

Portfolio holder decision – Portfolio holder for Planning and Economy – 6 November 2024

Solent Local Nutrient Mitigation Fund Projects Inter Authority Agreement (IAA)

Purpose	For Decision
Classification	Public
Executive Summary	<p>The report sets out the key issues around the formation of the Solent Mitigation Partnership which aims to provide strategic mitigation for the increase in nutrient deposition as a result of new development. This will be formalised through the signing of an Inter Authority Agreement by all partners who wish to participate.</p> <p>The report recommends that the Inter Authority Agreement is signed and that delegated authority is given to the Strategic Director for Place, Operations and Sustainability to agree the Council as a Benefiting Party for projects delivered through the agreement utilising the Local Nutrient Mitigation Fund.</p>
Recommendations	<ol style="list-style-type: none"> 1. That the proposed Inter Authority Agreement be signed, and authority be delegated to the Strategic Director for Place, Operations and Sustainability, to enter into the final agreement, including any minor amendments, following consultation with the Council’s S151 Officer and the Planning and Economy Portfolio Holder. 2. That authority be delegated to the Strategic Director for Place, Operations and Sustainability to agree the Council as a Benefiting Party for projects delivered through the Inter Authority Agreement, following consultation with the Council’s S151 Officer and the Planning and Economy Portfolio Holder.
Reasons for recommendations	The recommendations support the Corporate Plan priorities for:

	<ul style="list-style-type: none"> • People – meeting housing needs; and • Place – protecting our climate and natural world. <p>The Inter Authority Agreement enables the provision of a convenient way for developers to meet their obligations under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). It allows them to mitigate the in-combination impacts of their developments in relation to water quality, without having to provide bespoke mitigation measures, which may be difficult in practical terms and potentially far more expensive.</p> <p>The principles of the Inter Authority Agreement have been agreed by the Partnership for South Hampshire (PfSH) and individual authorities need to consider their participation. The Agreement allows development to come forward whilst preventing harm to protected species and remains a collaborative Partnership between local authorities within and adjoining PfSH, as well as national and local nature conservation bodies. PfSH has agreed that only those authorities that sign the agreement will be able to debate items related to the deployment of the Local Nutrient Mitigation Fund (LNMF) capital programme.</p>
Wards	All
Portfolio Holder	Councillor Derek Tipp – Planning and Economy
Strategic Director	James Carpenter – Strategic Director for Place, Operations and Sustainability
Officer Contact	<p>Tim Guymer Assistant Director for Place Development tim.guymer@nfdc.gov.uk</p>

Introduction and background

1. The effects of increasing levels of nutrient discharge and eutrophication on water quality impacts New Forest District by limiting the opportunities for new housing growth and effective strategic planning for growth more widely. These impacts on water quality and their effects on planned growth across the Solent sub-region has been reported on regularly through the Partnership for South Hampshire.
2. In May 2023 Fareham Borough Council provided an expression of interest to government for funding to provide local authority led nutrient mitigation solutions across the Solent. The expression of interest provided an indicative capital programme of mitigation schemes and was designed to help ensure a consistent 5-year supply of nutrient mitigation across the impacted areas of the Solent. All authorities impacted by nutrient neutrality across the Solent, with the exception of the South Downs National Park Authority, supported both the expression of interest and proposed capital programme of mitigation options.
3. Funding was awarded from the Ministry of Housing, Communities and Local Government (MHCLG) in January 2024 to facilitate the delivery of nutrient mitigation across the Solent sub-region, this funding is referred to as the Local Nutrient Mitigation Fund (LNMF). Fareham Borough Council was identified as the lead authority in respect to the fund and as such were required to sign a Memorandum of Understanding associated with the requirements of the funding.
4. The Memorandum of Understanding for the LNMF identified that all funding must be committed within the 2024/2025 financial year. In order to meet the requirements of the funding, Fareham Borough Council as lead authority has started to deploy the fund on behalf of impacted authorities¹.

¹ [Report to the Partnership for South Hampshire Joint Committee](#) refers and sets out the capital programme and the reason and purpose of the fund.

