

**Dated**

**2024**

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**BASINGSTOKE AND DEANE BOROUGH COUNCIL (1)**  
**CHICHESTER DISTRICT COUNCIL (2)**  
**EAST HAMPSHIRE DISTRICT COUNCIL (3)**  
**EASTLEIGH BOROUGH COUNCIL (4)**  
**FAREHAM BOROUGH COUNCIL (5)**  
**GOSPORT BOROUGH COUNCIL (6)**  
**HAMPSHIRE COUNTY COUNCIL (7)**  
**HAVANT BOROUGH COUNCIL (8)**  
**ISLE OF WIGHT COUNCIL (9)**  
**NEW FOREST DISTRICT COUNCIL (10)**  
**NEW FOREST NATIONAL PARK AUTHORITY (11)**  
**PORTSMOUTH CITY COUNCIL (12)**  
**TEST VALLEY BOROUGH COUNCIL (13)**  
**WILTSHIRE COUNCIL (14)**  
**WINCHESTER CITY COUNCIL (15)**

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**INTER AUTHORITY AGREEMENT FOR  
SOLENT  
LOCAL NUTRIENT MITIGATION FUND PROJECTS**

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Southampton, Fareham and Havant Legal Partnership  
Civic Centre  
Southampton  
SO14 7LY  
REF:CLT-055093

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This Agreement is dated

## **Parties**

- (1) **BASINGSTOKE AND DEANE BOROUGH COUNCIL** of Civic Offices, London Rd, Basingstoke RG21 4AH ("**BDBC**");
- (2) **CHICHESTER DISTRICT COUNCIL** of East Pallant House, Chichester, West Sussex, PO19 1TY ("**CDC**").
- (3) **EAST HAMPSHIRE DISTRICT COUNCIL** of Monterey House Bedford Rd, Petersfield GU32 3LJ ("**EHDC**"),
- (4) **EASTLEIGH BOROUGH COUNCIL** of Eastleigh House, Upper Market St, Eastleigh SO50 9YN ("**EBC**");
- (5) **FAREHAM BOROUGH COUNCIL** of Civic Offices, Civic Way, Fareham, Hampshire, PO16 7PP ("**FBC**" or the "**Lead Authority**" as the case may be);
- (6) **GOSPORT BOROUGH COUNCIL** of Town Hall, High St, Gosport PO12 1EB ("**GBC**");
- (7) **HAMPSHIRE COUNTY COUNCIL** of The Castle, Upper High Street, Winchester, SO23 8UJ ("**HCC**");
- (8) **HAVANT BOROUGH COUNCIL** of Public Service Plaza, Civic Centre Road, Havant, PO9 2AX ("**HBC**")
- (9) **ISLE OF WIGHT COUNCIL** of County Hall, High Street, Newport, PO30 1UD ("**IWC**")
- (10) **NEW FOREST DISTRICT COUNCIL** of Appletree Court, Beaulieu Rd, Lyndhurst SO43 7PA ("**NFDC**");
- (11) **NEW FOREST NATIONAL PARK AUTHORITY** of Lymington Town Hall Avenue Road Lymington SO41 9ZG ("**NFNPA**");
- (12) **PORTSMOUTH CITY COUNCIL** of Civic Offices, Guildhall Walk, Portsmouth PO1 2AL ("**PCC**");
- (13) **TEST VALLEY BOROUGH COUNCIL** of Beech Hurst, Weyhill Rd, Andover SP10 3AJ ("**TVBC**");
- (14) **WILTSHIRE COUNCIL** of Bythesea Road, Trowbridge, Wiltshire, BA14 8JN ("**WC**")
- (15) **WINCHESTER CITY COUNCIL** of City Offices, Colebrook Street, Winchester SO23 9LJ ("**WCC**")

together the "**Parties**" and each a "**Party**".

## **BACKGROUND**

- (A) The Parties to this Agreement are all either local authorities or national park authorities and who either are members of PfSH who act under the PfSH Agreement or are within the wider area affected by the same environmental challenges to which this Agreement seeks to address.
- (B) PfSH has appointed FBC as the Lead Authority for the purposes of this Agreement.
- (C) Following approval by PfSH, the Lead Authority submitted a proposal to DLUHC, was awarded Grant Funding (in round 1) from the Local Nutrient Mitigation Fund and entered into memoranda of understanding with DLUHC regarding the administration and delivery of funding. The Lead Authority has subsequently been allocated further grant funding (in round 2) from the Local Nutrient Mitigation Fund. This Agreement relates to the funding received in rounds 1 and 2 and any future grant funding from the Local Nutrient Mitigation Fund.

