

**General terms and conditions of contract of East Hampshire District
Council for voluntary litter picking**

WHEREAS:

- A. Unless the context requires otherwise, defined terms used in the Licence shall have the same meaning whenever used in these terms and conditions.
- B. The Voluntary Group has applied to the Council to carry out the Permitted Activity on the Council's Land.
- C. The Council has agreed to permit the Voluntary Group to enter the Council's Land during the Licence Period to carry out the Permitted Activity only and for no other purpose whatever.
- D. These terms and conditions and the Licence set out the basis on which the Permitted Activity will be carried out on the Council's Land as well as the Voluntary Group's obligations.
- E. The Council and the Voluntary Group each agree and acknowledge their mutual intention to be legally bound by the Licence and these terms and conditions, acknowledging that the obligations imposed by both of the aforementioned constitute valid legal and binding obligations enforceable against either party.

Now it is agreed

1. Definitions and Interpretation

- 1.1. In this Agreement, unless the context otherwise requires the following terms shall have the meanings given to them hereunder: -

“Agreement” These terms and conditions, in combination with the Licence

“Commencement Date” The date of the Licence.

“Council” East Hampshire District Council of Monterey House
Bedford Road Petersfield Hampshire GU32 3LJ

“Council's Land” The land more particularly described in the Licence.

“Data Protection Legislation”	all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) (DPA 2018); and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other successor regulatory authority.
“Designated Hours”	Those designated hours of use of the Council’s Land as specified in the Licence.
“Intellectual Property Rights”	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
“Interest in Default”	means interest at the rate of 4% over the Bank of England base lending rate from time to time in force.
“Licence”	means the litter picking approval licence as entered into between the Council and the Voluntary Group and as signed by both of them and dated.
“Licence Period”	the licence period as set out in the Licence.
“Permitted Activity”	the permitted activity set out in the Licence.
“Personal Data”	Has the meaning given to the corresponding term under Article 4 of UK GDPR.

“UK GDPR”	Has the meaning given to it in section 3(10) of the DPA 2018 (as supplemented by section 205(4) of the DPA 2018).
“Voluntary Group”	the person or persons, organisation, company, partnership, limited liability partnership, charity, registered society, unincorporated association or other entity whatever listed in the Licence.
“Working Day”	A day other than a Saturday, Sunday or bank or public holiday in England.

- 1.2. The **titles** or **headings** appearing in the Agreement are for reference only and shall not affect its construction.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
- 1.7. Unless expressly provided otherwise in this Agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8. Unless expressly provided otherwise in this Agreement, a reference to legislation or a legislative provision includes all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.9. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.10. The Data Protection Schedule forms part of these terms and conditions and shall have effect as if set out in full in the body of these terms and conditions. Any reference to this Agreement includes the Data Protection Schedule.

2. Voluntary Group's Obligations

- 2.1 Prior to the commencement of the Permitted Activity, the Voluntary Group will obtain all necessary licences permissions and consents (whether of a public or private nature) required for the implementation of the Permitted Activity and shall ensure that they remain valid throughout the Licenced Period and it shall retain copies of all of those licences permissions and consents. The Council can demand to see all of the aforesaid and the Voluntary Group will promptly provide copies of all of the aforesaid.
- 2.2 The Council permits the Voluntary Group to access and occupy the Council's Land for the Permitted Activity only and only during the Designated Hours and only for the Licence Period (subject to any early termination pursuant to these terms and conditions) in common with the Council and all others authorised by the Council.
- 2.3 The Council gives no warranty that the Council's Land possesses any necessary consents (whether of a public or private nature) for the Permitted Activity.
- 2.4 The Council gives no warranty that the Council's Land is physically fit and/or suitable for the Permitted Activity.
- 2.5 The Voluntary Group acknowledges that it does not rely on, and shall have no remedies whatever in regard to, any representation or warranty (whether made innocently or otherwise) that may have been made by or on behalf of the Council before the date of the Licence as to any of the matters mentioned in clauses 2.3 and 2.4.
- 2.6 The Voluntary Group is solely responsible for all health and safety aspects of the Permitted Activity including without limitation it must carry out or procure any mandatory and/or recommended health and safety assessments and any other risk assessments applicable to the Permitted Activity.
- 2.7 Without prejudice to the generality of the preceding provision, the Voluntary Group shall be solely responsible for the safety of any of its property and equipment used as part of the Permitted Activity.
- 2.8 Without prejudice to the generality of clause 2.9, the Voluntary Group shall maintain current and accurate records of all work carried out as part

of the Permitted Activity and such records shall include full details of any expenditure incurred thereby and if so demanded by the Council the Voluntary Group shall:

