

For the Attention of
«LeadOfficer»
«LeadOfficerJobTitle»
«Organisation»
«OrganisationAddress1»
«OrganisationAddress2»
«OrganisationAddress3»
«OrganisationAddress4»
«OrganisationAddress5»
«OrganisationAddress6»

01 November 2023

Sustrans Reference No: «ApplicationID»

Project Name: «ProjectName»

Dear Applicant

«PROGRAMME»
«ORGANISATION»–«PROJECTNAME»

Following upon your Application to the Programme, we, Sustrans, incorporated under the Companies Acts (registered number 01797726) and a registered charity in Scotland (charity number SC039263) and in England and Wales (charity number 326550), having its registered office at 2 Cathedral Square, College Green, Bristol BS1 5DD and operating in Scotland as Sustrans Scotland, having a place of business at 1 Exchange Crescent, Conference Square, Edinburgh, EH3 8RA (“**Sustrans**”), offer to make available to you «LegalName» (the “**Applicant**”) acting as the lead partner on behalf of the Project Partners the Grant (as defined in Part 1 of the Schedule).

Sustrans must ensure that any financial contribution made to an organisation is used for the purpose for which it is granted and that the arrangements correspond with Sustrans’ funding cycle. The Grant is, therefore, offered on the following terms and conditions:

1 DEFINITIONS AND INTERPRETATION

In this Agreement, including the Schedule in 5 parts, the words and expressions set out in Part 1 of the Schedule shall have the meanings given to them in that part of the Schedule.

2 STATEMENT OF MUTUAL BENEFIT AND INTERESTS

2.1 The Parties acknowledge that:

2.1.1 The Applicant's strategic plan for cycling includes actions aimed at encouraging both walking and cycling through community engagement and development of the city's on-road and off-road active travel network.

2.1.2 Sustrans Strategy 2023 states the vision of the organisation is "*a society where the way we travel creates healthier places and happier lives for everyone*".

2.1.3 The aim of Places for Everyone is to create safer, more attractive, healthier, and inclusive places which are enjoyed equitably by increasing the number of trips made by walking, wheeling and cycling for everyday journeys.

2.1.4 the Sustrans Design Principles (as defined below) will be applied in guiding the development of the Project and are as follows:

- (a) develop ideas collaboratively and in partnership with communities;
- (b) facilitate independent walking, cycling and wheeling for everyone, including an unaccompanied 12 year old;
- (c) design places that provide enjoyment, comfort and protection;
- (d) ensure access for all and equality of opportunity in public space;
- (e) ensure all proposals are developed in a way that is context-specific and evidence-led;
- (f) reallocate road space, and restrict motor traffic permeability to prioritise people walking, cycling and wheeling over private motor vehicles;

(the "**Sustrans Design Principles**").

2.1.5 Transport Scotland's National Transport Strategy sets out a vision for "is for a sustainable, inclusive, safe and accessible transport system helping deliver a healthier, fairer and more prosperous Scotland for communities, businesses and visitors" This vision is underpinned by four Priorities, promotes equality, takes climate action, helps our economy prosper and improves our health and wellbeing.

2.2 The Parties agree that:

2.2.1 partnership working is a key component in the delivery of the Project; and

2.2.2 the aims and priorities of the Applicant stand to be directly benefited by the work of Sustrans in achieving both its own corporate objectives and in helping to achieve the aim of Places for Everyone.

3 **PARTNERSHIP WORKING, CO-ORDINATION AND MONITORING**

3.1 The Parties acknowledge that the Programme envisages the Parties working in a spirit of collaboration and co-operation, with a view to delivering the Approved Activities in partnership.

Reporting

3.2 During the Claim Period:

3.2.1 the Project Manager shall attend monthly (or more frequently or less frequently if Sustrans requires) meetings (the “**Delivery Group**”) with the Project Monitor to discuss all aspects of the Project, in particular implementation of the Outline Programme (including progress towards fulfilment of the Milestones);

3.2.2 the Parties shall meet, as required, to form a Steering Group to oversee the Project in respect of high-level strategy and overall progress against the Outline Programme;

3.2.3 the Applicant shall provide Sustrans, on request, with such information, explanations and documents as Sustrans may reasonably require, so that Sustrans can ensure that the Grant is being properly used in accordance with the terms of the Agreement and for monitoring and evaluation purposes;

3.2.4 without prejudice to the generality of clause 3.2.3, The Applicant shall supply Sustrans with briefing reports on a monthly basis (in a form acceptable to Sustrans, acting reasonably), which shall include: updates on implementation of the Approved Activities; progress towards the Milestones; project design and delivery; and project spend.

3.3 Where the Project is being delivered in part by a Project Partner, it is the Applicant’s responsibility to review any briefing reports, information, explanations or other documents before submission to Sustrans to ensure that the information is correct.

3.4 Prior to the Completion Date, the Applicant shall supply Sustrans with a final report on the Project (in a form acceptable to Sustrans, acting reasonably).

- 3.5 The Applicant, with input from the Delivery Group, shall, within 12 weeks of the date of signing of this Agreement, develop a Monitoring Framework, which the Applicant shall implement (subject to any alterations agreed by the Delivery Group from time to time) during the Monitoring Period.
- 3.6 During the Monitoring Period:
- 3.6.1 If the Project is selected by Sustrans as a candidate for an automated counter, any data on route usage collected by the Applicant (or by a Project Partner, as the case may be) shall be shared with Sustrans. Note: The Applicant can only install a counter which would integrate seamlessly with Glasgow City's current suite of automatic cycle counters.
- 3.6.2 If a Project is selected as a candidate for an automated counter, Sustrans will pay the full cost of the counter's installation and the initial contract for telemetric data collection which runs from the date of installation for a period of 12 months, plus pro rata to the following 31st March.
- 3.6.3 The Applicant will own the counter from the date of installation. The Applicant will be responsible for the costs associated with the maintenance of the counter from this date and for the contract for telemetric data collection following the expiry of the initial contract (referred to at clause 3.6.1 above).
- 3.6.4 The Applicant will be bound to maintain the counter for a minimum of five years from the date of installation. The Applicant will provide Sustrans with the output data from the automatic cycle counter in a suitable electronic format on a quarterly basis or as mutually agreed.
- 3.6.5 Any additional monitoring or data gathering related to the Project carried out by the Applicant (or a Project Partner) during the Monitoring Period shall be shared with Sustrans.

Inspection

- 3.7 During the Claim Period, the Applicant shall permit Sustrans and its authorised representatives (which, for the avoidance of doubt, shall include in-house personnel and external representatives) access to Project documentation, and (to the extent it is reasonably able to do so) any land or premises relating to the Project. Access by Sustrans (and its authorised representatives) will be at any reasonable hour (with notice being given) for the purpose of inspecting any land or premises, equipment, documents and records and for carrying out any checks and recording its findings, in order (i) to verify that the information given in the Application (and subsequently) is correct; and (ii) to verify that the Approved Activities are being carried out in accordance with the Agreement.

- 3.8 The Applicant must provide such assistance to Sustrans, or its representatives, as Sustrans may reasonably require in order to carry out an inspection, including reproduction of documents, records and information, whether held electronically or in hard copy.
- 3.9 The Applicant shall authorise all third party contractors, consultants and Project Partners to liaise with and provide information to Sustrans in connection with the Project, to assist Sustrans in the carrying out of any verification or inspection process described at clauses 3.7 and 3.8 above.

