

# ALLOCATION AGREEMENT

For Biodiversity Gain on IFORD ESTATE

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| THIS AGREEMENT is dated ...12 <sup>th</sup> May 2025...                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Between</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| (1) <b>J &amp; H ROBINSON(IFORD FARMS)LIMITED</b> incorporated and registered in England and Wales with company number 00369915 whose registered office is at Sutton House, Iford, Lewes, East Sussex, BN7 3EU ( <b>Owner</b> ); and                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| (2) <b>Emsworth Business Park Limited</b> incorporated and registered in England and Wales with company number 14749453 whose registered office is at Passfield Business Centre Lynchborough Road, Passfield, Liphook, England, GU30 7SB ( <b>Purchaser</b> ).                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Concerning</b> the sale, purchase and allocation of Biodiversity Gain on part of the land known as <b>2 Houndean Cottages, Brighton Road, Lewes, BN7 3jH</b>                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Terms of this Agreement:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p>This Agreement, together with the Contract Particulars and the Terms and Conditions, shall together be referred to as the "<b>Allocation Agreement</b>" or this "<b>Agreement</b>". The Owner and the Purchaser shall together be referred to as the <b>parties</b> and each a <b>party</b>.</p> <p>To the extent that there is any conflict between the Contract Particulars and the Terms and Conditions, the order of precedence shall be as follows:</p> <ul style="list-style-type: none"><li>(a) the Contract Particulars;</li><li>(b) the Terms and Conditions.</li></ul> |                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Contract Particulars</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Allocation Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | means the sum of One Hundred and One Thousand Seven Hundred pounds (£101,700) (exclusive of VAT) to be paid by the Purchaser to the Owner in consideration for the Allocation to be provided for the Development, or such other amount as may be agreed in writing between the parties in the case of the parties coming to an express written agreement on changes to the Reserved Capacity and any related changes to the Allocation Fee. |
| <b>Determining Authority</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | means Havant Borough Council or its successor as local planning authority;                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Development</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | means the development of land known as Interbridges, Emsworth, PO10 7PH in accordance with the Planning Application;                                                                                                                                                                                                                                                                                                                        |

|                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Further Reserve Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                               | a non-refundable sum (except where clause 8.2 of the Allocation Agreement applies) of 10% of the Allocation Fee to be paid by the Purchaser to the Owner for the further reservation of the Allocation of the Required Capacity once Approval is granted, which for the avoidance of doubt forms part of the Allocation Fee;                                              |
| <b>Initial Reserve Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                               | a non-refundable sum (except where clause 8.2 of the Allocation Agreement applies) of £1,000 to be paid by the Purchaser to the Owner for the initial reservation of the Allocation of the Required Capacity, which for the avoidance of doubt forms part of the Allocation Fee                                                                                           |
| <b>Required Capacity</b>                                                                                                                                                                                                                                                                                                                                                                                                                 | <p>2.66 Biodiversity Units of Other Neutral Grassland</p> <p>1.86 Biodiversity Units of Mixed Scrub</p> <p>or such other quantity and type of Biodiversity Units as may be agreed in writing between the parties in the case of the parties coming to an express written agreement on changes to the Reserved Capacity and any related changes to the Allocation Fee.</p> |
| <p>This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart, when executed, shall be an original of this Agreement and all counterparts shall together constitute one instrument.</p> <p><b>THIS AGREEMENT</b> has been entered into on the date stated at the beginning of it.</p> |                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Signed by Owner</b>                                                                                                                                                                                                                                                                                                                                                                                                                   | <div style="border: 1px solid black; height: 40px; width: 100%; background-color: black;"></div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <span>Signature</span> <span>Print Name</span> <span>Date</span> </div>                                                                                                                    |
| <b>Signed by Purchaser</b>                                                                                                                                                                                                                                                                                                                                                                                                               | <div style="border: 1px solid black; height: 80px; width: 100%; background-color: black;"></div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <span>Signature</span> <span>Print Name</span> <span>Date</span> </div>                                                                                                                    |