- (D) PfSH has identified, developed and will seek to agree a number of Projects to which the Grant Funding can be applied. Further decisions on those will be decided through the auspices of PfSH, subject to the provisions in this Agreement.
- (E) The purpose of this Agreement is to define the collaborative relationship between the Parties in relation to the Projects. In particular, it documents the working and funding arrangements of the Parties and the cooperative way in which they will work together to fulfil their shared obligations and objectives of delivering the Projects and providing the Services.
- (F) The Lead Authority will apply the Grant Funding to the Projects. This will involve in respect of each Project providing a grant from the Grant Funding to a Party who will be the Host Authority for that Project and the Parties agree that this Agreement will serve as a grant funding agreement between the Lead Authority and each such Host Authority.
- (G) Each Host Authority is the owner of the Asset involved in the Project (as applicable).
- (H) Each Host Authority will be responsible for such aspects of the Project or Services as are agreed through PfSH and/or as set out in this Agreement.
- (I) The Lead Authority will be responsible for selling Credits arising from the Projects.
- (J) The Lead Authority will provide regular updates to PfSH and carry out annual reviews in accordance with the terms of this Agreement.
- (K) The Parties have agreed that only the Benefiting Parties will share liabilities as set out in this Agreement.
- (L) The Parties enter into this Agreement to provide the necessary degree of certainty to each Party, in its capacity as competent authority under the Habitat Regulations when considering granting planning permission, approving reserved matters or discharging conditions in respect of development within its administrative area, that the Projects shall be delivered, managed and maintained and are capable of being properly enforced by that Party.

## AGREED TERMS

### 1 DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

“**Agreement**” means this agreement between the Parties comprising these terms and conditions together with the schedule attached to it.

“**Aims and Outcomes**” means the objectives of the Parties, as described in Clause 4.

“**Asset**” means such land, building, plant or equipment owned by a Host Authority and identified in the Project.

“**Authorised Officer**” means a Party's employee, agent or sub-contractor and any employee of one Party who is seconded to another Party and is acting in accordance with the Party's instructions.

“**Benefiting Party**” means a Party who in respect of a given Project expresses an interest in becoming one and is subsequently agreed as being one by the PfSH Joint Committee from time to time.

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

“**Continuing Breach Notice**” means a further notice issued by a Party following the recipient Party's failure to comply with the requirements of the Material Breach Notice.

**“Credit”** means (a) a nitrogen credit in connection with a Project and which has been recognised by Natural England as having nitrogen mitigation value and which can be used to offset increased nitrogen levels, (b) a phosphate credit in connection with a Project and which has been recognised by Natural England as having phosphate mitigation value and which can be used to offset increased phosphate levels or (c) a biodiversity net gain unit in connection with a Project and which can be used for biodiversity net gain purposes.

**“DLUHC”** means the Department for Levelling Up, Housing and Communities (now the Ministry of Housing, Communities and Local Government) or its successor.

**“Existing Mitigation Schemes”** means nutrient mitigation projects arranged or operated by any of EBC, HBC, PCC or WCC under an agreement completed before the date of this Agreement.

**“Financial Contributions”** means the financial contributions of the Parties payable in accordance with clauses 16 and 18.

**“Financial Year”** means 1 April to 31 March.

**“Force Majeure Event”** means any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government or regulatory bodies, fire, flood, storm or earthquake, or disaster.

**“Grant Funding”** means funding awarded to the Lead Authority by DLUHC under Local Nutrient Mitigation Fund GRANT DETERMINATION 2024: No 31/7062 and Nutrient Support Fund GRANT DETERMINATION 2024: No 31/7063 both dated 8 February 2024 and any other grant funding awarded to the Lead Authority under Local Nutrient Mitigation Fund.

**“Habitat Regulations”** means the Conservation of Habitats and Species Regulations 2017

**“Host Authority”** means a Party who is provided some Grant Funding by the Lead Authority to deliver a Project or such part thereof as agreed between the two parties and by PfSH.

**“Income”** means income from the sale of Credits and/or any income arising from or in connection with a Project.

**“Intellectual Property Rights”** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**“Local Nutrient Mitigation Fund”** means funding (for capital and revenue) made available by DLUHC towards boosting the supply of mitigation measures concerning nutrients and enabling housing development, which for the avoidance of doubt includes funding from the local nutrient mitigation revenue fund.

**“Maintenance Plan”** means a maintenance plan that (i) demonstrates nutrient (nitrogen and/or phosphorous as applicable) removal in accordance with the applicable budget calculator published by Natural England, and (ii) sets out a plan for the future management and maintenance of the relevant Asset.

**“Material Breach Notice”** means a notice issued by a Party to another Party setting out:

- (a) the recipient Party is in a material breach of one or more of the obligations of this Agreement;
- (b) the details of the material breach;

- (c) the steps which the recipient Party is required to take to remedy such material breach; and
- (d) the period within which the material breach is to be remedied, being not less than one month from the date of the notice save in the case of emergency.

“**Monitoring Authority**” shall have the meaning ascribed to it in Clause 13.2.

“**Perpetuity**” means 100 years from the sale of the last Credit in connection with a given Project.

“**PfSH**” means the Partnership for South Hampshire.

“**PfSH Agreement**” means the agreement between (inter alia) the Parties and dated 27 January 2021.

“**PfSH Joint Committee**” means that joint committee of that name established and administered under the PfSH Agreement.

“**Policies and Procedures**” means the Parties’ respective internal policies and procedures, together with any other policies or procedures relevant to the proper performance of the Services.

