the HRA.
- 13.2. The Employer will provide reasonable assistance and cooperation to DWP and the Gateway (to the extent the Gateway is subject to the Information Acts) to enable DWP and the Gateway to comply with its information disclosure obligations under the Information Acts.
- 13.3. The Employer acknowledges that DWP and the Gateway, acting in accordance with the codes of practice issued and revised from time to time under the Information Acts, may disclose

information concerning the Employer and this Kickstart Employer Agreement without consulting the Employer.

- 13.4. Where the Gateway is subject to the Information Acts, the Gateway will take reasonable steps to notify the Employer of a request for information that directly relates to the Employer's operations, to the extent that it is permissible and reasonably practical for it to do so. Notwithstanding any other provision in this Kickstart Employer Agreement, DWP or the Gateway will be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Acts.
- 13.5. The Employer will notify the Gateway 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, officers or volunteers.

#### **14. DATA PROTECTION**

- 14.1. The Parties acknowledge that, for the purpose of Data Protection Legislation, each of the Gateway and the Employer is the Controller of any Personal Data processed by it pursuant to the Funded Activities. To the extent that the Gateway, the Employer or DWP share any Personal Data for the purposes specified in clause 14.4, they are each separate independent Controllers in respect of such data.
- 14.2. The Employer shall (and shall procure that its Representatives shall) adhere to all applicable provisions of the Data Protection Legislation and not put the Gateway or DWP in breach of the Data Protection Legislation.
- 14.3. On request from the Gateway or DWP, the Employer will provide the Gateway or DWP with all such relevant documents and information relating to its data protection policies and procedures as the Gateway or DWP may reasonably require.
- 14.4. The Employer agrees that the Gateway and its Representatives, and DWP and its representatives, may use Personal Data which the Employer provides about its staff (including Participants), clients, suppliers and partners involved in the Funded Activities to exercise rights under this Kickstart Employer Agreement and / or to administer the Grant or associated activities. The Gateway agrees that the Employer and its Representatives may use Personal Data which the Gateway or DWP provides about (i) staff involved in the Funded Activities to manage its relationship and communicate with the Gateway or DWP, and (ii) candidates for Kickstart Scheme vacancies for the purpose of reviewing applications and contacting them for interviews or further information.
- 14.5. The Gateway and the Employer shall only share Personal Data (with each other or DWP):
  - (a) in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
  - (b) to the extent required in connection with the Funded Activities and this Kickstart Employer Agreement.
- 14.6. Where a Party (the **Data Receiving Party**) receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data shared pursuant to this Kickstart Employer Agreement:

- 14.6.1 the other Party shall provide any information and/or assistance as reasonably requested by the Data Receiving Party to help it respond to the request or correspondence, at the Data Receiving Party's cost; or
- 14.6.2 where the request or correspondence is directed to the other Party and/or relates to the other Party's processing of Personal Data, the Data Receiving Party will:
  - (a) promptly, and in any event within three (3) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
  - (b) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 14.7 Each Party shall notify the other Party within 24 hours of becoming aware of any Personal Data Breach (as defined in the GDPR) relating to Personal Data provided by the other Party (or DWP) pursuant to this Kickstart Employer Agreement and shall:
  - 14.7.1 do all such things as reasonably necessary to assist the other Party, and DWP if applicable, in mitigating the effects of the Personal Data Breach;
  - 14.7.2 implement any measures necessary to restore the security of any compromised Personal Data;
  - 14.7.3 work with the other Party, and DWP if applicable, to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - 14.7.4 not do anything which may damage the reputation of the other Party or DWP or its relationship with the relevant Data Subjects, save as required by Law.
- 14.8 Without limiting any other provision of this clause 14, each Party shall, on request, provide such information and assistance as is reasonably requested by the other Party or DWP to assist in complying with the Data Protection Legislation in respect of the Personal Data.
- 14.9 The Gateway and the Employer shall not retain or process Personal Data for longer than is necessary to perform the respective obligations under this Kickstart Employer Agreement, unless otherwise required by Law.

## **15. INTELLECTUAL PROPERTY RIGHTS**

- 15.1. Intellectual Property Rights in all IPR Material will be the property of the Employer. Other than as expressly set out in these Conditions, neither Party will have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent. Other than as expressly set out in these Conditions, the Employer will not have any right to use any of DWP's names, logos or trade marks on any of its products or services without DWP's prior written consent (to be requested via the Gateway).
- 15.2. The Employer grants to the Gateway and DWP a non-exclusive, perpetual, irrevocable, royalty-free, sub-licensable and worldwide licence to use all the IPR Material for the purpose of supporting the Kickstart Scheme and other projects. This licence excludes any materials created by the Employer or its Representatives for use in the Employer's day-to-day activities outside the Kickstart Scheme.

## **16. INSURANCE**

- 16.1. The Employer will during the term of the Funding Period, and for six years after termination or expiry of this Kickstart Employer Agreement, ensure that it has and maintains at all times adequate insurance cover with an insurer of good repute that is, at a minimum, consistent with

the cover maintained as good industry practice in the Employer's sector by organisations of a similar size to the Employer.

- 16.2. The Employer will upon request produce to the Gateway its policy or policies of insurance or where this is not possible, a certificate of insurance issued by its insurance brokers confirming the insurances are in full force and effect together with confirmation that the relevant premiums have been paid.

