



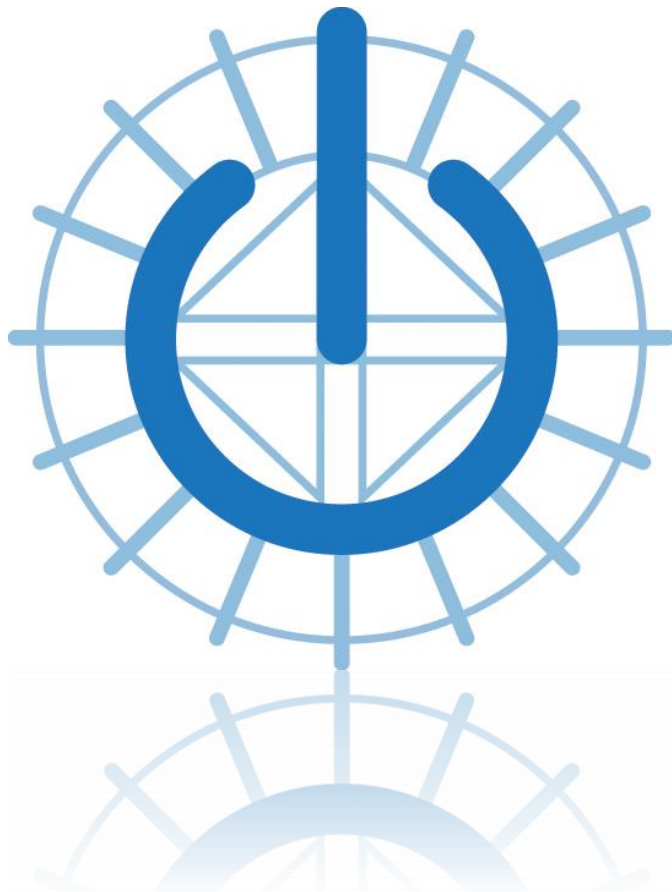
## The Millbrook Power (Gas Fired Power Station) Order

### Draft S106 Agreement – Submitted at Deadline 5

Planning Act 2008  
The Infrastructure Planning  
(Applications: Prescribed Forms and Procedure) Regulations 2009

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**DATED** \_\_\_\_\_ **2018**

**(1) CENTRAL BEDFORDSHIRE COUNCIL**

**(2) BEDFORD BOROUGH COUNCIL**

**(3) MILLBROOK POWER LIMITED**

**(4) O&H Q7 LIMITED**

**(5) FOREST OF MARSTON VALE TRUST**

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**DEED OF DEVELOPMENT CONSENT OBLIGATIONS**

**pursuant to Section 106 of the Town and Country  
Planning Act 1990 (as amended)  
relating to the  
Millbrook Power Project in Central Bedfordshire**

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**Pinsent Masons**

**BETWEEN:**

- (1) **CENTRAL BEDFORDSHIRE COUNCIL** of Priory House, Monks Walk, Chicksands, Shefford, Bedfordshire SG17 5TQ ("**CBC**");
- (2) **BEDFORD BOROUGH COUNCIL** of Borough Hall, Cauldwell St, Bedford MK42 9AP ("**BBC**");
- (3) **MILLBROOK POWER LIMITED** whose registered office is at Drax Power Station, Drax, Selby, North Yorkshire, YO8 8PH (company number 08920458) (the "**Developer**");
- (4) **O&H Q7 LIMITED** whose registered office is at 25-28 Old Burlington Street, London, W1S 3AN (company number 05277165) (the "**Landowner**"); and
- (5) **FOREST OF MARSTON VALE TRUST** (registered charity number 1069229) of The Forest Centre, Station Road, Marston Moretaine, Bedford MK43 0PR (the "**Forest of Marston Vale Trust**");

