DATED 20[ ]

1. **SOUTH OXFORDSHIRE DISTRICT COUNCIL**
2. **LEDA PROPERTIES LIMITED**
3. **CULHAM STORAGE LIMITED**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**DEED OF AGREEMENT**

**Under Section 106 of the Town and Country Planning Act 1990 (as amended)**

**relating to biodiversity net gain on land to the North of the Culham Science Centre, Thame Lane near Clifton Hampden OX14 3GY**

**Planning Application number: P24/S1498/FUL**

**District reference: Legal LG/10846**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Contents

[1 Definitions 1](#_Toc185244620)

[2 Legal Basis 6](#_Toc185244621)

[3 Conditionality and Termination 6](#_Toc185244622)

[4 The Owner & Developer’s Covenants 6](#_Toc185244623)

[5 The Council's Covenants 7](#_Toc185244624)

[6 Indexation 7](#_Toc185244625)

[7 Interest on late payment 7](#_Toc185244626)

[8 Ownership 7](#_Toc185244627)

[9 Miscellaneous 7](#_Toc185244628)

[10 Waiver 8](#_Toc185244629)

[11 INTENTIONALLY LEFT BLANK 9](#_Toc185244630)

[12 Limitation of Liability 9](#_Toc185244631)

[13 Notices 9](#_Toc185244632)

[14 Data Protection 10](#_Toc185244633)

[15 Value Added Tax 10](#_Toc185244634)

[16 Governing Law 10](#_Toc185244635)

[17 Execution 10](#_Toc185244636)

[Schedule 1 – Site Location Plan 13](#_Toc185244637)

[Schedule 2 – Owner and Developer’s Covenants 14](#_Toc185244638)

[1 Implementation of the Habitat Management and Monitoring Plan 14](#_Toc185244639)

[2 Habitat Management and Monitoring Plan 14](#_Toc185244640)

[3 Biodiversity Gain Land Monitoring Contribution 15](#_Toc185244641)

[4 Access for Inspection 15](#_Toc185244642)

[5 Breach Provisions 15](#_Toc185244643)

[Schedule 3 – Council Covenants 17](#_Toc185244644)

[1 Inspection of the Habitat Management and Monitoring Plan 17](#_Toc185244645)

[2 Habitat Management and Monitoring Plan 17](#_Toc185244646)

[3 Habitat Management and Monitoring Contribution 17](#_Toc185244647)

[4 Right of Access 17](#_Toc185244648)

[5 Breach Provisions 17](#_Toc185244649)

[Agreement

1. Dated
2. Between
   1. **SOUTH OXFORDSHIRE DISTRICT COUNCIL of** Abbey House, Abbey Close, Abingdon, Oxfordshire OX14 3JE (the **Council**); and
   2. **LEDA PROPERTIES LIMITED** (company registration number 1257376) whose registered office is situated at 2 Bignell Park Barns, Chesterton, Bicester, Oxfordshire, OX26 1TD (the **Owner**); and
   3. **CULHAM STORAGE LIMITED** (company registration number 14305030) whose registered office is situated at4th Floor 80 Victoria Street, London SW1E 5JL (the **Developer**)
3. Recitals
   * + 1. The Council is the Local Planning Authority for the purposes of the 1990 Act for the area in which the Development is situated;
       2. The Owner is the registered freehold owner of the Site that is registered with Title Absolute at the Land Registry under Title Number ON208645 being subject to charges and covenants but otherwise free from encumbrances as the Owner hereby warrants.
       3. The Developer by the Planning Application has applied to the Council for planning permission for the Development
       4. The Council refused the Planning Application on 8 August 2024 and the Developer lodged the Appeal with the Planning Inspectorate
       5. The Owner and the Developer have agreed to enter into the covenants contained in this Agreement pursuant to the provisions of the 1990 Act upon the terms and conditions hereinafter appearing with the intent that it should be binding not only upon the Owner and the Developer but also upon any person deriving title from them as provided by Section 106 of the 1990 Act and any persons claiming through under or in trust from them
       6. This Deed is entered into to ensure that the Site provides a Biodiversity Net Gain to satisfy the requirements of Schedule 7A of the 1990 Act.
4. It is agreed as follows:
5. Definitions
   1. For the purposes of this Deed the following expressions shall have the following meanings unless the context requires otherwise:

