

DATED

20[]

(1) NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

AND

(2) [CONSULTANT NAME]

AGREEMENT FOR ARCHITECTURAL SUPPORT IN
RESPECT OF THE FRONTAGE IMPROVEMENT
SCHEME FOR COALVILLE TOWN CENTRE

THIS AGREEMENT is made on the _____ day of _____ 2019

CONSULTANT DETAILS	
Consultant:	[CONSULTANT'S COMPANY NAME] LIMITED
Company Number:	[CONSULTANT'S COMPANY NUMBER]
Consultant's address:	[CONSULTANTS REGISTERED ADDRESS]
Consultant's Representative:	Name: [NAME] Title: [TITLE] Email: [EMAIL] Telephone: [NUMBER] Postal Address: [POSTAL ADDRESS]
CUSTOMER DETAILS	
Customer:	North West Leicestershire District Council
Customer address:	The Council Offices, Whitwick Road, Coalville, Leicestershire, LE67 3FJ
Customer's Representative:	Name: Barrie Walford Title: Business Focus Team Manager Email: barrie.walford@nwleicestershire.gov.uk Telephone: 01530 454578 Postal Address: The Council Offices, Whitwick Road, Coalville, Leicestershire, LE67 3FJ
SPECIFIC TERMS	
Start Date	[DATE] OR [The date of this Agreement]
Expiry Date	[[DATE] OR [The 1st anniversary of this agreement]]
Extension Period(s)	2 years in annual increments
Extension Notice Period	3 months before the Expiry Date
Charges	As set out in Schedule 2
Invoice Frequency	At the completion of each stage of each project as described in the Specification
Specification of Services	As set out in Schedule 5 Specification
Consultant's Key Personnel	[Insert Names of Key Personnel]
Data to be Processed	The Personal Data to be Processed by the Consultant as Data Processor pursuant to this Agreement is set out in Schedule 3

SCHEDULES INCLUDED IN THIS AGREEMENT	
Schedule 1	Terms and Conditions of Contract for Services
Schedule 2	Charges
Schedule 3	Data Processing
Schedule 4	Template Letter of Appointment
Schedule 5	Specification including Customer's Requirements and Consultant's Tender Response

This agreement is entered into on the date set out above and is made up of this Agreement and the Schedules stated above.

Signed for and on behalf of **North West Leicestershire District Council**

Name and position:

[insert name]

[insert job title]

Signature:

.....

We accept the terms set out in this Agreement including Schedules stated above.

Signed for and on behalf of **[insert name of Consultant]**

Name and position:

[insert name]

[insert job title]

Signature:

.....

Schedule 1
Terms and Conditions of Contract for Services

1 Interpretation

1.1 In these terms and conditions:

“Agreement”	means the contract between (i) the Customer and (ii) the Consultant constituted by the Consultant’s countersignature of the Agreement and includes the Agreement and Schedules;
“Charges”	means the charges for the Services as specified in the Agreement;
“Confidential Information”	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
“Consultant”	means the person named as Consultant in the Agreement;
“Customer”	means the person named as Customer in the Agreement;
“DPA”	means the Data Protection Act 2018;
“Expiry Date”	means the date for expiry of the Agreement as set out in the Agreement;
“Extension Period(s)”	means the extension period or periods stated in the Agreement
“Extension Notice Period”	means the notice period stated in the Agreement
“Frontage Improvement Scheme”	means the Frontage Improvement Scheme for Coalville Town Centre
“FOIA”	means the Freedom of Information Act 2000;
“Grant Applicant”	means the freehold owners and/or full repairing leaseholders to whom each grant from the Frontage Improvement Scheme will be paid;
“Information”	has the meaning given under section 84 of the FOIA;
“Key Personnel”	means any persons specified as such in the Agreement or otherwise notified as such by the Customer to the Consultant in writing;
“Necessary Consents”	all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Consultant’s obligations under this Agreement, whether required in order to comply with Legislation or as a result of the rights of any third party;
“Party”	means the Consultant or the Customer (as appropriate) and “Parties” shall mean both of them;
“Personal Data”	means personal data (as defined in the DPA), including but not limited to the personal data set out in the Agreement, which is processed by the Consultant or any Staff on behalf of the Customer pursuant to or in connection with this Agreement;

“Purchase Order Number”	means the Customer’s unique number relating to the supply of the Services;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Services”	means the services to be supplied by the Consultant to the Customer under the Agreement;
“Specification”	means the specification for the services (including as to quantity, description and quality) as specified in the Agreement;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Consultant and/or of any sub-contractor of the Consultant engaged in the performance of the Consultant’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where requested by the Customer, the Customer’s procedures for the vetting of personnel as provided to the Consultant from time to time;
“Term”	means the period from the start date of the Agreement set out in the Agreement to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word ‘including’ shall be understood as meaning ‘including without limitation’.