**WHEREAS:**

- (A) CBC is the local planning authority for the area in which the Site is situated and is the enforcing authority for the purposes of section 106 of the 1990 Act.
- (B) Given the Site is located close to the administrative boundary of CBC and BBC, it is considered appropriate for BBC to be a party to this Deed so that it can take the benefit of the obligations relating to the Education Scheme and the Local Employment Scheme contained in Schedule 1 and Schedule 2.
- (C) The Landowner is the freehold owner of the Site registered at the Land Registry under title number BD209604.
- (D) The Developer has the benefit of an option to purchase the Site.
- (E) The Forest of Marston Vale Trust is responsible for creating and managing the Forest of Marston Vale.
- (F) On 23 October 2017 the Developer submitted the Application to the Secretary of State for development consent to construct and operate the Project. The Application was accepted for examination by the Secretary of State on 20 November 2017.
- (G) It is intended that the Developer will be the undertaker for the purposes of the Development Consent Order and the Developer intends to construct and operate the Project as authorised by the Development Consent Order (excluding those parts of the Project that will be constructed and operated by NGET and NGG).
- (H) The Councils, the Forest of Marston Vale Trust, the Developer and the Owner have agreed to enter into this Deed as a development consent obligation under the 1990 Act in order to secure the planning obligations contained in this Deed which are necessary to mitigate the impacts of the Project and to make the Project acceptable in planning terms.

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 Where in this Deed the following defined terms and expressions are used they shall have the following respective meanings unless otherwise stated:

**"1990 Act"**

means the Town and Country Planning Act 1990 (as amended);

<b>"2008 Act"</b>	means the Planning Act 2008 (as amended);
<b>"Application"</b>	means the application for a development consent order under section 37 of the Planning Act 2008 in relation to the Project and submitted to the Secretary of State on 23 October 2017 and given reference number EN010068;
<b>"Built Area"</b>	means the area of land, in Ha, to be developed for numbered works 1A, 1B, 1C, 1D (except for 1D(g)), 2A, 3A (except for 3A(f)), 5 (except for 5(d)) and 6(a) of the Project, such area to be calculated from the details approved under requirement 2(4) of the Development Consent Order;
<b>"Commence"</b>	has the same meaning as in Article 2 of the Development Consent Order and the words <b>"Commencement"</b> and <b>"Commenced"</b> and cognate expressions are to be construed accordingly;
<b>"Construction Period"</b>	means the period from Commencement until the Date of Final Commissioning (inclusive);
<b>"Councils"</b>	means CBC and BBC;
<b>"Covanta S106 Agreement"</b>	means the deed dated 8 July 2011 and made between (1) BBC (2) CBC (3) the Landowner (4) Covanta Energy Limited and (5) and Covanta Rookery South Limited relating to the Rookery South (Resource Recover Facility) Order 2011 (SI 2013 No. 680) as varied by the deed dated 11 March 2013 and made between (1) BBC (2) CBC (3) the Landowner (4) Covanta Energy Limited and (5) and Covanta Rookery South Limited;
<b>"Date of Final Commissioning"</b>	has the same meaning as defined Article 2 of the Development Consent Order;
<b>"Deed"</b>	means this deed made under section 106 of the 1990 Act and all other powers enabling;
<b>"Development Consent Order"</b>	means the development consent order to be made pursuant to the Application;
<b>"Education Scheme"</b>	means a programme of visits to schools located within the administrative areas of CBC and BBC to be made by the Developer which will be used to explain the Project and how such a facility fits within the provision of energy for the United Kingdom;
<b>"EPC Contracts"</b>	means the main contracts for the design, engineering, procurement, construction, installation, completion, commissioning and testing of the Project;
<b>"Expert"</b>	means the expert appointed by any of the Parties pursuant to Clause 20;
<b>"Forest of Marston Vale"</b>	means the community forest shown for the purposes of identification only outlined in blue on Plan 2;
<b>"Forest of Marston Vale Plan"</b>	means the Forest Plan 2000 which sets out the strategic framework and guidance for creating the Forest of

Marston Vale the relevant extracts of which are appended to this Deed at Schedule 4;

**“Forest of Marston Vale Tree Planting”**

means the provision of tree planting within the Site that equates to tree coverage over a land area equivalent to 39% of the Built Area;

**“Ha”**

means hectare;

**“Interest Rate”**

means 2% above the Bank of England base rate applicable at the date the relevant payment is due;

**“Index Linked”**

means increased by an amount equivalent to the increase in the Retail Price Index published by the Office of National Statistics in England from the date of this Deed to the latest Index available (whether provisional or final) on the date on which the sum is payable;

**“Landscape and Ecological Mitigation and Management Strategy”**

means the written strategy of that name to be submitted for approval by the Developer to CBC pursuant to requirement 3 of the Development Consent Order;

**“Local Employment Scheme”**

means a scheme setting out the details and mechanisms for securing the use of local labour contractors goods and services during the Construction Period and Operational Period of the Project including:

- (a) the measures that the Developer will take in order to ensure that opportunities for local organisations to bid for contracts during the Construction Period are advertised locally;
- (b) the measures that the Developer will take in order to ensure that opportunities for local organisations to bid for contracts during the Operational Period of the Project (for example for maintenance, waste, cleaning or security services) are advertised locally;
- (c) a requirement for the Developer to notify the Councils when the procurement process for any construction contracts required during the Construction Period is due to begin in order to allow the Councils to advertise opportunities via any brokerage scheme that they may run;
- (d) a requirement for the Developer to notify the Councils when the procurement process for any operational contracts required during the Operational Period is due to begin in order to allow the Councils to advertise opportunities via any brokerage scheme that they may run;
- (e) the anticipated number of local supplier days that will be hosted by the Developer prior to and during the Construction Period;
- (f) promotion of the Local Employment Scheme and liaison with contractors engaged in the construction of the Project to ensure that they also apply the Local Employment Scheme so

far as is practicable having due regard to the need and availability for specialist skills and trades and the programme for constructing the Project;

- (g) a procedure for monitoring of the Local Employment Scheme and reporting the results of such monitoring to the Councils including details of the origins, qualifications, numbers and other details of candidates; and
- (h) a timetable for the implementation of the Local Employment Scheme.

<b>"LTSA Contract"</b>	means the main contract for the provision of long term maintenance services consisting of parts, scheduled outage services and unscheduled outage services in respect of the Project;
<b>"NGET"</b>	means National Grid Electricity Transmission plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London, WE2N 5EH;
<b>"NGG"</b>	means National Grid Gas plc (Company Registration Number 02006000) whose registered office is at 1 to 3 Strand, London WC2N 5EH;
<b>"Notice"</b>	means the written notification given by any Party to the other Parties of their intention to refer to the Expert any dispute arising between the Parties in respect of any matter contained in this Deed, such notice to specify the matters set out in clause 20;
<b>"Occupy"</b>	means to occupy the Project other than for the purposes of construction fitting out commissioning testing (including the export of electricity during commissioning and testing) or site security and " <b>Occupation</b> " " <b>Occupying</b> " and " <b>Occupied</b> " and cognate expressions shall be construed accordingly;
<b>"Operational Period"</b>	means the period from the Date of Final Commissioning to when the Project is decommissioned;
<b>"Outstanding Land Area"</b>	means the difference, in Ha, between the actual area of land to be covered by Part of the Forest of Marston Vale Tree Planting through the approved Landscape and Ecological Mitigation and Management Strategy and the area of land that would equate to 39% of the Built Area were the Forest of Marston Vale Tree Planting to be completed in its entirety;
<b>"Part of the Forest of Marston Vale Tree Planting"</b>	means the provision of tree planting within the Site that equates to tree coverage over a land area less than 39% of the Built Area;
<b>"Parties"</b>	means the CBC, BBC, the Landowner, the Forest of Marston Vale Trust and the Developer and " <b>Party</b> " means any one of them as the context so requires;

<b>“Plan 1”</b>	means the plan attached to this Deed marked “Plan 1” showing the Site ;
<b>“Plan 2”</b>	means the plan attached to this Deed marked “Plan 2” showing the Forest of Marston Vale;
<b>"PPA"</b>	means a planning performance agreement substantially in the form set out in Schedule 5 relating to the contributions payable by the Developer towards the costs incurred by the Councils for discharging the requirements set out in Schedule 2 of the Development Consent Order and in monitoring and regulating agreed Tasks (as defined in the PPA);
<b>“Project”</b>	means the "authorised development" as defined in Article 2 and Schedule 1 of, and to be authorised by, the Development Consent Order part of which is to be located on the Site;
<b>“Residual Forest of Marston Vale Contribution”</b>	means the sum equal to the Outstanding Land Area multiplied by the Value;
<b>“Secretary of State”</b>	means the Secretary of State for Business, Energy and Industrial Strategy or such other Secretary of State of Her Majesty's Government that has the responsibility for determining projects relating to energy development;
<b>“Site”</b>	means the land at Millbrook Power Station, in the vicinity of the former clay extraction pit at Rookery South, near Stewartby, Bedfordshire shown edged in green on Plan 1;
<b>“Value”</b>	means seventy thousand and seven pounds and forty two pence (£70,007.42) Index Linked per Ha;
<b>“Working Day”</b>	means any day apart from Saturday, Sunday and any statutory bank holiday on which clearing banks are open in England for the transaction of ordinary business.