## **17. ASSIGNMENT**

- 17.1. Subject to clause 17.2, neither Party will transfer, assign, novate or otherwise dispose of the whole or any part of this Kickstart Employer Agreement or any rights under it to another organisation or individual without the other Party's prior approval.
- 17.2. The Gateway may transfer, assign or novate any or all of its rights and obligations under this Kickstart Employer Agreement to DWP if requested to do so by DWP in writing.

## **18. LOSSES, GIFTS AND SPECIAL PAYMENTS**

- 18.1. The Employer must obtain prior written consent from the Gateway before:
- 18.1.1. writing off any debts or liabilities;
  - 18.1.2. offering to make any Special Payments; and
  - 18.1.3. giving any gifts,
- in connection with this Kickstart Employer Agreement.
- 18.2. The Employer will keep a record of all gifts, both given and received, in connection with the Funding or any Funded Activities.

## **19. PUBLICITY**

- 19.1. The Employer gives consent to the Gateway and DWP publicising in the press or any other medium the Grant, the Funding and details of the Funded Activities using any information gathered from the Gateway's initial Grant application or any information or reports submitted under this Kickstart Employer Agreement.
- 19.2. The Employer will comply with all reasonable requests from the Gateway and DWP to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Gateway and DWP in its promotional and fundraising activities relating to the Funded Activities.
- 19.3. The Gateway consents to the Employer carrying out any reasonable publicity about the Funding and the Funded Activities as required, from time to time.
- 19.4. Any publicity material for the Funded Activities must refer to the programme under which the Funding was awarded and, subject to clause 19.7, must feature DWP's Kickstart Scheme logo. If a Third Party wishes to use DWP's Kickstart Scheme logo, the Employer must first seek permission from DWP (via the Gateway).
- 19.5. The Employer will acknowledge the support of the Gateway and DWP in any materials that refer to the Funded Activities and in any written or spoken public presentations about the Funded Activities. Such acknowledgements (where appropriate or as requested) will include the Gateway's and DWP's name and Kickstart Scheme logo (or any future name or logo adopted

by the Gateway or DWP) using the templates provided by the Gateway or DWP from time to time.

- 19.6. The Employer may use the Gateway's name, DWP's name and the Kickstart Branding to publicise the Funding and the Funded Activities, provided that:

19.6.1. its use of the Gateway's name, DWP's name and the Kickstart Branding does not in any way weaken or damage the reputation and image of the Gateway, DWP or the Kickstart Branding (including the goodwill associated with it); and

19.6.2. in using the Gateway's or DWP's name and Kickstart Branding, the Employer will comply with all reasonable branding guidelines issued by the Gateway or DWP from time to time, including those available at <https://www.gov.uk/government/publications/kickstart-scheme-employer-resources/kickstart-scheme-brand-guidelines>.

- 19.7. No other rights under the Kickstart Branding are granted to the Employer. In particular, the Employer has no right to permit any Third Party (including any affiliated or associated person) to use the Kickstart Branding without DWP's prior written consent (requested via the Gateway). The Employer will be responsible for the acts and omissions of any Third Party it permits to use the Kickstart Branding as if they were its own. The Employer will cease, and will procure that any Third Parties permitted to use the Kickstart Branding cease, all further use of the Kickstart Branding if requested to do so by DWP in writing.

## **20. EVALUATION**

The Gateway and DWP, directly or through Third Parties, may undertake research and evaluation exercises of the Funded Activities and the Kickstart Scheme generally. The Employer shall, during and after the Funding Period, cooperate with the Gateway, DWP and/or any Third Party by responding to requests for information, surveys and questionnaires and by providing access to its employees, customers and contractors as may be required by the Gateway, DWP and/or the selected Third Party. The results of any research and evaluation will be handled in such a way that they do not identify individual respondents, unless permitted by Data Protection Legislation.

## **21. CHANGES TO DWP'S REQUIREMENTS**

- 21.1. The Gateway will notify the Employer of any changes to the Funded Activities supported by the Grant.
- 21.2. The Employer will endeavour to accommodate any changes to DWP's needs and requirements for the Grant and the Funded Activities that impact on this Kickstart Employer Agreement. Where the Employer fails to implement the required changes, the Gateway reserves the right to withhold or suspend Funding payments or terminate this Kickstart Employer Agreement.

## **22. CLAWBACK, EVENTS OF DEFAULT AND TERMINATION**

### **Events of Default**

- 22.1. The Gateway may exercise its rights set out in clause 22.3 if any of the following events occur:
- 22.1.1. the Employer uses the Funding for a purpose other than the Funded Activities;
- 22.1.2. the Employer fails to comply with any of its obligations under this Kickstart Employer Agreement and the failure is material in the opinion of the Gateway;