## TERMS AND CONDITIONS

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## BACKGROUND

- (A) The Owner is the registered owner of the Allocation Land, which forms part of the Biodiversity Gain Land, subject to the entries disclosed in the registered title.
- (B) The Owner has entered into the Section 106 Agreements, which secure the use of the Biodiversity Gain Land for Biodiversity Net Gain and which facilitates the Allocation and ongoing monitoring of the Biodiversity Gain Land, in order to provide an offsite Biodiversity Net Gain solution for the benefit of developments.
- (C) Subject to the occurrence of the Unconditional Date, and in consideration of, the payment of the Allocation Fee, the Owner agrees to comply with the Habitat Management and Monitoring Plan on the Allocation Land required to provide Biodiversity Net Gain for the Development and to Allocate the Required Capacity to the Purchaser.

## 1. DEFINITIONS

The following definitions and rules of interpretation apply in this Allocation Agreement:

|                                                      |                                                                                                                                                                                                                                       |
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| <b>"Allocation"</b>                                  | has the same meaning as in the Section 106 Agreements and <b>"Allocate"</b> <b>"Allocated"</b> and <b>"Allocations"</b> shall be construed accordingly;                                                                               |
| <b>"Allocation Fee"</b>                              | has the meaning given to it in the Contract Particulars;                                                                                                                                                                              |
| <b>"Allocation Fee Final Instalment"</b>             | means the remaining unpaid amount of the Allocation fee calculated by deducting the Reserve Fee and Further Reserve Fee from the Allocation Fee.                                                                                      |
| <b>"Allocation Land"</b>                             | means an area within the Biodiversity Gain Land as shown for illustrative purposes edged in green on the plan attached to this Allocation Agreement and which is for the purposes of providing Biodiversity Gain for the Development; |
| <b>"Approval"</b>                                    | means the grant of planning permission in relation to the Planning Application;                                                                                                                                                       |
| <b>"Biodiversity Capacity"</b>                       | has the same meaning as in the Section 106 Agreements;                                                                                                                                                                                |
| <b>"Biodiversity Gain"</b>                           | has the same meaning as in the Section 106 Agreements;                                                                                                                                                                                |
| <b>"Biodiversity Gain Land"</b>                      | has the same meaning as in the Section 106 Agreements;                                                                                                                                                                                |
| <b>"Biodiversity Gain Site Register (Statutory)"</b> | has the same meaning as in the Section 106 Agreements;                                                                                                                                                                                |

|                                |                                                                                                                                                                                                                                                                                                                                                                                                            |
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| <b>“Biodiversity Net Gain”</b> | has the same meaning as in the Section 106 Agreements;                                                                                                                                                                                                                                                                                                                                                     |
| <b>“Biodiversity Unit(s)”</b>  | has the same meaning as in the Section 106 Agreements;                                                                                                                                                                                                                                                                                                                                                     |
| <b>“Challenge Period”</b>      | the period of six weeks and ten Working Days commencing on the date of the Approval;                                                                                                                                                                                                                                                                                                                       |
| <b>“Challenge”</b>             | means an application for judicial review or an application pursuant to section 288 of the Town and Country Planning Act 1990 (as amended) brought by a party other than the Developer (or any associate of the Developer) arising from the grant of an Approval or an application to a higher court appealing against a judgement in respect of an application made to a lower court;                      |
| <b>“Court Decision”</b>        | <p><b>Confirmatory</b> means either:</p> <p>(a) A judgement of the High Court or Court of Appeal confirming the grant of Approval, and the period for an appeal against such a decision has expired without a further Challenge being made; or</p> <p>A judgement of the Supreme Court confirming the grant of Approval by the determining authority or by the Secretary of State following an appeal;</p> |
| <b>“Decision”</b>              | The written decision of the Determining Authority or Planning Inspector/Secretary of State (in the event of an appeal or call in) determining the Planning Application;                                                                                                                                                                                                                                    |
| <b>“Determining Authority”</b> | has the meaning given to it in the Contract Particulars;                                                                                                                                                                                                                                                                                                                                                   |
| <b>“Development”</b>           | has the meaning given to it in the Contract Particulars;                                                                                                                                                                                                                                                                                                                                                   |
| <b>“Expiry Date”</b>           | means the date that is 3 years from the date of this Agreement (or such alternative date as may be agreed by the parties in writing).                                                                                                                                                                                                                                                                      |
| <b>“Finally Determined”</b>    | <p>Means where a Challenge has been made, the first or the following events to occur:</p> <p>(a) permission to bring a Challenge (where required) has not been granted and the period</p>                                                                                                                                                                                                                  |

within which an application for permission to appeal against such refusal has expired without a further Challenge being made;