1990 Act means the Town and Country Planning Act 1990 (as amended).

Agreement Expiry Date means a date which is the expiration of the period of 30 years following the Completion Date.

**Appeal** means the appeal under Section 78 of the 1990 Act submitted by the Developer to the Secretary of State against the Council’s refusal of planning permission for the Planning Application and allocated reference number [ ]

**[Biodiversity Gain Land Monitoring Contribution** means the sum of £15,144.92 (Fifteen Thousand One Hundred and Forty-Four pounds and Ninety-Two pence) Index Linked to be paid by the Developer to the Council under paragraph 3 of Schedule 2 of this Deed to be applied by the Council as a financial contribution towards the Council's costs of monitoring compliance with the Owner and Developer’s obligations under this Deed for the purpose of achieving the Biodiversity Net Gain as specified in the Habitat Management and Monitoring Plan.]

Biodiversity Metric means the statutory biodiversity accounting tool published by DEFRA or Natural England from time to time that can be used to measure the biodiversity value or relative biodiversity value of habitat or habitat enhancement for the purposes of biodiversity net gain.

Biodiversity Net Gain or BNG means an increase in Biodiversity Units resulting from implementing the Habitat Management and Monitoring Plan (as measured using the Biodiversity Metric) on the Site in order to create or enhance biodiversity under Schedule 7A of the 1990 Act.

Biodiversity Unit(s) means the quantum of biodiversity as measured by the Biodiversity Metric.

Breach Notice means a notice which may be served by the Council on the Owner under paragraph 5 of Schedule 2 of this Deed.

Certificate of Completion means a written certificate of completion confirming that the Habitat Creation and Enhancement Works have been completed to the reasonable satisfaction of the Council on the Completion Date issued (or deemed to have been issued) by the Council under paragraph 1.1(b)(i) of Schedule 3 and for the avoidance of doubt the said certificate may be issued by email to: [insert email applicant’s email address] or post in accordance with clause 13

1. **CIEEM**  is the Chartered Institute of Ecology and Environmental Management or its successor in function

Commencement Date means the date upon which the Development Commenced

**Commencement of Development** the carrying out on the Planning Application Site of any material operation pursuant to the Planning Permission or (where clause 9.9 applies) a Section 73 Permission and “material operation” shall have the meaning given to it in Section 56(4) of the 1990 Act and material operations shall be construed as being carried out at the earliest date on which any material operation is begun save that a material operation shall not include operations in connection with any archaeological investigations works of excavation demolition site clearance diversion of services installation of services for construction purposes only site or soil investigations remedial action in respect of any contamination landscaping works provision of construction access landscaping works noise attenuation works or the erection of hoardings and fences and “Commence Development” and “Commenced” shall be construed accordingly

**Competent** holding a minimum of Membership of the CIEEM or a cognate body with a professional code of conduct and/or in line with definitions provided by the British Standard on Biodiversity Net Gain (8683: 2021) and any relevant Natural England or DEFRA Guidance

Completion Date means the date specified in the Certificate of Completion that shall be the date that both the Development Completed and the Habitat Creation and Enhancement Works were completed, and where these are different dates, the later date shall apply.

**Completion Date Notice** means written notice from the Owner to the Council of the proposed Completion Date served in accordance with paragraph 1.2(e) of Schedule 2.