2 Basis of Agreement

- 2.1 The Agreement constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Agreement shall be deemed to be accepted by the Consultant once a copy of the Agreement, signed by the Consultant, has been countersigned by the Customer.

3 Supply of Services

- 3.1 In consideration of the Customer’s agreement to pay the Charges, the Consultant shall supply the Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Consultant shall:

- 3.2.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
 - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Consultant's industry, profession or trade;
 - 3.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Consultant's obligations are fulfilled in accordance with the Agreement;
 - 3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
 - 3.2.5 obtain all Necessary Consents required for the performance of the Services;
 - 3.2.6 comply with all applicable laws; and
 - 3.2.7 provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 3.3 The Consultant shall enter into written agreements with all relevant Grant Applicants. This shall be by way of a letter of appointment substantially in the form set out in Schedule 4 of this Agreement.
- 3.4 Where the Consultant is making recommendation for the Grant Applicants to enter into agreements with contractors, the Consultant shall procure that any goods or services shall:
- 3.4.1 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the goods;
 - 3.4.2 conform with the specifications (including the Specification), drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Consultant) supplied by, or on behalf of, the Consultant;
 - 3.4.3 be free from design defects; and
 - 3.4.4 be fit for any purpose held out by the Consultant or made known to the Consultant by the Customer expressly or by implication, and in this respect the Customer relies on the Consultant's skill and judgement. The Consultant acknowledges and agrees that the approval by the Customer of any designs provided by the Consultant shall not relieve the Consultant of any of its obligations under this sub-clause.
- 3.5 The Customer may by written notice to the Consultant at any time request a variation to the scope of the Services. In the event that the Consultant agrees to any variation to the scope of the Services, the Charges shall be at the hourly rate set out in the Charges at schedule 2.
- 3.6 The Consultant may from time to time identify architectural work that it considers to be outside of the scope of the Services. In the event that the Customer agrees to any variation to the scope of the Services, the Charges shall be at the hourly rate set out in the Charges at schedule 2.

4 Term

- 4.1 The Agreement shall take effect on the date specified in Agreement and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Customer may extend the Agreement for the Extension Period by giving not less notice in writing to the Consultant than the Extension Notice Period. The terms and conditions of the Agreement shall apply throughout any such extended period save that the term Expiry Date shall be amended to mean the last day of the Extension Period.

5 Charges, Payment and Recovery of Sums Due

- 5.1 The Charges for the Services shall be as set out in the Agreement and shall be the full and exclusive remuneration of the Consultant in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Consultant directly or indirectly incurred in connection with the performance of the Services.
- 5.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Consultant a sum equal to the VAT chargeable in respect of the Services.
- 5.3 The Consultant shall invoice the Customer in arrears:
- 5.3.1 In respect of Stage 1 fees, at the end of stage 1;
- 5.3.2 In respect of Stage 2 fees, after practical completion, and the consequent submission of a short written report to the project team.
- Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.4 In consideration of the supply of the Services by the Consultant, the Customer shall pay the Consultant the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.5 If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed.
- 5.6 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Consultant shall not suspend the supply of the Services unless the Consultant is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.7 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Consultant interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.8 Where the Consultant enters into a sub-contract, the Consultant shall include in that sub-contract:
- 5.8.1 provisions having the same effects as clauses 5.3 to 5.7 of this Agreement; and
- 5.8.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.3 to 5.8 of this Agreement.
- 5.8.3 In this clause 5.8, "sub-contract" means a contract between two or more Consultants, at any stage of remoteness from the Customer in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 5.9 If any sum of money is recoverable from or payable by the Consultant under the Agreement (including any sum which the Consultant is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Consultant under the Agreement or under any other agreement or contract with the Customer. The Consultant shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of

any such amount in whole or in part.

6 Premises and equipment

- 6.1 If necessary, the Customer shall provide the Consultant with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer's premises by the Consultant or the Staff shall be at the Consultant's risk.
- 6.2 If the Consultant supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Consultant shall vacate the Customer's premises, remove the Consultant's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Consultant shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Consultant or any Staff, other than fair wear and tear.
- 6.3 If the Consultant supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Consultant shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 6.5 Where all or any of the Services are supplied from the Consultant's premises, the Consultant shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.6 Without prejudice to clause 3.2.7, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Consultant and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.7 The Consultant shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Consultant or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Consultant or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

7 Staff and Key Personnel

- 7.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Consultant:
 - 7.1.1 refuse admission to the relevant person(s) to the Customer's premises;
 - 7.1.2 direct the Consultant to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 7.1.3 require that the Consultant replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,and the Consultant shall comply with any such notice.
- 7.2 The Consultant shall:
 - 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
 - 7.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's and/or Grant Applicant's premises in connection with the Agreement; and
 - 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably

specified by the Customer.