- 2.8.1 provide the Council with prompt access to such records and other relevant data and otherwise provide to the Council within a reasonable period of time such evidence as the Council may require in order to review that the Voluntary Group carried out the Permitted Activity and to verify whether the Voluntary Group otherwise complied with the Agreement; and
 - 2.8.2 serve any notices on any persons and carry out any other relevant tasks in order to comply with the Data Protection Legislation in connection with allowing the Council access to any Personal Data of those affected persons arising out of clause 2.8.1.
- 2.9 The Voluntary Group shall following demand by the Council promptly provide to the Council any information in connection with the Permitted Activity.
- 2.10 The Voluntary Group must not cause or permit the Council's Land to become unclean or dirty.
- 2.11 The Voluntary Group must not make any alteration or addition of any nature whatever to the Council's Land.
- 2.12 The Voluntary Group must not display any advertisement, signboards, nameplate, inscription, flag, banner, placard, poster, signs or notices related to the Permitted Activity at or on the Council's Land or at or on any other land within the Council's proprietorship without the prior written consent of the Council.
- 2.13 The Voluntary Group must not do or permit to be done on the Council's Land anything which is illegal or which may be or become a nuisance (whether actionable or not), annoyance, inconvenience or disturbance to the Council or to tenants or occupiers of the Council's Land or to any owner or occupier of neighbouring property or to members of the public.
- 2.14 The Voluntary Group must not cause or permit to be caused any damage of any nature to the Council's Land or to any other land or property within the Council's proprietorship or to any neighbouring buildings or land.
- 2.15 The Voluntary Group must not apply for any planning permission in regard to the Council's Land.

- 2.16 The Voluntary Group must not do anything that will or might constitute a breach of any necessary consents affecting the Council's Land or which will or might vitiate in whole or in part any insurance effected by the Council in regard to the Council's Land and/or any property of the Council thereon from time to time.
- 2.17 The Voluntary Group must comply with all laws and with any recommendations of the relevant suppliers relating to electricity, gas, water, sewage, telecommunications and data and other services and utilities which are affected or may be affected by the Permitted Activity.
- 2.18 The Voluntary Group must comply with all rules and regulations the Council makes and notifies to the Voluntary Group from time to time governing the Voluntary Group's use of the Council's Land in connection with the Permitted Activity.
- 2.19 The Voluntary Group must leave the Council's Land in a clean and tidy condition and remove the Voluntary Group's equipment and goods and its persons from the Council's Land at the end of the Licence Period (or any earlier date of termination pursuant to these terms and conditions).
- 2.20 Following either completion of the Permitted Activity or the date on which the Voluntary Group can no longer continue with the Permitted Activity for whatever reason, the Voluntary Group shall promptly notify the Council in writing and following the Council's demand shall promptly send the Council written records and any other data in a form specified by the Council evidencing how all or part of the Permitted Activity was completed and the Voluntary Group must state whether or not the Permitted Activity was successfully implemented.

3. Accounting

- 3.1 The Voluntary Group shall keep detailed accounts of expenditure in connection with the Permitted Activity and receipts in connection thereto for a period of 6 years following either date specified in clause 2.20 and if the Council so demands shall provide the Council or its agents or representatives with copies of as much of the aforesaid information as the Council may reasonably request.
- 3.2 The Voluntary Group shall comply with the Council's demands and facilitate the Council's compliance in connection with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Council.

4. Publicity

- 4.1 Subject to obtaining the prior written approval of the Council the Voluntary Group shall acknowledge the support of the Council for the Permitted Activity in any materials or media that refer to the Permitted Activity and in any written or spoken public presentations about the Permitted Activity. Where authorised in writing by the Council to publicise the Permitted Activity, the Voluntary Group shall abide by all instructions from the Council regarding publicity of the Permitted Activity.
- 4.2 Subject to clause 4.1, all press releases, newspaper articles, social media posts and other communications methods must include:
 - 4.2.1 Any logo or logos prescribed by the Council
 - 4.2.2 Any specific scheme programme text as supplied by the Council from time to time
 - 4.2.3 Any other information prescribed by the Council

