

## **GRANT TERMS AND CONDITIONS FOR SUSTAINABLE AGRICULTURE PROGRAMME**

The Scottish Ministers in exercise of their powers under section 153 (1) (z5 – z7) of the Environmental Protection Act 1990 (the 1990 Act), agree to give a grant to the Grantee, if eligible, as set out in the Claim and always subject to the following Conditions.

These Conditions apply to all Claims made by the Grantee for funding under the Scheme Guidance and shall form part of the Agreement unless otherwise specifically agreed in writing by the Scottish Ministers.

### **1. Definitions and Interpretation**

- 1.1 In these Conditions, the words and expressions set out in **SCHEDULE 2** [Error! Reference source not found.](#) shall have the meanings ascribed to them in that Schedule.
- 1.2 In these Conditions unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.
- 1.3 The headings in these Conditions are for convenience only and shall not be read as forming part of the Conditions or taken into account in their interpretation.
- 1.4 Except as otherwise provided in these Conditions, any reference to a clause, paragraph, subparagraph or schedule shall be a reference to a clause, paragraph, subparagraph or schedule of these Conditions. The schedules are intended to be contractual in nature. They form part of the Agreement and should be construed accordingly.
- 1.5 This Agreement shall not be varied except by an instrument in writing signed by both parties.

### **2. Purposes of the Grant**

- 2.1 The Grant is made to enable the Grantee to carry out the relevant Project in line with the Scheme Guidance. The Scottish Ministers may at any time order any variation to any part of the Grant, the Claim and/or the Scheme Guidance that for any reason shall in the Scottish Ministers' opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the eligible funding and changes in quality, form, character, kind, timing, method or sequence or the conditions set out in the Scheme Guidance.
- 2.2 The Grant shall only be used for the purposes of the Project in line with the Scheme Guidance and for no other purpose whatsoever.
- 2.3 No part of the Grant shall be used to fund any activity or material which is party political in intention, use, or presentation or appears to be designed to affect support for a political party.
- 2.4 The main objectives/expected outcomes of the Grant are as set out in the Scheme Guidance.
- 2.5 The eligible costs for which the Grant can be claimed are as set out in the Scheme Guidance.
- 2.6 The eligible costs exclude any Value Added Tax (VAT) reclaimable by the Grantee.
- 2.7 These Conditions apply to all Claims for funding pursuant to the Scheme Guidance to the exclusion of any other terms that the Grantee seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

### **3. Payment of Grant**

- 3.1 The Grant shall be paid by the Scottish Ministers to the Grantee in accordance with the terms of **SCHEDULE 1** attached.
- 3.2 The Grantee shall as part of the Claim submit to the Scottish Ministers a statement of compliance with the Conditions of the Grant. The statement shall be signed by or on behalf of the Grantee.
- 3.3 In the event that the amount of the Grant paid by the Scottish Ministers to the Grantee at any point in time is found to exceed the amount of the funding properly applied for by the Grantee in connection with the Project, the Grantee shall repay to the Scottish Ministers the amount of such excess within 14 days of receiving a written demand for it from or on behalf of the Scottish Ministers. In the event that the Grantee fails to pay such amount within the 14 day period, the Scottish Ministers shall be entitled to interest on the sum at the rate of 2 per cent per annum above the Bank of England base lending rate prevailing at the time of the written demand from the date of the written demand until payment in full of both the sum and the interest.
- 3.4 The Scottish Ministers shall not be bound to pay to the Grantee, and the Grantee shall have no claim against the Scottish Ministers in respect of, any instalment of the Grant which has not been properly claimed for by the Grantee in line with the Scheme Guidance or no sufficient evidence of the claim has been provided as part of the Claim, unless otherwise agreed in writing by the Scottish Ministers.
- 3.5 Wherever under this Agreement any sum of money is recoverable from or payable by the Grantee, that sum may be deducted from any sum then due, or which at any later time may become due, to the Grantee under this Agreement or under any other agreement or contract with the Scottish Ministers or with any department, agency or authority of the Crown or the Scottish Ministers.

