

# Data Processing Agreement

**Between:**

**CWM ENVIRONMENTAL LTD** of Head Office, Nantycaws Recycling Centre, Llanddarog Rd, Nantycaws, Carmarthen, Carmarthenshire SA32 8BG ('Controller'); and

| | of | ('Processor')



**In consideration of the respective undertakings, warranties and representations given by each of the parties as set out in this Agreement, it is hereby agreed as follows:**

**1. Definitions and interpretation**

- 1.1.1. The following words and phrases shall have the following meanings
- 1.1.2. 'Agreement' means this agreement, its schedules and any other documents attached to, or referred to as forming part of this agreement:
- 1.1.3. 'Commissioner' means the Information Commissioner (see Article 4(A3), UK GDPR and section 114, DPA 2018)
- 1.1.4. 'Controller' has the meaning ascribed to it by the UK GDPR
- 1.1.5. 'Data' means personal data having the meaning ascribed under the UK GDPR that are under the control of the Controller and in respect of which the Processor is required to provide the Services, the details of which are set out in Part A of Schedule 1 of this Agreement
- 1.1.6. 'Data Protection Legislation' means: (a) to the extent that the UK GDPR applies, the law from time to time of the UK or a part of the UK which relates to the protection of personal data; and (b) to the extent that the EU GDPR applies, the law from time to time of the European Union or any member state of the European Union which relates to the protection of personal data
- 1.1.7. 'Data Subject' has the meaning given under the UK GDPR
- 1.1.8. 'EU GDPR' means the General Data Protection Regulation (EU) 2016/679)
- 1.1.9. 'Good Industry Practice' means standards, practices, methods and procedures conforming to the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector
- 1.1.10. 'Personal Data Breach', a personal data breach involving Data
- 1.1.11. 'Processor' has the meaning ascribed to it by the UK GDPR
- 1.1.12. 'Principal Agreement' means any agreement entered into by the parties for the provision of Services, which is supplemented by the terms of this Agreement
- 1.1.13. 'Processing' has the meaning ascribed by UK GDPR
- 1.1.14. 'Third Party' means any person (other than an employee of the Controller or Processor) or organisation, whether incorporated or unincorporated, which is not named in this Agreement as the 'Controller' or 'Processor', including, but not limited to, subcontractors and agents
- 1.1.15. 'UK GDPR' has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018 (and regulations made thereunder) (DPA 2018)

**1.2. In this Agreement:**

- 1.2.1. References to clauses and schedules are references to the clauses and schedules of this Agreement

- 1.2.2. Headings shall not affect their interpretation
- 1.2.3. words importing a gender shall include all genders, and references to a 'person' shall include a reference to a body corporate, association or partnership
- 1.2.4. The word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include', and its derivatives shall be construed accordingly
- 1.3. In the case of conflict or ambiguity between any Principal Agreement and this Agreement, this Agreement shall prevail.

## **2. Commencement**

- 2.1. This Agreement shall commence on the ..... ('**Commencement Date**') and shall continue until ..... unless terminated earlier in accordance with clause 10.

## **3. The Services**

- 3.1. The terms of this Agreement supplement the terms of any Principal Agreement.
  - 3.1.1. The Processor acknowledges that the Controller is a contracting authority subject to the Procurement Act 2023 and shall support transparency, audit and disclosure obligations
- 3.2. The Processor shall perform the Services using the level of skill and care that ought reasonably to be expected of an experienced provider of services of the nature of the Services and in accordance with:
  - 3.2.1. the law of England and Wales;
  - 3.2.2. Good Industry Practice;
- 3.3. The Controller shall be entitled, by giving written notice to the Processor, to suspend the Services at any time and, immediately on receipt of such notice, the Processor shall, and shall procure that its employees shall, comply with the requirements of such suspension.

## **4. Data Ownership**

- 4.1. The Processor acknowledges and accepts that it is Processing the Data as a service provider and Processor and that, as between the parties, the Data and all intellectual property rights in the Data shall belong to the Controller absolutely.
- 4.2. The Controller hereby grants the Processor permission during the term of this Agreement to process the Data solely for the purposes of providing the Services, but for no other purpose.

## **5. Controller obligations**

No later than the Commencement Date, the Controller shall provide the Processor with the Data together with such information as the Processor may reasonably require to enable it to provide the Services.

