

DATED

~~2017~~2018

CORNWALL COUNCIL

-AND-

LISKEARD TOWN COUNCIL

**AGREEMENT**

TO

Run and Manage Westbourne Gardens, Liskeard  
Cornwall

**THIS AGREEMENT** is made the    day of    2017~~2018~~

**BETWEEN :**

1. **THE CORNWALL COUNCIL** of Treyew Road, Truro, Cornwall TR1 3AY of the first part; and
2. **THE LISKEARD TOWN COUNCIL** of 3/5. West Street, Liskeard, Cornwall, PL14 6BW of the second part (each individually a “Party” and together “the Parties”)

**WHEREAS:**

- (A) The Gardens have for many years past been used as a recreational area and public open space whereon various events have been permitted to take place.
- (B) The Gardens are land within the control and ownership of Cornwall Council who run the Gardens under non statutory function powers conferred by a number of pieces of legislation.
- (C) By virtue of section 101 of the Local Government Act 1972 a local authority may arrange for the discharge of any of their functions by any other local authority. At the request of Cornwall Council the Liskeard Town Council has agreed to manage the Gardens jointly with Cornwall Council.

**IT IS AGREED** as follows:-

1. **DEFINITIONS**

- 1.1 In this Agreement the following words and expressions have the following meanings unless inconsistent with the context

**“Activity” or “Activities”** means any event, organised activity or assemblage of people for any purpose whatsoever approved by the Liskeard Town Council and the Cornwall Council.

**“Activity Plan”** means a description in writing of the planned Activities and shall include such details and documents as may be necessary for the Parties to discharge their duties under this Agreement or otherwise.

**“Agreement”** means this Agreement and the attached Schedules.

**“Confidential Information”** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data and Special Categories of Data within the meaning of the Data Protection Legislation. Confidential Information shall not include information which:

(i) was public knowledge at the time of disclosure (otherwise than by breach of clause 11 (Confidential Information: Disclosure of Information and Freedom of Information));

(ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

(iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or

(iv) is independently developed without access to the Confidential Information;

**“Consent Notice”** means the consent of an individual to the sharing of their

Personal Data for the provision of the Services:

**“Commencement Date”** means the date of this Agreement

**“Data Controller”** has the meaning given to it in the Data Protection Legislation;

**“Data Guidance”** means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy or compliance with Data Protection Legislation (whether specifically mentioned in this Agreement or not) to the extent published and publicly available or their existence or contents have been notified to the Service Provider by the Council and/or any relevant Regulatory Body;

**“Data Processor”** has the meaning given to it in the Data Protection Legislation;

**“Data Protection Legislation”** means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC both superseded by the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679), the Data Protection Act 2018 (which incorporates Directive (EU) 2016/680 – Law Enforcement Directive, the Digital Economy Act 2017, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2010 (SI2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC and subsequent amendments, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy including, where applicable, the guidance and codes of practice issued by the Information Commissioner;

**“Data Protection Officer”** has the meaning set out in the Data Protection Legislation;

**“Data Subject”** has the meaning given to it in Data Protection Legislation;

**"EIR"** means the Environmental Information Regulations 2004;

**"Fees"** shall mean all payments to be made by the Hirer to the Liskeard Town Council for the use of the Gardens, as shall be agreed by Cornwall Council, following annual review by the Stakeholder Group.

**"FOIA"** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Authority or relevant government department in relation to such legislation and the Environmental Information Regulations 2004;

**"Hirer"** means any person or persons who use the Gardens or part of the Gardens for an Activity permitted by the Liskeard Town Council whether or not for a fee.

**"Indirect Losses"** means loss of profits (other than profits directly and solely attributable to the provision of the Services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis;

**"Information Governance Lead"** means the individual responsible for information governance and for providing the Service Provider with regular reports on information governance matters, including details of all incidents of data loss and breach of confidence;

**"Joint Data Controller"** shall have the meaning given it in the Data Protection Legislation;

**"Law"** means any law, statute, subordinate legislation within the

meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body or Relevant Authority with which the Service Provider is bound to comply;

**“Losses”** means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, excluding Indirect Losses.

**“Management Group”** means such group as identified in Schedule 1 Part 1

**“Staff”** means all persons employed by the Liskeard Town Council to perform its obligations under this Agreement together with the Liskeard Town Council’s servants, agents, service providers, sub-contractors and volunteers used in the performance of its obligations under this Agreement.

