

WEST OXFORDSHIRE DISTRICT COUNCIL

Planning Obligation by Deed of Agreement under Section 106 of the Town and Country
Planning Act 1990

WEST OXFORDSHIRE DISTRICT COUNCIL

and

PUDLICOTE FARM LIMITED

Relating to Land at Pudlicote Farm, Chipping Norton, Oxfordshire, OX7 3HX

West Oxfordshire District

Planning Obligation by Deed of Agreement
under Section 106 of the Town and Country Planning Act 1990
relating to land at Pudlicote, West Oxfordshire District

Dated

2025

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DATE

2025

PARTIES:

- (1) **WEST OXFORDSHIRE DISTRICT COUNCIL of Council Offices, Woodgreen, Witney, OX28 1NB**, in the County of Oxfordshire (“**Council**”);
- (2) **PUDLICOTE FARM LIMITED (company number 02549385), Pudlicote Farm, Chipping Norton, Oxfordshire, OX7 3HX** (“**Owner**”);

hereinafter referred to as “**the Parties**”

INTRODUCTION

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Habitat Site is situated.
- (B) The Owner is the freehold owner of the Habitat Site.
- (C) The Parties have agreed to enter into this Deed in order to secure the provision management and maintenance of Biodiversity Units on the Habitat Site as set out in the planning obligations contained in this Deed, having regard to the provisions of the Council’s respective development plan the NPPF and the Environment Act 2021 and Schedule 7A of the 1990 Act.
- (D) The Council enters into this Deed pursuant to an exercise of delegated authority by the Senior Officer for Planning.
- (E) The Parties to this Deed have given due consideration to the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (to the extent relevant to the obligations in this Agreement) and the advice set out at paragraphs 56 and 57 of the NPPF.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings

Expression

Meaning

“1990 Act”

the Town and Country Planning Act 1990 (as amended)

“Biodiversity Gain Site”	land as defined by section 100 of the Environment Act 2021 where works are required for the purpose of habitat enhancement which enhancement is required to be maintained for at least thirty years after the completion of those works
“Biodiversity Gain Site Register”	the register of Biodiversity Gain established and maintained by Natural England or any other equivalent register or authority register in place from time to time
“Statutory Biodiversity Metric Tool”	the mechanism with reference to biodiversity metric 4.0 approved by DEFRA current at the date of this Deed to quantify impacts on biodiversity that allows a Biodiversity loss and/or a Biodiversity gain affecting different habitats to be compared and ensures the biodiversity offsetting proposed is sufficient to compensate for any residual losses of biodiversity or provide the required biodiversity net gain for any development scheme or any other such metric updated from time to time
“Statutory Biodiversity Metric User Guide”	the Statutory Biodiversity Metric user guide dated February 2024 published by the Government or any replacement guide issued by the Government thereafter
“Biodiversity Unit”	a unit (or part thereof) used to describe relative biodiversity value, as calculated by the Statutory Biodiversity Metric Tool or any replacement metric issued by DEFRA and expressed as an Area Habitat Biodiversity Unit (AHBU)

	[habitats recorded in the metric tool in area (hectares)], Hedgerow Biodiversity Unit (HBU) [linear hedgerows recorded in length (kilometres)] and/or Watercourse Biodiversity Unit (WBU) [habitats recorded in the biodiversity metric according to length (kilometres)]
“Biodiversity Unit Cost”	the cost in pounds sterling of a Biodiversity Unit when Sold or Transferred
“Bundling”	the Sale or Transfer of a single Biodiversity Unit which also incorporates other environmental benefits either explicitly or implicitly together with the Biodiversity Unit as referred to in and where permitted by the Nature Markets Publication
“CIEEM”	the Chartered Institute of Ecology and Environmental Management or its successor in function
“Competent”	holding a minimum of Membership of CIEEM or a cognate body with a professional code of conduct and/or in line with definitions provided by the British Standard on Biodiversity Net Gain (8683:2021) and any relevant Natural England or DEFRA Guidance
“DEFRA”	the Department for Environment, Food and Rural Affairs or any successor body
“Double Counting”	the Sale or Transfer of the same Biodiversity Unit more than once as the basis for duplicated claims of