1. **Completion Report** means a written report submitted by a Competent ecologist who has personally surveyed the Site and which confirms that the Habitat Creation and Enhancement Works have been satisfactorily completed in accordance with the approved HMMP in force at the time

**Condition** means a condition of the Planning Permission that the Development may not Commence until a Habitat Management Monitoring Plan has been submitted to, and approved by, the District Council, in accordance with the requirements of paragraph 13 of Schedule 7A of the 1990 Act

**Decision Letter** means the Inspector or Secretary of State’s decision letter determining the Appeal

**Deed:** this agreement.

DEFRA means the public body known as the Department for Environment, Food & Rural Affairs or any successor body which acts as the Government's advisor for the natural environment, food or rural affairs in England.

**Development** the development of a Battery Energy Storage System (BESS), comprising a 500 megawatt (MW) battery storage facility with associated infrastructure, access and landscaping, with a connection into the Culham Jet National Grid substation on the Planning Application Site

**Development Completed** means when the works specified in the Development have been fully built out and are ready for occupation for the use permitted by the Planning Permission and “Completion of the Development” and “Completed the Development” shall be construed accordingly

1. **Force Majeure Event** means a circumstance not within the control of the Owner including without limitation (a) an act of God such as a drought, flood or other natural disaster; (b) appearance on the Site of an invasive or nuisance species (singular or plural); (c) epidemic or pandemic; (d) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations; (e) nuclear, chemical or biological contamination; (f) plant disease; (g) epizootic; or (h) compulsory purchase

**Habitat Creation and Enhancement Works** means the habitat creation and enhancement works set out in the Habitat Management and Monitoring Plan (excluding any management or monitoring activities specified in the Habitat Management and Monitoring Plan).

Habitat Management and Monitoring Plan or HMMP means the document to be submitted using Natural England’s published template “Habitat Management and Monitoring Plan Template (J258) or substantially in that format which is approved by the Council in the discharge of the Condition and which provides for the Biodiversity Units on the Site calculated in accordance with the Biodiversity Metric, as submitted and approved by the Council in accordance with the Planning Permission and which contains written narrative and spatial mapping details for Biodiversity Net Gain on the Site

Index Linked means adjusted in accordance with any variation in the Index of Retail Prices Information excluding mortgage interest payments occurring between April 2023 and the date when the relevant payment to the Council is due or made (whichever is the later)

**Inspector** means the inspector appointed by the Secretary of State to determine the Appeal

Interest means Interest at a rate of 4% above the base rate of Lloyds Bank PLC from time to time

1. Monitoring Report a written report produced by a Competent ecologist who has personally surveyed the Site to be provided on the dates set out in the Habitat Management and Monitoring Plan, which sets out:
2. (a) the results of a review of the operation and effectiveness of the Habitat Management and Monitoring Plan since the previous Habitat Monitoring Report; and
3. (b) any remedies or measures that are required to be implemented to meet the requirements of the Habitat Management and Monitoring Plan
4. using the monitoring strategy and methods set out in the Habitat Management and Monitoring Plan

Natural England means the public body known as Natural England or any successor body which acts as the Government's advisor for the natural environment in England.

Off-Site means a site identified by or on behalf of the Owner and approved in writing by the Council where Biodiversity Units are to be provided in accordance with paragraphs 5.2(a) and / or (b) and/or 5.3(a) and/or (b) of Schedule 2 may apply

Obligations means the obligations given to the Council by the Owner and the Developer as set out in Schedule 2.

Parties means (collectively) the Council, Owner and the Developer and Party shall refer to any of them as the context requires.