**“Personal Data”** has the meaning given to it in the Data Protection Legislation;

**“Personal Data Breach”** has the meaning given to it in the Data Protection Legislation;

**“Privacy Notice”** means the information that must be provided to a Data Subject under the Data Protection Legislation;

**“Privacy Notice”** means the information that must be provided to a Data Subject under the Data Protection Legislation;

**“Right of Access, Rectification or Erasure Request”** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to Data Protection Legislation to access, rectify or erase their Personal Data;

**“Risk Assessment”** means an assessment and quantification of the likely risks an Activity may pose to members of the public, Hirers or any other person and may include recommendations or conditions as to the way an Activity may be conducted.

**“Special Categories of Data”** has the meaning given to it in the Data Protection Legislation;

**“Stakeholder Group”** means such group comprising representatives as set out in Schedule 1 Part II.

**“the Plan”** means the Plan attached at Schedule 5.

**“the Gardens”** means that area of land for identification purposes only shown edged red on the Plan.

1.2 The masculine shall include the feminine and the neuter and vice versa and the singular shall include the plural and vice versa.

1.3 References herein to any Statute, Act of Parliament or Statutory Instrument shall be deemed to include any Statute, Act of Parliament or Statutory Instrument for the time being replacing amending or modifying the same, whether enacted before or after the date of this Agreement.

## **2. COMMENCEMENT AND DURATION**

2.1 The Agreement shall commence on the date shown above. The Agreement will continue in force for ten (10) years from the Commencement Date unless terminated earlier in accordance with the following conditions:

2.1.1. both Parties agree that it should be terminated

2.1.2 either of the Parties giving six (6) months' notice in writing to the other of its intention not to be bound by this Agreement and that the Agreement shall terminate upon the expiry of the notice.

2.1.3 the Liskeard Town Council breaches any of its obligations under this Agreement and fails to remedy such breach to the ~~reasonable~~ full satisfaction of the Cornwall Council within thirty (30) days of receiving written notice

2.2 The terms of this Agreement shall be reviewed every twelve months, by the Stakeholder Group at a meeting. The meeting shall discuss matters relevant to this Agreement.

2.3 In the event that the Stakeholder Group proposes any amendments to the Agreement, it shall submit them to Cornwall Council whose sole decision it shall be as to whether or not to amend the Agreement.

### **3. THE LISKEARD TOWN COUNCIL'S OBLIGATIONS**

3.1 The Liskeard Town Council shall manage the Gardens and any Activities taking place in it in accordance with this Agreement.

3.2 The Liskeard Town Council shall not book any Activity restricted by categories contained in Part II of Schedule Two.

3.3 The Liskeard Town Council shall co-ordinate all Activities and ensure that there is no conflict between any of the Activities.

3.4 The Liskeard Town Council shall ensure that it has received from and agreed with the Hirer an Activity Plan before approving any application for an Activity to take place in the Gardens.



- 3.5 The Liskeard Town Council shall ensure it has received sufficient information in order to:
- 3.5.1 provide sufficient time and space for the Activity;
  - 3.5.2 allow such measures as are required to protect the ground and structure of the Gardens to be implemented;
  - 3.5.3 allow an accurate assessment of Fees to be made.
- 3.6 The Liskeard Town Council shall not approve any application for an Activity if it cannot approve the Risk Assessment.
- 3.7 Prior to any Activity being approved, the Liskeard Town Council will undertake an assessment of the appropriate safeguarding measures required. The Liskeard Town Council will satisfy itself that if the Activity should require the Hirer, its staff or volunteers to have a DBS check (formerly Criminal Records Bureau (CRB)) check then the Hirer has proper procedures to ensure that these are carried out.
- 3.8 The Liskeard Town Council will ensure that its Staff have awareness and have received training in safeguarding so as to enable it to satisfactorily comply with clause 3.7 and clause 9.
- 3.9 The Liskeard Town Council may require the Hirer at the Hirer's own expense to produce a Risk Assessment for the Liskeard Town Council to approve or may use an agent as necessary to carry out a Risk Assessment.
- 3.10 The Liskeard Town Council shall enter into an agreement with Hirers of the Gardens as part of the booking arrangements. Such agreement shall require payment of the appropriate Fee and include terms that shall require the Hirer to:

3.10.1 obtain adequate insurance prior to any Activity taking place and to supply them with evidence that such insurance is in place

3.10.2 comply with Health and Safety conditions;

3.10.3 comply with conditions relating to noise to ensure that it does not create a nuisance to local residents;

3.10.4 to publicise the start and finish times of any event; and

3.10.5 comply with any other such terms as agreed between the Parties.