Biodiversity Gain as referred to in the Nature Markets Publication

“Expert”

an independent and professionally qualified expert with not less than five years relevant experience in the field of the matter in dispute who has been appointed pursuant to clause 15 of this Deed. For the avoidance of doubt any expert on ecology matters shall be a member of CIEEM

“Financial Update Report - Owner”

a written report by the Owner to the Council to demonstrate its continuing ability to cover the full costs of compliance with the requirements of the Habitat Management and Monitoring Plan on the Habitat Site for the remainder of its duration

“Force Majeure Event”

a circumstance not within the control of the Owner comprising (but not limited to) (a) an act of God such as a drought, flood, or other natural disaster, including those resulting from climate change; (b) appearance on the Habitat Site of an invasive or nuisance species (singular or plural); (c) epidemic or pandemic; (d) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations; (e) nuclear, chemical or biological contamination; (f) plant disease; (g) epizootic or (h) compulsory purchase.

“Habitat Creation and Enhancement Works”	The initial capital works required to implement the creation and enhancement of the habitats at the Habitat Site as set out in the Habitat Management and Monitoring Plan
“Habitat Creation and Enhancement Works Completion Date”	the date on which the Owner has completed the Habitat Creation and Enhancement Works (i.e. initial capital works only) in accordance with the Habitat Management and Monitoring Plan and as agreed between the parties
“Habitat Maintenance Works”	the ongoing maintenance works as detailed in the Habitat Management and Monitoring Plan and which are required to be undertaken by the Owner at the Habitat Site in order to comply with the Habitat Management and Monitoring Plan
“Habitat Maintenance Works Commencement Date”	the commencement date of the Habitat Maintenance Works at the Habitat Site in accordance with the Habitat Management and Monitoring Plan and which shall be the same date as the Habitat Creation and Enhancement Works Completion Date
“Habitat Management and Monitoring Plan”	the plan for the Habitat Site which includes a programme for its management, maintenance and monitoring for thirty (30) years from the Commencement Date; a plan showing the number of Biodiversity Units and location of the parcel of land to which the Biodiversity Units can be attributed; and the methodology and format of Habitat Monitoring Reports to be provided to the Council together with access and inspection arrangements to facilitate such monitoring; which plan has been submitted to and

approved in writing by the Council and is appended hereto as at Appendix A and amended as provided for in clause 7

“Habitat Monitoring Report”

the written report to be provided on the dates set out in the Habitat Management and Monitoring Plan, which sets out (a) the results of a review of the operation and effectiveness of the Habitat Management and Monitoring Plan since the previous Habitat Monitoring Report; and (b) any remedies or measures that are required to be implemented to meet the requirements of the Habitat Management and Monitoring Plan; using the monitoring strategy and methods set out in the Habitat Management and Monitoring Plan (as provided for in Schedule 1 paragraph 9)

“Habitat Site”

the land at Pudlicote Farm, Chipping Norton, Oxfordshire, OX7 3HX and registered at HM Land Registry under title number ON324422 respectively against which this Deed may be enforced and which is shown edged red on Plan 1 and which comprises a Biodiversity Gain Site approved by the Council for the provision of Biodiversity Units in connection with development granted planning permission by the Council or other local planning authority subject to a condition to secure the biodiversity gain objective in accordance with Section 90A and Schedule 7A of the 1990 Act

“Habitat Site Manager”	means a competent organisation, company or individual appointed or to be appointed by the Owner in respect of the Habitat Site who will have responsibility for the implementation, management and maintenance of the Habitat Management and Monitoring Plan
“Area Habitat Biodiversity Unit (AHBU)”	a Biodiversity Unit that relates to area habitats (which may include: woodland, grassland, wetland, coastal, intertidal or other habitat types) as defined by the Statutory Biodiversity Metric User Guide (area of habitat measured in hectares)
“Hedgerow Biodiversity Unit (HBU)”	a Biodiversity Unit that relates to ‘hedgerows and lines of trees’ as linear habitats defined by the Biodiversity Metric User Guide (length of habitat measured in kilometres)
“Index Linked”	where specifically stated for the purposes of a particular financial contribution under this Deed means adjusted in accordance with any increase in the Consumer Prices Index (“CPI”) (or in the case that the CPI no longer exists during any period such index which replaces the same or is the nearest equivalent thereto as the Council shall reasonably nominate taking into account any official reconciliation of changes in its basis of calculation) by multiplying in each case the payment due by a fraction whose denominator shall be the last CPI monthly figure published before the date of this Deed and whose

