

Agenda Item **5**

Annex **3**

THIS MEMORANDUM OF AGREEMENT is made on 2007

BETWEEN

- (1) NATURAL ENGLAND of [address] ("Natural England"); and
- (2) [name of Party 2] of [address] ("Partner").

BACKGROUND

- (A) [brief background of memorandum of agreement between Natural England and Partner]
- (B) This memorandum of agreement sets out the principles which shall govern the relationship between Natural England and the Partner including their respective obligations and rights.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Memorandum, unless the context otherwise requires, a reference to:

"**Confidential Information**" means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, intellectual property rights, know-how, personnel, customers and suppliers of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998;

"**Memorandum**" means this document, including all schedules and appendices hereto;

A "**Party**" means any party to this Memorandum individually and "**Parties**" refers to all of the parties to this Memorandum collectively. A Party shall include all permitted assigns of the Party in question;

"**Project**" means the project which this Memorandum is intended to deliver. The project details, obligations of the parties and overarching principles of the relationship are more specifically detailed in the schedule.

1.2 The schedule is an integral part of this Memorandum and shall be interpreted accordingly.

2 PROJECT OUTLINE/PRINCIPLES OF THE RELATIONSHIP

2.1 This Memorandum shall be effective from the date of its execution and shall continue until [insert date] subject to earlier termination in accordance with paragraph 14.

2.2 The Parties shall work together in delivering the Project and in particular shall perform their respective obligations to the timetables set out in the schedule.

2.3 Furthermore the parties shall provide the following funding amounts in accordance with the payment dates identified in the schedule:

2.3.1	Natural England	£[]
2.3.2	Partner	£[]

2.4 The amounts set out in paragraph 2.3 shall be inclusive of all taxes which may be payable in relation to the Project from time to time.

2.5 The principles of the relationship between the Parties are also set out in the schedule. The Parties shall endeavour to apply these principles to their relationship throughout the term of this Memorandum.

3 RESOURCES

3.1 The Parties shall provide such resources identified in the schedule as being their responsibility to so provide.

3.2 If any of the individuals named as a resource being provided by a Party is unavailable for whatsoever reason, that Party shall offer an alternative member of staff with equivalent skill sets to the reasonable satisfaction of the other Party.

4 FUTURE SERVICES

4.1 On or before completion of the Project, the parties shall act reasonably in agreeing ongoing service delivery and support or, if applicable, co-operate to arrange a third party to so deliver the ongoing service and/or support.

5 FURTHER ASSURANCE

5.1 Natural England and the Partner shall promptly execute and deliver all such documents and do all such things as may from time to time be reasonably required for the purpose of giving full effect to the provisions of this Memorandum.

6 VARIATION AND WAIVER

6.1 Any variation of this Memorandum shall be in writing and signed by or on behalf of each of the Parties.

6.2 No delay by Natural England in exercising any provision of this Memorandum constitutes a waiver of such provision or shall prevent any future exercise in whole or in part.

7 SUCCESSORS AND ASSIGNS

7.1 The agreements reached between Natural England and the Partner pursuant to this Memorandum shall continue for the benefit of Natural England's successors and assigns.

7.2 The Partner cannot assign, sub-contract or in any other way dispose of the Memorandum or any part of it to any person, firm or company without the prior written consent of Natural England.

8 NOTICES

8.1 Any notice or other communication required to be given under this Memorandum, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each Party required to receive the notice or communication as set out below:

- 8.1.1 Natural England: [CONTACT ADDRESS];
- 8.1.2 Partner: [CONTACT ADDRESS]

or as otherwise specified by the relevant Party by notice in writing to each other Party.

8.2 Any notice or other communication shall be deemed to have been duly received:

- 8.2.1 if delivered personally, when left at the address and for the contact referred to in this clause; or
- 8.2.2 if sent by pre-paid first-class post or recorded delivery, at 11.00 am on the second business day after posting; or
- 8.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

8.3 A notice or other communication required to be given under this Memorandum shall not be validly given if sent by e-mail.

8.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

9 CONFIDENTIALITY

9.1 Both Parties acknowledge that pursuant to this Memorandum they will each disclose Confidential Information to the other. In consideration of the provision of such Confidential Information, each Party undertakes to the other:

- 9.1.1 to keep secret and confidential all Confidential Information disclosed to it, its employees, agents or advisers by or on behalf of the other in relation to the agreement or the business of the other Party which is of a confidential nature and not to use such Confidential Information for any purpose other than for the purposes of this Memorandum; and
- 9.1.2 not to disclose to any third party (other than its professional advisers or as required by law or any competent regulatory authority) any such Confidential Information other than that which comes into the public domain other than by breach of the undertakings contained in this clause 9.

9.2 These confidentiality undertakings shall subsist indefinitely so far as permissible by law.

9.3 The obligations of confidentiality set out in this clause 9 shall not apply to information already known to either Party, information in the public domain or information required to be disclosed by law.

