

17/05/2022 *draft*

**DATED**

**2022**

**(1) [ *Supplier* ]**

**AND**

**(2) Sustrans**

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**FRAMEWORK AGREEMENT**

**relating to**

Data collection Framework

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## **CONTRACT DETAILS**

<b>Date:</b>	
<b>Supplier:</b>	[FULL COMPANY NAME of <i>supplier</i> ] (company number [NUMBER]) whose registered office is at [REGISTERED OFFICE ADDRESS]
<b>Sustrans</b>	Sustrans  a charitable company limited by guarantee, incorporated and registered in England and Wales with company number 1797726 (registered charity number 326550)
<b>Sustrans' Address:</b>	2 Cathedral Square, College Green, Bristol, BS1 5DD
<b>Framework details</b>	Sustrans is appointing a framework of suppliers to support us in this data collection across the UK. The framework is divided into the lots below.  <ul style="list-style-type: none"> <li>• Lot 1 – Route User Intercept Surveys</li> <li>• Lot 2 – Counts and Observational Studies</li> <li>• Lot 3 – Household based surveys</li> <li>• Lot 4 – Qualitative research</li> </ul> , as further detailed in Schedule 1 - specification
<b>Framework Term</b>	01/07/2022 or  The date the Contract is entered into by the parties for 4 years.
<b>Special Terms</b>	[ as further detailed in Schedule 3 ]
<b>Schedules</b>	Schedule 1 – Specification  Schedule 2 – Rates and Payment  Schedule 3 – Draft Call-off Contract  Schedule 4 – Suppliers' tender

1. This Contract is made up of the following:
  - 1.1. The Contract Details
  - 1.2. The Conditions
  - 1.3. The Schedules specified in the Contract Details
2. If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

## BACKGROUND

- (A) *Sustrans issued a tender seeking to appoint a framework of suppliers to support data collection across the UK.*
- (B) *The Supplier submitted a proposal to show they are capable of delivering the services as set out in the Invitation to Tender, particularly in relation to competence, professionalism and ability to provide the services in an efficient and cost-effective manner.*
- (C) *On this basis Sustrans has selected the Supplier to enter into a Framework Agreement along with a number of other Suppliers to provide services on a call-off or further competition basis in accordance with the terms of this framework agreement.*
- (D) *This framework agreement sets out the award and ordering procedure for the services which may be required, the main terms and conditions for any contract, and the obligations of the Suppliers during and after the Term of the Framework Agreement*

## AGREED TERMS

**The Customer's attention is particularly drawn to the provisions of clause 9.**

### **1. Interpretation**

1.1 In these Conditions, the following definitions apply:

<b>"Rates"</b>	the rates payable by Sustrans for the supply of the Services as detailed in the Contract Details [and Schedule 2].
<b>"Conditions"</b>	these terms and conditions as amended from time to time in accordance with clause 12.8.
<b>"Contract"</b>	the contract between the Supplier and Sustrans for the supply of Services in accordance with the Contract Details, these Conditions and any Schedules.
<b>"Intellectual Property Rights"</b>	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

<b>"Outputs"</b>	the end result of the Services to be delivered by the Supplier under the Contract as set out in Schedule 1.
<b>"Real Living Wage"</b>	the most recently identified hourly figure published from time to time by the Living Wage Foundation or any successor body with responsibility for setting this figure
<b>"Results"</b>	any results of investigations and conclusions drawn from them by the Supplier in the course of the Services.
<b>"Services"</b>	the services, including the Outputs, supplied by the Supplier to Sustrans as set out in Schedule 1.
<b>"Sustrans Materials"</b>	has the meaning set out in clause 3.4(g).

1.2 In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and a reference to a party includes its, successors or permitted assigns;
- (b) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted; and
- (c) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## **Term of Framework Agreement**

### **Scope of Framework**

#### **2. Basis of contract**

- 2.1 The Contract shall commence on the date when it has been signed by both parties and shall continue, unless terminated earlier in accordance with its terms.
- 2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

#### **3. Supply of Services**

- 3.1 The Supplier shall supply the Services to Sustrans on signing of a call-off contract
- 3.2 The Supplier shall meet any performance dates specified in the call-off contract.
- 3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, provided that the Supplier shall notify Sustrans before implementing any such change.