Proposed Capital Programme			
Projects	Scope	Total LNMF Budget Allocation	Catchment(s)
Water Efficiency (Council Led)	Design water efficiency measures for council owned housing stock and social tenanted property for the purposes of nutrient reduction. Commission local authorities to implement new measures and collate data for reporting mitigation of water resource savings and lower water bills to residents without the need to access the private market.	£540,000	East Hampshire, Test and Itchen, New Forest Rivers
Water Efficiency (Registered Providers)	Design water efficiency measures for affordable stock managed by registered housing providers for the purposes of nutrient reduction. Commission registered housing providers to implement new measures and collate data for reporting mitigation of water resource savings and lower water bills to residents without the need to access the private market.	£360,000	East Hampshire, Test and Itchen, Arun (Western Streams)
Upgrades to Council Owned Sewerage Infrastructure	The identification of authority owned Sewerage Treatment Works (PTP and septic tank) which are suitable for upgrades to enable reductions in Nitrogen and Phosphorus into waterways and improves discharge point to Controlled Waters. Lead design planning and obtain Authority agreement to proceed with upgrade and manage oversight of the upgrade.	£900,000	Test and Itchen, Itchen (P)
Wetland Delivery	Using collated evidence on the deliverability of different wetlands to proposed several schemes where land is in control of an LPA. Proposed full feasibility on projects and obtain agreement on most suitable option(s). Setup mechanism to implement delivery of preferred option.	£1,200,000	Test and Itchen
Reduction of Intensive Agriculture	Strategy predicated on all sites providing, in addition to nutrient mitigation, additional benefits such as public access, BNG, and national and local policy objectives. Where possible sites should also aim to deliver further benefits, such as providing mitigation for recreational disturbance and assisting in water resource management. Initial projects should be focused on the Test and Itchen and East Hampshire catchments	£6,560,000	All
Institutional Framework	Develop a long-term delivery vehicle, that address state aid and public v's private classification issues, to manage and provide a local authority led nutrient credit offer by creating and maintaining mitigation schemes.	£40,000	All
TOTAL		£9,600,000	

Figure 1 - Proposed LNMF Capital Programme

5. In order to effectively deploy the fund across all catchments, and to form a Solent Mitigation Partnership that brings together all impacted authorities to deliver a strategic local authority led solution, an Inter Authority Agreement (IAA) is proposed.
6. For New Forest District, this proposed IAA relates to the eastern river catchments in the Planning Area that drain into the Solent (Totton and the Waterside, together with the South Coastal Towns sub areas). Water quality impacts relate to nitrate neutrality. Separate water quality issues and subsequent mitigation work is ongoing in the River Avon catchment in relation to phosphorus neutrality, covering the western sub area of the Avon Valley and Downlands. This catchment has separately benefitted from an MHCLG awarded Local Nutrient Mitigation Fund, which will be reported on separately in due course.

Inter Authority Agreement

7. The IAA (Appendix A) has been drafted by Southampton Legal Partnership. The agreement has been reviewed by all 17 of the authorities impacted by nutrient neutrality across the Solent. The

review process culminated in a number of multi-authority roundtables in September 2024 to further review and refine the agreement.

8. At the 30 September PfSH Joint Committee meeting the following recommendations were agreed:
 - a. NOTES the update on projects within the LNMF capital programme;
 - b. AGREES the principles of the Inter Authority Agreement and supports their individual authorities to enter into the agreement as appropriate;
 - c. AGREES the sales approach, including sales price and approach to allocation of credits;
 - d. AGREES that parties who are not members of the Partnership for South Hampshire, but who sign the Inter Authority Agreement, will be invited to Joint Committee to debate and/or vote on items related to the deployment of the LNMF capital programme;
 - e. AGREES that parties who are members of the Partnership for South Hampshire, but who do not sign the Inter Authority Agreement, will not be able to debate and/or vote on items related to the deployment of the LNMF capital programme; and
 - f. AGREES that Hampshire County Council, Portsmouth City Council and Southampton City Council would have no right of veto for items relating to the LNMF capital programme.

9. There are 5 main principles of the IAA:
 - Shared benefits – The deployment of projects through the LNMF is designed to facilitate development in multiple authorities with the aim of providing a robust and sustainable supply of mitigation across the Solent area. The IAA identifies the PfSH Joint Committee as the body responsible for confirming delivery of new projects and the body responsible for agreement of the planning authority areas benefiting from each project.