3.10.6 acknowledge that despite entering into an agreement with the Liskeard Town Council the use and occupation of the Gardens by the Hirer is as licensee only, no relationship of landlord and tenant has been created and the Cornwall Council retains full and ultimate control occupation and ownership of the Gardens.

3.10A The Liskeard Town Council acknowledges that in entering into this Agreement with the Cornwall Council and in entering into any agreements with Hirers its use and occupation of the Gardens is merely as licensee, no relationship of landlord and tenant has been created and the Cornwall Council retains full and ultimate control, exclusive occupation and ownership of the Gardens. The Liskeard Town Council shall ensure it retains appropriate control and possession of the Gardens so as not to impede the Cornwall Council's overall interest and occupation of the Gardens and in accordance with its obligations under this Agreement.

3.11 The Liskeard Town Council shall ensure that any Hirer who is using electrical equipment which is to be either powered by a generator or mains shall be suitably tested and the Liskeard Town Council will request a copy of the relevant certificate for their records.

- 3.12 Any Hirer requesting a period of hire or use of any part of the Gardens for a period of more than fourteen (14) consecutive days in any one (1) calendar year shall require a written licence to be issued. The Liskeard Town Council will seek approval from Cornwall Council when receiving a request of this nature. The decision to grant a licence will be made by Cornwall Council and representatives of the Management Group. The licence will be issued by Cornwall Council and managed by the Liskeard Town Council. No licence shall be issued for a period greater than four months.
- 3.13 The Liskeard Town Council shall refer all issues relating to repair and maintenance of street lighting or highways, in the first instance to the Cornwall Council directly at the following email address [environreactiveworks@cormacltd.co.uk](mailto:environreactiveworks@cormacltd.co.uk).
- 3.14 The Liskeard Town Council shall be responsible at its own cost for any cleansing or collection of litter and refuse caused by any Activity, notwithstanding its discretion to require Hirers to carry out cleansing or collection of litter and refuse as part of the conditions of hire.
- 3.15 The Liskeard Town Council shall carry out at its own cost all those maintenance activities assigned to it in Schedule Three.
- 3.16 The Liskeard Town Council shall allow Cornwall Council to use the Gardens without any charge being payable provided that:-
- 3.16.1 Cornwall Council gives Liskeard Town Council written notice of the times, dates, and Activity that the Cornwall Council requires;
- 3.16.2 the time and use or proposed use does not interfere with any Activity which has been previously approved by the Liskeard Town Council.
- 3.17 Cornwall Council shall acting reasonably have the right to withhold permission for any Activity proposed to be carried out in the Gardens, ~~not to be unreasonably withheld~~.

3.18 The Liskeard Town Council shall inform Cornwall Council promptly and confirm in writing if it is unable to or fails to carry out any of its obligations in accordance with this Agreement. The provision of information under this clause 3.18 shall not in any way release or excuse the Liskeard Town Council from any of its obligations under this Agreement.

3.19 ~~The Liskeard Town Council shall at all times (where relevant) comply with Cornwall Council's Contract Procedure Rules and Financial Regulations and all policies and procedures as may be amended from time to time.~~ Not Used.

3.20 If the Liskeard Town Council is unable or fails to comply with its obligations or any part thereof in accordance with the requirements of clause 3, Cornwall Council may itself provide or may employ and pay other persons to fulfil the requirements of this Agreement or any part thereof and any additional ~~reasonable~~ costs incurred thereby shall be recoverable from the Liskeard Town Council by Cornwall Council as a debt. Cornwall Council's rights under this clause shall be without prejudice to any other rights or remedies which it may possess.

#### **4. CORNWALL COUNCIL'S OBLIGATIONS**

4.1 Cornwall Council shall be responsible for the routine cleansing and collection of litter and refuse from the Garden.

4.2 Cornwall Council will use reasonable endeavours to ensure that the Garden is maintained in a safe condition.

4.3 Without prejudice to clause 4.1, Cornwall Council will ensure:

4.3.1 all trees are regularly inspected;

4.3.2 all street furniture is kept in a safe and tidy condition; and

4.3.3 any maintenance assigned to it in Schedule Four is carried out.

4.4 Cornwall Council shall use reasonable endeavours to ensure that the structural integrity of the Gardens together with the any part underlying a highway and spanning across and culvert and/or drain, and the perimeter walls, fences and hedges are fully maintained.