- 22.1.3. the Employer uses the Funding for Ineligible Expenditure;
- 22.1.4. the Employer fails, in the Gateway's opinion, to make satisfactory progress with the Funded Activities and, in particular, with meeting the agreed outputs set out in Annex 4;
- 22.1.5. the Employer fails to (i) submit an adequate remedial action plan after being requested to do so under clause 6.2.4 or (ii) improve delivery of the Funded Activities in accordance with the remedial action plan approved by the Gateway;
- 22.1.6. the Employer is, in the opinion of the Gateway, delivering the Funded Activities in a negligent manner (in this context negligence includes failing to prevent or report actual or anticipated fraud or corruption);
- 22.1.7. the Employer applies for, obtains or fails to declare Duplicate Funding;
- 22.1.8. the Employer receives funding from a Third Party which, in the opinion of the Gateway, undertakes activities that are likely to bring the reputation of the Funded Activities, the Gateway or DWP into disrepute;
- 22.1.9. the Employer provides the Gateway with any materially misleading or inaccurate information and/or any of the information provided for the Gateway's grant application or in any subsequent supporting correspondence is found to be incorrect or incomplete to an extent which the Gateway considers to be significant;
- 22.1.10. the Employer commits or has committed a Prohibited Act or fails to report a Prohibited Act to the Gateway, whether committed by the Employer, any of its Representatives or a Third Party, as soon as it becomes aware of it;
- 22.1.11. the Gateway determines that the Employer or any of its Representatives has:
- (i) acted dishonestly or negligently at any time during the term of this Kickstart Employer Agreement and to the detriment of the Gateway or DWP;
  - (ii) taken any actions which unfairly bring or are likely to unfairly bring the Gateway's or DWP's name or reputation and/or the Gateway or DWP into disrepute. Actions include omissions in this context;
  - (iii) transferred, assigned or novated this Kickstart Employer Agreement to any Third Party without the Gateway's consent; or
  - (iv) failed to act in accordance with the Law, howsoever arising, including incurring expenditure on unlawful activities;
- 22.1.12. the Employer 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);
- 22.1.13. the Employer becomes insolvent as defined by section 123 of the Insolvency Act 1986, or it is declared bankrupt or 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;
- 22.1.14. the European Commission (or a Domestic Successor) or the Court of Justice of the European Union (or Domestic Successor) requires any Funding paid to be recovered



by reason of a breach of State Aid Law, including through its application under Article 10 of the Northern Ireland Protocol;

22.1.15. any court, tribunal or independent body or authority of competent jurisdiction requires any Funding paid to be recovered by reason of a breach of (i) the UK's obligations under the Trade and Co-operation Agreement or any other applicable international agreement; or (ii) the terms of any UK subsidy control legislation;

22.1.16. the Employer breaches the Code of Conduct and/or fails to report an actual or suspected breach of the Code of Conduct by any of its Representatives in accordance with clause 26.2; or

22.1.17. the Employer undergoes a Change of Control which the Gateway, acting reasonably, considers:

- 22.1.17.1. will be materially detrimental to the Funded Activities; or
- 22.1.17.2. will result in the new body corporate being unable to receive the Funding because it does not meet the Eligibility Criteria.

22.2. Where the Gateway determines that an Event of Default has or may have occurred, the Gateway shall notify the Employer to that effect in writing, setting out any relevant details of the failure to comply with this Kickstart Employer Agreement or pertaining to the Event of Default and details of any action that it intends to take or has taken.

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

22.3. Where the Gateway determines that an Event of Default has or may have occurred, the Gateway may take any one or more of the following actions:

- 22.3.1. suspend or terminate the payment of the Funding for such period as the Gateway shall determine;
- 22.3.2. reduce the amount of Funding in which case the payment of Funding shall thereafter be made in accordance with the reduction and notified to the Employer;
- 22.3.3. require the Employer to repay to the Gateway the whole or any part of the amount of the Funding previously paid. Such sums may be recovered as a debt;
- 22.3.4. give the Employer an opportunity to remedy the Event of Default (if the Gateway considers it remediable) in accordance with the procedure set out in clause 22.5;
- 22.3.5. terminate this Kickstart Employer Agreement; and/or
- 22.3.6. request to DWP that the Employer be excluded from any future participation in the Kickstart Scheme.

22.4. If the Employer fails to perform any of its obligations under this Kickstart Employer Agreement (other than a material failure), the Gateway may serve a notice on the Employer requiring remedial action to be taken within a period as specified by the Gateway (such period not more than 20 Working Days). If the failure is not remedied within the period specified by the Gateway, the failure to remedy will amount to a material failure for the purposes of clause 22.1.2.

### **Opportunity for the Employer to remedy an Event of Default**

22.5. Where the Employer is provided with an opportunity to remedy an Event of Default in accordance with clause 22.3.4, the Gateway will inform the Employer of the Event of Default, how it must be resolved and the timescales for its resolution. If the Event of Default has not been resolved after the Employer has been given an opportunity to remedy it to the reasonable

satisfaction of the Gateway, the Gateway may immediately exercise any other right(s) in clause 22.3.

- 22.6. The Gateway shall not by reason of the occurrence of an Event of Default which is, in the opinion of the Gateway, capable of remedy, exercise its rights under either clause 22.3.3 or 22.3.522.3.4 unless the Employer has failed to rectify the default to the reasonable satisfaction of the Gateway. The Gateway may conclude an Event of Default is incapable of remedy where, for example, it is one of multiple Events of Default that have or may have occurred and which demonstrate (in the Gateway's opinion) that the Employer is unwilling to comply, or unable to comply, with the terms and conditions of this Kickstart Employer Agreement.