 - Monitoring functions – within the agreement it details the process for ensuring that the mitigation schemes meet the requirements to provide nutrient neutrality over the defined period (usually 100+ years). It creates the role of Monitoring Authority which will carry out this function. As such, the IAA removes the need for signatories to enter into individual section 106 agreements for each scheme, as well as removing the need for additional legal agreements to deal with cross-boundary enforcement requirements.

 - Working together – Due to the cross-boundary nature of many environmental services, it is intended that the IAA ensures that the projects delivered within the LNMF meet the requirements of

the Habitat Regulations for all signatories of the IAA. If an authority feels they are unable to sign the IAA within the required timescales then no credits created from the LNMF funding, or future investment generated by the sales of these credits, will be able to be sold in those local authority areas not covered by the IAA.

- Risk management – In order to protect against any financial risk arising from projects deployed through the LNMF the IAA confirms the use of a sinking fund to be ringfenced for that purpose. The sinking fund is designed to be equal to the potential liability arising from each site, and in the case of the purchase of land at Stubbington is £1,377,000. As each new project comes forward the sinking fund will be increased and agreed as part of the business case agreement process. Should the sinking fund not be sufficient to meet any future liability then the IAA identifies that any remaining grant funding, or any available income from credit sales, will be first used to satisfy that liability. In the unlikely event of any additional liability, in excess of the sink fund and available funds, liability will be shared equally among those who have signed the Agreement and are listed as receiving a benefit for the project from which the liability arises. In the event a party leaves the Agreement they continue to be liable for any projects for which they are listed as a benefiting party².
 - Sales process – The IAA identifies the PfSH Joint Committee as the body responsible for agreeing the sales price and allocation of credits. This is to allow easier review and agreement of these elements as the market continues to evolve. Local authority signatories outside of PfSH will be invited to sit at the relevant Joint Committee items.
10. As the nutrient neutrality function expands its remit by adding new schemes, as well as rolling out the delivery and sale of Biodiversity Net Gain (BNG) units, the IAA will need to be reviewed periodically. New schemes will be added to a Schedule of the Agreement and authorities and organisations not already a signatory can be added to the Agreement through a variation process.

Rationale for signing the Inter Authority Agreement

11. The Council in its role as Local Planning Authority needs to ensure that sufficient mitigation is available to meet planned growth. It is acknowledged that the benefits of the IAA are geographically limited to the eastern river catchments of the Planning Area, which drain into the Solent.

² The IAA defines a 'Benefiting Party' as 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.

12. Although there is a private supply of mitigation across the majority of impacted areas across the Solent, regular reporting of the relative supply of mitigation has shown that the private market is unable to supply a sufficient and reliable amount of mitigation to maintain a 5-year supply within the market. Additionally, reliance on the private market requires substantial work on cross-boundary legal agreements in order to ensure compliance with the Habitat Regulations as Competent Authorities in decision making.
13. The IAA aims to ensure a 5-year supply of mitigation by working alongside the private market to provide a supply of mitigation for developers. It is also proposed that projects delivered through the IAA deliver multiple benefits, including the provision of BNG units and removing the need for cross-boundary legal agreements for projects delivered through the IAA.
14. By becoming a party to the IAA, the Council will have the benefit, over time, of a consistent 5-year supply of mitigation in the eastern parts of its Local Planning Authority area to facilitate planned sustainable growth. Additionally, decision makers can have the confidence that planning applications for qualifying development proposals meet the requirements of Habitat Regulations regarding certainty of delivery without the additional staff resource needed to arrange cross boundary legal agreements for each mitigation project that comes forward.

Options appraisal

15. Business as Usual – The Council could decline to enter into the IAA and simply continue to signpost developers to third-party mitigation schemes as the only option for the eastern parts of the Planning Area. However, due to the geographical mitigation requirements for nitrogen, these third-party options are limited and do not provide a consistent 5-year supply of mitigation. For these reasons, this option is rejected.

Consultation undertaken

16. Whilst extensive engagement has taken place between the relevant local authorities proposed to be party to this Agreement, there has been no public consultation on the proposed Agreement. The approach has been subject to engagement with Natural England as it was developed through the work of the PfSH Planning Officers Group.