5. Termination

- 5.1 The Agreement shall end on the earliest of:
 - 5.1.1 The end date of the Licence Period;
 - 5.1.2 The expiry of a reasonable written period of notice of early termination given by the Council to the Voluntary Group (which can be served by post, email, fax or hand delivery);
 - 5.1.3 With immediate effect by the Council giving the Voluntary Group written notice (which can be served by post, email, fax or hand delivery) if the Voluntary Group commits a breach of any part of the Agreement;
 - 5.1.4 With immediate effect by the Council giving the Voluntary Group written notice (which can be served by post, email, fax or hand delivery) if the Voluntary Group takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors or any other similar matters or processes or procedures (in any jurisdiction);

5.1.5 With immediate effect by the Council giving the Voluntary Group written notice (which can be served by post, email, fax or hand delivery) if the Voluntary Group ceases to carry on the Permitted Activity including the Voluntary Group notifying the Council that it no longer wishes to carry on the Permitted Activity; and

5.1.6 With immediate effect if the Voluntary Group ceases to exist.

5.2 Any termination or ending howsoever of the Agreement shall not affect any right or remedy available to the Council under the Agreement or under law. Without prejudice to the generality of the foregoing, the Council reserves the right to charge Interest in Default on any outstanding sums due from the Voluntary Group from the due date until payment in full.

6. Delivery of the Permitted Activity

6.1 The Voluntary Group shall at all times comply with the provisions and timeframes set out in the Agreement in relation to the delivery of the Permitted Activity and will on request by the Council demonstrate to the Council how it is complying with this Agreement.

6.2 The Voluntary Group shall monitor the delivery and success of the Permitted Activity throughout the Licence Period to ensure that the aims and objectives of the Permitted Activity are being met and that this Agreement is being adhered to and shall comply with any other monitoring conditions required by the Council from time to time.

6.3 The Voluntary Group shall ensure that the Permitted Activity is delivered in a lawfully compliant manner and according to industry standards.

6.4 The Voluntary Group shall permit the Council or any person authorised by the Council such reasonable access to its employees, agents, volunteers, premises, facilities and records, for the purposes of discussing, monitoring and evaluating the Voluntary Group's fulfilment of the provisions of the Agreement and the Voluntary Group shall, if so required by the Council, provide appropriate oral or written explanations.

6.5 The Voluntary Group shall not prevent the Council or any person authorised by the Council to visit the Voluntary Group at any time it is on the Council's Land carrying out the Permitted Activity so that the Council can monitor the delivery of the Permitted Activity.

7. Limitation of Liability

7.1 Subject to clause 7.2, the Council's total and aggregate liability under this Agreement whether under contract, tort (including negligence), misrepresentation, restitution or otherwise is strictly limited to £10 (Ten Pounds) and the Council accepts **no other** liability for any consequences whatever, whether direct or indirect, that may come about in connection with or arising out of the Permitted Activity.

7.2 The Council cannot limit or exclude any liability in response to:

7.2.1 any claim in regard to which the law prohibits exclusion or limitation of liability.

7.3 The Voluntary Group shall fully indemnify and keep fully indemnified the Council, its employees, contractors and agents from and against any claims, proceedings, costs, expenses, demands, losses, damages and all other liabilities of whatever nature connected with or arising from the actions and/or omissions of the Voluntary Group in relation to one or more of the following:

7.3.1. the Permitted Activity

7.3.2. the non-compliance of the Voluntary Group with any of its obligations under this Agreement or any other non-compliance on its part under this Agreement

7.3.3. its obligations to third parties.

8. Permitted Activity Delivery Breach

8.1 If, during the Licence Period, the Voluntary Group is unable to show sufficient progress in the delivery of the Permitted Activity such failure shall be treated as a material breach for the purposes of this Agreement and dealt with according to the Council's rights and remedies under this Agreement.

9. Insurance

9.1 The Voluntary Group shall ensure that at all times during the Licence Period it shall maintain the following insurance policies taken out with reputable insurers at its own cost and with the cover being as a minimum:

- 9.1.1 public liability insurance with a limit of indemnity of not less than £5,000,000 (five million pounds) in relation to any one claim or series of claims;
- 9.1.2 any other policy or policies of insurance which are necessary or recommended owing to the nature of the Permitted Activity and with a limit of indemnity to be prescribed by the Council in relation to any one claim or series of claims.

9.2 The Voluntary Group shall promptly deliver to the Council upon demand of the Council copies of the insurance policies referred to in clause 9.1 together with such evidence as the Council may require that such policies are current and in force and that premiums have been fully paid.