**Planning Application** the application for planning permission for the Development under the Council’s reference P24/S1498/FUL

**Planning Permission** the planning permission for the Development granted by the Inspector or the Secretary of State pursuant to the Appeal as may from time to time be amended by the approval of a non-material amendment pursuant to Section 96A of the 1990 Act or a Section 73 Permission

**Planning Application Site** means land to the North of the Culham Science Centre, Thame Lane near Clifton Hampden OX14 3GY being the wider site that is the subject of the Planning Application for the Development and is shown for identification purposes edged red on the Planning Application Site Plan

**Planning Application Site Plan** means the plan annexed to this Deed in Schedule 1 with drawing number SL254\_L\_X­\_LP\_01­­­ dated 18 November 2022

**Remedial Steps** means any remedial steps required to ensure compliance with the Habitat Management and Monitoring Plan

**Secretary of State** means the Secretary of State Housing Communities and Local Government

**Section 73 Permission** means a planning permission which may be granted by way of approval of an application under Section 73 of the 1990 Act permitting the Development subject to conditions which differ from the conditions of the Planning Permission

Site means that part of the site known as land to the North of the Culham Science Centre, Thame Lane near Clifton Hampden OX14 3GY and that falls within a part of the land that is registered at HM Land Registry with title number ON208645 and shown for identification purposes edged red on the Site Location Plan

**Site Location Plan** means the plan annexed to this Deed in Schedule 1 with drawing number X20827-04 dated 16.12.24

Working Day means day other than a Saturday a Sunday Christmas Day Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom and any day which is on or between the 27 and 31 December in any calendar year

* 1. Clause headings do not affect the interpretation of this Deed.
  2. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
  3. A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
  4. Unless the context otherwise requires, words in the singular include the plural and in the plural shall include the singular.
  5. Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
  6. A reference to the Owner includes those deriving title through or under it. A reference to the Council includes any successors to its statutory functions and any duly appointed employee or agent for the Council.
  7. Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
  8. Unless the context otherwise requires, a reference to a statute or statutory provision does include any subordinate legislation made from time to time under that statute or statutory provision.
  9. A reference to **writing** or **written** excludes faxes and e-mail.
  10. A reference to **this Deed** or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
  11. References to Clauses and Schedules are to the Clauses and Schedules of this Deed.
  12. An obligation on a Party not to do something includes an obligation not to allow that thing to be done.
  13. 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.
  14. Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
  15. Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of this restriction

1. Legal Basis
   1. This Deed is made under Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 with intent that it creates planning obligations binding the Owner and the Developer’s interests in the Site. The obligations, restrictions and covenants in Clause 4 are planning obligations for the purposes of Section 106 of the Act enforceable by the Council as local planning authority.
   2. No person shall be liable for any breach of any provisions of this Deed after it shall have parted with its entire interest in the Site or the part of the Site in relation to which the breach relates but without prejudice to its liability for any subsisting breach arising prior to parting with such interest and for the purposes of this clause a person parts with an interest in the Site notwithstanding the retention of easements or the benefit of covenants, restrictions or reservations which shall not constitute an interest for the purposes of this clause.
2. Conditionality and Termination
   1. Subject to Clauses 3.2 and 3.3, this Deed is effective on the date it is dated.
   2. Clause 4 is effective from the date on which the Planning Permission is granted.
   3. If the Planning Permission and any Section 73 Permissions shall expire within the meaning of sections 91, 92 or 93 of the 1990 Act or shall at any time be revoked or modified by any statutory procedure without the agreement of the Owner this Deed shall forthwith determine (insofar as it has not already been complied with and save for any obligations which are already outstanding)
   4. This Deed shall terminate on the Agreement Expiry Date, provided the Owner and Developer are are not in material and continuing breach of their obligations at that date.
   5. The termination of this Deed under clause 3.4 shall not affect any accrued rights and liabilities or any rights or remedies of the parties for breach, non-observance of non-performance of the obligations under this Deed.
3. The Owner & Developer’s Covenants
   1. The Owner and Developer covenant with the Council so as to bind their interests in the Site and to observe and perform the obligations as set out in Schedule 2 of this Deed.
   2. The Owner and the Developer covenant with the Council not to Commence Development unless not less than 10 Working Days prior written notice of the intention to Commence Development has been given to the Head of Planning and the Head of Planning has acknowledged receipt.
   3. The Owner shall notify the Council of the date of the Commencement of Development within 14 Working Days of its occurrence
   4. If the Secretary of State or the Inspector make a finding in the Decision Letter that any of the covenants or obligations in this Deed are incompatible with one or more of the tests for planning obligations set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and accordingly attaches no weight to the obligation in the Decision Letter then such covenant(s) or obligation(s) as so identified by the Secretary of State or Inspector in the Decision Letter shall be deemed to have been revoked and be of no effect notwithstanding the remaining provisions of this Deed which for the avoidance of doubt shall remain in effect and enforceable.
4. The Council's Covenants