- (b) all Challenges have been withdrawn;
- (c) a Court Confirmatory Decision has been issued;  
or
- (d) a quashing order has been issued nullifying the Approval and the determining authority has issued a further planning permission and the Challenge Period in respect of the Approval has expired.

|                                                 |                                                                                                                                                                                                                                                                 |
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| <b>"Further Reserve Fee"</b>                    | has the meaning given to it in the Contract Particulars;                                                                                                                                                                                                        |
| <b>"Habitat Management and Monitoring Plan"</b> | has the same meaning as in the Section 106 Agreements;                                                                                                                                                                                                          |
| <b>"Implementation Date"</b>                    | the date on which the Development is begun by the carrying out of a material operation as specified in section 56 (4) of the Town and Country Planning Act 1990 (as amended) and <b>"Implementation"</b> and <b>"Implement"</b> shall be construed accordingly; |
| <b>"Initial Reserve Fee"</b>                    | has the meaning given to it in the Contract Particulars;                                                                                                                                                                                                        |
| <b>"Planning Application"</b>                   | the planning application made or to be made by the Purchaser to the Determining Authority in relation to the Development;                                                                                                                                       |
| <b>"Required Capacity"</b>                      | means the number and type of Biodiversity Units of the total Biodiversity Capacity required by the Developer under this Agreement to provide Biodiversity Gain for the Development as specified in the Contract Particulars;                                    |
| <b>"Relevant Event"</b>                         | Means any of the following events: <ul style="list-style-type: none"> <li>(a) a change in the law; or</li> <li>(b) a decision of a Court, tribunal, Secretary of State, or other decision maker with competence;</li> </ul>                                     |

THAT in either case results in Biodiversity Gain not being required by law or the Allocation Land the subject of this

|                                 |                                                                                                                                                                                                                                                                                                                                                    |
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|                                 | Agreement no longer being considered to be an effective form of Biodiversity Gain;                                                                                                                                                                                                                                                                 |
| <b>“Secretary of State”</b>     | the Secretary of State for the relevant Ministry or Department or any other minister or authority for the time being entitled to exercise the powers given by sections 77, 78 and 79 of the Town and Country Planning Act 1990 (as amended);                                                                                                       |
| <b>“Section 106 Agreements”</b> | the agreements dated 18 <sup>th</sup> July 2023 entered into pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) between (1) South Downs National Park Authority and (2) the Owner;                                                                                                                                     |
| <b>“Unconditional Date”</b>     | means the date on which the earlier of the following first occurs: <ul style="list-style-type: none"> <li>a) the expiry of the Challenge Period where no Challenge is lodged; or</li> <li>b) (2) where a Challenge is lodged, the Challenge has been Finally Determined and has resulted in the upholding of the grant of the Approval;</li> </ul> |
| <b>“Qualifying Scheme”</b>      | has the same meaning as in the Section 106 Agreement;                                                                                                                                                                                                                                                                                              |
| <b>“Working Days”</b>           | means any Monday, Tuesday, Wednesday, Thursday and Friday except bank or public holidays;                                                                                                                                                                                                                                                          |

## 2. INTERPRETATION

- 2.1 The clause headings in this Agreement are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules (if any) are to the clauses and Schedules of this Agreement, unless stated otherwise.
- 2.3 Words importing one gender include any other genders and words importing singular include plural and vice versa.
- 2.4 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.5 Unless this Agreement states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws,

permissions and plans for the time being made, issued, or given under that legislation or deriving validity from it.

- 2.6 A reference to **writing** or **written** includes email but not fax.
- 2.7 References to the Biodiversity Gain Land and/or Allocation Land include any part of it.
- 2.8 References to “including” means “including without limitation”.
- 2.9 Any covenant not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.10 Where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually.