- 7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 7.5 The Customer may require the Consultant to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Consultant shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Services, relevant to the work of the Customer, or is of a type otherwise advised by the Customer (each such conviction a "Relevant Conviction"), or is found by the Consultant to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

8 Assignment and sub-contracting

- 8.1 The Consultant shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Consultant shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 8.2 Where the Customer has consented to the placing of sub-contracts, the Consultant shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.
- 8.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Consultant provided that such assignment, novation or disposal shall not increase the burden of the Consultant's obligations under the Agreement.

9 Intellectual Property Rights

- 9.1 All intellectual property rights in any materials provided by the Customer to the Consultant for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Consultant a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Consultant to perform its obligations under the Agreement.
- 9.2 All intellectual property rights in any materials created or developed by the Consultant pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Consultant. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to the Consultant by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
- 9.3 The Consultant hereby grants the Customer:
 - 9.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and
 - 9.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:

- (a) any intellectual property rights vested in or licensed to the Consultant on the date of the Agreement; and
- (b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

- 9.4 The Consultant shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Consultant or any Staff.

10 Governance and Records

- 10.1 The Consultant shall:

- 10.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
- 10.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.

- 10.2 The Consultant shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Consultant shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

- 10.3 The Customer shall promptly notify the Consultant of any infringement claim made against it relating to the Services and, subject to any statutory obligation requiring the Customer to respond, shall permit the Consultant to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The Customer shall give the Consultant such assistance as it may reasonably require to dispose of the claim and shall not make any statement which might be prejudicial to the settlement or defence of the claim.

11 Confidentiality, Transparency and Publicity

- 11.1 Subject to clause 11.2, each Party shall:

- 11.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
- 11.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

- 11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:

- 11.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;
- 11.2.2 to its auditors or for the purposes of regulatory requirements;
- 11.2.3 on a confidential basis, to its professional advisers;

- 11.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- 11.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Consultant's obligations under the Agreement provided that the Consultant shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Consultant's confidentiality obligations under the Agreement; and
- 11.2.6 where the receiving Party is the Customer:
- (a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;
 - (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
 - (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
 - (d) in accordance with clause 12.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 11.

- 11.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Consultant hereby gives its consent for the Customer to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Consultant to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 11.4 The Consultant shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

12 Freedom of Information

- 12.1 The Consultant acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
- 12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
 - 12.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 12.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
 - 12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by

the Customer.

- 12.2 The Consultant acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Consultant or the Services (including commercially sensitive information) without consulting or obtaining consent from the Consultant. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Consultant advance notice, or failing that, to draw the disclosure to the Consultant's attention after any such disclosure.
- 12.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Consultant or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

13 Protection of Personal Data and Security of Data

13.1 Definitions:

Where a term is not already defined in the definitions to the Agreement, the following terms shall have the following meanings:

Authority Correspondence: any correspondence from a Supervisory Authority in relation to the Processing of the Personal Data.

Controller: has the meaning set out in the UK Data Protection Laws.

Data Processor: has the meaning set out in the UK Data Protection Laws.

Data Protection Laws: means (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) of the United Kingdom which relates to the protection of individuals with regards to the processing of personal data to which a Party is subject, including the Data Protection Act 2018 and the GDPR; and (b) any code of practice or guidance published by a Supervisory Authority from time to time.

Data Subject: has the meaning set out in the UK Data Protection Laws.

Data Subject Request: an actual or purported subject access request or notice or complaint from (or on behalf of) a Data Subject exercising his rights under the UK Data Protection Laws.

Personal Data: any data relating to any person relevant to this Agreement including but not limited to name, address, contact details, date of birth, salary or any other data in relation to any person, including Sensitive Personal Data

Personal Data Breach: has the meaning set out in the GDPR.

Processing: has the meaning set out in the Data Protection Laws (and "Process" and "Processed" shall be construed accordingly).

Sensitive Personal Data: any sensitive personal data or special categories of personal data as defined as such by the Data Protection Laws.

Supervisory Authority: means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws, including the UK Information Commissioner's Office, or any successor or replacement bodies from time to time

- 13.2 During the term of this Agreement each Party acknowledges that it has obligations under applicable Data Protection Laws including, without limitation, to:

13.2.1 Make due notification to the Supervisory Authority, including in relation to its use and Processing of the Personal Data and comply at all times with the Data Protection Laws.