### **4. Inspection and Information**

- 4.1 The Grantee shall keep evidence of the Project in the form of receipts. Details shall include actual expenditure to be claimed.
- 4.2 Revisions to targets/milestones against which progress in achieving objectives/outcomes are monitored in line with the Scheme Guidance shall be subject to change from time to time.
- 4.3 The Grantee shall, on request or as part of the Claim, submit a report to the Scottish Ministers summarising the outcomes and performance of the Project. Such a report shall include such statistical and other information relating to the impact of the Project as shall be required by the Scottish Ministers.
- 4.4 The Grantee shall also provide any other information after submission of the Claim that the Scottish Ministers may reasonably require to satisfy themselves that the Project is consistent with the Agreement. The Grantee shall provide the Scottish Ministers with prompt access to any information they reasonably require to ensure compliance with these Conditions.
- 4.5 The Grantee shall keep and maintain for a period of 24 months after the expenditure occurs, adequate and proper records and books of account recording all receipts and expenditure of monies

paid to it by the Scottish Ministers by way of the Grant. The Grantee shall afford the Scottish Ministers, their representatives, the Auditor General for Scotland, his/her representatives and such other persons as the Scottish Ministers may reasonably specify from time to time, such access to the Grantee's premises to which the Claim relates to, and those records and books of account as may be required by them at any reasonable time in response to a written request for such access from the person seeking it. The Grantee shall provide such reasonable assistance and explanation as the person carrying out the inspection may from time to time require.

- 4.6 In the event of the Grantee becoming aware of or suspecting any irregular or fraudulent activity that may have any impact on the Project or on the use of the Grant, or any part of it, the Grantee shall immediately notify the Scottish Ministers of such activity and provide such other information as the Scottish Ministers may reasonably require in relation to the impact on the Project and the use of the Grant.
- 4.7 The Grantee shall immediately inform the Scottish Ministers of any change in its constitution for example, but not limited to, a change in status from one type of body corporate to another.

## **5. Confidentiality and Data Protection**

- 5.1 The Grantee will respect the confidentiality of any commercially sensitive information that they have access to as a result of the Project.
- 5.2 Notwithstanding the above, the Grantee may disclose any information as required by law or judicial order. All information submitted to the Scottish Ministers may need to be disclosed and/or published by the Scottish Ministers. Without prejudice to the foregoing generality, the Scottish Ministers may disclose information in compliance with the Freedom of Information (Scotland) Act 2002, any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure. Further, the Scottish Ministers may also disclose all information submitted to them to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland, in right of the Scottish Administration or the United Kingdom, and their servants or agents. When disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Scottish Ministers shall if they see fit disclose such information but are unable to impose any restriction upon the information that it provides to Members of the Scottish Parliament, or Members of the United Kingdom Parliament; such disclosure shall not be treated as a breach of this Agreement.
- 5.3 The Grantee shall ensure that all requirements of the Data Protection Laws are fulfilled in relation to the Project.
- 5.4 To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Scottish Ministers publish an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Grantee should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of grant) in both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

## **6. Disposal of Assets**

The Grantee shall not, without prior written consent of the Scottish Ministers, dispose of any asset funded, in part or in whole, with Grant funds, within 5 years of the asset being acquired or developed if applicable. During that period the Scottish Ministers 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. The Scottish Ministers shall also be entitled to the relevant proportion of any proceeds resulting from any provision included as a condition of sale.

## **7. Publicity**

The Grantee shall where reasonably practicable acknowledge in all publicity material relating to the Project the contribution of the Scottish Ministers to its costs. The Scottish Ministers may require to approve the form of such acknowledgement prior to its first publication. The Grantee agrees that Scottish Ministers can use data (other than personal data) provided as part of the Claim for information, research and statistical purposes and any such other public policy purposes as may be considered appropriate by the Scottish Ministers.

## **8. Intellectual Property Rights**

- 8.1 All Intellectual Property Rights are hereby assigned to and shall vest in the Crown or its assignees.
- 8.2 The Grantee shall ensure that nothing contained in any materials produced or submitted to the Scottish Ministers in the Claim, or on request by the Grantee or anyone acting on its behalf nor the reproduction of such materials, shall constitute an infringement of any third party copyright or intellectual property right and shall indemnify the Scottish Ministers against all actions, proceedings, claims and demands made by reason of any such infringement.