1.2 In this Deed, unless stated otherwise:

- 1.2.1 words incorporating the singular include the plural and vice versa and words importing any gender include every gender;
- 1.2.2 words importing persons include firms, companies, corporations, and vice versa;
- 1.2.3 references to the Councils include the successors to their statutory function as local planning authorities;
- 1.2.4 references to the Landowner and to the Developer include references to the successors in title to their respective interests in the Site and persons deriving title from them (except where the contrary is expressly provided) and permitted assigns;
- 1.2.5 references to clauses, paragraphs and Schedules are unless otherwise stated references to the relevant clauses and paragraphs of and Schedules to this Deed;
- 1.2.6 words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of the restriction;



- 1.2.7 references in this Deed to statutes, by-laws, regulations, orders and delegated legislation shall include any statute, by-law, regulation, order or delegated legislation amending, re-enacting or made pursuant to the same as current and in force from time to time;
- 1.2.8 if any provision of this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected, impaired or called into question;
- 1.2.9 the recitals and headings in this Deed are for ease of reference only and shall not affect its construction or otherwise have any binding legal effect;
- 1.2.10 in the event of any conflict between the provisions of this Deed and of any document annexed hereto or referred to herein, the provisions of this Deed shall prevail;
- 1.2.11 references to "notice" shall mean notice in writing;
- 1.2.12 references to "including" shall mean including without limitation; and
- 1.2.13 the Interpretation Act 1978 shall apply to this Deed.

## 2. **LEGAL EFFECT**

2.1 This Deed is made pursuant to:

2.1.1 section 106 of the 1990 Act; and

2.1.2 section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other powers so enabling.

2.2 The obligations, covenants and undertakings on the part of the Developer in this Deed are development consent obligations pursuant to and for the purposes of the power referred to in clause 2.1.1 and so as to bind the Site and, subject to clauses 6 and 7, the said obligations, covenants and undertakings on the part of the Developer are entered into with the intent that they shall be enforceable by CBC not only against the Developer but also against any successors in title to or assigns of the Developer as if that person had been an original covenanting party and insofar as any such obligations, covenants and undertakings are not capable of falling within section 106 of the 1990 Act are entered into as obligations, covenants and undertakings in pursuance of the powers referred to in clause 2.1.2 with the intent that they shall be enforceable under contract.

2.3 It is hereby agreed that the Landowner and the Developer enter this Deed with the effect of binding the Site.

2.4 The Forest of Marston Vale Trust's approval or consent for any modification or variation of this Deed, shall only be required in respect of any modification or variation of Schedule 3.

## 3. **CONDITIONALITY**

3.1 Subject to clause 3.2, the Parties agree that:

3.1.1 clauses 1, 2, 3, 4.1.3, 4.1.4, 4.2.1(c), 4.2.1(d), 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 shall have operative effect upon the date of this Deed;

3.1.2 clauses 4.1.1, 4.1.2, 4.2.1(a), 4.2.1(b), 4.2.2 and 4.3 shall not have operative effect unless and until the Development Consent Order has come into force; and

3.1.3 clause 4.2.3 and 4.2.4 shall not have operative effect unless and until the Development Consent Order has come into force and the Project has Commenced.

3.2 Where the Development Consent Order becomes the subject of any judicial review proceedings:

3.2.1 until such time as such proceedings including any appeal have been finally determined, the terms and provisions of this Deed will remain without operative effect unless the Project has been Commenced; and

3.2.2 if following the final determination of such proceedings the Development Consent Order is capable of being Commenced, then this Deed will take effect in accordance with its terms.

3.3 Wherever in this Deed reference is made to the final determination of judicial review proceedings (or cognate expressions are used), the following provisions will apply:

3.3.1 proceedings by way of judicial review are finally determined:

(a) when permission to bring a claim for judicial review has been refused and no further application may be made;

(b) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or

(c) when any appeal is finally determined and no further appeal may be made.

#### 4. DEVELOPMENT CONSENT OBLIGATIONS

##### 4.1 DEVELOPER'S OBLIGATIONS

4.1.1 The Developer covenants with the Councils to observe and perform the obligations undertakings covenants and agreements in Schedule 1, Schedule 2 and Schedule 3.

4.1.2 The Developer covenants with the Forest of Marston Vale Trust to observe and perform the obligations undertakings covenants and agreements in Schedule 3.

4.1.3 Prior to Commencement of the Project the Developer shall enter into a PPA with CBC and enter into a PPA with BBC.

4.1.4 The Developer covenants to comply with the provisions contained within the PPA entered into pursuant to clause 4.1.3 (as amended and supplemented from time to time) until the Discharge Date (as defined in the PPA).