- 13.2.2 Ensure that all Personal Data disclosed or transferred to, or accessed by, the other Parties is accurate and up-to-date, as well as adequate, relevant and not excessive to enable any Party to Process the Personal Data, as envisaged under this Agreement.
- 13.2.3 Ensure that appropriate operational and technical measures are in place to safeguard against any unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data and where requested provide to the other party evidence of its compliance with such requirement.
- 13.2.4 Promptly, and in any event within 48 hours of receipt of any Data Subject Request or Authority Correspondence, notify the other Parties in the event that it receives such a Data Subject Request or Authority Correspondence in relation to the processing of Personal Data under, or in connection with, this Agreement.
- 13.2.5 Promptly and in no more than 24 hours notify the other Party in writing upon it becoming aware of any actual or suspected breach of clause 13.2.3 in relation to the Personal Data and shall, within such timescale to be agreed by the parties (acting reasonably and good faith):
 - (a) Implement any measures necessary to restore the security of compromised Personal Data; and
 - (b) Support the other party to make any required notifications to the Supervisory Authority and affected Data Subjects.
- 13.2.6 Take reasonable steps to ensure the reliability of any personnel who have access to the Personal Data.
- 13.2.7 Not transfer any Personal Data to a country or territory outside the European Economic Area (the "EEA") except for the Consultant's use in the country or territory which the Consultant carries out the Services without the prior written consent of the Customer.
- 13.2.8 Hold the information contained in the Personal Data confidentially.

Data Processor Obligations

- 13.3 To the extent that the Consultant is acting as a Processor for and on behalf of the Customer as the Controller, in relation to the Processing that it is carrying out arising out of, or in connection with, the performance of its obligations under this Agreement, it shall:
 - 13.3.1 Process Personal Data for and on behalf of the Controller for the purposes of performing its obligations under this Agreement, and only in accordance with the terms of this Agreement and any documented instructions from the Controller, and as updated from time to time. Unless prohibited by law, if a Processor is required by UK or European Union law (or the law of one of the Member States of the European Union) to act other than in accordance with the instructions of the Controller, the Processor shall promptly, and in any event within twenty-four (24) hours of becoming aware of the same, notify the Controller.
 - 13.3.2 Notify the Controller immediately (and in any event within twenty-four (24) hours) if it considers, in its opinion (acting reasonably), that any of the Controller's instructions under clause 13.3.1 infringes any of the Data Protection Laws.
 - 13.3.3 Ensure that appropriate operational and technical measures are in place to safeguard against any unauthorised or unlawful Processing of the Personal Data and against accidental loss or destruction of, or damage to, Personal Data and where requested provide to the Controller evidence of its compliance with such requirement.
 - 13.3.4 Maintain complete, accurate and up to date written records of all categories of processing activities carried out on behalf of the Controller, containing such information as the Controller may reasonably require.
 - 13.3.5 Not disclose Personal Data to a third party (including a sub-contractor) in any

circumstances without the Controller's prior written consent.

- 13.3.6 Notify the Controller promptly (and in any event within 24 hours) upon becoming aware of any actual or suspected, threatened or 'near miss' Personal Data Breach, and:
 - (a) implement any measures necessary to restore the security of compromised Personal Data; and
 - (b) assist the Controller to make any notifications to the Supervisory Authority and affected Data Subjects.
- 13.3.7 On termination or expiry of this Agreement (as applicable), cease Processing all Personal Data and return and/or permanently and securely destroy (as directed in writing by the Controller) all Personal Data and all copies in its possession or control.
- 13.3.8 Comply with the obligations imposed upon a Processor under the UK and EU Data Protection Laws.
- 13.3.9 Use all reasonable endeavours in accordance with good industry practice to assist the Controller to comply with the obligations imposed on the Controller by the Data Protection Laws, at the Processor's cost.
- 13.4 Each Party shall use its reasonable endeavours to assist the other Party to comply with any obligations under the Data Protection Laws and shall not perform its obligations under this Agreement in such a way as to cause the other Party to breach any of its obligations under the Data Protection Laws to the extent that such Party is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- 13.5 The Consultant shall indemnify and keep indemnified the Customer in respect of all Data Protection Losses suffered or incurred by, awarded against or agreed to be paid by, the Customer arising from or in connection with:
 - 13.5.1 Any breach by the Consultant of any of its obligations under this Agreement; and
 - 13.5.2 The Consultant acting outside or contrary to the lawful Processing instructions of the Customer in respect of the processing of Personal Data.

14 Liability

- 14.1 The Consultant shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- 14.2 Subject always to clauses 14.3 and 14.4:
 - 14.2.1 the aggregate liability of the Consultant in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed in aggregate the higher of:
 - 14.2.1.1 the indemnity limit of any applicable insurance policy maintained (or which should have been maintained pursuant to this Agreement or the amount which would have been paid out but for the Consultant doing something to vitiate the insurance) by the Consultant; and
 - 14.2.1.2 a multiple of ten times the total of the fees payable to the Consultant by the Council pursuant to this Agreement.
 - 14.2.2 the aggregate liability of the Customer in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, misrepresentation (whether tortious or statutory), tort (including negligence), breach of

statutory duty or otherwise shall in no event exceed a sum equal to the value of the Charges paid or payable to the Consultant; and

14.2.3 except in the case of claims arising under clauses 9.4, 13.5 and 18.3, in no event shall either Party be liable to the other for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

14.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

14.3.1 death or personal injury caused by its negligence or that of its Staff;

14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

14.3.3 any other matter which, by law, may not be excluded or limited.