## **6. Processor obligations**

- 6.1. The Processor and any employees that may process the Data shall:
  - 6.1.1. Process the Data solely for the purpose of providing the Services in accordance with any Principal Agreement and to fulfil the Processor's obligations and exercise its rights under any Principal Agreement and/or this Agreement and for no other purpose. This restriction applies during the term of this Agreement and/or the term of the Principal Agreement, whichever expires or terminates the later
  - 6.1.2. comply with all applicable laws, including the Data Protection Legislation and ensure the protection of the rights of the Data Subjects
  - 6.1.3. Comply with the following data requirements with respect to the Data
    - 6.1.3.1. Process the Data only in accordance with this Agreement and the Controller's written instructions as set out in Part B of Schedule 1 and any additional written instructions as given by the Controller from time to time. The Processor must promptly notify the Controller if, in its opinion, the Controller's instructions do not comply with the Data Protection Legislation
    - 6.1.3.2. Ensure that persons authorised to process the Data are informed of the confidential nature of the Data and have committed themselves to confidentiality or are under appropriate statutory obligation of confidentiality, allowing access to the Data strictly on a 'need-to-know' basis, always employing appropriate access controls
    - 6.1.3.3. take and implement appropriate technical and organisational measures against accidental, unauthorised or unlawful processing, access, copying, modification, reproduction, display or distribution of the Data, and against illegal or accidental loss, destruction, alteration, disclosure or damage of Data including, but not limited to, measures to ensure a level of security appropriate to the risk to the Data, including where appropriate:
      - 6.1.3.3.1. the encryption or pseudonymisation of the Data
      - 6.1.3.3.2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of systems processing the Data
      - 6.1.3.3.3. the ability to restore the availability and access to the Data promptly in the event of a physical or technical incident; and
      - 6.1.3.3.4. a process for regularly testing, accessing and evaluating the effectiveness of the technical and organisational measures for ensuring the security of the processing of the Data
    - 6.1.3.4. not disclose the Data to any Third Party in any circumstances other than with the express written consent of the Controller or in compliance with a legal obligation imposed upon the Processor
    - 6.1.3.5. only copy, reproduce and/or distribute the Data to the extent necessary for the performance of the Services
    - 6.1.3.6. Take steps to ensure the reliability of those of its employees who may have access to the Data and ensure that such persons have sufficient skills and training in the handling of personal data and comply with the Data Protection Legislation that the Data be processed strictly in accordance with the Controller's instructions unless required to do so by law
    - 6.1.3.7. not cause or permit the Data to be transferred outside the European Union or the United Kingdom

- without the prior written consent of the Controller and in accordance with clause 8
- 6.1.3.8. make available to the Controller all information necessary to demonstrate compliance with this Agreement and the Data Protection Legislation and allow for and contribute to audits, including inspections, conducted by the Controller and/or its nominated agent;
  - 6.1.3.9. Process the Data strictly in accordance with the Controller's relevant policies, processes and procedures
  - 6.1.3.10. assist the Controller with the obligations laid out in Articles 32-36 of the GDPR, taking into account the nature of the Services and information available to the Processor.
  - 6.2. The Processor agrees to notify the Controller of any Personal Data Breaches that occur, such as unauthorised disclosure, loss or theft of the Data, promptly and without undue delay, and in any event within twenty four to forty-eight hours of the Processor becoming aware of the Personal Data Breach; and
    - 6.2.1. provide the Controller without undue delay and, wherever possible, no later than twenty-four hours after becoming aware of the Personal Data Breach, such additional details relating to the Personal Data Breach as the Controller may reasonably require, including:
      - 6.2.1.1. The nature of the Personal Data Breach, including the categories and approximate number of Data Subjects and Data concerned;
      - 6.2.1.2. The investigations being undertaken by the Processor into the Personal Data Breach
      - 6.2.1.3. The Likely Consequences of the Personal Data Breach and
      - 6.2.1.4. any measures taken, or that the Processor recommends, to address the Personal Data Breach, including to mitigate its possible adverse effects.
  - 6.3. Immediately following any accidental, unauthorised or unlawful Data Processing or Personal Data Breach, the parties will coordinate with each other to investigate the matter. Further, the Processor will reasonably co-operate with the Controller, at no additional cost to the Controller, in the Controller's handling of the matter, including but not limited to:
    - 6.3.1. Assisting with any investigation;
    - 6.3.2. providing the Controller with physical access to any facilities and operations affected;
    - 6.3.3. making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Legislation or as otherwise reasonably required by the Controller; and
    - 6.3.4. taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the Personal Data Breach or accidental, unauthorised or unlawful Data Processing.
  - 6.4. The Processor will not inform any Third Party of any accidental, unauthorised or unlawful processing of all or part of the Data and/or a Personal Data Breach without first obtaining the Controller's written consent, except when required to do so by domestic law.
  - 6.5. The Processor agrees that the Controller has the sole right to determine:
    - 6.5.1. whether to provide notice of the accidental, unauthorised or unlawful processing and/or the Personal Data Breach to any Data Subjects, the Commissioner, other in-scope regulators, law enforcement

agencies or others, as required by law or regulation or in the Controller's discretion, including the contents and delivery method of the notice; and