## **5. ALTERATIONS AND ADDITIONS**

5.1 Cornwall Council will permit the Liskeard Town Council to create a double entrance at the points marked 'A' and 'B' on the Plan together with the grant of all necessary rights of vehicular access in order to use the new entrance. Any consent granted under this clause 5.1 shall not exempt the Liskeard Town Council from the obligation to apply for formal planning and other required consents prior to the work being carried out.

5.2 In the event that the Liskeard Town Council wish to create an energy supply in the Gardens, it shall notify the Cornwall Council of its plan and submit plans, prior to carrying out any work. The Cornwall Council shall notify the Liskeard Town Council as soon as reasonably possible, of its decision in relation to the proposed works. Any consent granted under this clause 5.2 shall not exempt the Liskeard Town Council from the obligation to apply for formal planning and other required consents prior to the work being carried out.

## **6. ACCOUNTS**

6.1 The Liskeard Town Council shall keep complete accounts and financial records relating to all Activities undertaken in the Gardens including all Fees paid to it and evidence of expenditure in relation to the Activities and its obligations under this Agreement.

6.2 The Liskeard Town Council shall permit inspection and provide copies of such accounts and records by Cornwall Council (or such officer(s) authorised for this purpose) at any time Cornwall Council reasonably demands.

6.3 The Liskeard Town Council shall be entitled to retain all income from the Gardens as long as such income is re-invested for the purpose of the Activities in the Gardens or other purposes in relation to the Gardens including administration cost. The combined Stakeholder/ Management Group will oversee the spending of the budget. The Liskeard Town Council will create and maintain a cost centre specifically for the Garden's budget.

6.4 Fees for usage of the Gardens shall be reviewed on an annual basis by the Stakeholder Group.

6.5 The Liskeard Town Council is to provide Cornwall Council with updates every twelve (12) months in respect of the following:-

6.5.1 The income generated during the previous twelve (12) month period.

6.5.2 The amount of expenditure during the previous twelve (12) month period.

6.5.3 All and any Activities and/or events that the Liskeard Town Council is reasonably aware of at the time of updating Cornwall Council that have been booked which will take place during the next twelve (12) month period.

6.5.4 If the income exceeds the expenditure at the site and there is no requirement for investment at the site then the profits shall be shared between Cornwall Council and Liskeard Town Council.

## **7. INSURANCE AND INDEMNITIES**

7.1 The Liskeard Town Council shall maintain public liability and third party insurance of the sum of Ten Million Pounds (£10,000,000) and produce a copy of such policy to Cornwall Council if so required.

7.2 The Liskeard Town Council shall indemnify Cornwall Council against any claims arising from Activities supervised by it under this Agreement.

7.3 The Liskeard Town Council shall indemnify the Cornwall Council against any losses that arise from the management of the Gardens by the Liskeard Town Council.

## **8. THE MANAGEMENT AND STAKEHOLDER GROUPS**

8.1 A combined Management and Stakeholder Group shall meet Annually and both Parties will ensure that there is officer representation at each meeting and that it shall co-operate fully with those meetings and ensure that the views of representatives are taken into account when any relevant decisions are made.

8.2 The Liskeard Town Council shall ensure meetings with the Management and Stakeholder Group are held once a year to which Officers and stakeholders shall be invited in advance and upon reasonable notice.

8.3 The Management Group will approve the annual programme of events and activities and will review these at each Management Group meeting.

8.4 The Liskeard Town Council shall ensure meetings with other user groups are held when deemed necessary to which the Cornwall Council shall be invited.

## **9. SAFEGUARDING**

9.1 The Liskeard Town Council shall put or have in place a safeguarding policy which reflects and complements the relevant statutory provisions relating to safeguarding children and/or vulnerable adults and Cornwall Council's safeguarding policies and procedures.

9.2 The Liskeard Town Council shall submit its safeguarding policy to Cornwall Council for approval. The Liskeard Town Council must incorporate any amendments to the policy which may be advised by Cornwall Council.

## 10. EQUIPMENT AND MATERIALS

10.1 Except as otherwise specified in this Agreement, the Liskeard Town Council shall provide all equipment and materials reasonably necessary in order for it to carry out its obligations under this Agreement. Any equipment used by Liskeard Town Council belonging to Cornwall Council, which is damaged, lost or unduly worn due to negligence, misuse, or wilful action by the Liskeard Town Council or its employees or other persons for whose action it is responsible, must be replaced at the Liskeard Town Council's own expense.

## 11. CONFIDENTIALITY; DATA PROTECTION AND FREEDOM OF INFORMATION

### 11.1 CONFIDENTIALITY

11.1.1 Except where otherwise provided for in this Agreement, Confidential Information is owned by the Party that discloses it (the "Disclosing Party") and the Party that receives it (the "Receiving Party") has no right to use it.