14.4 The Consultant's liability under the indemnity in clause 9.4, 13.5 and 18.3 shall be unlimited.

14.5 During the Term, the Consultant shall maintain in force, with a reputable insurance company, professional indemnity insurance, employer's liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Agreement, and shall produce to the Customer on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

15 Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

16 Termination

16.1 The Customer may terminate the Agreement in whole or in part at any time by notice in writing to the Consultant to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.

16.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement in whole or in part by written notice to the Consultant with immediate effect if the Consultant:

- 16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
- 16.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
- 16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Consultant receiving notice specifying the breach and requiring it to be remedied;
- 16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
- 16.2.5 breaches any of the provisions of clauses 7.2, 11, 12, 13 and 17;

- 16.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Consultant (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Consultant's assets or business, or if the Consultant makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction; or
- 16.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law.
- 16.3 The Consultant shall notify the Customer as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.
- 16.4 The Consultant may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 16.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 14, 16.6, 17.4, 18.3, 19 and 20.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 16.6 Upon termination or expiry of the Agreement, the Consultant shall:
 - 16.6.1 give all reasonable assistance to the Customer and any incoming Consultant of the Services; and
 - 16.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

17 Compliance

- 17.1 The Consultant shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Consultant of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Consultant in the performance of its obligations under the Agreement.
- 17.2 The Consultant shall:
 - 17.2.1 comply with the reasonable requirements of the Customer's security arrangements;
 - 17.2.2 comply with all the Customer's health and safety measures while on the Customer's premises; and
 - 17.2.3 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 17.3 The Consultant shall:
 - 17.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Consultant from time to time; and
 - 17.3.2 take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.
- 17.4 The Consultant shall supply the Services in accordance with the Customer's environmental policy as provided to the Consultant from time to time.
- 17.5 The Consultant shall comply with, and shall ensure that its Staff shall comply with, the provisions of:
 - 17.5.1 the Official Secrets Acts 1911 to 1989; and

17.5.2 section 182 of the Finance Act 1989.

18 Prevention of Fraud and Corruption

- 18.1 The Consultant shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 18.2 The Consultant shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Consultant (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 18.3 If the Consultant or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with the Customer, the Customer may:
- 18.3.1 terminate the Agreement and recover from the Consultant the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
 - 18.3.2 recover in full from the Consultant any other loss sustained by the Customer in consequence of any breach of this clause.

19 Dispute Resolution

- 19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “**Mediator**”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 19.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

20 General

- 20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 20.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 20.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them and shall not be replaced or superseded by the submission of any terms and conditions by the Consultant after the date of the Agreement. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

- 20.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 20.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 20.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 20.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

21 Notices

- 21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the Agreement, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 21.3 Notices under clauses 15 (Force Majeure) and 16 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.

22 Governing Law and Jurisdiction

The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

Schedule 2
Charges

[TO BE INSERTED FORM WINNING BID]

Schedule 3
Data Processing

The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do, unless otherwise notified by the Customer in writing, is listed in the following table by the Customer and may not be determined by the Contractor.

Description	Details
Subject matter of the processing	Receipt, storage and utilisation of relevant personal data to enable delivery of Architectural support.
Duration of the processing	For the duration of this this Agreement.
Nature and purposes of the processing	The receipt, organisation, storage, retrieval, consultation, use of Personal Data in order to facilitate delivery of the Frontage Improvement Scheme.
Type of Personal Data	Names, addresses, telephone numbers, and email addresses
Categories of Data Subject	Council staff, Grant Applicants and Contractors.

Schedule 4
Template Letter of Appointment

[ADDRESSEE]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear [ADDRESSEE],

[PROJECT DESCRIPTION] (Project) at [PROPERTY DESCRIPTION] (Property)

Thank you for appointing us to act as Consultant for your project. We will perform the Services, subject to the following conditions:

1. DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in this appointment:

1.1 Definitions:

Architectural Services Agreement: the agreement between us and NWLDC in relation to the Frontage Improvement Scheme for the provision of architectural services to you in respect of your application to the Frontage Improvement Scheme.

Business Day: a day other than a Saturday, Sunday or public holiday in England.

Construction Products Regulations: the Construction Products Regulations 2013 (SI 2013/1387) and the Construction Products Regulation (305/2011/EU).

Frontage Improvement Scheme: the Frontage Improvement Scheme for Coalville town centre

Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project.

NWLDC: North West Leicestershire District Council

Services: as defined at schedule 1 of this agreement

1.2 Paragraph and Schedule headings shall not affect the interpretation of this appointment.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 This appointment shall be binding on, and ensure to the benefit of, the parties to this appointment and their

respective personal representatives, successors and assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.10 Any reference to a party's **consent** or **approval** being required is to a consent or approval in writing which must be obtained before the relevant act is taken or event occurs.