##### 4.2 COUNCILS' OBLIGATIONS

4.2.1 The Councils covenant with the Developer:

(a) to observe and perform the covenants and obligations on their part contained in Schedule 1, Schedule 2 and Schedule 3.

(b) in the event approval is required to effect a variation to either:-

(i) the Education Scheme; or

(ii) the Local Employment Scheme,

such approval is to be given to the Developer in writing and must not be unreasonably withheld or delayed;

(c) to sign and complete a PPA with the Developer within 10 Working Days of request by the Developer; and

(d) to comply with the provisions within the PPA entered into pursuant to clause 4.2.1(c) (as amended and supplemented from time to time) until the Discharge Date (as defined in the PPA).

4.2.2 CBC covenants with the Developer to notify the Developer where any plan, detail or scheme approved by CBC pursuant to any requirement under the Development Consent Order replaces all or part of a plan, detail or scheme approved under the Rookery South (Resource Recover Facility) Order 2011 (SI 2013 No. 680) in respect of any land on which the Project is to be constructed.

4.2.3 The Councils agree that any obligations contained in the Covanta S106 Agreement relating to the Site are not enforceable against the Developer or against any successors in title to or permitted assigns or any person claiming through or under its interest in the Site.

4.2.4 The Councils agree that the construction, operation and maintenance of the Project will not constitute a breach of paragraph 16.1 of Schedule 1 of the Covanta S106 Agreement and the obligations contained in paragraph 16.1 of Schedule 1 of the Covanta S106 Agreement are not enforceable against the Developer.

#### **4.3 FOREST OF MARSTON VALE TRUST'S OBLIGATIONS**

The Forest of Marston Vale Trust covenants with the Developer to observe and perform the obligations undertakings covenants and agreements on their part contained in Schedule 3.

#### **5. REGISTRATION AS LOCAL LAND CHARGE**

This Deed shall be registered by the Councils as a local land charge in the register of local land charges pursuant to the Local Land Charges Act 1975.

#### **6. ENFORCEMENT**

The obligations, covenants and undertakings on the part of the Developer in this Deed in relation to Site shall not be enforceable by the Councils against the Landowner but shall be taken to be obligations, covenants and undertakings which are binding on the Landowner's freehold interest in the Site as if such obligations and undertakings were given by the Landowner and such obligations, covenants and undertakings shall remain binding upon any successors in title to or assigns of the Landowner and/or any person claiming through or under it an interest the Site as if that person had been an original covenanting party in respect of such interest for the time being held by the Landowner.

#### **7. RELEASE**

No person shall be liable for any breach of the development consent obligations or other provisions of this Deed after it shall have parted with its interest in the Site or the relevant part thereof but without prejudice to any rights of the Councils or either of them in respect of any antecedent breach of those obligations.

#### **8. FURTHER PLANNING PERMISSIONS AND DEVELOPMENT CONSENT ORDERS**

Nothing in this Deed shall be construed as prohibiting or limiting the rights of the Developer to use or develop any part of the Site in accordance with and to the extent permitted by a certificate of lawful use, planning permission, development consent order or other statutory authority granted either before or after the date of this Deed, other than the Development Consent Order.

#### **9. EXPIRY**

If the Development Consent Order expires or is quashed or revoked prior to Commencement then this Deed shall immediately determine and cease to have effect and the Councils shall cancel all entries made in their register of local land charges in respect of this Deed.

10. **CERTIFICATES OF COMPLIANCE**

The Councils shall upon written request certify compliance with the development consent obligations in this Deed.

11. **NOTICES**

11.1 Any notice, consent or approval required to be given under this Deed shall be in writing and shall be sent to the address and marked for the attention of the persons identified below or instead to such other persons as may be substituted for them from time to time.

11.2 Any such notice must be delivered by hand or by pre-paid special delivery post (unless the receiving party agrees to receive the notice electronically) and shall conclusively be deemed to have been received:

11.2.1 if delivered by hand, on the next Working Day after the day of delivery; and

11.2.2 if sent by special delivery post and posted within the United Kingdom, on the day 2 Working Days after the date of posting.