11.1.2 Subject to clauses 11.1.3 and 11.1.4, the Receiving Party agrees:

- (a) to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Agreement;
- (b) not to disclose the Disclosing Party's Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
- (c) to maintain the confidentiality of the Disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.

11.1.3 The Receiving Party may disclose the Disclosing Party's Confidential Information:

- (a) in connection with any dispute resolution under clause 18 (Dispute Resolution);
- (b) in connection with any litigation between the Parties;
- (c) to comply with the law;
- (d) to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in clause 11.1.2;



(e) to comply with a regulatory bodies request.

11.1.4 The obligations in clause 11.1.1 and clause 11.1.2 will not apply to any Confidential Information which:

(a) is in or comes into the public domain other than by breach of this Agreement;

(b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or

(c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.

11.1.5 The obligations in clause 11.1 and clause 11.2 shall not apply where the Confidential Information is related to an item of business at a board meeting of the Council or of any committee, sub-committee or joint committee of the Council or is related to an executive decision of the Council and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Council shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Service Provider and where reasonably practicable shall consider any representations made by the Service Provider.

## 11.2 INFORMATION GOVERNANCE AND DATA PROTECTION

11.2.1 The Parties must comply with Data Protection Legislation, Data Guidance, the FOIA and the EIR, and must assist each other as necessary to enable each other to comply with these obligations.

11.2.2 The Service Provider must comply with and must demonstrate satisfactory compliance with clause 11.2.1 above.

11.2.3 The Service Provider must:

(a) nominate an Information Governance Lead;

(b) nominate a Data Protection Officer if applicable; and

(c) ensure that the Council is kept informed at all times of the identities and contact details of the Information Governance Lead and the Data Protection Officer if applicable; and

11.2.4 If the Service Provider is required under Data Protection Legislation to notify the Information Commissioner or a Data Subject of a Personal Data Breach then within 48 hours of the breach occurring the Service Provider must inform the Council of the Personal Data Breach, and if the Service Provider will report the breach to the Information Commissioner within 72 hours as is required within the Data Protection Legislation.

11.2.5 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11.2 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.

11.2.6 Whether or not a Party or Sub-Contractor is a Data Controller or Data Processor will be determined in accordance with Data Protection Legislation and any further Data Guidance. The Parties acknowledge that a Party or Sub-Contractor may act as both a Data Controller and a Data Processor, or a Joint Data Controller.

11.2.7 Without prejudice to the generality of clause 11.2, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Service Provider for the duration and purposes of this Agreement.

11.2.8 Where required under Data Protection legislation, the Service Provider shall ensure that it has a Privacy Notice or Consent Notice in place.

11.2.9 Any failure by the Service Provider to inform individuals as required by Data Protection Legislation or Data Guidance about the uses of Personal Data that may take place under this Agreement cannot be relied on by the Services Provider as evidence that such use is unlawful and therefore not contractually required.

11.2.10 Without prejudice to the generality of clause 11.2, the Service Provider must ensure that all Personal Data processed by or on behalf of the Service Provider in the course of delivering the Services is processed in accordance with the relevant Parties' obligations under Data Protection Legislation and Data Guidance. The Service Provider shall:

- (a) process Personal Data only on the written instructions of the Council, unless the Service Provider is required by the laws of any member of the European Union or by the laws of the European Union (Applicable Laws) applicable to the Service Provider to otherwise process the Personal Data. Where the Service Provider is so required, it shall promptly notify the Council before processing the Personal Data, unless prohibited by the Law;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
- (i) the Council or the Service Provider has provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject has enforceable rights and effective remedies;
  - (iii) the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Service Provider complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

(d) notify the Council as soon as reasonably practicable if it receives:

(i) a request from a Data Subject to have access to that individual's Personal Data;

(ii) a Right of Access, Rectification or Erasure Request;

(iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);

(e) at the Service Provider's expense, assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) at the written direction of the Council, delete or return Personal Data and copies thereof to the individual on termination or expiry of this Agreement unless required by the Applicable Laws to store the Personal Data;

(g) maintain complete and accurate records and information to demonstrate its compliance with this clause 11.2 and allow for audits by the Council or the Council's designated auditor pursuant to clause 6 (Audit).

11.2.11 Where the Council requires information for the purposes of quality management, the Service Provider must consider whether the Council's request can be met by providing anonymised or aggregated data which does not contain Personal Data. Where Personal Data must be shared in order to meet the requirements of the Council, the Service Provider must:

(a) provide such information in pseudonymised form where possible; and in any event

(b) ensure that there is a legal basis for the sharing of Personal Data.