4 THE APPROVED ACTIVITIES

- 4.1 The Grant will be used exclusively towards the cost of carrying out the Approved Activities and for no other purpose whatsoever.
- 4.2 The Applicant must carry out the Approved Activities so that:
- 4.2.1 the Applicant complies with the terms of the Agreement;
 - 4.2.2 the Applicant achieves the Milestones; and
 - 4.2.3 the Applicant scope of the Project does not deviate from the Specification Drawing(s) (if any).
- 4.3 The Applicant must notify Sustrans in writing (or by e-mail) as soon as possible if:
- 4.3.1 the Approved Activities fall behind the periods set out in the Outline Programme; or
 - 4.3.2 the Applicant cannot complete any of the Approved Activities; circumstances arise which make it unlikely that the Applicant will be able to complete any of the Approved Activities; and/or there is a significant risk of the Applicant being unable to complete any of the Approved Activities.
- 4.4 If the Applicant can no longer meet the requirements set out in the Agreement, or if it is otherwise necessary for the Applicant to vary the Outline Programme or the information in Part 4 of the Schedule, the Applicant must submit a written request to Sustrans (or to the Steering Group in respect of Minor Variations (in accordance with the provisions of clause 4.5)) seeking to vary the Agreement or Outline Programme (a “**Change Control**”) for approval, which Sustrans will either approve in writing (in whole, in part and/or subject to conditions) or refuse in writing.
- 4.5 Where a Change Control Notice relates to the following:
- 4.5.1 a variation to the Agreement or constitutes a Material Variation, this must be submitted to Sustrans for prior written approval;

4.5.2 any variation other than a Material Variation (a “**Minor Variation**”), this must be submitted to the Steering Group for written approval and must be submitted to the Steering Group no less than 14 days prior to the next meeting of the Steering Group, and shall (subject to clause 4.6) be tabled at that meeting for discussion and approval.

4.6 With reference to clause 4.5, no decision by the Steering Group shall be made on a Minor Variation unless:

4.6.1 the proposed Change Control Notice has been the subject of detailed investigation (in respect of financial and other implications) by the Applicant, with appropriate input from external consultants to verify all key factual information and assumptions; and

4.6.2 the outcome of the work referred to in clause 4.6.1 has been reported to, and duly considered at, a meeting of the Delivery Group; and

4.6.3 a report, identifying the key points arising out of the work referred to in clause 4.6.1 and the deliberations of the Delivery Group pursuant to clause 4.6.2, is tabled at the meeting of the Steering Group at which the proposal to effect the Change Control is considered.

4.6.4 any increase in the percentage of the anticipated costs, which will be covered by the Grant has first been approved, in writing, by Sustrans (in accordance with clause 4.4).

5 **CONDITIONS FOR PAYMENT**

5.1 **Conditions Precedent**

The obligations of Sustrans under the Agreement shall not come into effect until Sustrans has notified the applicant that:

5.1.1 it has received all of the Initial Documents (if any) in form and substance satisfactory to it; and

5.1.2 the Project Specific Conditions (if any) have been fulfilled by the Applicant (to Sustrans’ satisfaction) or waived by Sustrans.

5.2 **Pre-Payment Conditions**

Sustrans is not obliged to make payment to the Applicant of the Grant (or any instalment of the Grant, as the case may be) until it (i) has received the relevant Claim completed in accordance with clause 6 below; and (ii) is satisfied that the following conditions have been met:

- 5.2.1 the Applicant has (i) complied with the terms of the Agreement; and (ii) complied with all relevant Legal Requirements;
 - 5.2.2 no Default has occurred which is continuing; and
 - 5.2.3 the Applicant has provided all information and documentation required in terms of the Agreement to verify the Claim.
- 5.3 Each of the conditions specified in clause 5.1 and 5.2 are for the benefit of Sustrans and it may waive all or any of the conditions as it sees fit.
- 5.4 In no event shall Sustrans be obliged to release more than the amount of the Grant, nor to re-allocate part of the Grant for any other activity (even if there is a shortfall in the funding of the Project or the costs of the Project increase). Should Sustrans agree to provide further funding or allow a reallocation of funds, such funding or reallocation would require to be the subject of a separate written agreement.
- 5.5 You acknowledge that Sustrans has applied for and received funding from the Scottish Ministers in exercise of their powers under section 70 of the Transport (Scotland) Act 2001, to deliver infrastructure and place making projects. Without prejudice to the generality of the foregoing provisions, release of the Grant (or any instalment of the Grant, as the case may be) by Sustrans shall be subject always to availability of funding to Sustrans from the Scottish Ministers. In the event that the Scottish Ministers: (i) withdraw their funding; or (ii) make changes to the funding arrangements as between Sustrans and Scottish Ministers such that release of the Grant by Sustrans in the manner envisaged by this Agreement is impacted, Sustrans shall be entitled to: (i) resile from this Agreement from the date on which the funding is withdrawn; and/or (ii) amend the terms of this Agreement by written notice to you.

6 PAYMENT

- 6.1 When the Applicant wishes to claim payment of the Grant, the Applicant must comply with Part 2 of the Schedule and the terms of the Agreement.
- 6.2 Sustrans reserves the right to advance the Grant to the Applicant in such instalments as Sustrans shall consider appropriate, at all times acting reasonably, having regard to the progress of the Project (including, without limitation, the achievement of Milestones, the delivery of any Deliverables associated with those Milestones and the satisfactory execution and production of financial evidence).
- 6.3 Where the Project is being delivered in part by a Project Partner, it is the Applicant's responsibility to review any Claim and supporting material before documents are submitted to Sustrans to ensure that the information is correct and all supporting evidence is available.

- 6.4 The Applicant must ensure that, before submitting a Claim, all the conditions detailed in clause 5.2 have been satisfied or will be satisfied by submission of the Claim with the required supporting information.
- 6.5 The Applicant must have completed the Approved Activities, have incurred and defrayed all expenditure for the Project and submitted a Claim for the final instalment of Grant to Sustrans no later than the Completion Date. Sustrans will have no obligation to pay the Grant (or any instalment of the Grant) after the Completion Date, except for payment of a validly submitted Claim received on or before the Completion Date and where the Applicant has satisfied the requirements of this Agreement.
- 6.6 Without prejudice to the generality of the foregoing provisions, notwithstanding the amount claimed by the Applicant in accordance with **Error! Reference source not found.** of the Schedule and the terms of the Agreement, Sustrans shall only be required to release the amount of Grant available to it from the Scottish Ministers acting through Transport Scotland.

7 **WARRANTIES AND REPRESENTATIONS**

The Applicant warrants and represents (i) on the date of the Agreement; (ii) on the date of submission of a Claim; and (iii) on the date of payment of each instalment of the Grant; that:

7.1 **Powers and Authority**

The Applicant has full power and authority to enter into and perform the Applicant's obligations contained in the Agreement and on execution and delivery of the Agreement, those obligations will be valid, legal and binding.

7.2 **Information**

7.2.1 All information provided by the Applicant (including through the Applicant's participation in the Delivery Group and Steering Group) to Sustrans in relation to the Project is true in all material respects as at the date on which it was provided. All statements of belief and opinion contained in that information were honestly held and made in good faith, having made all investigations that would be reasonable to verify the information.