### **General Termination rights**

- 22.7. Notwithstanding the Gateway's right to terminate this Kickstart Employer Agreement pursuant to clause 22.3 above, either Party may terminate this Kickstart Employer Agreement at any time by giving written notice to the other Party. The notice period will end when all existing Kickstart Scheme engagements of Participants at the time notice is given have finished. No further new Kickstart Scheme jobs will begin once notice has been served.

### **General Termination provisions**

- 22.8. Neither the Gateway nor DWP will be liable to pay any of the Employer's costs or those of any supplier of the Employer related to any transfer or termination of employment of any employees engaged in the provision of the Funded Activities.
- 22.9. The Employer shall, upon written request by the Gateway and in any event on termination of this Kickstart Employer Agreement, return to the Gateway all of its and DWP's data, documents and other materials in the possession or control of the Employer.
- 22.10. Termination or expiry of this Kickstart Employer Agreement shall be without prejudice to any rights or remedies accrued under it prior to termination or expiry and nothing in this Kickstart Employer Agreement shall prejudice the right of either Party to recover any amount outstanding at termination or expiry.
- 22.11. Any provision of this Kickstart Employer Agreement that expressly or by implication is intended to come into or continue in force on or after the expiry or termination of this Kickstart Employer Agreement shall survive such expiry or termination and continue in full force and effect.

### **Change of Control**

- 22.12. The Employer shall notify the Gateway immediately in writing as soon as the Employer is anticipating, undergoing, undergoes or has undergone a Change of Control, provided such notification does not contravene any Law.
- 22.13. The Employer shall ensure that any notification made pursuant to clause 22.12 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
- 22.14. Following notification of a Change of Control, the Gateway shall be entitled to exercise its rights under clauses 22.1.17 and 22.3 providing the Employer 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

- (i) where no notification has been made, the date that the Gateway becomes aware that a Change of Control is anticipated or is in contemplation or has occurred.

22.15. The Gateway shall not be entitled to terminate where an approval was granted prior to the Change of Control.

## **23. DISPUTE RESOLUTION**

23.1. The Parties will use all reasonable endeavours to negotiate in good faith, and settle amicably, any dispute that arises during the term of this Kickstart Employer Agreement. This clause 23 does not apply to any dispute or complaint which relates to DWP's or the Gateway's right to withhold or withdraw funds, reduce the number of jobs to be funded, require remedial activity or terminate or any other rights exercised at DWP's or the Gateway's sole discretion or in DWP's or the Gateway's opinion.

23.2. All disputes shall be referred in the first instance to the Gateway Representative and the Employer Representative.

23.3. If the dispute cannot be resolved between the Gateway Representative and the Employer Representative within a maximum of 14 days of the referral, the matter will be escalated to a formal meeting between a senior officer of each Party.

## **24. LIMITATION OF LIABILITY**

24.1. Neither the Gateway nor DWP accepts any liability for any consequences, whether direct or indirect, that may come about from the Employer delivering/running the Funded Activities, the use of the Funding or from withdrawal, withholding or suspension of the Funding.

24.2. The Employer shall indemnify and hold harmless DWP, the Gateway and its Representatives against all actions, claims, charges, demands, proceedings and Losses suffered or incurred by any of them arising out of or in connection with (i) any act(s) or omission(s) of the Employer in relation to the Funded Activities; (ii) the non-fulfilment of any obligations of the Employer under this Kickstart Employer Agreement, or (iii) the performance or non-performance of any obligation of the Employer to any Third Party.

24.3. Save in respect of any liabilities that cannot be lawfully limited, the Gateway's liability under this Kickstart Employer Agreement is limited to the amount of any Funding outstanding.

## **25. VAT**

25.1. The provision of the Funding is not consideration for any taxable supply for VAT purposes.

25.2. If VAT is held to be chargeable in respect of this Kickstart Employer Agreement, all payments shall be deemed to be inclusive of VAT and the Gateway shall not be obliged to pay any additional amount by way of VAT.

## **26. CODE OF CONDUCT FOR GRANT RECIPIENTS**

26.1. The Employer shall comply with the Code of Conduct, which includes ensuring that its Representatives undertake their duties in a manner consistent with the principles set out in the Code of Conduct.

- 26.2. The Employer shall immediately notify the Gateway if it becomes aware of any actual or suspected breach(es) of the principles outlined in the Code of Conduct by itself or any Representative.
- 26.3. The Employer acknowledges that a failure to notify the Gateway of an actual or suspected breach of the Code of Conduct may result in the Gateway immediately suspending the Funding, terminating the Kickstart Employer Agreement and taking action to recover some or all of the funds paid to the Employer in accordance with clause 22.1.16.

## **27. DWP'S RIGHTS**

Where any provisions of this Kickstart Employer Agreement confer a benefit on DWP, DWP may enforce those provisions. In addition, DWP may, as the ultimate provider of the Grant funding, enforce any of the terms of this Kickstart Employer Agreement as if it was the Gateway.

## **28. NOTICES**

All notices and other communications in relation to this Kickstart Employer 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 stated in the Funding Letter or otherwise notified in writing. All notices and other communications must be marked for the attention of the Gateway Representative (for notices to the Gateway) or the Employer Representative (for notices to the Employer). 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.

## **29. GOVERNING LAW**

This Kickstart Employer Agreement will be governed by and construed in accordance with the laws of England and the Parties irrevocably submit to the exclusive jurisdiction of the English courts.