	numerator shall be the last published CPI monthly figure available before the date on which payment is made
“Interest”	interest at 4 per cent above the base lending rate of Barclays Bank Plc from time to time (calculated on a daily basis from the date on which it fell due until the actual date of payment)
“Legal Additionality Test”	the requirement that a Biodiversity Unit is not provided to meet an existing regulatory obligation on the part of the Owner as referred to in the Nature Markets Publication
“Management Plan Monitoring Fee”	the sum of £11,902 (eleven thousand nine hundred and two pounds) Index Linked payable by the Owner to the Council as a contribution towards the Council’s costs of monitoring compliance with and funding for the Habitat Management and Monitoring Plan and reviewing Habitat Monitoring Reports
“Nature Markets Publication”	the publication entitled “Nature markets: A framework for scaling up private investment in nature recovery and sustainable farming” published by HM Government in March 2023 or such other document that supersedes or replaces it specific to biodiversity net gain by the Government
“NPPF”	the National Planning Policy Framework published December 2024 or such policy document as supersedes or replaces it
"Parties"	the parties to this Deed and the word "Party" shall mean any one of them

“Plan 1”	the plan attached to this Deed and marked Plan 1
“Watercourse Biodiversity Unit (WBU)”	a Biodiversity Unit that relates to watercourse habitats as defined by the Statutory Biodiversity Metric User Guide ((length of habitat measured in kilometres)
"S106 Monitoring Officer"	the Council's S106 Monitoring Officer for the time being or their successor post or any other officer to whom they delegate their S106 monitoring functions
“S106 BNG Set Up Fee”	£1,100 (one thousand one hundred pounds) plus VAT
“Sale”/“Sold”	the exchange of any Biodiversity Unit or part thereof to a third party for a monetary value and “sell” shall be construed accordingly
“Senior Officer for Planning”	the Council`s senior development management officer or any other officer to whom they delegate some or all of their functions under this Deed
“Stacking”	the sale or use of a single Biodiversity Unit and another nature market credit from the same intervention on land where this is permitted in accordance with the Nature Markets Publication
“Transfer”/“Transferred”	the exchange of any Biodiversity Unit or part thereof to a third party for any arrangement other than a monetary value

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.

- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to the Owners within this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect construction.
- 2.8 Any obligation, covenant, undertaking or agreement by any party to this Deed not to do any act or thing includes an obligation, covenant, undertaking or agreement not to permit, procure or allow the doing of that act or thing

3. **LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the 1990 Act and section 111 of the Local Government Act 1972 and section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and section 1 of the Localism Act 2011 with the intention that it shall bind the Owners' interest in the Habitat Site
- 3.2 The covenants, restrictions and requirements imposed upon the Owners under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council as local planning authority against the Owners and to the extent that any of the obligations are not planning obligations within the 1990 Act they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and section 1 of the Localism Act 2011 and all other enabling powers

4. **CONDITIONALITY**

This Deed shall come into effect upon the date at the head of this Deed

5. **THE OWNER'S COVENANTS**

5.1 The Owner covenants with the Council:

5.1.1 as set out in the First Schedule;

5.1.2 not to encumber or otherwise deal with their interest in the Habitat Site or any part or parts thereof in any manner whatsoever whereby the obligations, covenants and undertakings imposed by this Agreement are rendered impossible to carry out;

5.1.3 that there are no interests (legal or equitable) required for the purposes of section 106 of the 1990 Act in the Habitat Site other than detailed in this deed;