- 6.5.2. whether to offer any remedy to affected Data Subjects, including the nature and extent of such remedy.
- 6.6. The Processor will cover all reasonable expenses associated with the performance of the obligations under clause 6.2 through clause 6.5 unless the matter arose from the Controller's specific written instructions, negligence, wilful default or breach of this Agreement.
- 6.7. The Processor will also reimburse the Controller for actual reasonable expenses that the Controller incurs when responding to an incident of accidental, unauthorised or unlawful processing and/or a Personal Data Breach to the extent that the Processor caused such, including all costs of notice and any remedy as set out in clause 6.5.
- 6.8. The Processor agrees that it shall procure that any employees who may collect any Data in respect of the Services shall ensure that such Data is captured correctly in accordance with the requirements of the Data Protection Legislation and shall amend inaccurate Data promptly upon being notified that the Data is inaccurate.
- 6.9. The Processor agrees that it shall procure that if any of its employees collect Data when providing the Services and/or create materials or interactive systems for the collection of Data, it shall:
  - 6.9.1. incorporate a privacy notice meeting the requirements of the Data Protection Legislation:
    - 6.9.1.1. on all documents (whether electronic, paper-based, online or otherwise), which data subjects may use to provide Data;
    - 6.9.1.2. Each Contractor shall act only in respect of Personal Data relating to its Lot and shall not process data relating to another Contractor's workforce
    - 6.9.1.3. In all telephone scripts and recorded messages used by employees when collecting Data from Data Subjects
  - 6.9.2. ensure that any promotional materials include details of how the person to whom such promotional materials have been sent may indicate that he does not wish to receive any further promotional materials.
- 6.10. To the extent permitted to do so by applicable law, the Processor shall notify the Controller of all Communications, compliant or notice it receives directly or indirectly from Third Parties relating to the Data which suggest non-compliance by the Controller, Processor or any other person with the Data Protection Legislation, including communications from Data Subjects and regulatory bodies, and shall not do anything or enter into any communication with such Third Party unless expressly authorised to do so by the Controller.
- 6.11. The Processor must notify the Controller within 2 days of receiving a request from a Data Subject to access their Data or to exercise any other rights under the Data Protection Legislation.
- 6.12. The Processor will give the Controller, at no additional cost to the Controller, its full cooperation and assistance in responding to any complaint, notice, communication or Data Subject request.
- 6.13. The Processor must, at no additional cost to the Controller, take such technical and organisational

measures as may be appropriate and promptly provide such information to the Controller as the Controller may reasonably require to enable the Controller to comply with:

- 6.13.1. the rights of Data Subjects under the Data Protection Legislation, including, but not limited to, subject access rights, the rights to rectify, port and erase personal data, object to the processing and automated processing of personal data, and restrict the processing of personal data; and
- 6.13.2. information or assessment notices served on the Controller by the Commissioner under the Data Protection Legislation

## **7. Warranties**

- 7.1. Each party warrants that it has full and due authority to enter into this Agreement and that doing so will not cause it to be in breach of any other contract or order of any competent court or regulatory authority.
- 7.2. The Processor warrants and undertakes and shall procure that it and its employees have not done and shall not do or, where they have a duty to act, have not omitted to do and shall not omit to do anything that would cause the Controller or themselves to be in breach of the Data Protection Legislation.

## **8. Use of Third Parties**

- 8.1. The Processor shall not engage with and permit any Third Party to process the Data without the prior written authorisation of the Controller to such third party processing the Data.
- 8.2. The Processor acknowledges and accepts that any consent given is subject to:
  - 8.2.1. The Processor entering into a written contract with the Third Party that contains terms substantially the same as those set out in this Agreement, in particular, in relation to requiring appropriate technical and organisational data security measures, and, upon the Controller's written request, provides the Controller with copies of the relevant excerpts from such contracts;
  - 8.2.2. The processor maintains control over all of the Data it entrusts to the Third Party and
  - 8.2.3. The Third Party's contract terminates automatically upon termination of this Agreement for any reason.
- 8.3. Where the Third Party fails to fulfil its data protection obligations under the written agreement with the Processor, which contains terms substantially the same as those set out in this Agreement, the Processor shall remain fully liable to the Controller for the performance of the Third Party's obligations.

