

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

02 November 2023

Sustrans Reference No: «ApplicationID»

Project Name: «ProjectName»

Dear Applicant

PLACES FOR EVERYONE
«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 «OrganisationLegalDesignation» (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 4 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 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.

2.1.2 Sustrans Design Principles will guide development:

- (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.

2.1.3 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.

2.1.4 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*".

2.2 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 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 you 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;

3.2.3 without prejudice to the generality of Clause 3.2.2, you 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; project risks; and project budget and spend.

- 3.3 Where the Project is being delivered in part by a Project Partner, it is your 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, you shall supply Sustrans with a copy of each of the Initial Documents (in a form acceptable to Sustrans, acting reasonably).

Inspection

- 3.5 During the Claim Period, you 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.

- 3.6 You 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.
- 3.7 You 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 3.5 and 3.6 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 You must carry out the Approved Activities so that:
- 4.2.1 you comply with the terms of the Agreement;
 - 4.2.2 you achieve the Milestones; and
 - 4.2.3 the scope of the Project does not deviate from the Specification Drawing(s) (if any).
- 4.3 You 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 you cannot complete any of the Approved Activities; circumstances arise which make it unlikely that you will be able to complete any of the Approved Activities; and/or there is a significant risk of you being unable to complete any of the Approved Activities.
- 4.4 If you can no longer meet the requirements set out in the Agreement, or if it is otherwise necessary for you to vary the Outline Programme or the information in PART 4 of the Schedule, you must submit a written request to Sustrans 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.

5 **CONDITIONS FOR PAYMENT**

5.1 **Conditions Precedent**

The obligations of Sustrans under the Agreement shall not come into effect until Sustrans has notified you 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 you (to Sustrans' satisfaction) or waived by Sustrans.

5.2 **Pre-Payment Conditions**

Sustrans is not obliged to make payment to you 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; (ii) in regard to works at the end of a project stage completed in one financial year received the relevant Claim by 15th March in each said year and (iii) is satisfied that the following conditions have been met:

- 5.2.1 you have (i) complied with the terms of the Agreement; and (ii) have complied with all relevant Legal Requirements;
- 5.2.2 no Default has occurred which is continuing; and
- 5.2.3 you have 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 you wish to claim payment of the Grant, you 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 you in such instalments as Sustrans shall consider appropriate 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 You 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 You 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, as the case may be) 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 PART 2 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

You warrant and represent (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

You have full power and authority to enter into and perform your 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 you or on your behalf 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 your knowledge and belief, you have 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 your rights and the performance of your obligations under, the Agreement do not and will not conflict with:

- 7.3.1 any Legal Requirement with which you are obliged to comply; or
- 7.3.2 any document which is binding upon you.

7.4 **No Default**

- 7.4.1 No Default is outstanding or could be expected to result from you entering into the Agreement.
- 7.4.2 No other event is outstanding which constitutes a default under any other document which is binding on you 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 your assets, financial condition or operations and no such proceedings are presently in process, pending or threatened which might adversely affect your assets, financial condition or business or your ability to perform your obligations under the Agreement.

7.6 Sources of Funding

You continue to have the funding (from your own resources and/or external financing) and/or the in-kind support, as detailed in your Application, available to you for application towards the costs of the Project.

8 GENERAL UNDERTAKINGS

You undertake that during the Period, you 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 you wish to withdraw from the Programme and terminate the Agreement; and/or
- 8.1.3 if you are no longer able, or are unlikely to be able, or there is a significant risk that you will be unable, 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's 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 relevant design standards relative to the Approved Activities, if applicable.

8.4 Project related assets

- 8.4.1 Not without Sustrans' prior written consent:

- (a) discontinue 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 (including, without limitation, to the Specification Drawing(s).
- (b) amend the Project Area.

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 you) is being sought, has been approved, withdrawn or restricted in relation to the Approved Activities.

8.6 **Insurance**

8.6.1 Keep 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 you or to your contractor(s) involved in the Project and against the risk of injury to members of the public (the "**Insurances**").

8.6.2 Apply any insurance monies which are paid or payable to you 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 Sustrans's Grant Manager and to the officer of equivalent authority within the Applicant's organisation, 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 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 You must acknowledge in all publicity materials, websites, social media and publications relating to the Approved Activities that financial assistance has been received from Sustrans and its funders.
- 10.2 Sustrans shall be entitled to publicise the detail of the award of the Grant, progress in respect of the Project, including your name, the amount of the Grant and the name of the Programme, by any means that Sustrans and its funders deem appropriate.
- 10.3 All publicity and marketing materials must include reference to Sustrans and its funders, including logos where appropriate.
- 10.4 You shall, within 8 weeks of the date of signing of this Agreement develop a communications strategy for implementation during the Period (which must be approved by Sustrans, in writing, prior to implementation), 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 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 you of its intention to do so in writing and allow you a reasonable period of time (as specified in the notice) 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 you, 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

Your 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

Your 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 you.

11.5.5 Insolvency Proceedings

You are sequestrated, become apparently insolvent or enter into a trust deed for the benefit of your creditors or an administrator or trustee is appointed to manage your affairs or being a company you pass a resolution to be wound up, go into liquidation, whether voluntary or compulsory (other than a voluntary liquidation of a solvent company for the purposes of amalgamation or reconstruction) or circumstances arise that would enable a court to make a winding up order or you

are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or a receiver or administrator is appointed or an administration order is made or circumstances arise that would entitle a court or creditor to appoint such a receiver or administrator.

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 your ability to comply with your obligations under the Agreement.