## ANNEX 1 – DEFINITIONS

The following expressions have the meanings set out below:

**Bribery Act** means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning this legislation;

**Change of Control** means, in respect of the Employer or any person who Controls the Employer, any change of Control of that person. **Control** means the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **Controls** shall be interpreted accordingly;

**Code of Conduct** means the Code of Conduct for Recipients of Government General Grants published by the Cabinet Office in November 2018 which is available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/754555/2018-11-06\\_Code\\_of\\_Conduct\\_for\\_Grant\\_Recipients.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/754555/2018-11-06_Code_of_Conduct_for_Grant_Recipients.pdf), including any subsequent updates from time to time;

**Commencement Date** means the date on which this Kickstart Employer Agreement comes into effect, which shall be the date on which the Gateway receives a signed copy of the Funding Letter completed to its satisfaction;

**Confidential Information** means any information (however conveyed, recorded or preserved) disclosed by a Party or its personnel (or DWP or its personnel) (**Disclosing Party**) to another Party (and/or that Party's personnel) whether before or after the date of this Kickstart Employer Agreement, including:

- (a) any information that ought reasonably to be considered to be confidential (whether or not it is so marked) relating to:
  - (i) the business, affairs, customers, clients, suppliers or plans of the Disclosing Party; or
  - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the Disclosing Party;
- (b) any information developed by a Disclosing Party in the course of delivering the Funded Activities or the Kickstart Scheme;
- (c) Personal Data; and
- (d) any information derived from any of the above.

Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure (otherwise than by breach of clause 11 of these Conditions);
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the Disclosing Party;
- (c) is received from a Third Party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Disclosing Party's Confidential Information.

**Controller and Data Subject** take the meanings given in the GDPR;

**Crown Body** or **Crown** means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly

for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

**Data Protection Legislation** means (i) the GDPR; (ii) the Data Protection Act 2018 to the extent that it relates to the processing of Personal Data and privacy; and (iii) all applicable Law relating to the processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, in each case as amended, supplemented or substituted from time to time;

**Domestic Successor** means, as the context requires, either:

- (a) a body that takes over the functions of the European Commission in the United Kingdom after its withdrawal from the European Union; or
- (b) the relevant court in England, Wales or Scotland which takes over the functions of the Court of Justice of the European Union in England, Wales or Scotland (as applicable) after the United Kingdom's withdrawal from the European Union;

**Duplicate Funding** means funding provided by a Third Party to the Employer, which is for the same purpose for which the Funding was made but has not been declared to the Gateway;

**DWP** means the Secretary of State for Work and Pensions;

**Eligibility Criteria** mean DWP's criteria, including the guidance available at <https://www.gov.uk/government/collections/kickstart-scheme>, to determine who should be recipients of Kickstart Scheme funding and which vacancies are appropriate for Kickstart Scheme funding;

**Eligible Expenditure** means the expenditure incurred by the Employer during the Funding Period for the purposes of delivering the Funded Activities which comply in all respects with the eligibility rules set out in clause 5 of these Conditions;

**Employer or you** means the Party specified in the Funding Letter as the Employer;

**Employer Representative** means the representative appointed by the Employer, which at the Commencement Date shall be the individual listed as such in the Funding Letter;

**Event of Default** means an event or circumstance set out in clause 22.1;

**FOIA** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

**Funded Activities** means the activities set out in the Funding Letter and Annex 2 of these Conditions;

**Funding** means that part of the Grant that the Gateway pays to the Employer in accordance with clause 4 and subject to the provisions set out at clause 22;

**Funding Letter** means the letter from the Gateway to the Employer confirming the details of the Funding;

**Funding Period** means the period from the Commencement Date until the Project End Date;

**Gateway Representative** means the individual nominated by the Gateway to be the single point of contact for this Kickstart Employer Agreement;

**General Data Protection Regulation** and **GDPR** means the General Data Protection Regulation (EU) 2016/679, as it forms part of domestic law by virtue of [section 3](#) of the [European Union \(Withdrawal\) Act 2018](#) and as modified by domestic law from time to time;

**Grant** means the sum or sums that DWP will pay to the Gateway to contribute towards the Kickstart Scheme activities of the Gateway and the employers it represents;

**Gateway** or **us** means the Party specified in the Funding Letter as the Gateway;

**HRA** means the Human Rights Act 1998 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

**Ineligible Expenditure** means expenditure incurred by the Employer which is not Eligible Expenditure, including the non-exhaustive lists of Ineligible Expenditure as set out in clause 5 of these Conditions;

**Information Acts** means the Data Protection Legislation, FOIA and the Environmental Information Regulations 2004, as amended from time to time;

**Intellectual Property Rights** or **IPRs** means copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and Confidential Information, and any modifications, amendments, updates and new releases of the same and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**IPR Material** means all materials produced by the Employer or its Representatives in relation to the Funded Activities during the Funding Period (including materials expressed in any form of report, database, design, document, technology, information, know how, system or process);

**Kickstart Branding** means the Kickstart and Kickstart Scheme names, the Kickstart Scheme logo and any registered or unregistered trade marks (including applications) owned by DWP in relation to any of them. It includes any future names or logos adopted by DWP in relation to the Kickstart Scheme;

**Kickstart Employer Agreement** means these terms and conditions including the Annexes to them (the **Conditions**), together with the Funding Letter;

**Law** means any applicable law, statute, byelaw, regulation, order, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directive or requirement of any regulatory body, or delegated or subordinate legislation;

**Losses** means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgement, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, and **Loss** will be interpreted accordingly;

**Northern Ireland Protocol** means the Protocol on Ireland/Northern Ireland in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community;

**Participants/Participant** means the persons engaged by the Employer through the support of the Kickstart Scheme. Participants will be young people, aged 16 – 24, who are claiming Universal Credit and are referred to the Employer by DWP (directly or via the Gateway) for employment opportunities. See also Annex 5.