5.1.4 that no part of the Habitat Site is subject to any constraints, including but not limited to restrictive covenants, planning conditions, hydrology, flooding, public footpaths or other public access rights, archaeology and/or contamination which would be reasonably capable of affecting its suitability as a Habitat Gain Site and the habitat works and management required to achieve the target habitat, which have not been disclosed in writing to the Council prior to the completion of this deed

5.2 The Owner shall indemnify the Council for any reasonable expenses or liability necessarily incurred as a result of a breach by the Owner of any obligations contained in this Agreement

6. **THE COUNCIL'S COVENANTS**

6.1 The Council covenants with the Owner

6.1.1 as set out in the Second Schedule

6.1.2 Following receipt of any payments or financial contributions from the Owner pursuant to any obligations contained in this Deed (which for the avoidance of doubt does not include any payments made by a developer or applicant for planning permission to the owner of the Habitat Site):

- (a) to place the payments or financial contributions on deposit in the Council's Bank accounts (as the Council in its sole discretion shall decide) and to attribute a rate of interest thereon; and

- (b) to apply such payments or financial contributions only for the purposes specified in this Deed provided that the Council will be entitled to treat any accrued interest as if it were part of the principal sum paid by the Owner and for the avoidance of doubt the Council may apply all or any part of such payments to costs already incurred at the date of payment in pursuit of the purposes specified in this Deed.

7. THE HABITAT MANAGEMENT AND MONITORING PLAN

7.1 The Habitat Management and Monitoring Plan shall be a plan for the Habitat Site which includes a programme for its management and maintenance for thirty (30) years from the Habitat Maintenance Works Commencement Date, showing:

7.1.1 the number and location of all Biodiversity Units intended to be created; and

7.1.2 the methodology, format and frequency of Habitat Monitoring Reports to be provided to the Council together with access and inspection arrangements to facilitate such monitoring;

7.2 The Habitat Management and Monitoring Plan is appended hereto at Appendix A subject to any amendments thereto which have been agreed in writing by the Parties as provided below.

7.3 Where reasonably requested by the Owner (in writing) to facilitate the creation, adaptation and / or maintenance of Biodiversity Units or make doing so more cost-effective or for any other purpose reasonably requested by the Owner, the parties shall co-operate in good faith to agree amendments and revisions to the Habitat Management and Monitoring Plan, and such amendments or revisions shall be recorded in writing.

7.4 Should the Parties be unable to agree any such amendments or revisions then the matter shall be referred to an Expert for determination in line with clause 15.

7.5 The parties shall agree a reasonable period of time for implementing any amendments to the Habitat Management and Monitoring Plan.

8. MISCELLANEOUS

8.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council in the negotiation, preparation and execution of this Deed up to £1,500 plus VAT and the S106 BNG Set Up Fee.

- 8.2 No provisions of Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 8.3 This Deed shall be registerable as a local land charge by the Council.
- 8.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given by the Senior Officer for Planning unless otherwise stated.
- 8.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 8.6 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Habitat Site, or the part in which it occurs, but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Habitat Site in accordance with a planning permission granted (whether or not on appeal) after the date of this Deed
- 8.8 Without prejudice to the Council's statutory rights of entry the Owner shall permit the Council and its authorised employees and agents upon reasonable written notice to enter the Habitat Site at all reasonable times for the purpose of verifying whether or not any obligation arising hereunder has been performed or observed.
- 8.9 Where any statutory undertaker or person acquires or exercises any statutory right or power over any part of the Habitat Site for the purposes of the supply of electricity, gas, water, drainage or telecommunication services and the Council cannot require them to provide replacement Biodiversity Units or take any other enforcement action against the relevant statutory undertaker the Owner will cooperate in good faith with any statutory undertaker to minimize the loss of biodiversity and to replace any lost Biodiversity Units to the equivalent number, type and level of enhancement.

9. **WAIVER**

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent

the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10. CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Habitat Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Habitat Site or part thereof purchased by reference to a plan

11. INTEREST

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

12. JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the Courts of England.

13. DELIVERY

The provisions of this Deed (other than this clause and clause 8.1 which shall be of immediate effect) shall be of no effect until this Deed has been dated.