10 INTELLECTUAL PROPERTY RIGHTS

10.1 All intellectual property rights in any information or material existing prior to the date of this Memorandum shall remain the property of the Party introducing such information. Each Party shall grant the other a non-exclusive licence to use all such

pre-existing information and materials, including any intellectual property rights in the same, in perpetuity.

- 10.2 Any new or future intellectual property rights arising from or as a result of the Project shall be jointly owned by Natural England and the Partner.
- 10.3 Both Parties shall do, or procure to be done, all such further acts and things and the execution of all such other documents as may from time to time be required for the purpose of ensuring all new and future intellectual property rights arising from the Project vest jointly in the Parties.

11 INFORMATION

- 11.1 The Partner acknowledges that Natural England are subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") and the Partner shall assist and co-operate with Natural England as necessary to comply with these requirements.
- 11.2 In responding to a request for information, including information in connection with the Project, Natural England will use reasonable endeavours to consult with the Partner. Notwithstanding this the Partner acknowledges that Natural England may disclose information without consultation, or following consultation with the Partner having taken its views into account.
- 11.3 The Partner shall ensure that all information produced in the course of the Project or relating to the Memorandum is retained for disclosure and shall provide all necessary assistance as reasonably requested to enable Natural England to respond to a request for information within the time for compliance and shall permit Natural England to inspect such records as requested from time to time.
- 11.4 Both Parties acknowledge that any statutory and other constraints on the exchange of information will be fully respected, including the requirements of the Data Protection Act 1998 and the Human Rights Act 1998.

12 LIMITATION OF LIABILITY

- 12.1 Natural England's total liability arising under, or in connection with, this Memorandum, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited as follows:
- 12.1.1 for non-payment of funding, to the amount unpaid; or
- 12.1.2 for any other type of liability, to the amount of funding unpaid under this Memorandum.
- 12.2 The Partner's total liability arising under, or in connection with, this Memorandum, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited to five (5) million pounds or one hundred and twenty five percent (125%) of the total funding amounts specified in clause 2.3 whichever is the greater.

13 RECONCILIATION OF DISAGREEMENT

- 13.1 Any disagreements will normally be resolved amicably at working level. In the event of failure to reach consensus between the Parties then such failure shall be handled in the following manner:

- 13.1.1 The dispute shall in the first instance be referred to Natural England's Project Executive officer or manager in the organisation of similar standing and the Partners [] officer for resolution at a meeting to be arranged as soon as practicable after the failure to reach consensus arises, but in any event within ten business days;
- 13.1.2 If the dispute cannot be resolved in accordance with 13.1.1 above within ten business days after such referral, or within any other period agreed between the Parties then the dispute shall be referred to Natural England's Head of Procurement and/or Natural England's Legal Adviser and to the Partner's [] officer for resolution at a meeting to be arranged as soon as practicable after such referral, but in any event within ten business days;
- 13.1.3 If the dispute has not been resolved following a referral in accordance with 13.1.2 the Parties shall settle the dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR.

14 TERMINATION

- 14.1 Natural England may terminate the Memorandum by notice in writing with immediate effect with no liability to the Partner where:
 - 14.1.1 the Partner undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the Memorandum or the Project; or
 - 14.1.2 the Partner becomes insolvent, bankrupt, enters into liquidation, enters into a voluntary arrangement, appoints a receiver or such similar event in any jurisdiction save for the purposes of a solvent reconstruction or amalgamation; or
 - 14.1.3 the Partner is guilty of any fraud or dishonesty or acts in any manner which in the opinion of Natural England brings or is likely to bring the Partner or Natural England into disrepute or is materially adverse to the interests of Natural England; or
 - 14.1.4 the Partner suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Partner ceases to trade.
- 14.2 On termination of the Memorandum in accordance with this paragraph 14, each Party shall return to the other the pre-existing information or materials to the Party that provided the information.

15 VARIATION

- 15.1 No variation of this Memorandum shall be valid unless it is in writing and signed by or on behalf of each of the Parties.

16 ANNOUNCEMENTS

- 16.1 The Partner shall not make, or permit any person to make, any public announcement concerning the Project (whether before, at or after completion) except as required by law or with the prior written consent of the Natural England.

17 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

17.1 The Parties do not intend that any term of the Memorandum shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

18 GOVERNING LAW

18.1 This Memorandum and all disputes or claims arising out of or in connection with the activities of the parties in delivering the Project shall be governed by and construed in accordance with the law of England.

Each Party hereby confirms its agreement to the terms contained in this Memorandum.

Signed on behalf of
NATURAL ENGLAND:

Signed on behalf of
PARTNER:

Print Name:

Print Name:

Job Title:

Job Title

Date:

Date:

**SCHEDULE:
PROJECT OUTLINE**

[PROJECT DESCRIPTION]

[GENERAL PRINCIPLES]

[OBJECTIVES OF THE COLLABORATION BETWEEN THE PARTIES]

[DISTINCTIVE RESPONSIBILITIES OF NATURAL ENGLAND]

[DISTINCTIVE RESPONSIBILITIES OF THE PARTNER]

[RESOURCES]

[TIMETABLES]