**Party** means the Gateway or the Employer and **Parties** shall be each Party together;

**Personal Data** has the meaning given to it in the GDPR;

**Prohibited Act** means:

- (a) directly or indirectly offering, giving or agreeing to give to any servant of the Gateway or the Crown any gift or consideration of any kind as an inducement or reward for:
  - (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Kickstart Employer Agreement; or
  - (ii) showing or not showing favour or disfavour to any person in relation to this Kickstart Employer Agreement;
- (b) committing any offence:
  - (iii) under the Bribery Act;
  - (iv) under legislation creating offences in respect of fraudulent acts; or
  - (v) at common law in respect of fraudulent acts in relation to this Kickstart Employer Agreement; or
- (c) defrauding or attempting to defraud or conspiring to defraud the Gateway or the Crown;

**Project End Date** means, subject to the early termination provisions contained within this Kickstart Employer Agreement, 30 November 2022;

**Representatives** means a Party's duly authorised directors, employees, officers, agents, professional advisors and consultants;

**Special Payments** means ex gratia expenditure by the Employer to a Third Party where no legal obligation exists for the payment and/or other extra-contractual expenditure. Special Payments may include out-of-court settlements, compensation or additional severance payments to the Employer's employees;

**State Aid Law** means the law embodied in Articles 107 - 109 of the Treaty on the Functioning of the European Union and any related legislation adopted by the Council, European Parliament and/or the Commission (including implementing legislation, decisions and communications) to the extent it applied or continues to apply at any time in the United Kingdom;

**Third Party** means any person or organisation other than the Gateway, Employer or DWP;

**Trade and Cooperation Agreement** means the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (as that agreement is modified or supplemented from time to time in accordance with any provision of it or of any other future relationship agreement);

**VAT** means value added tax chargeable in the UK; and

**Working Day** means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday in England.





## **ANNEX 2 – FUNDED ACTIVITIES**

### **1. Background/purpose of the Kickstart Scheme and the role of Gateways**

The Kickstart Scheme is designed to improve employability and the chances of sustained employment for those at risk of long term unemployment in the 16-24-year-old age group. It provides grant funding to employers to support the creation of new jobs that would not otherwise exist.

The Kickstart Scheme funding will support employers to provide six months of work for young people. It will be regular, paid work which will help young people to develop transferrable skills (such as team work) and demonstrate to future employers that they have a track record of being a reliable employee with an up-to-date reference.

Kickstart gateways will play an important role in the national effort to help young people into employment and support economic recovery from the impact of Covid-19. They will help a wide range of employers, including small and medium sized organisations, to create jobs and deliver support to young people at risk of long term unemployment. Gateways have flexibility to decide how best to help the employers and young people they are supporting.

### **2. Aims and objectives of the Funded Activities**

The Funding will help the Employer to provide a quality work experience to individuals at risk of long term unemployment in the 16-24-year-old age group. The work should incentivise positive behaviours from these individuals to make them more attractive to future employers and maximise their readiness to make a successful transition into long term employment, giving them the confidence and competence to succeed. As such, the Kickstart Scheme aims to reduce the scarring effect of unemployment.

### **3. Funded Activities**

The Employer will use the Funding to provide six months of employment for Participants, including support to Participants in developing work skills and finding future employment. The activities funded are described more fully below:

- a. The employment opportunities created with the Funding will be equivalent to jobs not funded by the Kickstart Scheme. The jobs will have the same expectation on the Participant to improve and develop. The jobs should enable the Participant to build up skills that will lead to sustainable employment and should be paid at the normal rate for similar jobs and with the same frequency (see note 6 below).
- b. The Funding will be used by the Employer to provide new jobs. The jobs must not:
  - replace existing or planned vacancies; or
  - cause existing employees, workers, apprentices or contractors to lose work or reduce their working hours.
- c. All Kickstart Scheme jobs must be accompanied by a written job description, setting out the purpose, start date and responsibilities of the position.
- d. All employment opportunities supported by the Funding must:
  - provide regular, meaningful work for the Participant, for a minimum of 25 hours per week on average each month, for six months (see note 5 below); and
  - pay at least the National Minimum Wage/National Living Wage (as applicable) for

the Participant's age group, national insurance and minimum automatic enrolment contributions.

The Employer must make the required employer national insurance contributions for Participants and comply with its employer automatic enrolment duties with respect to Kickstart Scheme Participants. The Employer must meet its statutory duties in relation to employment rights and employer responsibilities in the workplace (for example, for health, safety and welfare) for all Kickstart Scheme Participants.