### **3. COMMENCEMENT**

- 3.1 This Agreement shall come into force on the date it is dated.

### **4. OBLIGATIONS OF THE PURCHASER**

- 4.1 The Purchaser shall:

- 4.1.1 pay the Initial Reserve Fee to the Owner on the date of this Agreement.
- 4.1.2 (if it has not already been done so) finalise and submit the Planning Application to the Determining Authority within a reasonable timescale and thereafter diligently pursue the Planning Application until a Decision is issued.
- 4.1.3 notify the Owner within 5 Working Days of each of the following events:
  - (a) the Decision being issued (with a copy of the Decision to be provided to the Owner) and whether the Decision is to grant an Approval or to refuse the grant of an Approval;
  - (b) the commencement of any Challenge Proceedings;
  - (c) the final determination of any Challenge Proceedings;
  - (d) if the Decision is to refuse the grant of an Approval, whether or not the Purchaser intends to appeal the Decision;
  - (e) the Implementation Date;
  - (f) in the event that the Approval lapses.
- 4.1.4 pay or cause to be paid the Further Reserve Fee to the Owner within 10 Working Days of the Unconditional Date.
- 4.1.5 pay or cause to be paid the Allocation Fee Final Instalment to the Owner prior to the Implementation Date.

4.2 The Purchaser shall not Implement the Development until it has paid the Allocation Fee in full to the Owner.

4.3 Prior to, or as soon as reasonably practicable after, the date of payment of the Allocation Fee Final Instalment, the Purchaser shall provide the following documents to the Owner in order to enable the Allocation of the Required Capacity on the Allocation Land to the Development:

4.3.1 a copy of the 'biodiversity gain plan' for the Development in approved format;

4.3.2 a copy of the Approval;

4.3.3 a copy of the final Biodiversity Metric for the Development in approved format;

AND SHALL provide any other documents, and take any other administrative steps or actions, as are reasonably requested by the Owner in to order to enable the Allocation of the Required Capacity on the Allocation Land to the Development.

4.4 The Purchaser shall be responsible for ensuring that any documents provided under clause 4.3 are valid and correctly completed and that the Required Capacity under this Agreement is sufficient for its Biodiversity Net Gain requirements in relation to the Development.

## 5. OBLIGATIONS OF THE OWNER

5.1 The Developer may (in its absolute discretion) at any time on or prior to the date referred to in clause 5.1.5 elect to pay the Allocation Fee Final Instalment in full to the Owner and upon receipt of the Allocation Fee Final Instalment the Owner will reserve the Required Capacity to the Developer

5.2 The Owner shall, following receipt of the Initial Reserve Fee, reserve the Required Capacity on the Allocation Land for the Purchaser/Development until the earlier of:

5.2.1 the Expiry Date; and

5.2.2 the date on which the entirety of the Required Capacity has been Allocated to the Developer;

;

PROVIDED THAT that the Owner may agree (at its sole discretion) upon request from the Purchaser to extend the Expiry Date subject to (a) the receipt of an additional fee from the Purchaser (the amount of which is to be agreed between the parties acting reasonably and which shall be regarded as an increase in the Initial Reserve Fee for the purposes of calculating the Allocation Fee Final Instalment) and (b) agreement being reached between the parties (acting reasonably) as to any revision to the Allocation Fee payable by the Purchaser to the Owner but for the avoidance of any doubt where the Developer has paid the Allocation Fee Final Instalment to the Owner pursuant to clause 6.1 then the Owner will continue to reserve the Required Capacity to the Developer after the Expiry Date and until such date on which all of the Required Capacity has been fully Allocated.

5.3 The Owner shall, following receipt of the Further Reserve Fee, continue to reserve the Required Capacity on the Allocation Land for the Purchaser/Development until the earlier of:

- 5.3.1 the date the Required Capacity has been Allocated to the Developer; and
- 5.3.2 the date 2 years after the grant of the Approval if the Allocation Fee Final Instalment has not yet been paid before such date;

PROVIDED THAT that the Owner may agree (at its sole discretion) upon request from the Purchaser to extend the 2-year further reserve period set out above subject to (a) the receipt of an additional fee from the Purchaser (the amount of which is to be agreed between the parties acting reasonably and which shall be regarded as an increase in the Further Reserve Fee for the purposes of calculating the Allocation Fee Final Instalment) and (b) agreement being reached between the parties (acting reasonably) as to any revision to the Allocation Fee payable by the Purchaser to the Owner but for the avoidance of any doubt where the Developer has paid the Allocation Fee Final Instalment to the Owner pursuant to clause 6.1 then the Owner will continue to reserve the Required Capacity to the Developer after the Expiry Date and until such date on which all of the Required Capacity has been fully Allocated.