1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.12 A reference to **writing** or **written** includes fax and email.

1.13 References to paragraphs and Schedules are to the paragraphs and Schedules of this appointment.

1.14 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

1.15 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this appointment) at any time.

1.16 Unless this appointment otherwise expressly provides, a reference to the Property or the Project is to the whole and any part of it.

1.17 Unless otherwise expressly provided, the obligations and liabilities of the persons forming the parties under this appointment are joint and several.

1.18 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. OUR OBLIGATIONS

2.1 Subject to Paragraph 2.2, we warrant and undertake that we shall:

- (a)** comply with the terms of this appointment;
- (b)** not without both your and NWLDC's written consent, make any material change to the designs or specifications for the Project after they have been settled or approved;
- (c)** provide you with as many copies of the "as built" drawings of the Project as you reasonably require;
- (d)** carry out and fulfil, in all respects, the duties of a designer and principal designer under the Construction (Design and Management) Regulations 2015 (SI 2015/51);
- (e)** act fairly and impartially when exercising our power to issue certificates and award extensions of time under any building contract relating to the Project;
- (f)** regularly liaise with any building contractors or professional consultants engaged on the Project.

2.2 We warrant and undertake that we shall exercise all the reasonable skill, care and diligence to be expected of a qualified and experienced member of our profession undertaking the Services on works similar in scope and character to the Project:

- (a)** when performing the Services;

(b) not to specify for use in the Project any materials, equipment, products or kits, which, at the time of specification or use, are generally accepted, or generally suspected, in the construction industry at the relevant time as:

(i) posing a threat to the health and safety of any person;

(ii) posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project;

(iii) reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project;

(iv) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or

(v) having been supplied or placed on the market in breach of the Construction Products Regulations;

(c) to comply with (and ensure the completed Project complies with) any statutory requirements, secondary legislation, regulations, bye-laws and planning agreements, obligations and consents; and

(d) to perform the Services and prepare all Material for those elements of the Project for which we are responsible according to the Project programme or, in the absence of a Project programme, in sufficient time to facilitate the efficient progress of the Project.

2.4 Our duties or liabilities under this appointment shall not be negated or diminished by any approval, inspection, test or omission to approve, inspect or test, by you or on your behalf.

2.5 Our services under this agreement are limited to the extent of the Project agreed by NWLDC under the Coalville Frontage Improvement Scheme.

2.6 Whilst on your premises we shall comply with your Security Requirements.

3. YOUR OBLIGATIONS

You will:

- (a) Allow us reasonable access to the Property to enable us to comply with our obligations as identified at paragraph 2;
- (b) Allow contractors reasonable access to the Property to enable them to complete the works.
- (c) Attend at site meetings as necessary.
- (d) Maintain security of your premises in accordance with your standard security requirements.
- (e) Promptly notify us of any health and safety hazards which may exist or arise at your premises which may affect us in connection with the performance of our obligations under this Agreement.

4. OUR AUTHORITY

Notwithstanding any other provision of this appointment, other than in an emergency or with both your and NWLDC's prior written consent, we have no authority to:

(a) make or instruct any material alteration to the Project or your Services;

(b) vary, terminate or waive compliance with the terms of any building contract or professional appointment relating to the Project;

- (c) enter into any contract, commitment or undertaking on your behalf; or
- (d) without prejudice to Paragraph 2.1(d), issue any instruction or notice under a building contract or professional appointment relating to the Project that:
 - (i) delay the Project; or
 - (ii) increase the cost of the Project.

5. TERMINATION

5.1 With the written consent of NWLDC you may terminate our engagement under this appointment at any time by giving ten Business Days' notice in writing to us.

5.2 either you or us, with NWLDC's written consent, may immediately terminate our engagement under this appointment by giving written notice to the other party if:

- (a) the other party is in material breach of its obligations under this appointment and fails to remedy such breach within ten Business Days of receiving written notice requiring it to do so; or
- (b) the other party becomes insolvent as defined in section 113 of the Housing Grants, Construction and Regeneration Act 1996.

6. CONSEQUENCES OF TERMINATION

6.1 On termination in accordance with paragraph 5 you shall not be liable to us for:

- (a) any costs, expenses, disbursements or losses;
- (b) any loss of profits, loss of fees, loss of chance or other similar losses; or
- (c) any indirect losses or consequential losses

arising out of termination of our engagement under this appointment.

6.2 Termination of our engagement under this appointment shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this appointment which existed at or before the date of termination.

7. ASSIGNMENT AND SUB-CONTRACTING

We shall not sub-contract the performance of any of the Services without NWLDC's prior written consent. We shall be responsible for any services we sub-contract to a third party as if we had performed such services ourselves.

9. COPYRIGHT

9.1 We own all intellectual property rights (including copyright) relating to the Material we produce.

9.2 We grant you, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, us for any purpose relating to the Project and the Property, including the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, building information modelling and repair of the Property and the

Project.