Financial and resource implications

17. As projects delivered through the IAA are for the benefit of all authorities and must be maintained for at least a 100-year period,

there is a potential financial liability for authorities identified within the Agreement.

18. The IAA confirms that only authorities identified as Benefiting Parties for each project will have a potential financial liability. The IAA also confirms a sink fund will be ring fenced to account for potential liabilities and only when the applicable sink fund, as well as remaining grant funding and available income, have been exhausted will Benefiting Parties potentially be asked on to cover any additional liability.
19. Although potential liability is uncapped. It is considered that there is sufficient ability to assess any liability on a project-by-project basis as they are presented. Should the Council feel that a project, and proposed applicable Sink Fund, exposes the Council to undue financial risk, this can be avoided by determining not to become a Benefiting Party for that project. It is proposed that the determination as to whether the Council becomes a Benefiting Party is delegated to Strategic Director Place, Operations and Sustainability following consultation with Council's S151 Officer and the Planning and Economy Portfolio Holder.
20. Where the Council may be the Host Authority for a project, with a project being delivered in its administrative area, there is the potential for council officer time to be required across multiple departments to facilitate delivery of the projects. The IAA identifies in schedule 1 that the Host Authority may provide a number of services, with these services funded through the LNMF as per the excerpt below. As such any staffing implications of the agreement would be cost neutral to the Council.

Legal implications

21. There are no specific legal implications for the recommendations other than that the signing of the Agreement will make it a legally binding agreement with regard to the resource implications set out above. This includes the proposed delegated authority for the Strategic Director Place, Operations and Sustainability for future agreements to individual projects.

Risk assessment

22. There are financial risks associated with the recommendations. These are comprehensively explained under the financial and resource implications section above and no further risk assessment is considered necessary.

Environmental / Climate and nature implications

23. The Inter Authority Agreement will help to avoid harm to the natural environment, and in particular the habitats on which protected species rely.

Equalities implications

24. There are no equalities implications arising from the recommendations.

Crime and disorder implications

25. There are no crime and disorder implications arising from the recommendations.

Data protection / Information governance / ICT implications

26. There are no implications arising from the recommendations.

New Forest National Park / Cranborne Chase National Landscape implications

27. The New Forest National Park Authority, as Local Planning Authority, is responsible for considering the approach within the National Park. It is considered that the jointly agreed partnership approach across the PfSH area is efficient and effective. The New Forest National Park Authority is a member of the Partnership for South Hampshire.
28. There would be no landscape implications for land within the National Landscape designation or its setting as the IAA will apply to river catchments in the eastern parts of the Planning Area, outside of the National Landscape.

Conclusion

29. The Inter Authority Agreement (IAA) will allow qualifying development proposals to come forward without significant harm to the natural environment due to nutrient pollution. The Agreement will be an efficient and effective way to ensure that developers do not have to provide bespoke on-site solutions. Projects delivered through the IAA will deliver multiple benefits including the provision of BNG units.

Portfolio holder endorsement

I have agreed to the recommendations of this report.

Sign: Derek Tipp

Date: 6 November 2024

Appendices

Appendix A – Proposed Inter
Authority Agreement

Background Papers:

[PfSH report 23/07/2024](#) -
Deployment of the Local Nutrient
Mitigation Fund

Date on which notice given of this Decision – 6 November 2024

Last date for call in – 13 November 2024

Dated 2024

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)
SOUTH DOWNS NATIONAL PARK AUTHORITY (13)
SOUTHAMPTON CITY COUNCIL (14)
TEST VALLEY BOROUGH COUNCIL (15)
WILTSHIRE COUNCIL (16)
WINCHESTER CITY COUNCIL (17)