“**Project**” means any project proposed by a Host Authority and approved by PfSH from time to time to which Grant Funding shall be applied by the Lead Authority and which has been recognised by Natural England as having nitrogen mitigation value or phosphate mitigation value or which can be used for biodiversity net gain purposes to enable Credits to be sold.

“**Services**” means the services relating to a Project to be delivered by the Lead Authority or the Host Authority (as the case may be) under this Agreement, as more particularly described in Schedule 1.

“**Sink Fund**” means such fund held by the Lead Authority for the purpose of and in accordance with this Agreement made up of ring-fenced sum(s) from the Grant Funding, Income or Financial Contributions made from the Benefiting Parties towards anticipated long term costs and liabilities arising from each Project as agreed between the Parties and PfSH.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 The Schedule forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedule.
- 1.4 Words in the singular include the plural and vice versa.
- 1.5 A reference to one gender includes a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to “**writing**” or “**written**” includes both e-mail and post.
- 1.8 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.9 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.10 References to clauses and Schedules are to the clauses and Schedules of this Agreement. References to paragraphs are to paragraphs of the relevant Schedule.
- 1.11 If there is any conflict or ambiguity between the body of this Agreement and any of the other documents referred to in this Clause 1.11, the conflict shall be resolved in accordance with the following order of precedence (with clause 1.11.1 being predominant and then in descending order):

- 1.11.1 the body of this Agreement;
- 1.11.2 the Schedules; and
- 1.11.3 any other document referred to in this Agreement.

## **2 TERM**

- 2.1 This Agreement shall take effect on the Commencement Date and shall continue unless and until terminated in accordance with this Agreement.

## **3 APPROVALS AND STATUTORY AUTHORITY**

- 3.1 Each Party hereby confirms that it has taken such decisions as are necessary in accordance with its own constitutional arrangements in order to enter into this Agreement.
- 3.2 This Agreement is made pursuant to s.1 Localism Act 2011, section 111 of the Local Government Act 1972, s.33 Local Government (Miscellaneous Provisions) Act 1982, ss.65 and 65A of the Environment Act 1995 (specifically for SDNPA and NFNPA) and all other enabling powers.

## **4 OBJECTIVES OF THE AGREEMENT**

- 4.1 The purpose of this Agreement is to deliver the Projects to enable sustainable development, unlock stalled housing delivery whilst delivering secondary environmental and public benefits<sup>1</sup>. This shall be achieved principally through the following steps:
  - 4.1.1 The Lead Authority shall be responsible for the application of the Grant Funding;
  - 4.1.2 The Lead Authority shall be responsible for the overall delivery of a Project;
  - 4.1.3 The Host Authority shall be responsible for the delivery and the management and maintenance of a Project (to the extent it is responsible as agreed in accordance with this Agreement).
  - 4.1.4 The Lead Authority and the Host Authority shall each use reasonable endeavours to enter into such arrangements as appropriate to enable the Lead Authority to sell on the open market Credits created from a Project.
  - 4.1.5 The Lead Authority shall be responsible for selling Credits on the open market.
  - 4.1.6 The Benefiting Parties for each Project shall collectively share the risk, liabilities and benefits involved in and arising from that Project and the sale of Credits from that Project.

## **5 AUTHORISED OFFICER**

- 5.1 The Parties shall each nominate an Authorised Officer, who shall be the main point of contact for each Party and shall be responsible for representing the respective Party and liaising with the other Parties' Authorised Officers in connection with this Agreement.
- 5.2 The Authorised Officers shall be responsible for taking decisions for and on behalf of that Party in connection with matters concerning this Agreement, unless they indicate that the decision is one that cannot be taken by that Authorised Officer.

## **6 GOVERNANCE**

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<sup>1</sup> Letter from the Department of Levelling Up, Housing & Communities dated 19 December 2023 announcing the creation of the Local Nutrient Mitigation Fund.



- 6.1 The Parties agree that decisions in relation to the Projects shall be taken by PfSH in accordance with the PfSH Agreement SUBJECT ALWAYS TO:
- 6.1.1 Any such decision shall not fetter the decision of the Lead Authority insofar as it relates to matters concerning the Lead Authority's section 151 officer, which (in such circumstances) shall have a right of veto and the final decision through its own corporate decision making process;
  - 6.1.2 Any such decision shall not fetter the decision of the Host Authority insofar as it relates to matters concerning the Host Authority's section 151 officer or other exceptional circumstances where there is significant financial risk to the Host Authority, which (in such circumstances) shall have a right of veto and the final decision through its own corporate decision making process;
  - 6.1.3 HCC, SCC and PCC not being able to exercise their right of veto in accordance with the PfSH Agreement.
- 6.2 The Parties agree that any actions or decisions (whether as Lead Authority, Host Authority or otherwise) pursuant to this Agreement shall accord with and be consistent with all applicable decisions taken by PfSH.