7.2.2 To the best of the Applicant's knowledge and belief, the Applicant has not failed to disclose to Sustrans any information which, if disclosed, could adversely affect the decision of a person considering whether or not to provide a grant on the terms of the Agreement and nothing has occurred since the date that any information was provided which renders the information untrue or misleading in any material respect.

7.2.3 There are no legal or other restrictions affecting the Project which prevent the carrying out of the Approved Activities.

7.3 **Non-Conflict**

The entry into, and the exercise of the Applicant's rights and the performance of the Applicant's obligations under, the Agreement do not and will not conflict with:

7.3.1 any Legal Requirement with which the Applicant are obliged to comply; or

7.3.2 any document which is binding upon the Applicant.

7.4 **No Default**

7.4.1 No Default is outstanding or could be expected to result from the Applicant entering into the Agreement.

7.4.2 No other event is outstanding which constitutes a default under any other document which is binding on the Applicant and which relates to the Approved Activities.

7.5 **Litigation**

No judgment, order or decree has been given in any legal proceedings which has had or could be expected to have an adverse effect on the Applicant's assets, financial condition or operations and no such proceedings are presently in process, pending or threatened which might adversely affect the Applicant's assets, financial condition or business or the Applicant's ability to perform the Applicant's obligations under the Agreement.

7.6 **Sources of Funding**

The Applicant continues to have funding available from the Applicant's own resources or external financing, as detailed in the Application, to put towards the costs of the Approved Activities.

8 **GENERAL UNDERTAKINGS**

The Applicant undertakes that during the Period, the Applicant shall:

8.1 **Notification of Default or Withdrawal**

Immediately notify Sustrans, in writing, (or by e-mail):

8.1.1 if a Default or any change in circumstance happens which would make anything in the Agreement, the Application, or any information provided to Sustrans in connection with the Project, incorrect;

8.1.2 if the Applicant wishes to withdraw from the Programme and terminate the Agreement; and/or

8.1.3 If the Applicant is no longer able, or is unlikely to be able to comply with the terms of the Agreement.

8.2 **General Information**

8.2.1 Immediately supply to Sustrans in writing (or by e-mail) details of any legal proceedings or dispute of any kind which might adversely affect the Project.

8.2.2 Implement the Project in a proper and efficient manner and keep proper financial and other records all to Sustrans' reasonable satisfaction which shall at all reasonable times be open for inspection by Sustrans.

8.2.3 Provide any information, documents and records requested by Sustrans.

8.3 **Statutory Compliance**

8.3.1 Comply with all Legal Requirements relating to the Approved Activities and immediately upon becoming aware of any matter concerning compliance with Legal Requirements, inform Sustrans in writing.

8.3.2 Comply with any statutory guidance and relevant design standards relative to the Approved Activities, as agreed by the Delivery Group.

8.4 **Project related assets etc**

8.4.1 Not without Sustrans' prior written consent effect a Material Variation.

8.4.2 During progress of the works, keep all the property, temporary accommodation, plant, equipment and other assets of the Project in a good state of repair and cleanliness and in good condition all to Sustrans' reasonable satisfaction.

8.5 **Public Funding**

Notify Sustrans if grant assistance from another public body or bodies (other than the Applicant) is being sought, has been approved, withdrawn or restricted in relation to the Approved Activities and provide evidence of any instalment of grant paid by another public body with each Claim submitted.

8.6 **Insurance**

8.6.1 Keep, or ensure that any relevant contractor keeps, all temporary accommodation, equipment, and other assets which relate to the Approved Activities (including vehicles) insured, with a reputable insurance company and for the full

reinstatement value, against loss by fire, storm, theft, impact and all comprehensive perils, and against any additional perils which Sustrans may require and arrange for insurance against the risk of injury to the Applicant or to the Applicant's contractor(s) involved in the Project (the "Insurances").

8.6.2 Apply, or where the insurance is procured by a contractor, ensure that the contractor/its insurers apply, any insurance monies which are paid or payable to the Applicant in respect of the Insurances in making good the loss or damage.

9 DISPUTE RESOLUTION

9.1 The Parties agree that all disputes arising out of or relating to this Agreement should, in the first instance, be submitted by either Party to the Steering Group for resolution.

9.2 If a dispute cannot be so resolved within 14 days, the dispute may, within 28 days thereafter, be referred for final determination to an expert (the "**Expert**") who shall be deemed to act as expert and not as arbiter; the following provisions shall apply:

9.2.1 the Expert shall be selected by mutual agreement or, failing agreement, within 14 days after a request by one Party to the other, shall be chosen at the request of either Party by the President for the time being of the Law Society of Scotland who shall be requested to choose a suitably qualified and experienced Expert for the dispute in question;

9.2.2 within 14 days after the Expert has accepted the appointment, the Parties shall submit to the Expert a written report on the dispute;

9.2.3 both Parties will then afford the Expert all necessary assistance which the Expert requires to consider the dispute;

9.2.4 the Expert shall be instructed to deliver his/her determination to the Parties within 14 days or such other period as agreed in writing by the Parties after the submission of the written reports pursuant to paragraph 9.2.2.

9.3 Save in the case of manifest error, decisions of the Expert shall be final and binding and shall not be subject to appeal.

9.4 The Expert shall have the same powers to require any Party to produce any documents or information to him and the other Party as an arbiter and each Party shall in any event supply to him/her such information which it has and is material to the matter to be resolved and which it could be required to produce.

9.5 The fees of the Expert shall be borne by the Parties in such proportion as shall be determined by the Expert having regard (amongst other things) to the conduct of the Parties.

10 PUBLICITY

- 10.1 The Applicant must acknowledge in all publicity materials, websites, social media and publications relating to the Approved Activities that financial assistance has been received from Sustrans on behalf of the Scottish Ministers (acting through Transport Scotland).
- 10.2 Sustrans shall be entitled to publicise the detail of the award of the Grant, progress in respect of the Project, including the Applicant's name, the amount of the Grant and the name of the Programme, by any means that Sustrans and Transport Scotland deem appropriate.
- 10.3 All publicity and marketing materials must include reference to Sustrans and Transport Scotland, including logos where appropriate.
- 10.4 The Applicant shall, within 8 weeks of the date of signing of this Agreement develop a communications strategy for implementation by the Applicant during the Period, the object of which is to generate positive publicity and public opinion in respect of the Project.

11 DEFAULT

- 11.1 If a Default occurs, Sustrans, at all times acting reasonably, may at any time during the Period determine to revoke the approval, re-assess, vary, make a deduction from, withhold, or require immediate repayment of the Grant or any part of it.
- 11.2 If Sustrans intends to exercise its rights under clause 11.1, it shall first give notice to the Applicant of its intention to do so in writing and allow the Applicant a reasonable period of time (as specified in the notice but not less than 14 days) in which to make representations and/or propose a remedial plan, which Sustrans shall give due consideration to, before exercising its rights under clause 11.1.
- 11.3 If, on the expiry of the period referred to in clause 11.2, Sustrans has not received any written representations or remedial plan from the Applicant, it may make the determination as proposed.
- 11.4 A certificate by Sustrans setting out the amount of the Grant due to be repaid will, in the absence of manifest error, be conclusive evidence of the sum to be repaid.
- 11.5 Each of the following events shall be a Default:

11.5.1 Non-Payment

The Applicant's failure (i) to make any repayment required in terms of the Agreement; or (ii) to pay any other monies due under the Agreement, within 14 days of the due date.