The Council covenants with the Owner and Developer as set out at Schedule 3.

1. Indexation
   1. All payments payable to the Council shall be Index Linked.
   2. Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.
2. Interest on late payment

If any sum or amount has not been paid to the Council by the date it is due, the Owner or Developer who has covenanted to pay, shall pay the Council Interest on that amount. Interest shall accrue on a daily basis for the period from the due date of the sum to and including the date of payment of the sum together with the Interest.

1. Ownership
   1. The Owner shall notify the Council immediately of any change in ownership of any of their interests in the Site occurring before all the obligations under this Deed have been discharged.

Notice under Clause 8.1 shall include details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan

1. Miscellaneous
   1. The Developer shall pay to the Council the Council’s reasonable and proper legal costs incurred in the preparation, negotiation and completion of this Deed on the date of this Deed.
   2. The Owner will reimburse the Council in respect of all legal and administrative costs reasonably incurred in connection with the enforcement of any of the provisions of this Agreement including correspondence monitoring and site visits by or on behalf of the Council where the Council reasonably considers that there has been a default on the part of the Owner and for the avoidance of doubt this is in addition to the Biodiversity Gain Land Monitoring Contribution
   3. Where the agreement, approval, consent or expression of satisfaction is to be given by any Party or any person on behalf of any Party hereto under this Deed such agreement, approval or consent or expression of satisfaction:
      * 1. shall not be unreasonably withheld or delayed;
        2. shall be given in writing; and
        3. may be validly obtained only before the act or event to which it applies.
   4. Where any payment of costs or other payments are to be made by the Owner or the Developer to the Council such costs and other payments shall be deemed to be reasonable and proper.
   5. This Deed shall be deemed a Local Land Charge and will be registered as such by the Council.
   6. The Parties do not intend any person to have the benefit of the Contract (Rights of Third Parties) Act 1999.
   7. If any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable, such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provision of this Deed.
   8. Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its functions in any capacity (including in particular its capacities as highway authority and local planning authority) and the rights, powers, duties and obligations of the Council under private, public or subordinate legislation may be effectively exercised as if it were not a Party to this Deed.
   9. In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and a Section 73 Permission is granted this Agreement shall (unless the Council determine that revised planning obligations are required as a result of such amendment) apply to development pursuant to the Planning Permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act and FOR THE AVOIDANCE OF DOUBT this shall mean that the covenants restrictions and obligations in this Agreement shall apply to them as if they were specifically referred to in this Agreement and this Agreement shall take effect and be read and construed accordingly
   10. Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed and insofar as reasonably practicable the parties shall amend that clause or clauses in such reasonable manner as achieves the intention of the parties without illegality
   11. Nothing in this Agreement shall prevent the Owner from developing the Site or any part of the Site in accordance with a planning permission other than the Planning Permission or a Section 73 Permission
2. Waiver

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants, terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