## **9. Indemnities**

- 9.1. The Processor agrees to indemnify the Controller against any costs, claims, expenses (including reasonable legal costs), damages, fines, liabilities and proceedings incurred by the Controller or for which the Controller may become liable due to any failure by the Processor or its employees, Third Parties, subcontractors or agents to comply with any of its obligations under this Agreement and/or the Data Protection Legislation.
- 9.2. Nothing in this Agreement relieves the Processor of its own direct responsibilities and liabilities under the Data Protection Legislation.
- 9.3. Any limitation of liability of the Processor outlined in the Principal Agreement will not apply to this

Agreement's indemnity or reimbursement obligations.

## **10. Termination**

- 10.1. The Controller shall be entitled to terminate this Agreement for convenience by giving to the Processor not less than one calendar month's written notice.
- 10.2. This Agreement shall terminate automatically on termination of any Principal Agreement, subject to the provisions of clauses 10.3 and 10.4. Either party shall be entitled to terminate this Agreement immediately if:
  - 10.2.1. The other is in material breach of any provision of this Agreement, which is:
    - 10.2.1.1. not capable of remedy or
    - 10.2.1.2. is capable of remedy but which is not remedied within one calendar month of a notice being served to require the breach to be remedied;
  - 10.2.2. A competent court grants a petition, or an order is made, or a resolution is passed for the other to be wound up;
  - 10.2.3. the other party is dissolved (other than for reconstruction or amalgamation whilst solvent);
  - 10.2.4. a petition is granted, a notice of intended or actual appointment is presented, or a competent court makes an order for the appointment of an administrator;
  - 10.2.5. the other party enters into an arrangement or compromise with its creditors (or any class of them) or takes steps to obtain a moratorium or protection from its creditors (or any class of them), or
  - 10.2.6. distress, execution, or other legal process is levied on the whole or part of the other's undertaking or assets.
- 10.3. On termination or expiry of this Agreement, at the Controller's request, the Processor shall and shall procure that any Third Parties it engages shall promptly and securely deliver, or procure the prompt and secure delivery, to the Controller all Data, materials, documentation (including all copies in every form and media) in its power, possession or control.
- 10.4. On termination of this Agreement for any reason or expiry of its term, the Processor will, if directed in writing by the Controller.
  - 10.4.1. erase all the Data from its computer and communications systems and devices used by it, or which is stored in electronic form
  - 10.4.2. erase all the Data which is stored in electronic form on systems and data storage services provided by third parties and
  - 10.4.3. certify in writing to the Controller that it has complied with the requirements of this clause 10.4 within 10 days of doing so.
- 10.5. If any law, regulation, or government or regulatory body requires the Processor to retain any Data that the Processor would otherwise be required to return or destroy, it will notify the Controller in writing of that retention requirement, giving details of the documents, materials or Data that it must retain, the legal basis for retention, and establishing a specific timeline for deletion or destruction once the retention requirement ends.



## **11. Confidentiality**

- 11.1. Each party shall treat as confidential the content of this Agreement and all information relating to the business and/or affairs of the other party which it may receive or derive as a result of this Agreement and shall not disclose to any person or allow any other person to use such information other than as permitted by this Agreement.
- 11.2. Each Party shall be entitled to disclose the information referred to in clause 11.1 to its professional advisers strictly on a 'need to know' basis, provided such professional advisers are under a binding duty of confidence.
- 11.3. The provisions of clause 11.1 shall not apply to any information which:
  - 11.3.1. is in the public domain other than by default of the receiving party.
  - 11.3.2. is received by the receiving party from a bona fide Third Party with no apparent restriction on its unfettered right to disclose such information.
  - 11.3.3. is or has already been independently generated or obtained by the receiving party; or
  - 11.3.4. is required to be disclosed by applicable law.

PROVIDED ALWAYS that the relief in clauses 11.3.1 to 11.3.4 does not apply with respect to the Data

## **12. Notices**

- 12.1. All notices to be given by a party under this Agreement will be in writing, in English and will be addressed to the other party at the address shown below (as may be changed by the relevant party giving notice to the other in accordance with this clause 12):

**For the Controller:**

Address: CWM Environmental Ltd.  
Head Office  
Nantycaws Recycling Centre, Llanddarog Rd  
Nantycaws, Carmarthenshire, SA32 8BG  
Email: [steve.everett@cwmenvironmental.co.uk](mailto:steve.everett@cwmenvironmental.co.uk)  
Attention: Steve Everett

**For the Processor:**

Address: Supplier Ltd.  
Address 1  
Address 2  
Email: [supplier@supplier.co.uk](mailto:supplier@supplier.co.uk)  
Attention: Supplier

- 12.2. Notices may be served by hand, registered post or email and will be deemed to have been served as

follows:

- 12.2.1. **if delivered by hand or registered post:** at the time of delivery, provided it is delivered before 16.00 on a business day (being a weekday other than a bank holiday) and, if not, on the next business day; and
- 12.2.2. **If sent by email: upon receipt by the sender,** a receipt to confirm that the email has been sent to the correct address.