11.5.2 **Breach of Other Obligations**

The Applicant's failure to comply with the provisions of the Agreement (other than non-payment referred to in clause 11.5.1) within such a reasonable period of time as Sustrans may stipulate, having regard to the circumstances.

11.5.3 **Misrepresentation**

Without prejudice to any criminal prosecution that may be initiated, if anything in the Application, the Agreement, or any information, documents or records submitted in connection with the Project proves to be misleading or false in any respect (whether such statement is made intentionally, recklessly or negligently).

11.5.4 **Unenforceability**

The Agreement is (i) terminated; (ii) frustrated; or declared void or unenforceable by any court of competent jurisdiction; or is claimed to be void or unenforceable by the Applicant.≠

11.5.5 **Insolvency Proceedings**

The Applicant is sequestrated, becomes apparently insolvent or enters into a trust deed for the benefit of the Applicant's creditors.

11.5.6 **Litigation**

Any legal proceedings are initiated which, if adversely determined are likely (in the assessment of Sustrans) to have an adverse effect on the Applicant's ability to comply with the Applicant's obligations under the Agreement.

11.5.7 **Unlawfulness**

It is or becomes unlawful for the Applicant to perform any of the Applicant's obligations under the Agreement.

11.5.8 **Damage**

Any of the assets in respect of which the Grant has been paid are destroyed and (i) no insurance proceeds are available; or (ii) Sustrans agrees that the assets cannot be reinstated.

11.5.9 **Termination**

The Applicant terminates the Agreement other than by reason of an event of Force Majeure.

11.5.10 **Material Variation**

There has been a Material Variation and no request for a Change Control has been approved by Sustrans.

11.5.11 **Transport Scotland Funding Withdrawal or Change**

Sustrans determines, in its sole discretion, that its financial contribution to the Project cannot be sustained as a consequence of the withdrawal, variation, deduction or redistribution of funding available to it by Transport Scotland or the revocation or re-assessment of approval necessary for the availability of funding to it by Transport Scotland.

12 **CLAWBACK AND DISPOSAL OF ASSETS**

12.1 The Applicant agrees that if there is a breach of any of the warranties and representations at clause 7 or the Applicant discontinues the whole or a substantial part of the Project or make any alteration that is, in Sustrans' reasonable opinion, a material alteration to the character of the Project or Project Area during the Period without Sustrans' prior approval, then the Applicant may be required to repay all or part of the Grant to the extent that it has been paid out or such proportion of the Grant that Sustrans, acting in its sole discretion, determines to be reasonable in the circumstances, with interest at the Interest Rate running from the date of the notification of the breach from Sustrans.

12.2 The Applicant shall not, without the prior written consent of Sustrans, dispose of any asset funded, in part or in whole, with the Grant during the lifetime of the assets. During that period Sustrans shall be entitled to the proceeds of the disposal – or the relevant proportion of the proceeds based on the percentage of grant funding used in connection with the acquisition or improvement of the asset against the whole proceeds. Sustrans shall also be entitled to the relevant proportion of any proceeds resulting from any provision included as a condition of sale. Recovery by Sustrans shall not be required where the value of the asset is less than £1,000.

13 **OVERPAYMENTS**

13.1 If Sustrans has made an Overpayment in respect of the Grant or any instalment of the Grant, in contemplation of the Agreement:

13.1.1 the Applicant will be obliged to repay such Overpayment; or

13.1.2 at its option, Sustrans may deduct the amount of such Overpayment from the next payment or payments of the Grant.

13.2 Unless the Overpayment was made as a result of an error by Sustrans, the Applicant will be obliged to pay (or Sustrans will be entitled to deduct from the Grant in accordance with

clause 13.1.2) interest on the amount of the Overpayment at the Interest Rate from the date when the Overpayment was made.

- 13.3 A certificate by Sustrans setting out the amount of the Overpayment will, in the absence of manifest error, be conclusive evidence of the sum to be repaid.

14 **INTEREST**

- 14.1 Except where otherwise specified in the Agreement, if the Applicant fails to pay any amount due under the Agreement, interest will be payable on the outstanding amount from, unless otherwise specified, the date of demand for payment up to the date of actual payment at the Interest Rate.

- 14.2 A certificate by Sustrans as to the applicable Interest Rate during any relevant period at the relevant dates shall be conclusive except for manifest error but prior to issuing such a certificate to the Applicant, Sustrans shall notify the Applicant (in writing) of the amount of the Overpayment and shall include calculations demonstrating how that figure has been arrived at.

15 **ASSIGNATION**

- 15.1 The Applicant must not assign, transfer, hold on trust or otherwise dispose of any of the Applicant's rights and/or obligations under the Agreement.
- 15.2 Sustrans is entitled to assign or transfer its rights and/or obligations under the Agreement.

16 **DATA PROTECTION & FREEDOM OF INFORMATION**

- 16.1 The data and information the Applicant provides to Sustrans pursuant to the Application and the Agreement is subject to the provisions of the Freedom of Information (Scotland) Act 2002 (FOISA), the Data Protection Act 2018 (DPA) and the Environmental Information (Scotland) Regulations 2004 (EI(S)R) and the provisions of the Information Sharing Agreement as set out in Part 6 of the Schedule.
- 16.2 Sustrans shall be entitled to share relevant data, including historical data, that is held about the Applicant and the Applicant's business with other organisations for legitimate purposes and when required to do so in terms of any Legal Requirement.
- 16.3 Sustrans shall be entitled to disclose relevant data under FOISA and EI(S)R unless a relevant exemption or exception applies.
- 16.4 Sustrans shall be entitled to release information held about the Applicant, including the Applicant's identity, the amount of the Grant and information provided as part of the Applicant's Application.

17 **WAIVER**

- 17.1 Any failure by either Party to seek redress for breaches, or insist on strict performance of any terms, conditions or provisions of this Agreement, or the failure of Sustrans to exercise any right or remedy to which it is entitled in terms of this Agreement shall not (unless otherwise stated) constitute a waiver of any of the terms, conditions or provisions of this Agreement or (as the case may be) of those rights and remedies.
- 17.2 A waiver of any default shall not constitute a waiver of any subsequent default and shall not prejudice the ability of the Party waiving such default to exercise its rights and remedies in full on the occasion of any subsequent default.

18 **NATURE OF AGREEMENT**

- 18.1 The Parties acknowledge that nothing in the Agreement should be taken to derogate from the ability of the Applicant to exercise its own discretion in the course of carrying out its statutory functions. In the event that there is any conflict between the statutory duties of the Applicant and the Sustrans Design Principles, the Parties agree that the Applicant's statutory duties will take precedence in the delivery of the Project.
- 18.2 The Parties acknowledge that nothing in the Agreement, including but not limited to Sustrans' participation in the Delivery Group or Steering Group, should be taken to derogate from the ability of Sustrans to exercise any right or remedy to which it is entitled in terms of this Agreement or excuse non-performance by the Applicant of its obligations under this Agreement.

19 **STATUTORY CONSENTS**

Nothing in the Agreement (including but not limited to Sustrans' participation in the Delivery Group or Steering Group or its approval of the Master Delivery Plan or Change Control Notice) shall be deemed to constitute the consent of Sustrans, Transport Scotland or the Scottish Ministers in relation to the carrying out of the Approved Activities in terms of any Legal Requirements.