1. Intentionally Left Blank
2. Limitation of Liability
   1. No person shall be liable under this Deed after it shall have parted with its interest in the Site (or in the event of a disposal of part of the Site be liable in respect of that part disposed) but without prejudice its liability for any subsisting breach arising prior to parting with such interest (or part thereof).
   2. This Deed shall not be enforceable against:
      * 1. any statutory undertaker who acquires any part of the Site or interest therein for the exclusive purpose of carrying out their statutory undertaking; or
        2. any person whose only interest in the Site or any part of it is in the nature of the benefit of an easement or covenant, or as the owner of the sub-soil of any highway within the Site.
   3. No person shall be liable for breach of obligation if it is shown:
      * 1. That the breach occurred as a direct result of a Force Majeure Event; or
        2. That the breach occurred as a result of doing, or not doing, something in an emergency in circumstances where it was necessary for that to be done, or not done in order to prevent loss of life or injury to any person.
3. Notices
   1. Any notice to be given under this Deed shall be:
      * 1. in writing; and

either

delivered by hand; or

sent by pre-paid first-class post or other next working day delivery service.

* + - 1. sent to
         1. the Council at the address referred to on page 1 of this Deed (marked for the attention of The Head of Planning and quoting reference P24/S2626/FUL or as otherwise notified to the Owner from time to time); and
         2. any other Party at its registered address as shown on page 1 of this Deed or as otherwise notified to the Council from time to time).
  1. This Clause 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.

1. Data Protection
   1. The parties to this Agreement acknowledge and agree that information as to compliance with obligations pursuant to this Agreement (including as to whether or not contributions have been paid) may be passed to:
      * 1. persons who make enquiries on such matters and who advise that they or their clients are proposing to acquire an interest in the Site and it isacknowledged that the recipients of such information may then disseminate it further
        2. any person when so required in order to comply with statutory requirements including the Freedom of Information Act 2000
2. Value Added Tax
   1. Any sum payable under this Deed is exclusive of VAT (if any).
   2. If at any time VAT is required to be paid in respect of any sum due under this Deed then to the extent that VAT had not been previously charged in respect of that sum the Council shall have the right to issue a VAT invoice and the VAT shall be paid accordingly.
3. Governing Law

This Deed 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.

1. Execution

|  |  |
| --- | --- |
| This Deed has been executed by the Parties and is delivered on the date on the first page.  THE COMMON SEAL OF  SOUTH OXFORDSHIRE DISTRICT COUNCIL  is hereunto affixed under the  authentication of  Name:  The Officer Appointed for this purpose |  |

|  |  |
| --- | --- |
| **Executed** as a deed by  **LEDA PROPERTIES LIMITED**  acting by a Director and its Secretary  or by two Directors | ) ) ) ) |
| Director Name: (Capitals) | ) |
| Director Signature: | ) |
|  |  |
| Director/Secretary Name (Capitals) | ) |
| Director/Secretary Signature: | ) |
| **Executed** as a deed by  **CULHAM STORAGE LIMITED**  acting by a Director and its Secretary  or by two Directors | ) ) ) ) |
| Director Name: (Capitals) | ) |
| Director Signature: | ) |
|  |  |
| Director/Secretary Name (Capitals) | ) |
| Director/Secretary Signature: | ) |



Site Location Plan

**Planning Application Site Plan**

1. – Owner and Developer’s Covenants

The Owner and Developer covenants with the Council so as to bind their interests in the Site as follows:

1. Implementation of the Habitat Management and Monitoring Plan
   1. To:
      * 1. notify the Council in writing of the Commencement Date within 10 Working Days of it occurring;
        2. begin the Habitat Creation and Enhancement Works in accordance with the Habitat Management and Monitoring Plan;
        3. complete the Habitat Creation and Enhancement Works in accordance with the Habitat Management and Monitoring Plan;
        4. [use reasonable endeavours to Complete the Development not later than 5 years from the Commencement Date or by the date the Habitat Creation and Enhancement Work are completed, whichever date is later;]
        5. issue the Completion Report and Completion Date Notice to the Council within 10 Working Days of the Completion Date;
        6. promptly rectify any defects in the Habitat Creation and Enhancement Works identified by the Council under paragraph 1.1(b)(ii) of Schedule 3 and issue a subsequent Completion Date Notice and thereafter to continue to rectify any defects and issue Completion Date Notices until the Council issues a Certificate of Completion;
        7. upon receiving the Certificate of Completion from the Council, maintain the Site in accordance with the Habitat Management and Monitoring Plan for a period of not less than 30 years from the Completion Date; and
        8. provide a Monitoring Report to the Council within 20 (twenty) Working Days of each Monitoring Report date specified in the Habitat Management and Monitoring Plan.
2. Habitat Management and Monitoring Plan
   1. To notify the Council of any requested amendment to the Habitat Management and Monitoring Plan, such notice to include:
      * 1. the proposed amended Habitat Management and Monitoring Plan;
        2. a statement of reasons for such amendment; and
        3. confirmation (with reasons) that the amendment would not prejudice:
           1. the use or management of the Site in a manner consistent with its function to deliver Biodiversity Net Gain; and
           2. the continued functioning of the Site for Biodiversity Net Gain
        4. Not to make any changes to the HMMP without the prior approval, in writing, of the Council.
        5. Where the Council agrees, in writing, to the changes to the HMMP, the Owner and Developer shall thereafter manage and maintain the Site in accordance with the amended Habitat Management and Monitoring Plan for the remaining period that expires 30 years from the Completion Date, or for such longer period as agreed between the Parties, and for no other purpose inconsistent with the requirements of the Habitat Management and Monitoring Plan.
3. [Biodiversity Gain Land Monitoring Contribution
   1. To pay the Biodiversity Gain Land Monitoring Contribution to the Council prior to the Commencement of Development]
4. Access for Inspection

4.1 From the Commencement Date, to allow the Council, its agents, and contractors with or without workmen and equipment to:

* + - 1. enter onto the Site at all reasonable times (following reasonable notice given in accordance with paragraph 4 of Schedule 3) to monitor compliance with:
         1. the obligations in this Deed; and
         2. any Breach Notice;

and

* + - 1. pass and repass across any land within the Owner’s and Developer’s control which is necessary to gain access to for the purpose of accessing the Site in accordance with paragraph 4.

1. Breach Provisions
   1. Where a Breach Notice has been served, to:
      * 1. provide to the Council for approval a draft proposal in writing within 20 Working Days setting out the Remedial Steps and a timetable for the implementation of those Remedial Steps;
        2. Provide to the Council any additional information it reasonably requires in order to consider the draft proposal and Remedial Steps; and
        3. As soon as reasonably practicable following approval by the Council of a proposal referred to in paragraph 5.1 of this Schedule, the Owner [and Developer] shall implement the Remedial Steps in accordance with that approved proposal.
   2. At any time where the Council, acting reasonably, considers that the Owner and/or Developer are unable to deliver the Biodiversity Units on the Site, in accordance with its Biodiversity Metric calculation, as submitted and approved by the Council in accordance with the Planning Permission, the Owner and/or Developer shall, subject to the Council’s agreement in writing:
      * 1. purchase and allocate to the Planning Permission replacement Biodiversity Units Off-Site of an equivalent number to those it has been unable to deliver on the Site; and
        2. if replacement Biodiversity Units are only partly available Off-Site, then in addition to securing those available and allocating them to the Planning Permission, to also purchase an equivalent number of statutory credits from Natural England of Biodiversity Units that it has been unable to deliver both on the Site and Off-Site, and provide the Council with proof of purchase; and
        3. where replacement Biodiversity Units are not available off-Site, purchase equivalent statutory credits from Natural England of Biodiversity Units it has been unable to deliver on the Site or Off-Site and provide the Council with proof of purchase.
   3. Where the Owner and/or Developer has Commenced Development but has not Completed the Development within 5 years of the Commencement Date and no longer intends to fully build out the entire Development which results in a failure to deliver the Biodiversity Units on the Site in accordance with the Habitat Management and Monitoring Plan, then the Owner and/or Developer shall, subject to the Council’s agreement in writing:
      * 1. purchase and allocate to the Planning Permission replacement Biodiversity Units Off-Site of an equivalent number to those it has been unable to deliver on the Site; and
        2. if replacement Biodiversity Units are only partly available Off-Site, then in addition to securing those available and allocating them to the Planning Permission, to also purchase an equivalent number of statutory credits from Natural England of Biodiversity Units it has been unable to deliver both on the Site and Off-Site, and provide the Council with proof of purchase; and
        3. where replacement Biodiversity Units are not available off-Site, purchase equivalent statutory credits from Natural England of Biodiversity Units it has been unable to deliver on the Site and provide the Council with proof of purchase