## **9. Default and Recovery etc. of Grant**

- 9.1 The Scottish Ministers may re-assess, vary, make a deduction from, withhold, or require immediate repayment of the Grant or any part of it in the event that:
  - 9.1.1 The Grantee commits a Default;
  - 9.1.2 The Scottish Ministers consider that any change or departure from the purposes for which the Grant was awarded warrants an alteration in the amount of the Grant;
  - 9.1.3 The Grantee fails to carry out the Project;
  - 9.1.4 In the Scottish Ministers' opinion, the progress on the Project is not satisfactory;
  - 9.1.5 In the Scottish Ministers' opinion, the future of the Project is in jeopardy;
  - 9.1.6 The Grantee provides inaccurate, incomplete or false information in the Claim; or
  - 9.1.7 In the Scottish Ministers' opinion, the Grant is likely to bring the reputation of the Scottish Ministers into disrepute.
- 9.2 If the Grant the (or any part or condition thereof) does not comply with applicable Subsidy Control obligations, Scottish Ministers may require immediate repayment of the Grant or any

part of it together with interest at such rate and on such basis as may be determined from time to time in accordance with law.

9.3 The Scottish Ministers may withhold the payment of the Grant if at any time within the duration of the Agreement:

9.3.1 The Grantee passes a resolution that it be wound up, or a court makes an order that the Grantee be wound up, in either case otherwise than for the purposes of reconstruction or amalgamation, or circumstances arise which would enable a court to make such an order or the Grantee is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

9.3.2 Where the Grantee is an individual, if a petition is presented for the Grantee's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Grantee; or the Grantee makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage his affairs; or

9.3.3 A receiver, manager, administrator or administrative receiver is appointed to the Grantee, or over all or any part of the Grantee's property, or circumstances arise which would entitle a court or a creditor to appoint such a receiver, manager, administrator or administrative receiver.

9.4 In the event that the Grantee becomes bound to pay any sum to the Scottish Ministers in terms of clause 9.1, the Grantee shall pay the Scottish Ministers the appropriate sum within 14 days of a written demand for it being given by or on behalf of the Scottish Ministers to the Grantee. In the event that the Grantee fails to pay the sum within the 14 day period, the Scottish Ministers shall be entitled to interest on the sum at the rate of 2 per cent per annum above the Bank of England base lending rate prevailing at the time of the written demand, from the date of the written demand until payment in full of both the sum and interest. **Error! Hyperlink reference not valid.**

9.5 Notwithstanding the provisions of this clause 9, in the event that the Grantee is in breach of any of the Conditions, the Scottish Ministers may, provided that the breach is capable of a remedy, postpone the exercise of their rights to recover any sum from the Grantee in terms of clause 9 for such period as they see fit, and may give written notice to the Grantee requiring it to remedy the breach within such period as may be specified in the notice. In the event of the Grantee failing to remedy the breach within the period specified, the Grantee shall be bound to pay the sum to the Scottish Ministers in accordance with the foregoing provisions.

9.6 Any failure, omission or delay by the Scottish Ministers in exercising any right or remedy to which they are entitled by virtue of clauses 9.1 to 9.3 shall not be construed as a waiver of such right or remedy.

## **10. Assignation**

The Grantee shall not be entitled to assign, sub-contract or otherwise transfer its rights or obligations under the Agreement without the prior written consent of the Scottish Ministers.

## **11. Termination**

The Agreement may be terminated by the Scottish Ministers giving not less than 3 months' notice in writing from the date of the notice being sent.

## **12. Corrupt Gifts and Payments of Commission**

The Grantee shall ensure that its employees shall not breach the terms of the Bribery Act 2010 in relation to this or any other grant. The Grantee shall ensure that adequate controls are in place to prevent bribery.

## **13. Continuation of Conditions**

13.1 These Conditions, except for Condition 6, shall continue to apply for a period of 5 years after the end of the financial year in which the final instalment of the Grant was paid.