9.3 The Voluntary Group shall comply with all of the obligations on its part under the insurance policies referred to in clause 9.1 and shall ensure that the policies do not lapse and that it does not cause any breach or breaches of one or more of them.

10. Intellectual Property Rights

10.1 The Council and the Voluntary Group each agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, know-how and any other Intellectual Property Rights whatever owned by either the Council or the Voluntary Group before the Commencement Date or developed by either party during the Licence Period, shall remain the property of the original party.

11. Confidentiality and Freedom of Information

11.1 Each party shall during the term of this Agreement and subsequently keep secret and confidential all Intellectual Property Rights or other business, technical or commercial information disclosed to it as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations according to the terms of this Agreement or save as expressly authorised in writing by the other party.

11.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property Rights, or other business, technical or commercial information which:

- 11.2.1 at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain

other than by breach of the terms of this Agreement by the receiving party;

11.2.2 is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence;

11.2.3 is at any time after the Commencement Date acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party; or

11.2.4 must be disclosed pursuant to any laws or by an order of a Court or Tribunal.

11.3 The Parties acknowledge that the Council is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIRs**) and nothing in this Agreement shall restrict or fetter the Council's rights and responsibilities under the aforementioned legislation.

11.4 The Voluntary Group shall provide forthwith all necessary assistance and cooperation as requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs within the timescales stated under the FOIA and EIRs.

12. Statutory and Legal Obligations

12.1 The Voluntary Group under this Agreement and in delivering the Permitted Activity shall comply with all laws and all legislation applicable to the Permitted Activity including without limitation:

12.1.1 Bribery Act 2010

12.1.2 Human Rights Act 1998

12.1.3 Modern Slavery Act 2015

12.1.4 Health & Safety at Work etc. Act 1974

12.1.5 Equality Act 2010

12.2 The legislation referred to in clause 12.1 shall be deemed to include subordinate legislation made under the above pieces of legislation from time to time together with any guidance or codes of practice issued by

the relevant government department or authority in relation to the above pieces of legislation.

13. Data Protection

13.1 The Council and the Voluntary Group will each comply with their respective obligations under the Data Protection Schedule.

14. Variations

14.1 The Council can unilaterally update and amend these terms and conditions at any time and from time to time and any revised terms and conditions will be posted to the Council's website on a publicly accessible webpage and the Voluntary Group shall be deemed to have notice thereof and shall be deemed to accept the same from the date of posting of the same.

14.2 Save for the procedure under clause 14.1, no variations to these terms and conditions are permitted.

15. Costs

15.1 The parties shall bear their own costs and expenses in connection with this Agreement.

16. Assignment

16.1 The Voluntary Group may not, without the prior written consent of the Council, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement.

17. Contracts (Rights of Third Parties) Act 1999

17.1 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement.

18. Jurisdiction and Interpretation

18.1 This Agreement shall be governed exclusively by the jurisdiction of England and Wales and claims will be exclusively determined by the Courts within that jurisdiction and it shall be interpreted according to English law.

18.2 In the event of any inconsistency between these terms and conditions and the Application Form, the former shall prevail.

19. Entire Agreement

19.1 This Agreement represents the entire understanding between the parties in relation to the subject matter of the Agreement.

20. Power to Contract

20.1 Each of the parties respectively warrants and represents that it holds all powers necessary to enter into the Agreement and that it has obtained the necessary internal authority and approvals to do so.

21. Joint and Several liability

21.1 Where the Voluntary Group is not a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Agreement for and on behalf of the Voluntary Group shall themselves be jointly and severally liable for the Voluntary Group's obligations and liabilities arising under this Agreement.

22. Partnership

22.1 This Agreement shall not create any partnership or joint venture between the Council and the Voluntary Group, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

23. Severability

23.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

23.2 If any provision or part-provision of this Agreement is deemed deleted under clause 23.1 above the parties shall negotiate in good faith to agree a replacement provision or part-provision that, to the greatest extent possible, achieves the intended commercial result of the original provision or part-provision.

24. Waiver

24.1 No failure or delay by the Council to exercise any right or remedy under this Agreement shall be construed as a waiver of that or any other right or remedy.

25. Continuity

25.1 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

26. VAT

26.1 The Voluntary Group acknowledges that every obligation on it, under or in connection with the Agreement, to pay any sum by way of a refund or indemnity or otherwise, includes an obligation to pay any VAT applicable to such sum.