PROVIDED THAT upon receiving the Council’s agreement in writing to paragraph 5.3(a)(b)(c) above, as applies, then the Owner and/or Developer shall issue the Council with the Completion Report and Completion Date Notice within 10 Working Days of the Council’s notification and shall thereafter comply with the provisions set out within this Schedule 2 paragraph 1(f) 1(g) and 1(h) in so far as applicable to the Biodiversity Units provided on Site

Or

* + - 1. submit to the Council a change to the Habitat Management and Monitoring Plan which would deliver a biodiversity net gain of a minimum of 10% on Site of the Development as built out and enter into a planning obligation restricting the further building out of the Planning Permission unless BNG is reassessed and additional Biodiversity Units are provided if reasonably required by the Council.

1. – Council Covenants

The Council covenants with the Owner and Developer as follows:

1. Inspection of the Habitat Management and Monitoring Plan
   1. To:
      * 1. review the Completion Report of the Habitat Creation and Enhancement Works within 30 Working Days following receipt of the Completion Date Notice;
        2. to do the following where the Completion Report has been reviewed under sub-paragraph (a):
           1. promptly issue a Certificate of Completion if the Habitat Creation and Enhancement Works if the Habitat Creation and Enhancement Works have been completed to the reasonable satisfaction of the Council; or
           2. promptly notify the Owner and Developer of any defects, if the Council determines that the Habitat Creation and Enhancement Works have not been completed; and
        3. where the Owner and /or Developer issues a subsequent Completion Date Notice under paragraph 1.2(e) of Schedule 2, re-review the Habitat Creation and Enhancement Works under paragraph 1.1(a) of this Schedule and to comply with paragraph 1.1(b) of this Schedule until it issues the Certificate of Completion.
2. Habitat Management and Monitoring Plan
   1. Not to unreasonably withhold or delay giving its written approval to any revised or replacement Habitat Management and Monitoring Plan submitted by the Owner and/or Developer to the Council under Schedule 2 of this Deed;
3. Habitat Management and Monitoring Contribution
   1. To use the Biodiversity Gain Land Monitoring Contribution for its intended purpose and not for any other purpose.
4. Right of Access
   1. To give not less than 10 Working Days' notice to the Owner and Developer of its intention to access the Site for the purposes of inspection under paragraphs 5 of Schedule 2 of this Deed to ascertain the Owner and Developer’s compliance with its covenants under this Deed or a Breach Notice
5. Breach Provisions
   1. Where it considers that the Owner and/or Developer is not complying with its obligations under this Deed, the Council may serve a Breach Notice on the Owner and Developer setting out the reasons for alleging non-compliance
   2. Within 20 Working Days of receipt of the draft proposal from the Owner and /or Developer in compliance with paragraph 5.1 of Schedule 2, the Council will confirm if the Remedial Steps set out therein are approved
   3. In the event that the Council does not approve the said draft proposal and Remedial Steps, the Council shall set out what the Owner and/or Developer must reasonably do, or further information it must reasonably provide, in order to secure the Council’s approval.
   4. A Breach Notice may be withdrawn at any time where the Council is subsequently satisfied that the Owner and/or Developer is complying with the obligations under this Deed and no draft proposal and Remedial Steps are required.]