11.2.12 Subject always to clause 15 (Assignment and Sub-Contracting), if the Service Provider is to engage any Sub-Contractor to deliver any part of the Services (other than as a Data Processor) and the Sub-Contractor is to

access personal or confidential information or interact with individuals, the Service Provider must impose on its Sub-Contractor obligations that are no less onerous than the obligations imposed on the Service Provider by this clause 11.2.

11.2.13 The Service Provider shall indemnify the Council against any Losses incurred by the Council arising from, or in connection with, any breach of the Service Provider's obligations under this clause 11.2.

11.2.14 Notwithstanding any other provision of this Agreement, where the Service Provider commits a Personal Data Breach which under Data Protection Legislation must be notified to the Information Commissioner and/or to an individual the Council may terminate this Agreement with immediate effect.

### 11.3 FREEDOM OF INFORMATION AND TRANSPARENCY

11.3.1 The Parties acknowledge their respective duties under the FOIA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

11.3.2 If the Service Provider is not a public authority, the Service Provider acknowledges that the Council is subject to the requirements of the FOIA and will assist and co-operate with the Council to enable the Council to comply with its disclosure obligations under the FOIA. Accordingly the Service Provider agrees:

(a) that this Agreement and any other recorded information held by the Service Provider on the Council's behalf for the purposes of this Agreement are subject to the obligations and commitments of the Council under the FOIA;

(b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Council;

(c) that if the Service Provider receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Council) and will promptly (and in any event within 2 working days) transfer the request to the Council;

(d) that the Council, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may

disclose information concerning the Service Provider and this Agreement either without consulting with the Service Provider, or following consultation with the Service Provider and having taken its views into account; and

(e) to assist the Council in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by an authority within 5 working days of such request and without charge.

11.3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information.

11.3.4 Notwithstanding any other provision of this Agreement, the Service Provider hereby consents to the publication of this Agreement in its entirety including from time to time agreed changes to this Agreement subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.

11.3.5 In preparing a copy of this Agreement for publication pursuant to clause 11.1.4 the Council may consult with the Service Provider to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Council's absolute discretion.

11.3.6 The Service Provider shall assist and co-operate with the Council to enable the Council to publish this Agreement.

11.3.7 In order to comply with the Government's policy on transparency in the areas of Agreements and procurement the Council will be disclosing information on its website in relation to expenditure over £500 (five hundred pounds) in relation to this Agreement. The information will include the Service Provider's name and the Charges paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.

11.3.8 The Service Provider shall comply with any requirements (including compliance with any appropriate information assurance scheme and the Computer Misuse Act 1990) in relation to its security policies, procedures and

control of Confidential Information, Personal Data and Special Categories of Data.

11.3.9 The Service Provider shall be responsible for any costs associated with compliance with the provisions of this clause 11.

11.4 The Service Provider shall indemnify the Council and shall keep the Council indemnified against Losses and Indirect Losses suffered or incurred by the Council as a result of any breach of this clause 11.

11.5 The Parties acknowledge that damages may not be an adequate remedy for any breach of this clause 11, and in addition to any right to damages the Council shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause 11. This clause 11 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

## **12. STATUTORY OBLIGATIONS**

12.1 The Parties shall at all times comply with the requirements of:

12.1.1 the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1992 and all other statutory and regulatory requirements and Cornwall Council's policies and procedures relating to health and safety copies of which are available on request.

12.1.2 the Equality Act 2010 and all other relevant related statutory and regulatory requirements and Cornwall Council's policies and procedures, copies of which are available on request, relating to equal opportunities and shall not treat any person or group of people less favourably than another on the grounds of race, colour, religion, belief, ethnicity, gender, age, disability, nationality, marital status or sexual orientation; and

12.1.3 all statutory and European and domestic statutory and regulatory requirements where relevant to the provision by the Parish Council of the Services and to be observed and performed in connection with this Agreement including any obligations binding upon Cornwall Council

and shall indemnify Cornwall Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever and howsoever arising in respect of any breach by the Parish Council of this clause 12.

### **13. GRATUITIES**

13.1 The Liskeard Town Council and its Staff shall not, whether itself, or by any person employed by it to comply with its obligations under this Agreement, solicit or accept any gratuity or any other reward, tip or any other form of money taking, collection or charge for any part of the services other than charges properly approved by Cornwall Council in accordance with the provisions of this Agreement.