14. NOTICES

14.1 In this Clause:

14.1.1 'The Council's address' means the address of the Council shown on the first page of this Deed or such other address as the Council may from time to time notify to the Owner and its successors as being its address for service for the purposes of this Deed

14.1.2 'The address of Owner' means the address shown on the first page of this Deed or such other address as it may have from time to time notified to the Council as being its address for service for the purposes of this Deed

14.2 Any notice or other communication given or made in accordance with this Deed shall be in writing and:

14.2.1 may (in addition to any other effective mode of service) be delivered personally or sent by registered or recorded delivery or prepaid first class letter post or its equivalent;

14.2.2 shall in the case of a notice or other communication to the Council be served on the Council at the Council's address addressed to its Planning S106 Monitoring Officer;

14.2.3 shall in the case of a notice or other communication to the Owner be served on the Owner at the address of the Owner;

14.3 Notices shall not be sent by email, fax or DX

15. **DISPUTE RESOLUTION**

15.1 The Parties agree and declare that they shall act in good faith to resolve any dispute, claim or proceeding arising out of or relating to this Deed. In the event that any dispute cannot be resolved by the Parties in accordance with the provisions of clauses 17.3 and 17.4 then a Party shall be free to refer the dispute to an Expert whose decision shall be final and binding on the Parties in the absence of manifest error and any costs shall be payable by the Owner and the Council in such proportion as the Expert shall determine and failing such determination shall be borne by the Parties in equal shares

15.2 In the absence of an agreement as to the appointment or suitability of the person to be appointed as an Expert then such dispute may be referred by either Party to the president for the time being of the CIEEM for him to appoint an Expert and their decision shall be final and binding on the Parties in the absence of manifest error and his costs shall be payable by the Parties in such proportion as the Expert shall determine and failing such determination shall be borne by the Parties in equal shares.

15.3 Unless the Expert shall direct to the contrary, not more than 28 days after his appointment the Parties shall exchange and copy to the Expert written summaries of their cases together with a bundle of key documents relied upon

15.4 The Expert shall be at liberty to visit the land relevant to the dispute unaccompanied and to call for such written evidence from the Parties as he may require

15.5 The Expert shall not, unless he directs to the contrary, hear oral representations from any Party to the dispute

15.6 The Expert shall fully consider all submissions and evidence when making his decision

15.7 The Expert shall give his decision in writing and shall give reasons for it

15.8 The Expert shall use all reasonable endeavours to give his decision and the reasons for it as speedily as possible and in any event within 42 days of this appointment.

15.9 Any Expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute.

16. **TERMINATION**

16.1 This Deed may be terminated by agreement in writing between the Parties where adequate provision has been secured by the Council for the replacement of any Biodiversity Units already Sold or Transferred at the date of termination

16.2 This Deed may be terminated by the Owner in writing to the Council in respect only of any Biodiversity Units which have yet to be Sold or Transferred and FOR THE AVOIDANCE OF DOUBT where such notice is provided to the Council this Deed shall continue in full force and effect in respect of any Biodiversity Units already Sold or Transferred at the date of that notice

16.3 If this Agreement is terminated under clause 16.1 or 16.2 above the Owner shall within thirty (30) days of such termination pay to the Council any outstanding sum due in accordance with the payment schedule set out in the Habitat Management and Monitoring Plan.

16.4 If this Deed is terminated under clause 16.1 or 16.2 the Council and the Owner may by agreement in writing determine how the Management Plan Monitoring Fee shall be applied after such termination.

16.5 When the Owner has managed and maintained the Habitat Site in accordance with the Habitat Management and Monitoring Plan for thirty years (or longer period pursuant to clause **Error! Reference source not found.**) then the Owner may terminate this deed.

16.6 If this deed is terminated then the Owner may remove it from the register of local land charges, HM Land Registry or any other register and the Council shall give any assistance or confirmation reasonably requested by the Owner.