## **7 CONFLICTS OF INTEREST AND NON COMPETITION CLAUSE**

- 7.1 Where a Party becomes aware of any actual, possible or potential conflict of interest in its performance of this Agreement (the "**Affected Party**"), then:
- 7.1.1 the Affected Party shall immediately inform the other Parties, in writing, of this conflict; and
  - 7.1.2 the Affected Party shall confirm what it proposes to do in accordance with its conflicts of interest policy.
- 7.2 The other Parties shall be free to require the Affected Party to take whatever action they reasonably consider to be necessary to avoid or mitigate the effects of the actual or potential conflict of interest as notified to them under Clause 7.1 or as may become known to the other Parties and the Affected Party shall so comply (so long as compliance is not unlawful).
- 7.3 If the other Parties so elect and at their discretion, the Affected Party may be required by the other Parties to cease providing any part of the Services or any other of its obligations affected by the conflict of interest and the Affected Party acknowledges and accepts that in such case it will have no claim for damages. In such circumstances the Parties shall seek to put in place arrangements which minimise as far as possible any effects on the performance by the Parties of this Agreement.
- 7.4 The Lead Authority shall ensure that pricing of Credits does not compete with nor present an economic advantage over the prices of credits or equivalent costs of securing the same type of mitigation from the Existing Mitigation Schemes operated separately by WCC, PCC, EBC and HBC outside of this Agreement.
- 7.5 The Parties agree that where a Party proposes to establish and/or operate a new project to sell nitrogen credits or phosphate credits outside of the terms of this Agreement, that Party shall ensure that the pricing of credits or equivalent costs does not compete with nor present an economic advantage over the pricing of such Credits.

## **8 OBLIGATIONS OF THE PARTIES**

- 8.1 The Lead Authority shall apply the Grant Funding to the delivery of the Projects and the provision of the Services in accordance with the memoranda of understanding between the Lead Authority and DLUHC.

- 8.2 Upon receipt of the Grant Funding, the Host Authority shall deliver the Project and, unless otherwise agreed by the Parties, shall be responsible for the management and maintenance of the Project.
- 8.3 The Lead Authority and the Host Authority (insofar as it relates to the delivery of a Project or such part thereof) shall provide the Services or procure that they are provided in order to deliver the objectives in Clause 4 and this Clause 8:
- 8.3.1 to ensure the proper discharge of their statutory functions;
  - 8.3.2 with reasonable skill and care, and in accordance with best practice guidance;
  - 8.3.3 in all respects in accordance with the provisions of this Agreement;
  - 8.3.4 in accordance with their constitution, standing orders or other rules on contracting; and
  - 8.3.5 in accordance with all applicable law.
- 8.4 The Host Authority shall prepare and submit for approval to the Lead Authority and the Monitoring Authority a Maintenance Plan in respect of its Asset(s) and upon completion of the Project shall comply with the Maintenance Plan in Perpetuity.
- 8.5 The Lead Authority shall apply such sum(s) from the Grant Funding or Income (as agreed between the Parties and by PfSH) towards the establishment and maintenance of a Sink Fund for a Project.
- 8.6 The Lead Authority shall prepare for approval by PfSH the documents below and shall, subject to completion and successful delivery of a Project, make Credits available for sale and use reasonable endeavours to sell Credits only in accordance with them:
- 8.6.1 A marketing strategy for the sale of Credits;
  - 8.6.2 Principles and priorities for the sale of Credits, which for the avoidance of doubt shall:
    - (a) include principles for pricing which comply with Clause 7.4 of this agreement; and
    - (b) include principles that ensure that Credits shall only be sold in respect of development falling within the administrative areas of the Benefiting Parties.
- 8.7 The Lead Authority shall, subject to completion and successful delivery of a Project, make Credits available for sale and shall only sell Credits in accordance with those documents set out in Clause 8.6 above and approved by PfSH. For the avoidance of doubt, the Lead Authority shall only sell Credits in respect of development within the Benefiting Parties' administrative boundaries.
- 8.8 The Lead Authority shall apply any Income in accordance with the memoranda of understanding between the Lead Authority and DLUHC and as agreed between the Parties and by PfSH.
- 8.9 The Lead Authority shall, before it or a Host Authority (as applicable) seeks any indemnity from the Benefiting Parties in accordance with Clause 18.3 of this Agreement, apply any remaining Grant Funding, applicable Sink Fund and any Income towards any liability arising out of or in connection with the performance of this Agreement by the Lead Authority and/or the Host Authority (as the case may be) in relation to a Project.
- 8.10 The Parties shall ensure that their Authorised Officers are appropriately managed and supervised in accordance with all relevant prevailing standards of professional accountability.
- 8.11 Additional services may be brought within the scope of this Agreement as may be agreed by the Parties in writing from time to time.

## **9 SALE OF CREDITS**

9.1 The Host Authority hereby assigns all rights in respect of Credits in connection with a Project to the Lead Authority subject to receipt by the Host Authority of the Grant Funding in respect of that Project.