20 **NOTICES**

Any notice or other communication under or in connection with the Agreement shall be (i) by e-mail to such e-mail address as is notified to the other Party from time to time or (ii) in writing delivered personally or by post:

- 20.1 to the Applicant at the Applicant's address set out in the Agreement, or such other address as is notified to Sustrans from time to time; and
- 20.2 to Sustrans at: 1 Exchange Crescent, Conference Square, Edinburgh, EH3 8RA, for the attention of the National Director, Scotland, or such other address and / or officer as is notified to the Applicant from time to time.

21 **SET OFF**

Sustrans shall be entitled to set-off any payment or payments of the Grant against any other payment due to Sustrans under this Agreement.

22 **ADDITIONAL CONTRACTUAL PROVISIONS**

- 22.1 The Agreement will be governed and construed in accordance with the Laws of Scotland and will subsist for the Period.
- 22.2 This offer is intended to form a contract between the Parties which, when concluded, shall be binding upon them.
- 22.3 If and to the extent that the CDM Regulations shall apply, the Applicant shall comply with its obligations under the CDM Regulations.
- 22.4 The Applicant and Sustrans agree that the Applicant is the “client” in respect of the Project for the purposes of the CDM Regulations and the Applicant shall perform and discharge all of the duties of the “client” under the CDM Regulations. In particular but without limitation, if the Project is notifiable under the CDM Regulations, as soon as practicable before commencement of the construction phase of the Project, the Applicant shall give notice in writing to the Health and Safety Executive in accordance with Regulation 6 of the CDM Regulations, and shall also deliver a copy of such notice to Sustrans as soon as it is issued.
- 22.5 Subject to a cap on the total indemnity not exceeding the sum of the Grant plus further funding agreed between the Parties pursuant to clause 5.4 (if any), the Applicant will indemnify and keep indemnified Sustrans against any direct loss, claim, liability, cost or expense suffered or incurred by Sustrans as a result of the Applicant’s failure to comply with the provisions of the Agreement and/or as a result of any warranties and representations proving to be untrue.
- 22.6 The obligations of the Parties under the Agreement that, by their nature, would continue beyond the expiration or termination of the Agreement, shall survive the expiration or termination of the Agreement for any reason.

23 **TIMING**

We expect the Applicant to return one of the signed copies of the Agreement to Sustrans within 56 days of the date of this offer (or as otherwise agreed between the Parties). If the Applicant does not return the Agreement within this timeframe then the offer may be withdrawn.

Yours faithfully

for and on behalf of Sustrans

Print Full Name: _____

Address:

Sustrans Scotland

1 Exchange Crescent

Conference Square

Edinburgh, EH3 8RA

Acceptance of this offer will have certain legal consequences and the Applicant is advised to take independent legal advice before signing.

ACCEPTANCE BY APPLICANT

We, «LegalName» hereby accept the terms of the preceding offer dated 01/11/2023 on the terms set out in the preceding offer as read with the schedule annexed to the offer and hold the contract between us as concluded:

Authorised Signatory _____

Name of Signatory _____

Date of Signing _____

Address:

«OrganisationAddress1»«OrganisationAddress2»

«OrganisationAddress2» , «OrganisationAddress3»

«OrganisationAddress4» , «OrganisationAddress5»

«OrganisationAddress6»

This is the Schedule referred to in the preceding offer by Sustrans to «Organisation»

SCHEDULE

PART 1 - DEFINITIONS AND INTERPRETATION

Section 1 - Definitions

In this Agreement:

“**Agreement**” means the contract constituted by (a) this offer and the Schedule in 5 parts and (b) the docket of acceptance by the Applicant;

“**Application**” has the meaning given to it in Part 4 of the Schedule;

“**Approved Activities**” means the activities carried out within the Project Area (or such wider area as is agreed in writing by Sustrans (via its Project Monitor)) and which activities are necessary in order to achieve and/or produce the Deliverables in respect of the Project, all as set out in Part 4 of the Schedule;

“**CDM Regulations**” means the Construction (Design and Management) Regulations 2015 together with any guidance and/or codes of practice issued from time to time by the Health & Safety Executive;

“**Claim**” means a claim for payment of an instalment of the Grant;

“**Claim Period**” means the period from the date of signing the docket of acceptance by the Applicant until the date of payment of the final instalment of Grant;

“**Completion Date**” has the meaning given to it in Part 4 of the Schedule;

“**Default**” shall have the meaning given to it in clause 11;

“**Deliverable**” means any item delivered or to be delivered by you at or before any Milestone or at any other stage in connection with the Project, as set out in the Outline Programme;

“**Delivery Group**” means a committee (drawn from representatives of the Parties only) and composed of a Sustrans’ Infrastructure Officer, the Sustrans’ Infrastructure Coordinator (where appropriate), the Applicant’s Technical Officer, and the Applicant’s Assistant Group manager (where appropriate) the remit of which is as follows:

- (a) detailed oversight of the various work streams comprised within the Project;
- (b) initial reviewing of reports (prepared by the Applicant) relating to Stage Reviews and any other status reports;

- (c) reviewing any Change Control Notice and thereafter making recommendations to Sustrans and/or the Steering Group (as appropriate) in respect of the same;
- (d) seeking of instructions from the Steering Group further to a Change Control having been approved;
- (e) agreeing on matters to be escalated to the Steering Group for consideration;

“Force Majeure” includes (i) a severe natural disaster seriously affecting the Project; (ii) a global pandemic seriously affecting the Project; and (iii) the accidental destruction of equipment or assets required for the Project where this seriously impacts upon the Applicant’s ability to progress the Project;

“Grant” has the meaning given to it in Part 4 of the Schedule;

“Initial Documents” means the Application;

“Interest Rate” means four per cent per annum above the base rate at the time or from time to time of the Royal Bank of Scotland plc;

“Legal Requirement” means any requirement in respect of or affecting the Project or its use under all applicable United Kingdom regulations and directives, common law, statute, statutory provision (including any subordinate legislation), instrument, rule or regulation, public or local policy or order made by, or any requirement of any competent statutory, public or local authority or the decision of any court of competent jurisdiction;

“Material Variation” means a significant variation in relation to the scope, timescales and budget in respect of the Project and which a reasonable person would regard as representing:

- a departure from the Sustrans Design Principles;
- a significant departure from the Project and its intended outcomes;
- a significant departure from the Approved Activities (as having been described) and a significant departure to the mode of delivery;
- an extension beyond the completion date as reflected in the Master Delivery Plan;
- a change in extent of the Project including the extent of the Project Area and route alignment; and/or
- a request for additional funding.