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

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This Agreement is dated

Parties

- (17) **BASINGSTOKE AND DEANE BOROUGH COUNCIL** of Civic Offices, London Rd, Basingstoke RG21 4AH ("**BDBC**");
- (17) **CHICHESTER DISTRICT COUNCIL** of East Pallant House, Chichester, West Sussex, PO19 1TY ("**CDC**").
- (17) **EAST HAMPSHIRE DISTRICT COUNCIL** of Monterey House Bedford Rd, Petersfield GU32 3LJ ("**EHDC**"),
- (17) **EASTLEIGH BOROUGH COUNCIL** of Eastleigh House, Upper Market St, Eastleigh SO50 9YN ("**EBC**");
- (17) **FAREHAM BOROUGH COUNCIL** of Civic Offices, Civic Way, Fareham, Hampshire, PO16 7PP ("**FBC**" or the "**Lead Authority**" as the case may be);
- (17) **GOSPORT BOROUGH COUNCIL** of Town Hall, High St, Gosport PO12 1EB ("**GBC**");
- (17) **HAMPSHIRE COUNTY COUNCIL** of The Castle, Upper High Street, Winchester, SO23 8UJ ("**HCC**");
- (17) **HAVANT BOROUGH COUNCIL** of Public Service Plaza, Civic Centre Road, Havant, PO9 2AX ("**HBC**");
- (17) **ISLE OF WIGHT COUNCIL** of County Hall, High Street, Newport, PO30 1UD ("**IWC**")
- (17) **NEW FOREST DISTRICT COUNCIL** of Appletree Court, Beaulieu Rd, Lyndhurst SO43 7PA ("**NFDC**");
- (17) **NEW FOREST NATIONAL PARK AUTHORITY** of Lymington Town Hall Avenue Road Lymington SO41 9ZG ("**NFNPA**");
- (17) **PORTSMOUTH CITY COUNCIL** of Civic Offices, Guildhall Walk, Portsmouth PO1 2AL ("**PCC**");
- (17) **SOUTH DOWNS NATIONAL PARK AUTHORITY** of South Downs Centre, North Street, Midhurst, West Sussex, GU29 9DH ("**SDNPA**")
- (17) **SOUTHAMPTON CITY COUNCIL** of Civic Centre, Civic Centre Road, Southampton, SO14 7LY ("**SCC**")
- (17) **TEST VALLEY BOROUGH COUNCIL** of Beech Hurst, Weyhill Rd, Andover SP10 3AJ ("**TVBC**");
- (17) **WILTSHIRE COUNCIL** of Bythesea Road, Trowbridge, Wiltshire, BA14 8JN ("**WC**")
- (17) **WINCHESTER CITY COUNCIL** of City Offices, Colebrook Street, Winchester SO23 9LJ ("**WCC**")

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

BACKGROUND

- (L) 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.
- (L) PfSH has appointed FBC as the Lead Authority for the purposes of this Agreement.
- (L) Following approval by PfSH, the Lead Authority submitted a proposal to DLUHC, was awarded Grant Funding from the Local Nutrient Mitigation Fund and entered into memoranda of understanding with DLUHC regarding the administration and delivery of funding.
- (L) 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.
- (L) 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.
- (L) 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.
- (L) Each Host Authority is the owner of the Asset involved in the Project (as applicable).
 - (L) 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.
 - (L) The Lead Authority will be responsible for selling Credits arising from the Projects.
 - (L) The Lead Authority will provide regular updates to PfSH and carry out annual reviews in accordance with the terms of this Agreement.
 - (L) 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

40 DEFINITIONS AND INTERPRETATION

- 1.11 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) .
- “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.

“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 pursuant to its letter of 19 December 2023 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 120 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.

- 2.11 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 3.11 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.
- 4.11 Words in the singular include the plural and vice versa.
- 5.11 A reference to one gender includes a reference to the other genders.
- 6.11 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.
- 7.11 A reference to **“writing”** or **“written”** includes both e-mail and post.
- 8.11 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.
- 9.11 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.
- 10.11 References to clauses and Schedules are to the clauses and Schedules of this Agreement. References to paragraphs are to paragraphs of the relevant Schedule.
- 11.11 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):
 - 11.1.3 the body of this Agreement;
 - 11.2.3 the Schedules; and
 - 11.3.3 any other document referred to in this Agreement.

40 TERM

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

40 APPROVALS AND STATUTORY AUTHORITY

- 1.1 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.
- 2.1 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.

40 OBJECTIVES OF THE AGREEMENT

- 1.1 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^[1]. This shall be achieved principally through the following steps:
 - 1.1.3 The Lead Authority shall be responsible for the application of the Grant Funding;
 - 1.2.3 The Lead Authority shall be responsible for the overall delivery of a Project;
 - 1.3.3 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).
 - 1.4.3 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.
 - 1.5.3 The Lead Authority shall be responsible for selling Credits on the open market.
 - 1.6.3 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.