17. **BREACH PROVISIONS**

17.1 No party shall be liable for breaching a requirement of the Habitat Management and Monitoring Plan or for any failure to deliver Biodiversity Units or for the destruction of any Biodiversity Units or any other habitat destruction or habitat failure which arises as a result of a Force Majeure Event

- 17.2 The Owner shall not be obliged to take action against any third party for any action or inaction that causes a breach of a requirement of the Habitat Management and Monitoring Plan or any failure to deliver Biodiversity Units or the destruction of any Biodiversity Units or any other habitat destruction or habitat failure.
- 17.3 Before taking action to enforce any of the provisions of this Deed the Council will give written notice to the Owner, stating the nature of the breach, the steps required to remedy the breach and agreeing a reasonable timescale for the Owner to remedy the breach, having taken advice from the Habitat Site Manager and in accordance with clause 7.5.
- 17.4 The Council will also give the Owner a reasonable opportunity to discuss the breach with it and the timescale and steps for remedying the said breach prior to the remedy being carried out. The Council will take into account any reasonable representations made by the Owner and Habitat Site Manager.
- 17.5 If the Owner does not use reasonable endeavours to remedy the breach within the stated time period within the Breach Notice or longer period as agreed with the Council or determined by the Expert then the Council will be able to pursue all legal remedies against the Owner.
- 17.6 If
- 17.6.1 at any time the Council acting reasonably notifies the Owner in writing that the Owner has wilfully committed a fundamental breach of the Habitat Management and Monitoring Plan, which is a breach causing habitat destruction or habitat failure in respect of one or more Biodiversity Units (and for the avoidance of doubt this shall not be deemed to have arisen where the Habitat Management and Monitoring Plan has been fully complied with); and
- 17.6.2 the Owner has not remedied the breach within a reasonable period and in accordance with clauses 17.3 to 17.5 then the Owner (at its discretion) may, taking into account of how many years the lost or undelivered Biodiversity Units were to be maintained, either:
- (a) subject to the Council's agreement in writing, provide replacement Biodiversity Unit(s) of an equivalent number, type and level of enhancement to those lost by undertaking new Habitat Creation and Enhancement Works at the Habitat Site to create those replacement Biodiversity Unit(s) of an equivalent number, type and level of enhancement to those lost and continue to implement the Habitat Management and Monitoring Plan in respect of those

units for an extended period to allow (having taken account of how many years the lost or undelivered Biodiversity Units were to be maintained for) the satisfaction of the thirty-year period in section 100(2)(b) of the Environment Act 2021; or

- (b) purchase biodiversity units from another Habitat Bank, or alternative off-site BNG supplier, for the equivalent number, type and level of enhancement to those that have been lost or cannot be delivered – the Owner would be required to provide evidence that they have approached *at least* three local or national suppliers, habitat banks or trading websites and that insufficient options are available in England (for example correspondence emails or a PDF download showing the marketplace search); or
- (c) pay the equivalent sum that the replacement units were originally, or would have been, sold for by the Owner to the Council to be used to fund local biodiversity projects; or
- (d) purchase Statutory Credits for the equivalent number of Biodiversity Units to those that are lost or that they are unable to deliver and provide the Council with proof of purchase; and update the Statutory Register accordingly and notify the Council in writing within twenty-eight working days of when this has been completed; or
- (e) should none of the above options be viable to the Owner, then the Owner shall (in writing) put forward to the Council an alternative proposal which delivers the equivalent or improved biodiversity net gain for the Council to consider and agree. Once agreed between the Parties the measures shall be implemented and maintained in accordance with the timescales and management details as agreed as part of the alternative proposals.

17.6.3 In respect of the delivery by the Owner of any clause under 17.6.2 the parties agree that any course of action will take into account the number of years (pro rata) the lost or undelivered Biodiversity Units were due to be maintained to be delivered, so that Owner is required to only deliver Biodiversity Units to the extent that any lost Biodiversity Units were unfulfilled.