“Milestones” means the operational milestones for completion of the Project as set out in the Outline Programme;

“Monitoring Framework” means the plan comprised of tasks and relative timescales for the collation of information by the Applicant to assess the impacts of the Project in the Period, before and after the Completion Date;

“Monitoring Period” means the period commencing on the date of payment of the final instalment of Grant and ending on the **fifth** anniversary of the date of payment of the final instalment of Grant;

“Outline Programme” means the programme for delivery of the Project and associated estimated expenditure during the Claim Period as set out in Part 3 of the Schedule (subject to any Change Control which may be made from time to time in accordance with the Agreement);

“Overpayment” means any amount paid in excess of a valid Claim, whether by administrative error or otherwise;

“Parties” means Sustrans and the Applicant and **“Party”** refers to either as the context requires;

“Period” means the period from the date of signing the docquet of acceptance by the Applicant until the date falling 1 year from the Completion Date; unless it is terminated earlier in accordance with its terms;

“Programme” has the meaning given to it in Part 4 of the Schedule;

“Project” has the meaning given to it in Part 4 of the Schedule, as more particularly described in the Application and the Specification Drawing(s) (if required);

“Project Area” has the meaning given to it in Part 4 of the Schedule;

“Project Manager” means the individual engaged by the Applicant detailed in Part 4 of the Schedule;

“Project Monitor” means the individual engaged by Sustrans, detailed in Part 4 of the Schedule;

“Project Partners” means those parties with an active role in delivering, monitoring or maintaining the Project, as listed in Part 4 of the Schedule and as more particularly described in the Application;

“Project Specific Conditions” means the conditions, if any, detailed in Part 4 of the Schedule;

“Scottish Ministers” means the Scottish Ministers acting through Transport Scotland;

“Steering Group” means the committee (drawn from representatives of the Parties only) and composed of the Sustrans’ Infrastructure Coordinator, the Sustrans’ Infrastructure Manager (where appropriate), and the Applicant’s Assistant Group Manager, meeting as required, the remit of which is as follows:

- (a) approving (subject to the provisions of clause 4.5) Change Control Notices in respect of Minor Variations;
- (b) ensuring compliance with the process for approval of any Change Control Notice;
- (c) making recommendations as to risks, issues and dependencies as highlighted by the Delivery Group;

“Sustrans Design Principles” shall have the meaning assigned to that expression in clause 2.1.2;

“Transport Scotland” means the executive agency of the Scottish Government responsible for the delivery of major infrastructure projects and for overseeing the operation of the Scottish transport networks.

Section 2 - Interpretation

Save to the extent that the context or the express provisions of the Agreement otherwise require, in the Agreement:

- 1 any term defined in this offer or in any of the Parts of the Schedule shall, unless the context requires otherwise, have the same meaning throughout the Agreement;
- 2 words importing the singular number only shall include the plural number and vice versa;
- 3 references to the Agreement or to any other document shall be construed as reference to the Agreement or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time;
- 4 any reference to a clause, Schedule or Part of the Schedule is to the relevant clause, Schedule or Part of the Schedule of or to this offer;
- 5 reference to any statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the same, or which has been amended, extended, consolidated or replaced by the same, and shall include any orders, legislation, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- 6 any phrase introduced by the words "including", "include", "in particular" or any similar expression shall be construed as illustrative only and shall not be construed as limiting the generality of any preceding words; and
- 7 the headings in the Agreement are included for convenience only and are to be ignored in construing the Agreement.

PART 2 – MAKING CLAIMS

- 1.1 A Claim for payment must be made to Sustrans prior to the Completion Date via the online Sustrans application portal (<https://scotlandportal.sustrans.org.uk>), using the prescribed digital claim form.
- 1.2 Each Claim for payment shall be submitted to Sustrans in arrears at regular intervals, which (without prejudice to that generality) shall be no less frequently than quarterly in any year (or as otherwise agreed with Sustrans), together with such explanatory or supplementary material as Sustrans may from time to time require whether before or after submission of the Claim, to substantiate the Claim.
- 1.3 On receipt of a Claim (and any required documentation and information), Sustrans shall determine the amount of expenditure which it considers the Applicant has reasonably and properly incurred in connection with the Project having regard to that Claim, to the Milestones achieved and to any Deliverables associated with those Milestones, in accordance with the Outline Programme. Sustrans shall use reasonable endeavours to pay the amount determined (subject always to the maximum amount of Grant) within 30 days of receiving a Claim and any required documentation and information relevant to the Claim.
- 1.4 If any such Claim or evidence is not satisfactory to Sustrans, payment may be withheld or reduced at Sustrans' discretion.
- 1.5 Sustrans reserves the right to withhold payment of part or all of the Grant until the prepayment conditions set out in clause 5.2 are implemented.
- 1.6 In the event that Sustrans agrees to release payment in respect of a Claim in advance of the Applicant having incurred and defrayed the costs attributable to that Claim, not later than 14 days after payment by Sustrans of a Claim, the Applicant must submit to Sustrans (in such form as Sustrans may specify from time to time) evidence of expenditure defrayed in respect of that Claim. Evidence of expenditure includes: original invoices; BACs runs; associated bank statements; and such other evidence as Sustrans may require to verify compliance with the Agreement.

PART 3 – OUTLINE PROGRAMME

Quarter	Milestone	Estimated Expenditure per quarter (£)
Q1	[describe Milestone(s) and achievement criteria associated with it]	
Q2		
Q3		
Q4		

PART 4 – PROJECT DETAILS

Programme Name	«PROGRAMME»
Project Reference	«ApplicationID»
Application	means the Applicant’s application to the Programme for financial support submitted to Sustrans on «SubmittedDate»;
Project Partners	«ProjectPartners»
Grant	<p>the lesser of «TotalGrantAward» or 100% of the anticipated costs (or such higher percentage as is agreed by Sustrans, in writing, in advance of the Completion Date) of which:</p> <ul style="list-style-type: none"> • £Y is available to claim before April 2024 • £Z will be made available subject to clause 5.5
Project	«ProjectName»
Project Area	As outlined in the application made to Sustrans on «SubmittedDate»
Completion Date	«CompletionDate»
Project Manager	«LeadOfficer»
Project Monitor	«ProjectMonitor»
Project Specific Conditions	
Deliverables	<p>Stage 0: Essential Deliverables</p> <ul style="list-style-type: none"> • Outline business case • Delivery plan • Stakeholder map • Outline communications and community engagement plan • Identified project team

	<ul style="list-style-type: none"> • Data sharing strategy <p>Other Stage 0 Deliverables</p> <ul style="list-style-type: none"> • Identification of community advisory group • Project brand and style guide • Landowner communications register • Invitation to tender • Tender document and returns for Stages 1-2 with completed scoring matrix <p>Stage 1: Essential Deliverables</p> <ul style="list-style-type: none"> • Feasibility study • Statutory permissions identification • Monitoring and evaluation plan • Updated project management documents • Updated communications and engagement documents <p>Other Stage 1 Deliverables</p> <ul style="list-style-type: none"> • Public life survey • Environmental and sustainability review • Community asset map • Plan to create community advisory group • Updated landowner mapping and communications register • Funding, collaboration, and partnerships plan <p>Stage 2: Essential Deliverables</p> <ul style="list-style-type: none"> • Comprehensive Concept package • Full business case • Match fund identification • Permissions and obligations • Behaviour change activity plan • Project communications • Updated project management documents • Updated monitoring and evaluation plan • Updated communications and engagement documents <p>Other Stage 2 Deliverables</p> <ul style="list-style-type: none"> • Visualisations • Multi-modal transport modelling • Plan for street trial • Green and blue infrastructure proposals
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	<ul style="list-style-type: none">• Lighting proposals• Signalling proposals• Formative baseline monitoring• Longtudinal monitoring• Updated community asset map• Client advisor brief and cost• Updated landowner mapping and communications register• Invitation to tender
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PART 5– INFORMATION SHARING

BACKGROUND

- (A) The following agreement between the Applicant and Sustrans reflects the arrangements that the Parties have agreed to put in place to facilitate the sharing of Personal Data relating to the Project, between the Parties acting as data controllers, and explains the purposes for which that Personal Data may be used.
- (B) The Parties agree to use and share Personal Data on the terms set out in this Information Agreement.