40 AUTHORISED OFFICER

- 1.1 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.
- 2.1 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.

40 GOVERNANCE

- 1.1 The Parties agree that decisions in relation to the Projects shall be taken by PfSH in accordance with the PfSH Agreement SUBJECT ALWAYS TO:
 - 1.1.3 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;
 - 1.2.3 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;
 - 1.3.3 HCC, SCC and PCC not being able to exercise their right of veto in accordance with the PfSH Agreement.
- 2.1 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.

40 CONFLICTS OF INTEREST AND NON COMPETITION CLAUSE

- 1.1 Where a Party becomes aware of any actual, possible or potential conflict of interest in its performance of this Agreement (the "**Affected Party**"), then:
 - 1.1.3 the Affected Party shall immediately inform the other Parties, in writing, of this conflict; and
 - 1.2.3 the Affected Party shall confirm what it proposes to do in accordance with its conflicts of interest policy.
- 2.1 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).
- 3.1 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.
- 4.1 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.
- 5.1 The Parties agree that where a Party proposes to establish and/or operate a new nitrogen or phosphorous mitigation project 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 Credits.

40 OBLIGATIONS OF THE PARTIES

- 1.1 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.
- 2.1 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.
- 3.1 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:
 - 3.1.3 to ensure the proper discharge of their statutory functions;
 - 3.2.3 with reasonable skill and care, and in accordance with best practice guidance;

- 3.3.3 in all respects in accordance with the provisions of this Agreement;
- 3.4.3 in accordance with their constitution, standing orders or other rules on contracting;
and
- 3.5.3 in accordance with all applicable law.
- 4.1 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.
- 5.1 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.
- 6.1 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:
 - 6.1.3 A marketing strategy for the sale of Credits;
 - 6.2.3 Principles and priorities for the sale of Credits, which for the avoidance of doubt shall:
 - (b) 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.
- 7.1 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.
- 8.1 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.
- 9.1 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.
- 10.1 The Parties shall ensure that their Authorised Officers are appropriately managed and supervised in accordance with all relevant prevailing standards of professional accountability.
- 11.1 Additional services may be brought within the scope of this Agreement as may be agreed by the Parties in writing from time to time.

40 SALE OF CREDITS

- 1.1 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.

40 DEEMED VARIATION TO PFSH AGREEMENT AND TERMINATION OF PFSH AGREEMENT

- 1.1 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:
 - 1.1.3 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.

- 2.1 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).

- 3.1 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.

40 REPORTING

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

40 ANNUAL REVIEW

- 1.1 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:
- 1.1.3 the delivery of the Aims and Outcomes, including the capital and revenue expenditure of the Grant Funding, Income and future liabilities and Sink Funds;
 - 1.2.3 the performance of the individual Services;
 - 1.3.3 plans to address any underperformance in the Services;
 - 1.4.3 actual expenditure compared with agreed budgets, and reasons for and plans to address any actual or potential underspends or overspends;
 - 1.5.3 review of plans and performance levels for the following year.

40 MONITORING AND COMPLIANCE

- 1.1 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.
- 2.1 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:
- 2.1.3 where the Host Authority is also the Lead Authority, it shall not be the Monitoring Authority; and
 - 2.2.3 a Host Authority may not be the Monitoring Authority in respect of the same Project.
- 3.1 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.

40 ENFORCEMENT FOR NON-COMPLIANCE

- 1.1 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:
- 1.1.3 verify whether any such obligation has been observed or performed and the progress of performance of any such obligation; and
 - 1.2.3 comply with Clause 14.5.
- 2.1 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.
- 3.1 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.
- 4.1 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.
- 5.1 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.
- 6.1 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.

40 APPROPRIATE ASSESSMENTS

- 1.1 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.
- 2.1 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.

3.1 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:

3.1.3 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;

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

40 REIMBURSEMENT OF COST OF SERVICES AND FINANCIAL CONTRIBUTIONS

1.1 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).

2.1 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.

3.1 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.

40 VAT

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

2.1 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.

40 LIABILITY AND INDEMNITY

1.1 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.