IN WITNESS whereof the Parties hereto have executed this Deed on the day and year first before written

THE FIRST SCHEDULE
Owner's Covenants with the Council

The Owner covenants with the Council as follows:

1. no more than one month after the Biodiversity Units arising from the Habitat Site have been registered on the National Gain Site Register with Natural England, the Owner shall:
 - 1.1 provide written confirmation to the Council of such registration; and
 - 1.2 promptly pay the Management Plan Monitoring Fee to the Council.
2. to complete the Habitat Creation and Enhancement Works in accordance with the Habitat Management and Monitoring Plan as soon as reasonably practicable.
3. For a period of no less than thirty (30) years from the Habitat Creation and Enhancement Works Completion Date to (at the Owner's discretion) either:
 - 3.1 manage and maintain the Habitat Site in accordance with the Habitat Management and Monitoring Plan and for no other purpose inconsistent with the requirements of the Habitat Management and Monitoring Plan; or
 - 3.2 procure such management and maintenance.
4. not to cause or permit the Sale or Transfer of any Biodiversity Unit until it has appointed a Habitat Site Manager who is Competent and whose experience and qualifications it shall have previously provided in writing to the Council; and thereafter to retain a Habitat Site Manager who is Competent throughout the duration of this agreement, and to notify any changes to their identity or contact details to the Council in writing within twenty-eight (28) days of any such change taking place
5. not to:
 - 5.1 create or cause or permit any encumbrance to the registered title to the Habitat Site; or
 - 5.2 execute, renew or extend (nor cause or permit the execution, renewal or extension of) any lien, license or similar interest that may reasonably affect the maintenance of the Habitat Site in accordance with the Habitat Management and Monitoring Plan, without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed;

6. to make available for allocation to developers by Sale or Transfer some or all of the Biodiversity Units from the Habitat Site;
7. to ensure that (in accordance with government guidance):
 - 7.1 all Biodiversity Units Sold or Transferred or available for Sale or Transfer on the Habitat Site shall at all times meet the Legal Additionality Test and
 - 7.2 that there is no Double Counting of any Biodiversity Unit PROVIDED THAT FOR THE AVOIDANCE OF DOUBT Bundling or Stacking will be permitted;
8. to allow access to the Habitat Site on reasonable notice and at reasonable times to persons duly authorised by the Council for the purposes of monitoring compliance with the Habitat Management and Monitoring Plan and this Deed, subject to appropriate health and safety measures if livestock are on the Habitat Site
9. **Habitat Monitoring Reports**
 - 9.1 To provide Habitat Monitoring Reports to the Council at the frequency as set out in the definition of the same from the commencement of the Habitat Creation and Enhancement Works or in accordance with such other timescale and frequency as shall be set out in the Habitat Management and Monitoring Plan or otherwise agreed in writing with the Council, that set out:
 - 9.1.1 the results of a review of the operation and effectiveness of the Habitat Management and Monitoring Plan since the previous Habitat Monitoring Report;
 - 9.1.2 any remedies or measures that are required to be implemented to meet the requirements of the Habitat Management and Monitoring Plan; and
 - 9.1.3 if applicable, proposed changes to the Habitat Management and Monitoring Plan for the Council's consideration and (if accepted) written approval
 - 9.2 To review each Habitat Monitoring Report with the Council and if the Council (acting reasonably) is of the view that a Habitat Monitoring Report indicates that the Habitat Management and Monitoring Plan is not being complied with or the aims not being met it shall notify the Owner to that effect setting out its reasons for holding such opinion as soon as reasonably practicable after the review and, in any event, within eight (8)

weeks of the review or as otherwise agreed in writing between the Parties.

- 9.3 Following receipt of any written notice from the Council pursuant to paragraph 9.2 above, the Owner shall submit Habitat Management and Monitoring Plan remedial measures that are designed to ensure the aims of the Habitat Management and Monitoring Plan can be met to the Council for approval including such further revisions as are reasonably required by the Council until such time as the Habitat Management and Monitoring Plan remedial measures are approved in writing by the Council and the Owner shall implement the approved Habitat Management and Monitoring Plan remedial measures as soon as reasonably practicable after they have been approved by the Council.