5.4 The Owner shall, following receipt of the Allocation Fee Final Instalment:

- 5.4.1 within 5 (five) Working Days of the date of receipt, provide written notice to the Purchaser and to the South Downs National Park Authority and the Determining Authority (if different) of the receipt of the Allocation Fee Final Instalment and its commitment to Allocate the Required Capacity on the Allocation Land to the Development;
- 5.4.2 as soon as reasonably practicable, and subject to compliance by the Purchaser with its obligations to provide documents or undertake any other steps of actions under clause 4.3, Allocate the Required Capacity on the Allocation Land to the Development by submitting the necessary application and documents to the Biodiversity Gain Site Register (Statutory) and/or undertaking any other steps or actions as are reasonably necessary to give effect to the Allocation in accordance with applicable rules and regulations; and
- 5.4.3 maintain the Allocation Land in accordance with the approved Habitat Management and Monitoring Plan in accordance with the Owner's obligations under the Section 106 Agreements (and for so long as those obligations apply to the Owner).

5.5 The Owner shall not be in breach of its obligations under this Agreement to the extent that failures or delays are caused by a breach by the Purchaser of its obligations or responsibilities under clauses 4.3 or 4.4.

## 6. NOTICES

6.1 Any notice, consent, demand or other communication to be given in connection with the matters contemplated by this Agreement shall be in writing and shall either be delivered by hand, sent through by courier (recorded delivery), or by e-mail. Delivery by courier shall be regarded as delivery by hand. Such communication shall be sent to the address of the relevant party set out in the Contract Particulars or to such other address or as may previously have been communicated to the sending party in accordance with this clause. Each communication shall be marked for the attention of the relevant person set out in the Contract Particulars.

6.2 A communication shall be deemed to have been served:

6.2.1 if delivered by hand, to the address referred to above, at the time of delivery; and

6.2.2 if sent by e-mail, when received in legible form.

6.3 If a communication would otherwise be deemed to have been delivered outside normal business hours (being 9:30 a.m. to 5:30 p.m. on a Working Day) under the preceding provisions of this clause, it shall be deemed to have been delivered at the next opening of such normal business hours.

6.4 A party may notify the other Parties of a change to its name, relevant person or address for the purposes of this clause provided that such notification shall only be effective five (5) clear Working Days after the date on which notice is deemed to have been served (or such later date as stated in the notice).

## 7. DETERMINATION OF DISPUTES

7.1 Subject to clause 7.7, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other party written notice requiring the dispute to be determined under this clause **Error! Reference source not found..** The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

7.2 For the purposes of this clause 7, a “Specialist” is a person qualified to act as an expert in relation to the dispute having not less than ten years’ professional experience in relation to developments in the nature of the Development and property in the same locality as the Biodiversity Gain Land.

7.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 7.4.

7.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the Purchaser and the Owner cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.

7.5 The Specialist is to act as an independent expert and:

7.5.1 each party may make written representations within ten (10) Working Days of his appointment and will copy the written representations to the other party;

7.5.2 each party is to have a further ten (10) Working Days to make written comments on the other’s representations and will copy the written comments to the other party;

7.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

- 7.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;
- 7.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
- 7.5.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (30) Working Days of his appointment.

7.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 7, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

7.7 This clause 7 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

## **8. TERMINATION**

8.1 The Owner may terminate this Agreement with immediate effect by giving written notice to the Purchaser upon the occurrence of the Expiry Date in the event that the Unconditional Date has not taken place.