### **14. AGENCY**

14.1 Neither the Liskeard Town Council nor its employees shall in any circumstances hold themselves out:

14.1.1 as being the servant or agent of Cornwall Council otherwise than in circumstances expressly permitted by this Agreement;

14.1.2 as being authorised to enter into any Agreement on behalf of Cornwall Council or in any other way to bind Cornwall Council to the performance, variation, release or discharge of any obligation otherwise than in circumstances expressly or implicitly permitted by this Agreement.

14.1.3 as having the power to make, vary, discharge or waive any bylaw or regulation of any kind.



**15. ASSIGNMENT AND SUBCONTRACTING**

15.1 ~~Not Used. Clause deleted.~~

15.2 The Liskeard Town Council shall not:

15.2.1 assign this Agreement or any part thereof or the benefit or advantage of this Agreement of any part thereof

15.2.2 sub-contract its obligations or any part thereof to any person without the previous written consent of Cornwall Council, which consent shall be at the absolute discretion of Cornwall Council and if given shall not relieve the Liskeard Town Council any liability or obligation under this Agreement and the Liskeard Town Council shall be responsible for the acts, defaults or negligence of any sub-contractor or sub-contractor's agents or employees in all respects as if they were the acts, defaults or negligence of the Liskeard Town Council or it's agents, or employees.

**16. WAIVER**

16.1 The waiver by either Party of a breach or default of any of the provisions of this Agreement by the other Party shall not be construed as a waiver of any succeeding breach of the same or other or other provisions nor shall any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege that it has or may have hereunder, operate as a waiver of any breach or default by the other Party.

**17. HEADINGS**

17.1 The headings to the Clauses of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

**18. DISPUTE RESOLUTION**

- 18.1 Any disputes or differences arising between the Parties in respect of the construction or effect of this Agreement, or the rights, duties and liabilities of the Parties hereinunder, or any matter or event connected with or arising out of this Agreement shall be resolved by the Parties negotiating in good faith.
- 18.2 In the absence of resolution in accordance with clause 18.1 above the dispute may be referred by this Agreement of both Parties to a single mediator to be appointed in accordance with the mediation procedures of the Centre for Effective Dispute Resolution (CEDR) Model Mediation procedure 2001 or such later edition as may be in force from time to time or such other organisation which provides mediation services. The mediator shall be agreed upon by the Parties.
- 18.3 All costs of mediation shall be borne equally by the Parties unless otherwise directed by the mediator.
- 18.4 The submission of either Party to clause 18.2 above shall not limit their right to commence any proceedings in any court of competent jurisdiction in England and Wales.

## **19. FORCE MAJEURE**

- 19.1 Either Party reserves the right to defer the services provided under this Agreement if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Cornwall Council including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, fire, explosion, flood, epidemic, lockouts, strikes or other labour disputes (whether or not relating to either party's workforce) or restraints or delays affecting carriers or inability or delay in obtaining supplies or adequate or suitable materials.
- 19.2 If the performance of a Party's obligations under this Agreement is in the opinion of that Party likely to be hindered, delayed or affected by a reason falling

within Condition 19.1 the Party so affected shall promptly notify the other Party in writing of that fact. If such circumstances continue for a continuous period of more than 6 months, either Party may terminate this Agreement by written notice to the other Party.

## **20. LEGAL PROCEEDINGS**

- 20.1 **Either Council will inform the other Council** immediately upon becoming aware of any accident, damage, or breach of any statutory provision relating in any way connected with this Agreement.
- 20.2 If requested to do so **either Council** shall and at its own expense, **provide the other Council** with any relevant information in connection with any litigation, arbitration or other dispute in which **the other** Council may become involved or any relevant disciplinary hearing internal to **the other** Council and shall give evidence in such inquiries or proceedings or hearings, arising in relation to this Agreement.
- 20.3 **Either** Council shall at its own expense fully assist **the other** Council, its internal auditors, the Local Government Ombudsman and the Independent Auditor, and any other body or person as may be specified by Cornwall Council with any investigations, enquiries or complaints relating to allegations of maladministration or other irregularities or improprieties in connection either directly or indirectly with the Agreement such assistance to include the prompt disclosure to such body or person as aforesaid of all relevant information and documentation.
- 20.4 Should any part of the services provided under this Agreement involve **either** Council in performing duties or exercising powers under some other contract it shall upon becoming aware of anything which is likely to give rise to arbitration or litigation under that other contract forthwith notify **the other** Council of any such matter together with such particulars as are available.