13.2 Condition 6 shall continue to apply until the end of the period referred to in that Condition.

## **14. Compliance with the Law**

The Grantee shall ensure that in relation to the Project, they and anyone acting on their behalf shall comply with the relevant law, for the time being in force in Scotland.

## **15. Governing Law**

This Agreement is governed by the Law of Scotland and the parties hereby prorogate to the exclusive jurisdiction of the Scottish Courts

## **SCHEDULE 1**

### **PAYMENT OF GRANT**

1. The total Grant of up to the amount claimed in the Claim shall be payable by the Scottish Ministers to the Grantee within 90 days of receipt of a completed Claim together with the associated evidence and information set out in the Claim and the Scheme Guidance.
2. Each claim shall be for an amount equal to the costs permitted and eligible as set out in the Scheme Guidance.
3. Each Claim shall be submitted together with such explanatory or supplementary material as the Scottish Ministers may from time to time require whether before or after submission of the Claim.
4. On receipt of each Claim (and any required documentation and information), the Scottish Ministers shall determine the amount of expenditure which they consider the Grantee is eligible for in connection with the Project having regard to that Claim and Scheme Guidance. The determination shall be based on the information provided by the Grantee in accordance with the Scheme Guidance. The Scottish Ministers shall use their best endeavours (but shall be under no obligation or duty) to pay the amount determined to the Grantee within 90 days of receiving an Claim and any required documentation and information relevant to the Claim.

## SCHEDULE 2

### DEFINITIONS

**“Agreement”** means the agreement constituted by the Scottish Ministers’ invitation to apply for a grant online, the Grantee’s Claim, these Conditions and the Grantee’s acceptance of these Conditions.

**“Conditions”** means these grant conditions applicable to any Claim made by a Grantee.

**“Claim”** the Grantee’s claim for funding in line with the Scheme Guidance.

**“Data Protection Laws”** means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data in the UK to which a party is subject including the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and the UK GDPR as amended from time to time.

**“Default”** means:

- a) Any breach of the obligations of either party under this Agreement (including, but not limited to, any breach of any undertaking or warranty given under or in terms of this Agreement);
- b) Any failure to provide accurate, correct and up to date information in the Claim;
- c) Any failure to perform or the negligent performance of any obligation under this Agreement;
- d) Any breach of any legislation; or
- e) Any negligence or negligent or fraudulent miss-statement or misappropriation of Grant, or any other default,

In all cases by either party, its employees, agents or representatives.

**“Financial Year”** means a period from 1 April in one year until 31 March in the next.

**“Grant”** means the grant offered by the Scottish Ministers to the Grantee as applied for and for the sum set out in the Claim, as varied from time to time in accordance with these Conditions and/or the Scheme Guidance.

**“Grantee”** means the eligible person, organisation or body to which the Grant will be payable as specified in these Conditions, the Scheme Guidance and in line with the sums eligible and claimed for in the Claim. Where two or more persons, organisations or bodies are the Grantee, references to the “Grantee” are to those persons, organisations or bodies collectively and their obligations under the Agreement are undertaken jointly and severally.

**“Intellectual Property Rights”** means all copyright, patent, trademark, design right, database right and any other right in the nature of intellectual property whether or not registered, in any materials or works in whatever form (including but not limited to any materials stored in or made available by means of an information technology system and the computer software relating thereto) which are created, produced or generated as part of the Project by or on behalf of the Grantee.

**“Payment”** means each of the payments specified in the Claim.

**“Project”** means the purpose for which the Grant has been awarded as described in more detail in the Scheme Guidance and as applied for by the Grantee in the Claim.

**“Scheme Guidance”** means the “Preparing for Sustainable Farming (PSF) Guidance” available on Scottish Government Rural Payments and Inspections website:

<https://www.ruralpayments.org/topics/all-schemes/preparing-for-sustainable-farming--psf/>

**“Subsidy Control”** means the United Kingdom’s international commitments on subsidy control arising from, amongst others, the EU-UK Trade and Cooperation Agreement, World Trade Organisation Membership and commitments arising from international treaties and agreements to which the United Kingdom is a party.

**“UK GDPR”** is as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.