3.4 The Supplier warrants to Sustrans that

- (a) the Services shall be provided using best care and skill diligence in accordance with best practice in the Supplier's industry, trade or profession;
- (b) it shall use personnel who are suitably skilled and experienced to perform the tasks assigned to them in the supply of the Services and in sufficient numbers to ensure that the Supplier's obligations under the contract are fulfilled;
- (c) the Outputs shall conform with the descriptions and specifications set out in the Order and that the Outputs shall be fit for any purpose expressly or impliedly made known to the Supplier before the Start Date;
- (d) it shall provide its own equipment, tools, vehicles and other items needed to perform the Services;
- (e) it shall use best quality goods and materials, standards and techniques in the performance of the Services and ensure that the Outputs shall be free from defects in workmanship, installation and design;
- (f) it shall obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (g) keep and maintain all materials, equipment, documents and other property of Sustrans ("**Sustrans' Materials**") at the Supplier's premises in safe custody at its own risk, maintain the Sustrans Materials in good condition until returned to Sustrans, and not dispose of or use Sustrans' Materials other than in accordance with Sustrans written instructions or authorisation; and
- (h) it shall obtain and maintain all necessary licences and consents and comply with all applicable laws and Regulations.

3.5 The Supplier warrants to Sustrans that it shall:

- (a) pay its staff engaged or employed in the provision of the Services; and
- (b) shall endeavour to ensure that all subcontractors pay all of their staff who are so engaged

whichever is the higher of the Real Living Wage and the market rate of wages or salary for that member of staff.

**4. Policies and charitable status**

4.1 Sustrans is a charity and nothing in the Contract shall be construed as an obligation on it to act beyond its powers.

4.2 Sustrans has a complaints policy and shall monitor all complaints received in relation to the Services with a view to identify and implement improvements to its activities.

4.3 In the provision of the Services under the Contract, the Supplier shall comply with Sustrans':

- (a) equality and diversity policy;
- (b) health and safety policy;

- (c) environment policy;
- (d) data protection; and
- (e) other policies relevant to the Services and listed in the Schedules.

Copies of these policies are available on request.

## **5. Sustrans' obligations**

### **5.1 Sustrans shall:**

- (a) provide the Supplier, its employees, agents, consultants and subcontractors, with access to premises, office accommodation and other facilities as reasonably required for the performance of the Services; and
- (b) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services;

## **6. Rates and payment**

6.1 The Rates for the Services shall be calculated in the manner set out in Schedule 2. Unless otherwise agreed in writing by Sustrans, the Rates are inclusive of every cost and expense incurred by the Supplier in connection with the performance of the Services.

6.2 Where the Rates are calculated by reference to time spent in providing the Services the following will apply:

- (a) 'day' means a period of 7.5 hours and excludes the time spent travelling to and from the place where the Services are performed; and
- (b) where more than 7.5 hours work is carried out in a day at Sustrans' written request, the Supplier shall be entitled to charge for the additional time at the pro-rated rate for a day.

6.3 The Supplier shall invoice Sustrans on completion of the Services or otherwise as set out in Schedule 2. Each invoice shall include the relevant purchase order number and such supporting information as Sustrans may require to verify the accuracy of the invoice.

6.4 Subject to 6.4 (c) Sustrans shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the end of the month of the date of a correctly rendered invoice ("**Due Date**"); and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier.
- (c) If the Supplier fails to deliver the Services or any part thereof as agreed or specified then Sustrans reserves the right to withhold all or part of the payment therefor and/or seek alternative methods of ensuring that the Services are delivered and where reasonable additional costs are incurred by Sustrans as a result these shall be paid by the Supplier.

6.5 All amounts payable by Sustrans are expressed as exclusive of value added tax ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract Sustrans shall, on receipt of a valid VAT invoice from the Supplier, pay to the

Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

- 6.6 If Sustrans fails to make any payment due to the Supplier under the Contract by the Due Date for payment and 6.4 (c) does not apply, the Supplier shall have the right to charge interest on the overdue amount at the rate of 2% per annum above the then current base lending rate of National Westminster Bank plc accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment.
- 6.7 The Supplier shall maintain complete and accurate records of the time and materials employed in the provision of the Services.

## **7. Intellectual property rights**

- 7.1 Sustrans does not warrant that any information data or results it passes to the Supplier in relation to the Services, does not infringe any valid or subsisting intellectual property right of any third party.
- 7.2 In respect of any goods that are transferred to Sustrans under this Contract, including without limitation the Outputs or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Sustrans, it will have full and unrestricted rights to transfer all such items to Sustrans.
- 7.3 The Supplier assigns to Sustrans, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Outputs.
- 7.4 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Outputs, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 7.5 The Supplier shall, promptly at Sustrans' request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Sustrans may from time to time require for the purpose of securing for Sustrans the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to Sustrans in accordance with clause 7.3
- 7.6 All Sustrans Materials are and shall remain the exclusive property of Sustrans.