## **21. RIGHTS OF THIRD PARTIES**

Unless the Contract (Rights of Third Parties) Act 1999 is expressly stated to apply no person other than the Parties to this Agreement may enforce any term of this Agreement under that Act.

**22. GOVERNING LAW**

This Agreement shall be read and construed according to the laws of England and Wales and shall be enforceable in the Courts of England and Wales.

**IN WITNESS** whereof the Parties have executed this Agreement the day and the year first before written.

**SIGNED for and on behalf of )**  
**CORNWALL COUNCIL )**

.....  
**Authorised Officer**

**SIGNED for and on behalf of )**  
**LISKEARD TOWN COUNCIL )**

.....  
**Authorised Officer**

## **SCHEDULE 1**

List of persons, organisations or bodies comprising the joint Management and Stakeholder Group

- Liskeard Town Council, Town Clerk, Chairman
- Community Link Officer
- Liskeard Town Council Officer (as required)
- Cornwall Council Officer
- Liskeard Town Councillor
- Cornwall Councillor

## **SCHEDULE 2**

### **Part 1**

#### **Activities Permitted (but not limited to)**

##### Live Music e.g.:

Brass/silver bands  
Orchestras  
Celtic/Folk/Jazz/Opera  
Choirs

##### Performers e.g.:

Dance  
Theatre  
Music  
Poetry

##### Events e.g.:

Concerts  
Charity Performers  
Celebrations  
Displays  
Exhibitions  
Plays  
Markets including Local and Continental Markets  
Education and Information Exhibitions

Subject to clause 3.17, any other activities approved by the Management Group

Subject to clause 3.17, activities permitted shall be at the discretion of the Liskeard Town Council but excludes those set out in Schedule 2 Part II below.

**Activities permitted shall also include:-**

**Charity Fund Raising Activities and Events**

Charities seeking to use the area to combine activities and entertainment with fundraising are to be encouraged. Charities seeking only to collect funds will be accommodated on nominated collecting points (agreed in writing by the Liskeard Council).

**Commercial Activities and Events**

Private companies wishing to use the Gardens for promotional purposes will be accepted at a commercial rate as agreed. Commercial activities must not impact on the overall enjoyment of the Gardens for the public. If a Commercial activity is deemed inappropriate Cornwall Council reserves the right to refuse similar activities in the future.

**Political Activities**

Any such activities shall only be permitted with the prior consent of Cornwall Council and will be subject to such controls as Cornwall Council and/or the Liskeard Town Council wish to impose following receipt of any comments/recommendations of the Management Group. In any event access to the Gardens shall not be restricted to any particular political party or group.

**Part II**

**Activities Not Permitted**

- Activities using heavy plant and machinery such as Fun Fairs, Steam Fairs, and Steam Engine Displays will be restricted as to their specific location.
- Activities that will or are likely to damage the surface and/or underlying material fabric of the Garden and/or the furniture of the Garden

- Activities which are likely to cause excessive noise or other form of nuisance or be offensive to morals or otherwise
- Activities that due to their size or nature is likely to be controversial or contentious and/or impact on the rest of the Town unless Cornwall Council has been consulted in writing and agree to it, prior to such Activity taking place.
- Any permitted Activities over Fourteen (14) consecutive days in any one (1) calendar year shall require an approved licence.



**SCHEDULE 3**  
**Obligations of the Liskeard Town Council**

1. To comply with the requirements of this Agreement and in particular the obligations listed in clause 3.
2. To arrange and maintain and pay for water and electricity supply if installed.
3. Not to construct erect or give permission for the construction or erection of any permanent object or objects in the Gardens without the prior written consent of Cornwall Council whose decision as to the suitability of such object or objects shall be final and binding.
4. To provide locks and keys for all gates, electric and water consoles.
5. To keep the grass cut and the Gardens generally in a tidy condition.

**Schedule 4**  
**Obligations of Cornwall Council**

1. To empty litter bins and collect refuse other than as provided above
  2. To manage the health and safety of the mature Trees now growing in the Garden.
  3. To maintain, repair and replace all walls, hedges and footpaths bounding the Gardens.
  4. To maintain, repair, renew and replace all pipes, wires, drains and other conduits required to provide a supply of electricity, water and drainage to existing infrastructure, other than that supplied by Liskeard Town Council.
  5. To maintain, repair and replace (where necessary) seats and benches
- Note- where upgrading of the existing site street furniture is required the income received under 6.3 shall be used before a request is made to Cornwall Council

**Schedule 5**  
**The Plan**