### **13. Miscellaneous**

- 13.1. **Assignment.** Neither the Processor nor any subcontractor of the Processor shall be entitled to assign its rights or benefits and/or transfer its obligations or burdens under this Agreement or any other agreement under which the Data are or are to be processed, in each case, whether in whole or in part
- 13.2. **Entire agreement.** This Agreement and the documents referred to in it, including the Principal Agreement, constitute the entire understanding and agreement of the parties in relation to the processing of the Data and supersede all prior agreements, discussions, negotiations, arrangements and understandings of the parties and/or their representatives in relation to such processing. However, nothing in this Agreement shall exclude or limit either party's liability for fraudulent misrepresentation in relation to this Agreement, whether occurring before or after the Commencement Date.
- 13.3. **Further Assurance.** Each party will do and execute and/or arrange for the doing and executing of any act and/or document reasonably requested of it by any other party to implement and give full effect to the terms of this Agreement.
- 13.4. **Survival.** Termination or expiry of this Agreement for any reason will not affect any rights or liabilities that have accrued before such termination or expiry, or the coming into force, or continuance in force, of any term that is expressly or by implication intended to come into, or continue in force, on or after termination or expiry.
- 13.5. **Waiver.** Delay in exercising, or failure to exercise, any right or remedy in connection with this Agreement will not operate as a waiver of that right or remedy.
- 13.6. **Severance.** The parties intend each provision of this Agreement to be severable and distinct from the others. If a provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, the parties will work together in good faith to agree on a provision that reflects the original intention of the parties as a substitute for the affected term.
- 13.7. **Counterparts.** This Agreement may be entered into in any number of counterparts and by the parties on separate documents, all of which, taken together, will constitute the same instrument. Transmission of the executed signature page of a counterpart of this Agreement by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this Agreement.
- 13.8. **Third-party rights.** The Controller is entering into this Agreement for its own benefit and for the data subjects whose personal data are to be processed by the Processor, each of whom shall be entitled to enforce this Agreement. In all other cases, a person who is not a party to this Agreement shall not

be entitled to benefit or have any rights to enforce any of its provisions, and the Contracts (Rights of Third Parties) Act 1999 shall not apply.

- 13.9. **Law and jurisdiction.** This Agreement is governed by and shall be construed in accordance with the laws of England and Wales. Each party hereby submits to the non-exclusive jurisdiction of the courts of England and Wales

## **SCHEDULE 1 – Data Protection**

### **Part A: The Data**

#### **The subject matter of the processing.**

In pursuance of CWM Environmental Ltd's obligations, CWM Environmental Ltd intends, through a competitive tender, to award the supply of Temporary Recruitment Services. The Contractor will supply Workers to the appointed "Sites" (as detailed in the specification) in accordance with the Regulatory Authority and Legislation governing agency workers, to perform tasks as deemed appropriate by the Contractor under the Contractor's contract, for a period of 36 months. This contract may be extended for 6 months, then on a 3-monthly basis thereafter, for no more than 2 extension periods (another 12 months). For the avoidance of doubt, the absolute total contract period will be for no more than 48 months. |

#### **The nature and purpose of the processing.**

The Contractor shall be responsible for delivering the Service, which shall include:

- Providing temporary workers to all CWM Environmental Ltd sites and departments. |

#### **The type of personal data to be processed.**

Any Personal Data gathered as a result of this contract, which may include, but is not limited to, Names, Addresses, phone numbers, email addresses, Date of birth, or any other such data not mentioned |

#### **The categories of data subjects covered by the processing.**

Any such categories which will or may have the potential of exposure as a result of this contract, which may include, but are not limited to, employees, customers & members of the public, or any such categories not mentioned.

Where the parties act as Joint Controllers, Schedule 6 of the Contract shall apply and this Agreement shall be interpreted accordingly

## **Part B: Additional processing instructions**

***NA***

**Signed for and on behalf of the Controller**

Authorised signatory: .....

Name: .....

Position: .....

Date: .....]

**Signed for and on behalf of the Processor**

Authorised signatory: .....

Name: .....

Position: .....

Date: .....]