## **10 DEEMED VARIATION TO PFSH AGREEMENT AND TERMINATION OF PFSH AGREEMENT**

10.1 The Parties who are PfSH members hereby agree that the PfSH Agreement shall, for the purposes of the taking of decisions by PfSH in connection with this Agreement, the delivery of the Projects and the sale of Credits, be deemed to be subject to the following variations:

10.1.1 BDBC, CDC, IWC, SDNPA and WC shall be entitled to participate and vote in meetings of PfSH; and

10.1.2 Clause 10 of the PfSH Agreement shall not apply to this Agreement.

10.2 The variation in accordance with Clause 10.1 above shall cease to have effect upon the termination of this Agreement (subject always to the provisions of this Agreement and to Clause 27).

10.3 In the event that the PfSH Joint Committee ceases to exist as a body under the PfSH Agreement and/or the PfSH Agreement is terminated in accordance with Clause 13 thereof, the Parties shall use all reasonable endeavours to agree and make substantially similar arrangements for the discharge of the functions under this Agreement where this Agreement refers to decisions by PfSH or the PfSH Joint Committee and any reference to PfSH or the PfSH Joint Committee in this Agreement shall subsequently be construed mutatis mutandis by reference to those arrangements.

## **11 REPORTING**

11.1 The Lead Authority shall report to scheduled meetings of PfSH and provide an update on the delivery of the Aims and Outcomes.

## **12 ANNUAL REVIEW**

12.1 The Lead Authority shall carry out a review of the Agreement within two months of the end of each Financial Year (“**Annual Review**”) for consideration by PfSH, including:

12.1.1 the delivery of the Aims and Outcomes, including the capital and revenue expenditure of the Grant Funding, Income and future liabilities and Sink Funds;

12.1.2 the performance of the individual Services;

12.1.3 plans to address any underperformance in the Services;

12.1.4 actual expenditure compared with agreed budgets, and reasons for and plans to address any actual or potential underspends or overspends;

12.1.5 review of plans and performance levels for the following year.

## **13 MONITORING AND COMPLIANCE**

13.1 Without prejudice to Clause 8.1, the Lead Authority shall apply Grant Funding for the purposes of monitoring of Projects and enforcement in accordance with Clause 13.

13.2 The Parties shall agree on and appoint a Party (the “Monitoring Authority”) to fairly, independently and diligently carry out monitoring of a Project. The Parties agree that:

13.2.1 where the Host Authority is also the Lead Authority, it shall not be the Monitoring Authority; and

13.2.2 a Host Authority may not be the Monitoring Authority in respect of the same Project.

- 13.3 The Monitoring Authority shall carry out the monitoring of the delivery of the Project and its ongoing management and maintenance in accordance with a timetable first agreed in writing between the Parties and shall provide reports of such monitoring to the Lead Authority.

#### **14 ENFORCEMENT FOR NON-COMPLIANCE**

- 14.1 The Host Authority permits the Lead Authority and the Monitoring Authority and their properly authorised agents and/or employees (on reasonable prior written notice) to enter onto relevant parts of the land where the Asset is situated to which any obligation relates in order to:

14.1.1 verify whether any such obligation has been observed or performed and the progress of performance of any such obligation; and

14.1.2 comply with Clause 14.5.

- 14.2 Prior to taking enforcement action pursuant to this Agreement in respect of a breach by a Host Authority to deliver the Project or to comply with the related Maintenance Plan in accordance with this Agreement, the Lead Authority or the Monitoring Authority shall serve a Material Breach Notice upon the Host Authority confirming that in the reasonable opinion of the Lead Authority or the Monitoring Authority (as the case may be) the Host Authority is in material breach of the obligations contained in this Agreement.

- 14.3 Where the Lead Authority or the Monitoring Authority (as the case may be) has served a Material Breach Notice upon the Host Authority pursuant to clause 14.2 and the Host Authority has failed to take the steps to remedy the material breach identified within the period stipulated in such notice, the Lead Authority or the Monitoring Authority (as the case may be) may serve a Continuing Breach Notice confirming that such material breach remains unremedied.

- 14.4 The Lead Authority or the Monitoring Authority (as the case may be) having served a Material Breach Notice shall not take any enforcement action until the period provided for in the Material Breach Notice to take steps to remedy the material breach has expired SAVE in the case of an emergency.

- 14.5 Upon the service of a Continuing Breach Notice, the Lead Authority or the Monitoring Authority (as the case may be) may enter the land where the Asset is situated and may carry out such steps and actions as may be necessary to remedy the breach and to comply with the requirements as set out in the Material Breach Notice and may recover its costs from the Host Authority and for the avoidance of doubt, Clause 18.3 of this Agreement shall not apply in such circumstances.

- 14.6 Where a Party considers that the Lead Authority is in breach of this Agreement, prior to taking enforcement action pursuant to this Agreement in respect of such breach, it may serve a Material Breach Notice upon the Lead Authority confirming that in the reasonable opinion of the Party issuing the Material Breach Notice the Lead Authority is in material breach of the obligations contained in this Agreement.

#### **15 APPROPRIATE ASSESSMENTS**

- 15.1 Each Party is the local planning authority for the purposes of the Town and Country Planning Act 1990 and the competent authority for the purposes of the Habitat Regulations.