## **8. Confidentiality**

- 8.1 A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.



- 8.2 Notwithstanding the provisions of Condition 8.1 Sustrans shall be entitled to publicise the Results without restriction.
- 8.3 This clause 8 shall survive termination of the Contract.

**9. Indemnity and insurance**

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 9.1 The Supplier shall keep Sustrans indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Sustrans as a result of or in connection with:
- (a) any claim made against Sustrans by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
  - (b) any claim brought against Sustrans for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services..
- 9.2 For the duration of the Contract, the Supplier shall maintain in force, with a reputable insurance company, such insurance as required for the performance of the Contract as detailed in clauses 9.2.1, 9.2.2 And 9.2.3. to cover the liabilities that may arise under or in connection with the Contract and shall, on Sustrans' request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 9.2.1 Product and Products Liability insurance with a limit of indemnity of no less than £5,000,000 any one event for Public Liability and in the aggregate for Products Liability. The insurance policy should contain an Indemnity to Principal clause. The requirement for insurance cover under this clause shall not apply in respect of Services provided by labour only contractors whose activities when performing the Services under this contract fall directly under the control of Sustrans or a Sustrans employee and for which no materials are provided by the contractor as part of the services provided.
- 9.2.2 Employers Liability Insurance with a limit of indemnity of no less than £5,000,000 any one event. The requirement for insurance cover under this clause shall not apply in respect of Services provided by labour only contractors whose activities when performing the Services under this contract fall directly under the control of Sustrans or a Sustrans employee and for which no materials are provided by the contractor as part of the services provided. This clause also shall not apply to suppliers who do not employ any of their own employees or labour only sub contractors.
- 9.2.3 Professional Indemnity Insurance with a limit of indemnity of no less than £2,000,000, to be maintained for a period of no less than 13 years from the

expiry of the Contract. This clause only applies to those suppliers who are providing Services to Sustrans which involve the provision of design, advice or professional services

9.3 This clause 9 shall survive termination of the Contract.

## **10. Termination**

10.1 Sustrans may terminate the Contract:

- (a) by giving the Supplier not less than [ 1 ] months notice; or
- (b) with immediate effect by giving notice to the Supplier if the Supplier commits a material or persistent breach and (if that breach is capable of remedy) fails to remedy that breach within 30 days of Sustrans giving notice of that breach.

10.2 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (b) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);
- (c) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (d) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (e) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- (f) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

10.3 Without limiting its other rights or remedies, neither party shall have any other right to terminate the Contract by notice unless expressly set out in the Order.

## **11. Consequences of termination**

11.1 On termination of the Contract for any reason:

- (a) Sustrans shall immediately pay to the Supplier all Rates for Services completed;
- (b) the Supplier shall return all of Sustrans' Materials. If the Supplier fails to do so, then Sustrans may enter the Supplier's premises and take possession of them. Until they have been returned, the Supplier shall be solely responsible

for their safe keeping and will not use them for any purpose not connected with the Contract;

- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **12. General**

### **12.1 Force majeure:**

- (a) For the purposes of the Contract, ("**Force Majeure Event**") means an event beyond the reasonable control of The Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm;
- (b) Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 90 consecutive days, Sustrans shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Supplier.

### **12.2 Assignment and subcontracting:**

- (a) Sustrans may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Supplier shall not, without the prior written consent of Sustrans, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

### **12.3 Notices:**

- (a) Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the

second day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

(c) This clause 12.3 shall not apply to the service of any proceedings or other documents in any legal action.

(d) For avoidance of doubt notice given under the Contract shall not be validly served if sent by e-mail.

12.4 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

12.5 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

12.6 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

12.7 A person who is not a party to the Contract shall not have any rights under or in connection with it.

12.8 Any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by Sustrans.

12.9 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

This Contract has been entered into on the date stated at the beginning of it.

SIGNED by,.....[print name]

for and on behalf of *[insert name of Supplier]*.

signature :.....

job title .....

Authorised Signatory

SIGNED by,.....[print name]

for and on behalf of **Sustrans**

signature :.....

Authorised Signatory

***Schedules:***

*[to be inserted ]*

**Schedule 1 –Specification of Framework Services**

**Schedule 2 –Payment details – Rates and invoice arrangements/ intervals (*see clause 6*)**

*Example:*

1. The rates are £[ ] + VAT.
2. 30% of the project costs will become payable following receipt and approval by Sustrans of [ ] , and the remaining 70% following receipt and approval by Sustrans of the remaining deliverables and the terms of clause 6.3 shall be interpreted accordingly.

**Schedule 3 – Draft call-off contract**

**Schedule 4 - Suppliers Tender**