9.3 The licence in Paragraph 9.2 allows you to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.

9.4 The licence in Paragraph 9.2 carries the right to grant sub-licences and is transferable to third parties without our consent.

9.5 You grant us, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence (or, as the case may be, sub-licence) including the right to grant sub-licences (or, as the case may be, sub-sub-licences), to copy and make full use of the Material produced by you or on your behalf (including any produced by a building contractor or another member of the professional team) for the purpose of performing the Services.

9.6 Neither we nor you shall be liable to each other for:

(a) any use of Material created by (or on behalf of) you for any purpose other than that for which that Material was prepared and/or provided; or

(b) any amendment or modification of Material, except where such amendment or modification:

(i) was made with the consent (not to be unreasonably withheld) of the party that produced it (or on whose behalf it was produced);

(ii) was made for a use permitted in Paragraph 7.2 or Paragraph 7.5 following termination of the engagement of the party that produced it (or on whose behalf it was produced) in relation to the Project.

9.7 You may at any time (whether before or after completion of the Services, or after termination of our engagement under this appointment) request a copy or copies of (some or all of) the Material from us. On your payment of our reasonable charges for providing the copy (or copies), we shall provide the copy (or copies) to you.

10. CONFIDENTIALITY

10.1 Neither you nor we shall at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Paragraph 10.2.

10.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, contractors, sub-contractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this appointment. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Paragraph 10; and

(b) as may be required by law, to a court of competent jurisdiction or any governmental or regulatory authority.

10.3 Neither you nor we shall use any other party's confidential information for any purpose other than to exercise our rights or perform our respective obligations under or in connection with this appointment.

11. PROFESSIONAL INDEMNITY INSURANCE

11.1 During the term, we shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Agreement, and shall produce to the you on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

12. DISPUTES

Notwithstanding any other provision of this appointment either we or you may refer a dispute arising under this appointment to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations 1998, which Part shall take effect as if it was incorporated into this paragraph.

13. LIMITATION OF LIABILITY

13.1 We shall not be responsible for any injury, loss, damage, cost, or expense suffered by the you if and to the extent that it is caused by your negligence or wilful misconduct or by breach of your obligations under this agreement.

13.2 Our aggregate liability in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of this agreement, the supply or failure to supply Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed in aggregate the indemnity limit of any applicable insurance policy maintained (or which should have been maintained pursuant to this Agreement of the amount which would have been paid out but for our doing something to vitiate the insurance) by us.

13.3 Nothing in this agreement shall exclude or limit our liability for:

(a) death or personal injury caused by your negligence; or

(b) fraud or fraudulent misrepresentation.

14. NOTICES

14.1 Any notice or other communication given to a party under or in connection with this appointment shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by fax to its main fax number.

14.2 Any notice or communication shall be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or

(c) if sent by fax, at 9.00 am] on the next Business Day after transmission.

14.3 This *Paragraph 14* does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15. LIABILITY PERIOD

Neither party shall commence any legal action against the other under this appointment after six years from the date of making good of defects of all of the Project and any adjudicator's decision under Paragraph 12 of this appointment shall be finally binding on both of us unless either party has referred that dispute for final determination by legal proceedings, or has commenced any legal action to recover any overpayment to which the decision has led, before that date.

16. THIRD PARTY RIGHTS

A person who is not a party to this appointment shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this appointment.

17. SCOPE OF APPOINTMENT

17.1 This appointment takes effect from the date when we commence performance of the Services, regardless of the date of this appointment.

17.2 This appointment constitutes the entire agreement between us and you and supersedes and extinguishes all previous appointments, agreements, promises, assurances, warranties, representations and understandings between us and you, whether written or oral, relating to its subject matter.

17.3 Each party acknowledges that in entering into this appointment it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this appointment.

17.4 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this appointment.

17.5 Nothing in this Paragraph 17 shall limit or exclude any liability for fraud.

18. GOVERNING LAW

This appointment and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

19. JURISDICTION

We and you irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this appointment or its subject matter or formation (including non-contractual disputes or claims).

Please acknowledge receipt and acceptance of this appointment by signing, dating and returning the enclosed copy.

Yours faithfully,

.....

[NAME OF SENDER]

Enc.