2.1 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).

3.1 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.

40 INSURANCE

1.1 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).

40 RECORDS, AUDIT AND ACCESS TO INFORMATION

1.1 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.

2.1 Each Party agrees to submit to any audit, review, inspection or examination, in accordance with its statutory requirements.

3.1 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.

40 COMPLIANCE WITH LAWS

1.1 In performing their obligations under this Agreement, the Parties shall at all times comply with:

- 1.1.3 all applicable law;
- 1.2.3 the Policies and Procedures.

2.1 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.

3.1 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.

40 DATA SHARING AND DATA PROTECTION, FREEDOM OF INFORMATION, INFORMATION SHARING AND CONFIDENTIALITY

1.1 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.

2.1 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).

3.1 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.

40 INTELLECTUAL PROPERTY

1.1 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”).

2.1 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.

3.1 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.

4.1 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.

40 EQUALITIES AND HUMAN RIGHTS

1.1 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.

2.1 In their performance of this Agreement the Parties agree to adopt and apply such policies to ensure compliance with their equality duties.

3.1 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.

40 COMPLAINTS

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

40 TERMINATION AND EXIT OF A PARTY TO THE AGREEMENT

1.1 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.

2.1 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.

3.1 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.

40 CONSEQUENCES OF TERMINATION

1.1 If this Agreement is terminated in accordance with Clause 26, the Parties agree as follows:

- 1.1.3 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.
- 1.2.3 The Parties shall work together to mitigate any liabilities (including without limitation the redeployment of staff within their respective organisations).
- 1.3.3 Capital assets shall be dealt with in accordance with such decision of PfSH.
- 2.1 Subject to Clause 27.3 below, the provisions of the following clauses shall survive the termination of this Agreement:
 - 2.1.3 Clause 1 (Definitions and Interpretation);
 - 2.2.3 Clause 4 (Objectives of the Agreement);
 - 2.3.3 Clause 6 (Governance);
 - 2.4.3 Clause 16 (Reimbursement of Cost of Services and Financial Contributions);
 - 2.5.3 Clause 17 (VAT);
 - 2.6.3 Clause 18 (Liability and Indemnity);
 - 2.7.3 Clause 20 (Records, Audit and Access to Information);
 - 2.8.3 Clause 22 (Data Sharing and Data Protection, Freedom of Information, Information Sharing and Confidentiality);
 - 2.9.3 Clause 27 (Consequences of Termination); and
 - 2.10.3 Clause 30 (Notices).
- 3.1 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.

40 DISPUTE RESOLUTION

- 1.1 The Parties shall respectively use all reasonable endeavours to resolve disputes arising out of this Agreement.
- 2.1 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.
- 3.1 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.
- 4.1 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.

40 FORCE MAJEURE

- 1.1 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.
- 2.1 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.
- 3.1 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.
- 4.1 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.

40 NOTICES

- 1.1 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.
- 2.1 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.

40 VARIATION

- 1.1 Any variation to this Agreement will only be valid if it is:
 - 1.1.3 agreed by each Party (including for the avoidance of doubt, any party who enters into this Agreement after the Commencement Date);

- 1.2.3 made in accordance with each Party's internal decision-making processes;
- 1.3.3 made in writing; and
- 1.4.3 duly executed as a deed.

40 WAIVER

- 1.1 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.
- 2.1 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.

40 FURTHER ASSURANCE

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

40 SEVERANCE

- 1.1 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.

40 ASSIGNMENT AND SUB-CONTRACTING

- 1.1 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.

40 EXCLUSION OF PARTNERSHIP AND AGENCY

- 1.1 Save as expressly provided otherwise in this Agreement or where a statutory provision otherwise requires, the Parties shall not in any way whatsoever:
 - 1.1.3 be, act or hold themselves out as an agent of the others;
 - 1.2.3 make any representations or give any warranties to third parties on behalf or in respect of the others; or
 - 1.3.3 bind or hold themselves out as having authority or power to bind the others.
- 2.1 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.

40 EXCLUSION OF THIRD PARTY RIGHTS

- 1.1 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.

40 ENTIRE AGREEMENT

- 1.1 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.

40 COUNTERPARTS

- 1.1 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

- 1.1 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