26.2 If the Voluntary Group is registered for VAT, or subsequently becomes liable to register for VAT, it must keep proper and up to date records and must make those records available to the Council and provide copies when requested.

Data Protection Schedule – Parties as Independent Controllers of shared Personal Data

1. The terms “**Controller**” “**Processor**” “**Processing**” “**Data Subject**” “**Personal Data**” and “**Personal Data Breach**” each have the respective meanings given to them within Article 4 of the UK GDPR.
2. Any defined term which has been defined in the terms and conditions and which is used in this Schedule shall bear the corresponding meaning to its definition in the terms and conditions.
3. References to “**shared Personal Data**” shall have the meaning specified in paragraph 7 hereunder.
4. The Council and the Voluntary Group are each independent Controllers of the shared Personal Data. Each party is separately responsible for its own Processing activities. Each party is separately responsible for informing Data Subjects of the Processing activities in regard to the shared Personal Data which is separately held by each of them.
5. The parties consider this data sharing initiative necessary and proportionate so that the object of the Agreement can be achieved. The aforementioned initiative does not unduly infringe the Data Subjects' fundamental rights and freedoms and interests.
6. Each party shall have a data protection officer and each of them shall work together to reach an agreement with regard to any issues arising from the data sharing and to improve actively the effectiveness of the data sharing initiative.
7. The parties agree to only Process the Personal Data mentioned in this paragraph 7 which includes details of any persons associated with the Voluntary Group obtained during and as part of the Litter Picking Voluntary initiative and which are required to effectively implement the Agreement such as a person's name, address, telephone number, email address, age, date of birth, national insurance number, occupation, images of the person and qualifications.
8. Each party must ensure compliance with applicable Data Protection Legislation at all times during the term of this Agreement.

9. Each party has such valid registrations as are required by the Information Commissioner or a successor national supervisory authority which, by the time that the data sharing is expected to commence, covers the intended data sharing pursuant to this schedule, unless an exemption applies.
10. Each party shall ensure that it Processes the shared Personal Data fairly and lawfully and that it has legitimate grounds under the Data Protection Legislation for the Processing of the shared Personal Data.
11. The parties each agree to provide such assistance as is reasonably required to enable the other party to comply with Data Subject rights requests within the time limits imposed by the Data Protection Legislation.
12. The Voluntary Group shall, in regard to the shared Personal Data, ensure that it provides clear and sufficient information to the Data Subjects, according to the Data Protection Legislation, of the purposes for which it will process their Personal Data, the legal basis for such purposes and such other information as is required by the Data Protection Legislation including:
 - a. if shared Personal Data will be transferred to a third party, that fact and sufficient information about such transfer and the purpose of such transfer to enable the Data Subject to understand the purposes and risks of such transfer.
13. The Council will inform the Data Subjects, according to the Data Protection Legislation, of the purposes for which it will process their Personal Data, the legal basis for such purposes and such other information as is required by the Data Protection Legislation.
14. The Voluntary Group warrants that the shared Personal Data is adequate, relevant and not excessive in relation to the purposes for which it is processed. The Voluntary Group covenants that the shared Personal Data is accurate and will where necessary be kept up to date.
15. The respective data protection officers for the parties are separately responsible for maintaining a record of subject rights requests, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request.

16. The parties shall acting in good faith and in co-operation agree policies and procedures in regard to data retention and deletion of the shared Personal Data.
17. For the purposes of this provision, transfers of Personal Data shall mean any sharing of Personal Data by a party hereto which receives shared Personal Data with a third party. Any such transfers must be compliant with Data Protection Legislation.
18. The parties undertake to have in place throughout the term of this Agreement appropriate technical and organisational security and training measures to:
 - a. prevent unauthorised or unlawful processing of the shared Personal Data; and
 - b. prevent the accidental loss or destruction of, or damage to, the shared Personal Data; and
 - c. ensure a level of security is maintained appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the shared Personal Data to be protected.
19. The parties shall each separately comply with a lawful obligation to report a Personal Data Breach to the Information Commissioner or appropriate successor supervisory authority and (where applicable) Data Subjects under the Data Protection Legislation and shall each inform the other party of any Personal Data Breach irrespective of whether there is a requirement to notify the Information Commissioner or any successor supervisory authority or Data Subject.
20. The parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Personal Data Breach in an expeditious and compliant manner.