- 15.2 SUBJECT TO Clause 15.3 below, the Parties hereby acknowledge that PROVIDED THAT a Project is completed to the satisfaction of the Lead Authority and the Maintenance Plan for the relevant Asset is complied with to the satisfaction of the Monitoring Authority, Credits will be able to be sold to mitigate any adverse effects that would otherwise occur in relevant protected sites caused by an increase in nutrient levels resulting from development in the Party's administrative area and that this Agreement provides the Party with the necessary degree of certainty to reach that conclusion in an appropriate assessment.

- 15.3 Clause 15.2 does not fetter the discretion of any Party or affect the statutory obligations of a Party to carry out an appropriate assessment in accordance with the Habitat Regulations. In the event that a

Party considers that a Credit may not be used to mitigate the effects of development in its area for the purpose intended, that Party:

15.3.1 shall be under no obligation to recommend the purchase of the Credit or rely on the Credit in its appropriate assessment or add a condition on a planning permission to that effect;

15.3.2 shall notify the other Parties and shall collaborate with the Parties to remedy any perceived inadequacy of the Project.

## **16 REIMBURSEMENT OF COST OF SERVICES AND FINANCIAL CONTRIBUTIONS**

16.1 The Parties agree that the reasonable, directly related and proportionate costs incurred by the Lead Authority of providing the Services shall be met by the Grant Funding and/or Income (as the case may be).

16.2 The Parties agree that the reasonable, directly related and proportionate costs incurred by the Host Authority of providing the Services shall be met by the Grant Funding and that the Lead Authority shall reimburse the Host Authority as soon as reasonably practicable.

16.3 The Parties hereby agree that, subject to a decision taken by PfSH, each Benefiting Party (including for the avoidance of doubt the Lead Authority and the Host Authority where they are a Benefiting Party as well) may be required to make an equal Financial Contribution to the Lead Authority or the Host Authority (as applicable) in connection with the establishment and/or maintenance of the Sink Fund and/or pursuant to Clause 18 of this Agreement. For the avoidance of doubt, the parties agree that Financial Contributions shall only be sought as a remedy of last resort.

## **17 VAT**

17.1 All amounts stated to be payable by any Party under this Agreement shall be exclusive of any VAT properly chargeable on any amount.

17.2 Each Party shall pay to the relevant other Party any VAT properly chargeable on any supply made to it under this Agreement provided that it shall first have received from the other Party a valid tax invoice in respect of that supply which complies with the requirements of Part III VAT Regulations 1995.

## **18 LIABILITY AND INDEMNITY**

18.1 Those Parties who are members of PfSH are subject to substantially the same liability provisions as set out in Clause 18.2 below under the PfSH Agreement. However, in view of the differing Parties, the provisions are set out in this Agreement and in the event of any conflict the provisions set out in this Agreement shall prevail over any equivalent provisions in the PfSH Agreement.

18.2 Whilst the affected Parties shall make all reasonable attempts to mitigate loss, each Party ("the indemnifying Party") shall indemnify the others in respect of any reasonable loss caused to each of the other affected Parties as a direct result of that indemnifying Party's negligence, wilful default or fraud or that of any of the indemnifying Party's employees in respect of its role in the activities of the PfSH Joint Committee and/or under this Agreement and/or where acting as Lead Authority, Host Authority or Monitoring Authority (as the case may be).

18.3 Save where Clause 18.2 above applies, the Lead Authority, the Host Authority and the Monitoring Authority shall be indemnified by the Benefiting Parties (including for the avoidance of doubt the Lead Authority, the Host Authority and the Monitoring Authority if applicable) in respect of any liability arising out of or in connection with the performance of this Agreement by the Lead Authority and/or the Host Authority (as the case may be) in relation to a Project on an equal basis PROVIDED ALWAYS that any remaining Grant Funding, the applicable Sink Fund and any Income shall first be used in respect of such liability.

## **19 INSURANCE**

- 19.1 Each of the Parties shall ensure that they have a sufficient policy of insurance as may reasonably be required (acknowledging that in some circumstances the Parties may self-insure) for any premises, Assets, Projects, Services and other activity that they contribute pursuant to this Agreement for the duration of this Agreement and for a period of six years after termination of this Agreement (in respect of any antecedent breaches only).

## **20 RECORDS, AUDIT AND ACCESS TO INFORMATION**

- 20.1 Each Party is responsible for keeping all books of accounts and accounting records of its own financial affairs in relation to the Project and for dealing with its own tax affairs.
- 20.2 Each Party agrees to submit to any audit, review, inspection or examination, in accordance with its statutory requirements.
- 20.3 The Parties shall co-operate in the provision of information, and access to premises and staff, to ensure compliance with any statutory inspection or audit requirements, or other monitoring or scrutiny functions. The Parties shall implement recommendations arising from these inspections, where appropriate.