8.2 Without affecting any other right or remedy available to it, any party may also terminate this Agreement with immediate effect by giving notice to the other parties if a Relevant Event occurs prior to the date on which the Required Capacity has been Allocated and within 10 working days of the date of such termination the Owner will refund the Reserve Fee and if applicable Allocation Fee to the Developer.

8.3 Without affecting any other right or remedy available to it, the Owner may terminate this Agreement with immediate effect by giving notice to the Purchaser if prior to the date on which the Required Capacity has been Allocated, the Purchaser is in breach of any of its obligations in this Agreement and the Purchaser has failed to rectify the breach within a reasonable time after receiving notice to rectify from the Owner.

8.4 Without affecting any other right or remedy available to it, the Purchaser may terminate this Agreement with immediate effect by giving notice to the Owner if prior to the date on which the Required Capacity has been Allocated, the Owner is in breach of any of its obligations in this Agreement and the Owner has failed to rectify the breach within a reasonable time after receiving notice to rectify from the Purchaser.

8.5 If this Agreement is terminated in accordance with the provisions of this clause 8, then neither party shall have any further rights or obligations under this Agreement save for the rights of either party in respect of any earlier breach of this Agreement.

## **9. PAYMENTS**

9.1 All payments due under this Agreement shall be paid in pounds to the bank account specified by the Owner and interest shall be payable on overdue amounts at a rate of 4% above the base rate of the Bank of England from time to time.

9.2 All fees specified in this agreement exclude any amounts in respect of VAT.

9.3 Where any taxable supply for VAT purposes is made under this Agreement by the Owner to Purchaser, the Purchaser shall, on receipt of a valid VAT invoice from the Owner, pay to the Owner such additional amounts in respect of VAT as are chargeable on the supply at the same time payment is due for the fees.

## 10. ASSIGNMENT

10.1 At any time prior to the earlier of (a) the Expiry Date and (b) the date on which the Required Capacity has been Allocated the Developer may with the approval of the Owner (such approval not to be unreasonably withheld or delayed) assign the benefit of this Deed to a third party PROVIDED ALWAYS THAT the Owner shall not withhold approval of any assignment to any registered owner of the Development or any purchaser of the registered title to the Development pursuant to contract with the Developer or owner of the Development.

10.2 Following the date on which the Required Capacity has been Allocated the Developer may with the Owners prior written approval (such approval not to be unreasonably withheld or delayed) assign the benefit of the Allocation and/or this Deed to a third party PROVIDED ALWAYS THAT the Developer shall pay the Owner's reasonable professional fees incurred in connection with the amendment of any updated or revised Capacity Monitoring Report as may be required by the Determining Authority PROVIDED ALWAYS THAT the Owner shall not withhold approval of any assignment to any registered owner of the Development or any purchaser of the registered title to the Development pursuant to contract with the Developer or owner of the Development.

10.3 The Owner shall not during the term of this Deed:

- (a) transfer, assent or grant any lease over the Allocation Land without first procuring novation of this Deed; or
- (b) grant any further mortgage, charge, encumbrance or other security interest over the Biodiversity Gain Land the subject of this Deed without first procuring that the chargee covenants directly with the Developer not to sell or otherwise transfer or dispose of the Biodiversity Gain Land or any part of it to any third party without first procuring the novation of this Deed.

10.4 At any time after payment of the Allocation Fee Final Instalment, the Developer may with the Owner's approval (such approval not to be unreasonably withheld or delayed) assign the Reserve Capacity which has not been Allocated to a different planning application or Qualifying Scheme or third party

10.5 .

## 11. ENTIRE AGREEMENT

11.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

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

## **12. VARIATION**

- 12.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **13. SEVERANCE**

- 13.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 13.2 If any provision or part-provision of this Agreement is deemed deleted under clause 13.2, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **14. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **15. NO PARTNERSHIP OR AGENCY**

- 15.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

## **16. FURTHER ASSURANCE**

At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

## **17. THIRD PARTY RIGHTS**

- 17.1 This Agreement does not give rise to any rights under the Contracts (Rights of Third parties) Act 1999 to enforce any terms of this Agreement.
- 17.2 The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

## **18. GOVERNING LAW**

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

**19. JURISDICTION**

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

## ANNEX 1 : ALLOCATION LAND PLAN

Land under a S106 Agreement