1 DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in this Information Agreement

1.1 Definitions

“Agreed Purpose” has the meaning given to it in clause 2.3 of this Agreement;

“Data Discloser” the Party transferring the Personal Data to the Data Receiver;

“Data Receiver” the Party receiving the Personal Data from the Data Discloser;

“Data Protection Legislation” the Data Protection Act 2018 (the DPA), the Data Protection Directive (95/46/EC), the General Data Protection Regulation ((EU) 2016/679) (the GDPR), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) (as amended) and all applicable laws and regulations relating to the processing of the personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other national data protection authority, and the equivalent of any of the foregoing in any relevant jurisdiction;

“Information Agreement” this information agreement as contained in this Part 7 of the Schedule;

“Project” the Project known as defined in the Agreement;

“Shared Personal Data” the Personal Data and Sensitive Personal Data or Special Category Personal Data to be shared between the parties under clause 5 of this Agreement;

“Subject Access Request” has the same meaning as "Right of access to personal data" in the DPA;

“Term” shall mean the Period as defined in the foregoing Agreement between the Parties;

Data Controller, Data Processor, Data Subject and Personal Data, Sensitive Personal Data, Special Category Personal Data, processing and appropriate technical and organisational measures shall have the meanings given to them in the Data Protection Legislation;

“**Portal**” means the Sustrans Scotland Application Portal (<https://scotlandportal.sustrans.org.uk>).

2 **PURPOSE**

- 2.1 This Information Agreement provides the legal framework and guidance to support the delivery of the Project and, in particular, the process for sharing Personal Data between the Applicant and Sustrans.
- 2.2 The Parties consider this data sharing initiative necessary as in order to facilitate the transfer and security of information collated during the Project. The aim of the data sharing initiative is to ensure that (a) the Applicant’s Active Travel Plan is complied with, (b) the vision set out in the Scottish Government’s Cycling Action Plan for Scotland 2017-2020 is achieved, and (c) the aspirations of the Sustrans Strategy 2017-2022 are met. It will serve to benefit individuals and society by encouraging walking and cycling, and the community engagement necessary to achieve these ends.
- 2.3 The Parties agree to only process Shared Personal Data, for the following purposes relating to the Project:
- 2.3.1 effective communication with members of the public and stakeholders in order to inform and/or consult them about any aspect of the project or its development;
 - 2.3.2 effective monitoring of the impacts of the scheme including on patterns of travel, especially on foot and by cycle; and
 - 2.3.3 effective communication with individuals and organisations who form part of the monitoring scheme.

The Parties shall not process Shared Personal Data in a way that is incompatible with the purposes described in this clause 2.3 (the “**Agreed Purpose**”).

3 **FAIR AND LAWFUL PROCESSING**

Legislation governing the management and disclosure of personal data

- 3.1 Each Party shall ensure that it processes Shared Personal Data fairly and lawfully in accordance with the Data Protection Legislation for the Term of this Agreement.
- 3.2 The conditions for processing Personal Data under the GDPR will be that the processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller (Art 6(1)(e) GDPR).

3.3 The Data Discloser shall, in respect of Shared Personal Data, ensure that its privacy notices are clear and provide sufficient information to the data subjects for them to understand what of their personal data the Data Discloser is sharing with the Data Receiver, the circumstances in which it will be shared, the purposes for the data sharing and either the identity of the Data Receiver or a description of the type of organisation that will receive the personal data.

4 ROLES AND RESPONSIBILITIES

4.1 Both Parties will be joint Data Controllers in respect of the Shared Personal Data.

4.2 It is the role of the Applicant to:

4.2.1 provide appropriate fair processing/privacy information so that individuals understand how their data will be stored on its systems, used by the Applicant, and shared with Sustrans; and

4.2.2 ensure the security of the information on its systems.

4.3 It is the role of Sustrans to:

4.3.1 provide appropriate fair processing/privacy information so that individuals understand how their data will be stored on its systems and used; and

4.3.2 ensure the security of the information on its systems.

4.4 Each Party shall appoint a single point of contact within their organisation who can be contacted in respect of queries or complaints regarding the DPA, GDPR and/or compliance under the terms of this Agreement. The points of contact for each of the parties are:

	The Applicant	Sustrans
Name	Dr Kenny Meechan	
Position	Data Protection Officer	Data Protection Manager
Address	City Chambers, Glasgow G2 1DU	2 Cathedral Square, College Green, BS1 5DD
Tel	0141 287 4517	0117 915 0320
E-mail	Kenny.meechan@glasgow.gov.uk	dataprotection@sustrans.org.uk

5 **SHARED PERSONAL DATA**

5.1 The following Personal Data will be shared between the Parties and stored on the data processing system during the Term:

5.1.1 Name

5.1.2 Gender

5.1.3 Address

5.1.4 Email address

5.1.5 Mode of Travel

5.2 The following types of Sensitive Personal Data or Special Category Data will be shared between the parties during the Term of this Agreement: Nil

5.3 The Shared Personal Data will be accessed and processed in accordance with clauses 6 and 7.

5.4 The Shared Personal Data must not be irrelevant or excessive with regard to the Agreed Purposes.

5.5 Shared Personal Data shall be limited to the Personal Data described in this clause 5.

6 **PROCESSES TO SHARE INFORMATION**

Management of data

6.1 Personal Data shared via the Portal will be encrypted in accordance with recognised industry standards compliant with the Data Protection Legislation before upload.

6.2 The Portal will have strict access controls to ensure that only relevant information is shared, as necessary, across Parties. Personal data will only be accessible by the Parties from whom it is expected, or they are able, to deliver a service.

Transfer and Storage of data

6.3 The Data Receiver shall not disclose or transfer the Shared Personal Data to a third party without the express written permission of the Data Discloser. In the event that express written permission is granted the Data Receiver shall not disclose or transfer Shared Personal Data outside the United Kingdom without ensuring that adequate and equivalent protections will be afforded to the Shared Personal Data.

Using & sharing data

- 6.4 Child records will only be accessed via the portal by Parties from whom it is expected, or they are able, to deliver a service. Health information will only be available to Parties who require it for the safe delivery of their services.
- 6.5 Personal data exchanged via the Portal will only be used in accordance with documented procedures agreed by the Delivery Group. It will not be printed, emailed, or otherwise transferred from either party's secure server (e.g. via removable media), or shared with any other party, without express permission from the Data Discloser.

Retention

- 6.6 The Data Receiver shall have in place a data retention policy and shall retain the Shared Personal Data in accordance with its data retention policy. The Data Receiver shall not retain or process Shared Personal Data for longer than is necessary to carry out the Agreed Purposes.
- 6.7 Notwithstanding clause 6.6, the Parties shall continue to retain Shared Personal Data in accordance with any statutory or professional retention periods applicable in their respective countries and/or industry.
- 6.8 The Data Receiver shall ensure that any Shared Personal Data are returned to the Data Discloser or destroyed in the following circumstances:
 - 6.8.1 on termination of the Agreement for whatever reason;
 - 6.8.2 on expiry of the Term (unless extended further to the terms of this Agreement); and/or
 - 6.8.3 once processing of the Shared Personal Data is no longer necessary for the purposes it were originally shared for, as set out in clause 2.