- e. Employment opportunities should not require Participants to undertake extensive training (either classroom or online) before they begin the job or at any point during the six months. For example, if a significant part of the job involves completing a training course or watching training videos, this would not constitute meaningful work or be equivalent to a job not funded by the Kickstart Scheme.
- f. The Employer will use the Funding to provide employability support to Participants and help Participants to develop work skills.
  - Employability support includes on-the-job training, work search support, transferrable skills development, mentoring, careers advice, and other related support to help the Participants find sustained employment after they have completed their Kickstart Scheme jobs.
  - Helping Participants to develop and build work skills includes developing attendance management, timekeeping, teamwork and communication skills as appropriate.
- g. The Funding should be used by the Employer to have regular (at least monthly) reviews with Participants to discuss performance in the role and areas for improvement.

**Please note:**

1. A Kickstart job is not an apprenticeship but a Participant may move to an apprenticeship whilst taking part in the Kickstart Scheme. Funding will cease once a Participant ceases to be involved in the Kickstart Scheme (for example, because the Participant has moved from a Kickstart Scheme job to an apprenticeship).
2. Once a Kickstart Scheme job is created, it can be taken up by a new Participant once the previous Participant has ceased to be employed as part of the Kickstart Scheme. A Kickstart Scheme job cannot be filled more than once by the same Participant.
3. The Employer acknowledges and agrees that DWP will only provide Grant funding for candidates referred to the Employer by DWP. DWP selects the candidates to refer to the Employer's Kickstart Scheme vacancies at DWP's sole discretion. Any recruitment activity by the Employer will not determine which candidates DWP refers to the Employer's vacancies.
4. The Employer will use reasonable endeavours to fill its vacancies as quickly as possible but is not otherwise obliged to accept candidates referred by DWP for its vacancies. Grant funding will only be provided once the Employer has accepted a candidate referred by DWP.
5. All Kickstart Scheme jobs must provide regular, meaningful work for Participants for six months. A job should not be designed to spread the six months of work over a longer period than six continuous months. For example, a job spread across seven months, with a one month break from work in the middle of it, will not be providing regular,

meaningful work for the Participant. The Employer must notify the Gateway if any Participant is unable to carry out regular, meaningful work at any point during the six month Kickstart Scheme employment (as per clause 7.2.2).

6. The Employer must treat the Participants fairly and no less favourably than other staff members doing similar work with similar experience who are recruited outside the Kickstart Scheme. DWP does not expect Participants to be paid less or less frequently than other new joiners in a similar position simply because the Participants are part of the Kickstart Scheme. The Funding is a contribution only and may not cover the full remuneration that the Employer should pay its Participants.

### ANNEX 3 – PAYMENT SCHEDULE

Subject to the Employer's compliance with the terms of this Kickstart Employer Agreement, the Gateway will make Funding payments in accordance with the following payment schedule for each Participant employed by the Employer as part of the Kickstart Scheme. The Funding per Participant will be paid in the following instalments:

INSTALMENTS	SUM PAYABLE	INSTALMENT PROCESSING DATE / MILESTONE
1 <sup>st</sup> instalment	One payment per Participant for set-up and support costs*. The amount is stated in the Funding Letter	On confirmation to DWP's satisfaction that the Participant has started employment with the Employer and receipt of funds from DWP.
2 <sup>nd</sup> instalment	One sixth of the Total Funding minus the first instalment. †	In arrears - on confirmation that Participant paid through PAYE for the first month and receipt of funding from DWP.† The payment from DWP is expected to be processed in or around the 6 <sup>th</sup> week of the job.
3 <sup>rd</sup> – 7 <sup>th</sup> instalments	Each payment is one sixth of the Total Funding minus the first instalment. †	In arrears – approximately every month after the 2 <sup>nd</sup> payment on confirmation that Participant paid through PAYE for the previous month and receipt of funding from DWP. †

A Grant instalment will usually be received by the Gateway from DWP up to 11 Working Days after it has been processed by DWP.

#### **Calculating the Total Funding:**

**Total Funding** means the total funding provided per Participant which includes (i) an initial instalment for set-up and support costs, and (ii) six further instalments based on 100% of the Relevant Wage for 25 hours a week of work by the Participant for 26 weeks, plus the associated employer National Insurance contributions and employer minimum automatic enrolment contributions.

**Relevant Wage** means the National Minimum Wage or the National Living Wage applicable to the Participant based on their age at the end of the six months of employment funded by the Kickstart Scheme.

DWP Grant payments are calculated on the basis of the National Minimum Wage or National Living Wage rates applicable at the time payment is made. Where a Grant payment is to be

made at the end of a period that spans two different rates (for example, where as a result of the April uprating, a payment period spans 2020/21 rates and 2021/22 rates), that payment will be calculated on the basis of the higher rates. For example, if a Participant starts work in a Kickstart Scheme job on 10 February 2021 and is 21 years old at the end of the six months of work, the Grant payment after the first month of work should be based on 2020/21 rates, the next payment (spanning 2020/21 and 2021/22 rates) should be based on 2021/22 rates because they are higher, and all further payments should be based on 2021/22 rates.

**\* The initial funding instalment:**

\* The initial instalment is a fixed amount to contribute to the costs of onboarding Participants, including IT equipment and software licences, administration and management time, and providing support to Participants to develop the skills and experience to find work after completing the scheme.