11.5.7 Unlawfulness

It is or becomes unlawful for you to perform any of your 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

You terminate the Agreement other than by reason of an event of Force Majeure.

11.5.10 Material Change

There has been a materially adverse change in the nature, scale, costs or timing of the Project (including, without limitation, a change to the Approved Activities and/or the Specification Drawing(s)) 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.

- 11.6 You will be responsible for paying all costs incurred by Sustrans in enforcement of the Agreement against you in the event of a Default including, but not limited to, all fees of agents, solicitors, surveyors and accountants employed by Sustrans but excluding Default in the circumstances outlined at 11.5.11 above.

12 **CLAWBACK AND DISPOSAL OF ASSETS**

12.1 You agree that if:

12.1.1 there is a breach of any of the warranties and representations at Clause 7; and/or

12.1.2 you discontinue the whole or a substantial part of the Project or make any alteration that is, in Sustrans's reasonable opinion, a material alteration to the character of the Project or Project Area.

then you may be required to repay all or part of the Grant to the extent that it has been paid out, with interest at the Interest Rate.

12.2 Without prejudice to the generality of Clause 12.1.2, you shall not, without prior written consent of Sustrans, dispose of any asset funded, in part or in whole, with Grant funds within 15 years of the asset being acquired or developed. 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.

13 **OVERPAYMENTS**

13.1 If Sustrans has made an Overpayment in respect of the Grant (or any instalment of the Grant, as the case may be):

13.1.1 you 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, you 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 you fail 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.

15 **ASSIGNATION**

15.1 You must not assign, transfer, hold on trust or otherwise dispose of any of your rights and/or obligations under the Agreement without the prior written consent of Sustrans, which consent shall not be unreasonably withheld or delayed.

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 you provide 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).

16.2 Sustrans shall be entitled to share relevant data, including historical data, that is held about you 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 you, including your identity, the amount of the Grant and information provided as part of your Application.

17 **WAIVER**

17.1 Any failure by Sustrans 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 Sustrans 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, subject always to the Applicant acting reasonably, 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.

18.2 The parties acknowledge that nothing in the Agreement 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 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 you at your 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 for the attention of such other officer as is notified to you 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 acknowledges that it is the “Client” in respect of the Project for the purposes of the CDM Regulations and, if required, before commencement of the Project the Applicant shall give notice to that effect to the Health and Safety Executive pursuant to the CDM Regulations. The Applicant will, in carrying out the Project, perform and discharge the duties of the “Client” under the CDM Regulations.

- 22.5 The Applicant and Sustrans agree that Sustrans is “a designer” in respect of the Project (but not the principal designer) for the purposes of the CDM Regulations and Sustrans shall perform and discharge all of the duties of a “designer” under the CDM Regulations.
- 22.6 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.
- 22.7 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 you to return one signed copy of the Agreement to Sustrans within 56 days of the date of this offer. If you do 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 you are advised to take independent legal advice before signing.

ACCEPTANCE BY APPLICANT

We, «Organisation» hereby accept the terms of the preceding offer dated 02/11/2023 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**»

«**OrganisationAddress3**»

«**OrganisationAddress4**» , «**OrganisationAddress5**»

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 4 parts and (b) the docket of acceptance by you;

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

“**Approved Activities**” means the activities set out in the Outline Programme;

“**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 the Grant (or an instalment of the Grant, as the case may be);

“**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;

“**Initial Documents**” means the documents, if any, detailed in PART 4 of the Schedule (if required);

“**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 PART 4 of the Schedule;

“**Eligible**” means deemed eligible for grant funding by Sustrans, acting in its sole discretion;

“**Force Majeure**” includes (i) a severe natural disaster seriously affecting the Project; (ii) 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;

“**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 European Union or 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;

“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 during the Monitoring Period;]

“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 Claim Period and the Monitoring Period (if applicable); unless the Agreement 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;

“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's 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 30 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	PLACES FOR EVERYONE
Project Reference	«ApplicationID»
Application	means your 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 Eligible costs (or such percentage as is agreed by Sustrans in writing in advance of the Completion Date in accordance with clause 4.4), 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	<ul style="list-style-type: none"> • «Conditions»
Initial Documents	<ul style="list-style-type: none"> •
Deliverables	<p><i>Stage 3 – Developed Design</i></p> <p>Essential Deliverables</p> <ul style="list-style-type: none"> • Design Development Documents • Baseline monitoring • Project communications

- Updated project management documents
- Updated communications and engagement documents

Additional Deliverables for High Value or Complex Projects

- Visualisations where appropriate
- Vehicle tracking drawings
- Formative baseline monitoring and evaluation
- Longitudinal monitoring

Additional Deliverables for Community Groups Only

- Updated client advisor brief and cost
- Full Planning permission
- Updated landowner mapping and communications register
- Updated funding, collaboration, and partnerships plan

Stage 4 – Technical Design

Essential Deliverables

- Contractor procurement strategy
- Statutory Permissions
- Baseline monitoring
- Baseline evaluation
- Behaviour change activity plan
- Project communications
- Match fund details
- Updated project management documents
- Updated communications and engagement documents

Additional Deliverables for High Value or Complex Projects

- Longitudinal monitoring

Additional Deliverables for Community Groups Only

- Updated client advisor brief and cost
- Road construction consent(s) as necessary
- Draft land agreements (agreement, lease, purchase, or order)
- Updated landowner mapping and communications register
- Updated funding, collaboration and partnerships plan
- Invitation to Tender

	<ul style="list-style-type: none">• Tender package and returns for Stage 5-7 with completed scoring matrix• Full planning with conditions cleared
--	--