10. **Financial reporting**

The Owner covenants:

- 10.1 To provide to the Council an annual 'Financial Update Report – Owner' for thirty years on each anniversary of the Commencement Date; and
- 10.2 To keep separate, accurate and up-to-date accounts and records of the receipt of any income, and the project expenditure in relation to the Habitat Site's funding, and to retain all invoices, receipts, and accounts and any other relevant documents relating to the expenditure on the Habitat Site as required by this Deed for a period of at least seven years following the receipt of any income or the carrying out of any expenditure to which they relate.

11. **Notification of Sale or Transfer**

The Owner covenants:

- 11.1 To notify the Council of the date of any Sale or Transfer of any Biodiversity Unit generated from the Habitat Site within twenty-eight (28) Working Days of the date of such Sale or Transfer occurring and to provide the Council on the date of such notification with the following information, in writing:
- 11.1.1 EITHER: a referenced row in the Statutory Biodiversity Metric Tool regarding which type and condition of habitat has been Sold or Transferred OR the following parameters:
- a the type and condition of habitat Sold or Transferred;

- b the area in hectares, or, if the Biodiversity is of a type to which a linear measurement applies, the length in metres, of the Biodiversity Unit(s) Sold or Transferred;
- c whether the habitat Sold or Transferred has been created or enhanced; and
- d its strategic significance score

11.1.2 the total value in Biodiversity Unit(s) (if known, and assessed in accordance with the Biodiversity Metric) and type of habitat;

11.1.3 details of each third party to whom any Biodiversity Unit has been Sold or Transferred including the address (which, if the said third party is a company shall be its registered office address) and contact details to include an email address and telephone number;

11.1.4 the Council's (or other local planning authority's) planning reference for the application (if any) to which the Sale or Transfer of a Biodiversity Unit relates;

11.1.5 a plan at a scale of no greater than 1:1250 clearly identifying the location of the part of the Habitat Site to which each Biodiversity Unit Sold or Transferred can be attributed;

11.1.6 a unique transaction number and a copy of a certificate which shall have been provided to the party acquiring the Biodiversity Unit;

12. Following any Sale or Transfer of any Biodiversity Unit generated from the Habitat Site, not to cause or permit any further Sale or Transfer of that Biodiversity Unit.

13. To submit all ecological records generated from the Habitat Site on an annual basis to Thames Valley Environmental Records Centre (TVERC);

14. To provide the Council, within fifteen (15) Working Days of the date of a written request for the same, with a schedule setting out all Biodiversity Units on the Habitat Site which have been Sold or Transferred and specifying whether they are related to development

14.1.1 within the Council's administrative area;

14.1.2 within the administrative area of a local planning authority adjacent to that of the Council; or

14.1.3 within an area outside of and not adjacent to the Council's administrative area;

and at the same time to provide the Council with a separate schedule of those Biodiversity Units on the Habitat Site which remain available for Sale or Transfer.

THE SECOND SCHEDULE
Council's Covenants

1. THE Council hereby covenants with the Owner:
 - 1.1 To comply with its obligations in the Habitat Management and Monitoring Plan
 - 1.2 Save for the Management Plan Monitoring Fee (which is designed to be spent over the thirty year lifetime of the Habitat Management and Monitoring Plan) if any sum paid to the Council or any part thereof is not committed for the purposes specified herein ten (10) years after the date of receipt then the Council covenants with the person or persons who makes payment of the same to repay to the person or persons who paid the said sum all or any of the remaining balance that remains unspent together with interest which has accrued thereon from the date of receipt of payment by the Council to the date of repayment at base rate of the Bank of England.
 - 1.3 For the avoidance of doubt, for the purposes of paragraph 1.2 above any sum (or part thereof) shall be deemed to have been committed if the Council has entered into any contract or given any undertaking (whether enforceable in law or otherwise) the performance or fulfilment of which will require it to expend funds in the future

APPENDIX A
HABITAT MANAGEMENT AND MONITORING PLAN

EXECUTED and delivered as a Deed)
by Pudlicote Farm Limited)
acting by a director)
in the presence of:)

Witness Signature:

Name:

Address:

Occupation:

THE COMMON SEAL of)
WEST OXFORDSHIRE DISTRICT COUNCIL)
was hereto affixed in the presence of:)

Authorised Signatory