**† Confirmation that Participant paid through PAYE:**

† Confirmation is collected by DWP from Real Time Information (RTI) submissions. No payment will be made without this confirmation that the Participant has been paid.

**Notes:**

**1. Leaving the Kickstart Scheme early**

If, prior to the expiry of the intended six-month period, a Participant ceases or will cease to be employed by the Employer as part of the Kickstart Scheme during any month (for example, because the Participant leaves their job or has their employment terminated), the Employer must notify the Gateway (as per clause 7.2.1) who will then notify DWP. This allows DWP to note that the Participant is no longer involved in the Kickstart Scheme and Eligible Expenditure with respect to that Participant is ending. A final funding instalment will be paid for that Participant on the same schedule, and subject to the same conditions, described in this Annex 3. No further funding instalments will then be paid in respect of that Participant. Please note that:

- Neither the first instalment nor any subsequent instalments of the Funding will be due or payable for any Participant who does not start their Kickstart Scheme job (see note 5 below).
- If a Participant ceases their Kickstart Scheme job without completing a full day of work, then neither the 2<sup>nd</sup> instalment nor any subsequent instalments of the Funding will be due or payable to the Employer for that Participant. DWP determines that a full day of work has been completed if the RTI submission for a Participant shows that the Participant has been paid the Relevant Wage for at least five hours of work.
- By way of example:
  - if a Participant starts their Kickstart Scheme job but leaves after three hours of work, the Employer will receive the first Funding instalment but will not receive any subsequent instalments;
  - if a Participant starts their Kickstart Scheme job but leaves after 10 hours of work, the Employer will receive the first Funding instalment and the second Funding instalment (one sixth of the Total Funding minus the first instalment) but will not receive any subsequent instalments.

**2. Grant funding term**

Unless DWP extends the Grant funding period (for example, under clause 7.2.2), funding is provided for a continuous six-month period only for each Participant. There is no funding for

any period of employment after this six-month period, whether this is to allow the Participant to take paid leave accrued during the six months or for any other reason.

3. Holiday

DWP expects Participants will take holiday at regular intervals during the Kickstart Scheme job. Where a Participant leaves the job early in unanticipated circumstances with unused holiday entitlement, then, subject to note 2 above, the Employer may add those accrued paid leave days to the Participant's last day of work to determine the last day of employment, which is then notified to the Gateway as per clause 7.2.1.

4. Eligible Expenditure

As per clause 5, Funding can only be used for Eligible Expenditure. The Funding must be used for Funded Activities, benefitting the Participants, and must not be used for any Ineligible Expenditure or retained by the Employer.

5. Starting employment

The Employer must not claim the first Funding instalment for any Participant until that Participant has commenced employment with the Employer. If the Employer receives the first Funding instalment for a Participant who has not commenced, or does not commence, employment with the Employer, the Employer must immediately repay the amount of the first instalment to the Gateway, unless otherwise instructed by the Gateway in writing.

A Participant has commenced employment with the Employer when the Participant has successfully started their first day of work with the Employer. The following is a non-exhaustive list of events that do not constitute a Participant having commenced employment with the Employer and which do not entitle the Employer to claim the first Funding instalment:

- (a) induction activities that take place before the Participant's actual start date;
- (b) offering a Participant a contract of employment;
- (c) pre-employment screening checks, such as a Disclosure and Barring Service (DBS) check;
- (d) allocating a predicted future start date to a Participant; and
- (e) the Participant's start date arriving but the Participant does not start work.

## **ANNEX 4 – AGREED OUTPUTS**

**The Employer is required to achieve the following outputs and performance measures through the Funded Activities:**

### **Agreed Outputs**

- Provide full details of the Kickstart Scheme vacancies to the Gateway and DWP and evidence that these jobs are new jobs promptly following signing of the Funding Letter.
- Make available the number of Kickstart Scheme vacancies stated in the Funding Letter and use reasonable endeavours to fill the vacancies as quickly as possible.
- Provide regular, meaningful work for the Participants that will help them become more attractive to future employers and maximise their readiness to make a successful transition into long term employment. For work to be meaningful, the job must be equivalent to a job not funded by the Kickstart Scheme and must not involve significant classroom or online training.
- Provide support to help each Participant with finding future employment. This can include on-the-job training, work search support, transferrable skills development, mentoring and careers advice, and support with CV and interview preparation.
- Help to build each Participant's work skills which can include developing attendance management, timekeeping, team work and communication skills. This will help the Participant's employment prospects after the Kickstart Scheme job ends.
- Keep records and other evidence of how the above outputs are being achieved (for example, notes of positive feedback that the Participant receives, records of mock job interviews conducted) and provide details to the Gateway or DWP on request.



## ANNEX 5 – PROOF OF CONCEPT

The Kickstart Scheme was designed for Participants aged between 16 - 24. There is a potential that individuals aged 25-29 may also derive benefit from being part of the Kickstart Scheme.

Individuals aged 25-29 registered to Job Centres in areas as determined by the DWP where there are an insufficient number of Participants aged between 16-24 available to fill the Kickstart job vacancies, will also be eligible for the Kickstart Scheme where referred by the DWP. Further details will be on [Kickstart Scheme - GOV.UK \(www.gov.uk\)](https://www.gov.uk/kickstart-scheme).

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