7 SECURITY AND TRAINING

- 7.1 Both parties agree to abide by the terms of the Data Protection Legislation, in that:
 - 7.1.1 All data shall be securely transmitted and stored;
 - 7.1.2 All information provided shall be used for no other purposes than the Agreed Purposes;
 - 7.1.3 Reasonable steps will be taken to ensure that all information disclosed is accurate and where a Party becomes aware of inaccuracies in Shared Personal Data, they will notify the other Parties;

7.1.4 All information shall be updated as required; and

7.1.5 Information shall be retained in accordance with clause 6.

Protective Marking

7.2 Information exchanged under this agreement will be classified, in accordance with Government Security Classifications, as OFFICIAL – SENSITIVE. There is no requirement to formally mark documents which carry this classification however appropriate organisational controls must be applied to protect it against unauthorised access or use.

7.3 Further information on the government security classifications can be found via the following link:

<https://www.gov.uk/government/publications/government-security-classifications>

7.4 Personal information that is considered to be sensitive in nature must only be assessed, used, copied or shared by persons who have been authorised to do so, and only when there is a genuine need to do so.

7.5 All Parties will have policies in place to manage the storage of, and access to, personal information held by their organisations. They will also ensure that all staff are clear about their roles and responsibilities regarding the Shared Personal Data and are provided with suitable training and support to fulfil these roles and responsibilities effectively.

7.6 Personal information sent between Parties and/or the Data Processor must be done in a secure manner which is in accordance with its classification. Sensitive Personal Data or Special Category Personal Data i.e. information that identifies a data subject's religious or philosophical beliefs, or health conditions, can only be emailed over a secure connection e.g. SFTP or TLS.

Security Measures

7.7 The Parties agree to implement appropriate technical and organisational measures to protect the Shared Personal Data in their possession against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, including but not limited to:

7.7.1 Ensuring IT equipment, including portable equipment is kept in lockable areas when unattended;

7.7.2 not leaving portable equipment containing the Personal Data unattended;

7.7.3 ensuring that staff use appropriate secure passwords for logging into systems or databases containing the Personal Data;

- 7.7.4 ensuring that all IT equipment is protected by antivirus software, firewalls, passwords and suitable encryption devices;
- 7.7.5 In particular ensure that any Sensitive Personal Data is stored and transferred (including where stored or transferred on portable devices or removable media) using industry standard 256-bit AES encryption or suitable equivalent;
- 7.7.6 limiting access to relevant databases and systems to those of its officers, staff agents and sub-contractors who need to have access to the Personal Data, and ensuring that passwords are changed and updated regularly to prevent inappropriate access when individuals are no longer engaged by the Party;
- 7.7.7 conducting regular threat assessment or penetration testing on systems;
- 7.7.8 Ensuring all staff handling Personal Data have been made aware of their responsibilities with regards to handling of Personal Data; and
- 7.7.9 Allowing for inspections and assessments to be undertaken by the other Party in respect of the security measures taken, or producing evidence of those measures if requested.

8 BREACHES OF SECURITY

- 8.1 All known or suspected breaches of security in relation to the Shared Personal Data (such as misuse or abuse of the system, misuse or abuse of information shared, unauthorised processing of data, unauthorised disclosure of information, malicious software attack, denial of service attack) are to be reported to the respective organisations' Information Security Officer, Data Protection Officer or equivalent as soon as possible and, in any event, within 24 hours of identification. Once notified of a breach of security an investigation is to be undertaken to identify, where possible, who carried out the breach, what information has been compromised, whether the integrity of the system has been compromised etc. Consideration will also need to be given as to whether the breach warrants a report to the UK Information Commissioner's Office.
- 8.2 Where any breach of security may amount to criminal activity, this must be reported to Police Scotland who will investigate the matter and, where appropriate, report the circumstances to the Procurator Fiscal.
- 8.3 Where relevant or necessary, the Party who has experienced the breach or suspected breach will inform the other Parties and will provide them with sufficient details which will enable them to retain assurance in the confidentiality, integrity and availability of the information and the processes supporting the information exchange, and to undertake risk assessments within their own organisations.

9 DATA SUBJECT RIGHTS

- 9.1 Data Subjects have the right to obtain certain information about the processing of their Personal Data through a Subject Access Request. Data Subjects may also request rectification, erasure or blocking of their Personal Data.
- 9.2 Access to information gathered, as part of any of these processes may be requested under subject access rights, as described in the DPA and the GDPR. All requests for information should be handled in accordance with internal procedures; further advice can be sought from each Party's Information Governance Unit or equivalent.
- 9.3 The Parties shall maintain a record of Subject Access Requests, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request.
- 9.4 Where a request has been received and a Party holds any information that originated from the other Party, or where a Party is considering the disclosure of information that may impact on the provision of a service, then it is recommended that the originator of the information is consulted prior to any disclosure. The ultimate decision as to whether to disclose the information lies with the organisation which received the request. However, the originator of the information should be given the opportunity to ensure that DPA exemptions are suitably applied.
- 9.5 Complaints from Data Subjects, or their representatives, about information held by either Party will be investigated first by the organisation receiving the complaint. Action that affects both Parties will not be taken without the consent of both Parties.
- 9.6 The Parties agree to provide reasonable and prompt assistance (within 5 Business Days of such a request for assistance) as is necessary to each other to enable them to comply with Subject Access Requests and to respond to any other queries or complaints from Data Subjects.

10 INDEMNITIES

Each Party shall indemnify the other against all costs, claims, damages or expenses suffered or incurred by the indemnified Party arising out of or in connection with any claim made against it in relation to any breach by the indemnifying Party of the Data Protection Legislation or the indemnifying Party's obligations under this Information Agreement.

11 TERM AND TERMINATION

- 11.1 This Information Agreement shall continue in force for the Term.

11.2 This Information Agreement shall automatically terminate on expiry of the Term unless, following a review of the terms of the Information Agreement under clause 11, the Parties agree to extend the Information Agreement.

11.3 Either Party may terminate this Information Agreement at any time should the Agreement be terminated.

12 **REVIEW**

12.1 This Information Agreement will be reviewed six months after the Agreement has been duly executed, and annually thereafter, but either Party can request that it be reviewed at any time providing reasonable cause can be shown.

12.2 Before any substantive changes are made this Information Agreement will be referred through the appropriate internal processes, including consultation with information governance colleagues.

12.3 The reviewers will consider whether the:

12.3.1 Information Agreement is achieving its purpose;

12.3.2 Information sharing is operating legally and smoothly; and

12.3.3 Processes require updating.

12.4 Both Parties must agree any changes proposed as a result of the review prior to signing a refreshed agreement.

13 **ENTIRE AGREEMENT**

This Information Agreement constitutes the entire agreement between the Parties in relation to its subject matter, namely the sharing of Personal Data, and supersedes and extinguishes all previous agreements, promises, assurances, understandings, warranties, or representations between them, whether written or oral, relating to its subject matter.

14 **GOVERNING LAW AND JURISDICTION**

This Information Agreement and any dispute or claim arising out of it or in connection with it or its subject matter or formation shall be governed by and construed in accordance with Scots law, and the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Information Agreement or its subject matter or formation.