We hereby acknowledge receipt and accept the contents of this letter

Signed

[NAME OF RECIPIENT]

Date

Schedule 1
Coalville Frontage Improvement Scheme Architectural Services

Scope of services

- The consultant will be responsible for providing all architectural services required to support the delivery of capital works through to scheme completion, in line with stages 0-7 of the RIBA Plan of Work 2013.
- The consultant will act as the lead consultant and contract administrator for the delivery of capital works.
- The consultant will need to enter into an agreement with the grant applicant to provide professional services, in line with RIBA stages 0-7. This will include planning the works, appointing and managing contractors, as well as overseeing the works to completion.
- In accordance with the RIBA Plan of Work 2013, the appointed consultant will be responsible for the procurement and management of any additional professional services and disbursements required. This will include coordinating and managing all enabling works relating to the frontage, including procuring the necessary professional services and contractors.
- The appointed consultant will perform the role of Principal Designer under the Construction Design and Management Regulations 2015.
- The appointed consultant will need to be sufficiently flexible to be able to carry out tasks within a reasonable timeframe as and when they arise throughout the lifetime of the contract. On occasions, this may involve weekend work if necessary to oversee works.
- The contract will include attendance of all necessary meetings (including grant panel meetings), and site visits.
- The consultant will liaise at all times to keep the project team informed of progress and issues, and to ensure the cost plan remains within budget.
- Tenderers will need to provide a clear statement demonstrating that they, or their practice, has appropriate RIBA/CIAT accreditations, with the documentation submitted to evidence this accreditation.

Specific duties

Duties of the architectural consultant will include the following:

- Liaison between the project team, the grant applicant, contractors and all other parties involved in the delivery of individual projects.

- To determine other professional support required, including surveys, and appoint on behalf of the grant applicant as necessary, subject to the agreement of the grant applicant and the council.
- Preparation of sketch scheme designs.
- Preparation of detailed design documents, including all working drawings, the schedule of works and specification. It is anticipated the drawings will comprise at a minimum:

Proposed elevation/s: scale 1:50

Detailed elements, and profiled parts of the frontage, at an appropriate scale: between 1:5 and 1:20

- Prepare an estimate of the total cost of the proposed works.
- Preparation of written reports and documentation for the grant panel.
- Where necessary, apply for and obtain all necessary statutory permissions to be able to deliver individual project, consents and approvals, including, as appropriate, Planning Consent, Advertisement Consent, Listed Building Consent, and Building Regulations.
- Preparation of all detailed information for discharge of statutory conditions, approval for variations to existing permissions and any subsequent applications for statutory approvals as required to deliver the scheme.
- Lead on contract administration, and at all times keep the project team informed.
- Ensure all works are compliant with current regulations including those relating to health and safety.
- Act as Principal Designer under the Construction Design and Management (CDM) Regulations 2015.
- Plan, manage, monitor and coordinate health and safety documentation, including the preparation of all necessary technical documentation.
- Co-ordinate pre-construction information, and provide the information other designers and contractors need to carry out their duties.
- Work with any other 'designers' on the project to eliminate foreseeable health and safety risks to anyone affected by the work and, where that is not possible, take steps to reduce or control those risks.
- Ensure provision by contractors of a CDM compliant health and safety pack.
- Advise on suitable forms of building contract, and the associated responsibilities.

- To reflect the grant payment processes of the Frontage Improvement Scheme, the consultant will need to supply a contract between the grant applicant and any contractors that will withhold 2.5% of the cost of works for 12 months after practical completion and until they have been certified to be free from defects. The final 2.5% will be paid to the contractors after a certificate of making good defects has been issued by the consultant.
- For each individual project, obtain three competitive quotes from contractors known to be able to achieve the standards required, and with demonstrable experience of working on conservation projects.
- Appoint suitable contractors, undertaking checks to ascertain insurance, track record and suitability.
- Oversee the procurement of additional technical services/disbursements necessary for individual projects.
- Preparation of all further information for construction as required.
- Coordinate and administer the construction contracts.
- Conduct meetings with the contractors to review progress.
- Provision to the contractors of further information as and when required, and review of information provided by contractors and specialists.
- Inspect works and issue certificate of practical completion after the works have been completed to the required standard, including resolution of identified snags. Ensure the CDM health and safety file etc. is compliant.
- Prepare a short written report for the project team for each project upon practical completion, with suggested recommendations to enhance future projects.
- Provision of architectural services associated with the administration of the construction/manufacture/installation contracts after practical completion, assisting users during the initial period of use and the review of project performance in use.
- Manage issues arising during the defects liability period and issue a certificate of making good defects at the end of the defects liability period, in order for retention monies to be released.
- Ensure any updates and amendments are made to the 'as built' drawings and the CDM health and safety file etc. during the defects liability period.
- Compile the maintenance and operational strategy, incorporating a programme for maintenance of the frontage.

- Provide a reasonable number of appropriate images in digital format, through the life of each of the individual projects, both as a record of projects, and to promote the scheme e.g. publications, website, digital media etc. These images should be copyright free.

**Schedule 5
Specification**

Part A – Customer's Requirements

Inserted overleaf is the Customer's requirements.

Part B – Consultant's Tender Response

Inserted overleaf is the Consultant's Tender Response.

Part A and Part B together shall form the Specification for the purposes of this contract provided that where there is a discrepancy between Part A and Part B of this Schedule 5, Part A shall take precedence.