## **21 COMPLIANCE WITH LAWS**

- 21.1 In performing their obligations under this Agreement, the Parties shall at all times comply with:
- 21.1.1 all applicable law;
  - 21.1.2 the Policies and Procedures.
- 21.2 The Parties shall maintain such records relating to this Agreement as are necessary pursuant to all applicable law as well as the Policies and Procedures and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the other Parties (or their Authorised Officers) as may be reasonably required.
- 21.3 The Parties shall monitor and shall keep each other informed in writing of any changes in the law that they become aware of that may impact the performance of this Agreement and shall provide each other with timely details of measures they propose to take and changes they propose to make to comply with any such changes. The Parties shall only implement such changes in accordance with Clause 31.

## **22 DATA SHARING AND DATA PROTECTION, FREEDOM OF INFORMATION, INFORMATION SHARING AND CONFIDENTIALITY**

- 22.1 Without prejudice to the specific requirements of this clause, each Party shall comply with its legal requirements under all applicable data protection legislation, freedom of information and associated legislation, and the law relating to confidentiality.
- 22.2 A Party will be appointed by agreement between the Parties for the purposes of ensuring compliance with any legislative or legal requirements relating to these issues should they arise directly in relation to the PfSH Joint Committee (as compared to information held by the Parties to this Agreement).
- 22.3 Subject to any legal obligations either arising upon the Parties and/or PfSH Joint Committee, information relating to this Agreement supplied between the Parties or to or from third parties shall, unless agreed by PfSH Joint Committee, subject to any over-riding legal obligations, be treated as confidential.

## **23 INTELLECTUAL PROPERTY**

- 23.1 All Intellectual Property Rights developed or created by a Party for the performance of the Services or the delivery of a Project shall be owned by that Party ("**Created IPR**").

- 23.2 Each Party grants to all other Parties a non-exclusive, personal, royalty-free licence for the duration of this Agreement to use its Created IPR to the extent necessary for the performance of this Agreement.
- 23.3 At the end of this Agreement, a party licensed to use Created IPR under Clause 23.2 shall cease to use that Created IPR and shall return any physical embodiment of the Created IPR (including any copies) in its possession or control to the Party that created it.
- 23.4 Each Party shall immediately give written notice to the other Parties of any actual, threatened or suspected infringement of any Party's Created IPR used in connection with this Agreement of which it becomes aware.

## **24 EQUALITIES AND HUMAN RIGHTS**

- 24.1 The Parties acknowledge their respective duties under equality legislation to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between different groups.
- 24.2 In their performance of this Agreement the Parties agree to adopt and apply such policies to ensure compliance with their equality duties.
- 24.3 The Parties shall take all reasonable steps to secure the observance of this Clause 24 by their Authorised Officers when performing this Agreement and delivering the Services described herein.

## **25 COMPLAINTS**

- 25.1 The Parties shall deal with all complaints received concerning the performance of this Agreement in the first instance through the Parties' respective complaints procedures.

## **26 TERMINATION AND EXIT OF A PARTY TO THE AGREEMENT**

- 26.1 Without prejudice to other rights and remedies at law, the Parties may mutually agree to terminate this Agreement and shall agree an appropriate notice period.
- 26.2 A Party may cease to be a party to this Agreement upon the giving of no less than 12 months prior written notice to all Parties.
- 26.3 The provisions of Clause 27 shall apply on termination of this Agreement or the exit of a Party to this Agreement in accordance with Clause 26.2.

## **27 CONSEQUENCES OF TERMINATION**

- 27.1 If this Agreement is terminated in accordance with Clause 26, the Parties agree as follows:
- 27.1.1 The Parties shall work together and cooperate to ensure that the winding down of the Projects is carried out smoothly and with as little disruption as possible to the Parties and third parties and where agreement cannot be reached then the disputes procedure in Clause 28 shall be applied.
- 27.1.2 The Parties shall work together to mitigate any liabilities (including without limitation the redeployment of staff within their respective organisations).
- 27.1.3 Capital assets shall be dealt with in accordance with such decision of PfSH.
- 27.2 Subject to Clause 27.3 below, the provisions of the following clauses shall survive the termination of this Agreement:
- 27.2.1 Clause 1 (Definitions and Interpretation);
- 27.2.2 Clause 4 (Objectives of the Agreement);

- 27.2.3 Clause 6 (Governance);
- 27.2.4 Clause 16 (Reimbursement of Cost of Services and Financial Contributions);
- 27.2.5 Clause 17 (VAT);
- 27.2.6 Clause 18 (Liability and Indemnity);
- 27.2.7 Clause 20 (Records, Audit and Access to Information);
- 27.2.8 Clause 22 (Data Sharing and Data Protection, Freedom of Information, Information Sharing and Confidentiality);
- 27.2.9 Clause 27 (Consequences of Termination); and
- 27.2.10 Clause 30 (Notices).

27.3 Where Credits have been sold in connection with a particular Project, the provisions of this Agreement shall survive the termination of this Agreement insofar as it is necessary (as agreed by the Benefiting Parties and where agreement cannot be reached then the disputes procedure in Clause 28 shall be applied) to ensure that the Habitat Regulations are complied with and that decisions by Benefiting Parties to grant planning permission, approve reserve matters or to discharge a condition are not undermined.

## **28 DISPUTE RESOLUTION**

- 28.1 The Parties shall respectively use all reasonable endeavours to resolve disputes arising out of this Agreement.
- 28.2 If any dispute is not resolved within one month, a Party, by notice in writing to the others, may refer the dispute to the chief executives of the Parties, who shall co-operate in good faith to resolve the dispute as amicably as possible within 90 days of service of the notice.
- 28.3 Subject to Clause 28.4, if the chief executives fail to resolve the dispute in the allotted time, the Dispute Resolution Procedure shall be deemed exhausted and the aggrieved Party may commence legal proceedings.
- 28.4 This Clause 28 shall not prevent a Party from seeking injunctive relief at any time during the lifetime of this Agreement (regardless of whether the Dispute Resolution Procedure set out in this Clause 28 has been exhausted or not) in the case of any breach or threatened breach by any Party of any obligation under this Agreement.

## **29 FORCE MAJEURE**

- 29.1 No Party or Parties to this Agreement (the “**Non-Affected Party**”) shall be entitled to bring a claim for a breach of obligations under this Agreement by any other Party (the “**Affected Party**”) to the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out obligations by that Force Majeure Event.
- 29.2 On the occurrence of a Force Majeure Event, the Affected Party shall notify the Non-Affected Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.
- 29.3 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay.



29.4 The Affected Party shall notify the Non-Affected Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.

### **30 NOTICES**

30.1 Notices shall be in writing and shall be sent to the other Party marked for the attention of the chief executive (or equivalent) or another person duly notified by the Party for the purposes of serving notices on that Party, at the address set out for the Party in this Agreement.

30.2 Notices may be sent by first class mail and by email. Correctly addressed notices sent by first class mail shall be deemed to have been delivered 72 hours after posting.

### **31 VARIATION**

31.1 Any variation to this Agreement will only be valid if it is:

31.1.1 agreed by each Party (including for the avoidance of doubt, any party who enters into this Agreement after the Commencement Date);

31.1.2 made in accordance with each Party's internal decision-making processes;

31.1.3 made in writing; and

31.1.4 duly executed as a deed.

### **32 WAIVER**

32.1 The failure of a Party to enforce any of the provisions of this Agreement at any time or for any period of time shall not be construed to be a waiver of any such provision and shall in no matter affect the right of that Party thereafter to enforce such provision.

32.2 No waiver in any one or more instances of a breach of any provision of this Agreement shall be deemed to be a further or continuing waiver of such provision in other instances.

### **33 FURTHER ASSURANCE**

33.1 Each Party shall do all things and execute all further documents necessary to give full effect to this Agreement.

### **34 SEVERANCE**

34.1 If any term, condition or provision contained in this agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

### **35 ASSIGNMENT AND SUB-CONTRACTING**

35.1 No Party shall assign, transfer, mortgage, charge, sub-contract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior consent of the other Parties.

### **36 EXCLUSION OF PARTNERSHIP AND AGENCY**

36.1 Save as expressly provided otherwise in this Agreement or where a statutory provision otherwise requires, the Parties shall not in any way whatsoever:

36.1.1 be, act or hold themselves out as an agent of the others;

36.1.2 make any representations or give any warranties to third parties on behalf or in respect of the others; or

36.1.3 bind or hold themselves out as having authority or power to bind the others.

36.2 As public bodies, the Parties do not enter into this Agreement with any view of profit. The use of the terms “partners” and “partnership” in this Agreement merely denotes the intention of the Parties to work within local government legislation in a common way to achieve shared objectives, and should not be taken as an indication of any legal partnership for the purposes of the Partnership Act 1890.

### **37 EXCLUSION OF THIRD PARTY RIGHTS**

37.1 Save to the extent as expressly provided for in this Agreement no person not a Party to this Agreement shall have any right to enforce any term of this Agreement and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

### **38 ENTIRE AGREEMENT**

38.1 This Agreement, the Schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the Parties relating to the subject matter of it and supersede all prior agreements, arrangements and understandings between the Parties relating to that subject matter.

### **39 COUNTERPARTS**

39.1 This agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

### **40 GOVERNING LAW AND JURISDICTION**

40.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and subject to Clause 28 (Dispute Resolution), the Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Execution block of  
[ ] COUNCIL

## SCHEDULE 1

### SERVICES PROVIDED BY LEAD AUTHORITY AND HOST AUTHORITY

#### LEAD AUTHORITY SERVICES

- Financial (including but not limited to accounting, audit, treasury management, book keeping, tax)
- Legal
- Human resources
- Complaints/information/
- Administrative
- IT/Website maintenance
- Ecological Services
- Communications

#### HOST AUTHORITY SERVICES

Insofar as the below items relate to that part of the project delivered by the Host Authority.

- Financial (including but not limited to accounting, audit, treasury management, book keeping, tax)
- Legal
- Human resources
- Complaints/information/
- Administrative
- IT/Website maintenance
- Ecological Services
- Communications