11.3 A notice or communication shall be served or given:

11.3.1 on CBC at its address given above or such other address for service as shall have been previously notified in writing to the other Parties and any such notice shall be marked for the attention of [\*];

11.3.2 on BBC at its address given above or such other address for service as shall have been previously notified in writing to the other Parties and any such notice shall be marked for the attention of [\*];

11.3.3 on the Landowner at its address given above or such other address for service as shall have been previously notified in writing to the other Parties and any such notice shall be marked for the attention of [\*];

11.3.4 on the Forest of Marston Vale Trust at its address given above or such other address for service as shall have been previously notified in writing to the other Parties and any such notice shall be marked for the attention of Nick Webb; and

11.3.5 on the Developer at its address given above or such other address for service as shall have been previously notified in writing to the other Parties and any such notice shall be marked for the attention of [\*].

11.4 The Developer shall provide the Landowner with a copy of any notice it receives pursuant to this clause 11.

12. **INTEREST**

Where any obligation in this Deed is expressed to require the Developer to pay any sum of money, interest at the Interest Rate shall be payable in addition to the sum of money itself calculated from the due date to the date on which the sum of money is actually paid.

13. **APPROVALS**

Where any approval, agreement, consent, confirmation or an expression of satisfaction is required under the terms of this Deed such approval, agreement, consent, confirmation or expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed.

14. **COUNCILS' POWERS**

Nothing in this Deed shall fetter the statutory rights, powers or duties of the Councils as local planning authorities or as Highway authorities as the case may be.

15. **GOOD FAITH**

The Parties agree with each other to act reasonably and in good faith in the discharge of the obligations contained in this Deed.

16. **RIGHTS OF THIRD PARTIES**

It is not intended that any person who is not a party to this Deed shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

17. **JURISDICTION**

17.1 This Deed including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

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

18. **COUNTERPARTS**

This Deed may be executed in any number of counterparts, each of which is an original and all of which may together evidence the same agreement.

19. **COSTS**

19.1 The Developer shall pay on completion of this Deed the reasonable legal and planning costs of the Councils incurred in the preparation, negotiation and execution of this Deed in the sum of £11.

19.2 The Developer shall pay on completion of this Deed the reasonable legal costs of the Forest of Marston Vale Trust incurred in the preparation, negotiation and execution of this Deed in the sum of £1,500 plus VAT.

20. **DISPUTE RESOLUTION**

20.1 In the event of any dispute arising between the Parties in respect of any matter contained in this Deed the same may be referred to the Expert by any Party serving the other Parties with a Notice.

20.2 The Notice must specify:

20.2.1 the nature, basis and brief description of the dispute;

20.2.2 the clause of this Deed or paragraph of a Schedule of this Deed to which the dispute has arisen; and

20.2.3 the proposed Expert.

20.3 The Expert shall be an independent person possessing expertise relevant to the dispute and in the event that the Parties are unable to agree whom should be appointed as the Expert within twenty (20) Working Days after the date of the Notice then any Party may request:

- 20.3.1 if such dispute shall relate to matters concerning the construction, interpretation and/or the application of this Deed, the Chairman of the Bar Council to nominate the Expert;
  - 20.3.2 if such dispute shall relate to matters necessitating any calculation or otherwise concerning a financial aspect of this Deed, the President of the Institute of Chartered Accountants in England and Wales to nominate the Expert;
  - 20.3.3 if such dispute shall relate to matters requiring a specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors to nominate the Expert;
  - 20.3.4 in all other cases, the President of the Law Society to nominate the Expert.
- 20.4 The Expert shall act as an expert and not as an arbitrator and whose cost shall be at his discretion or in the event that he makes no determination, such costs will be borne by the Parties to the dispute in equal shares.
- 20.5 The Expert shall be appointed (through an agreed request statement setting out exactly the questions that he is to determine submitted jointly by the Parties) subject to an express requirement that he reaches his decision and communicates it to the Parties to the dispute within the minimum practical timescale allowing for the nature and complexity of the dispute and in any event not more than twenty (20) Working Days from the date of his appointment to act.
- 20.6 The Expert shall be required to give notice to each of the said Parties to the dispute inviting each of them to submit to him within twenty (20) Working Days from the date of his appointment written submissions and supporting material and shall afford to the said Parties an opportunity to make counter submissions within a further ten (10) Working Days in respect of any such submission and material.
- 20.7 In the absence of manifest error the Expert's decision shall be binding on the Parties.

## **SCHEDULE 1**

### **THE EDUCATION SCHEME**

1. Prior to Commencement of the Project, the Developer shall submit the Education Scheme to the Councils for approval.
2. The Developer and the Councils shall work together to establish the initiatives set out within the Education Scheme.
3. The Developer shall not Commence the Project until the Education Scheme has been approved by the Councils and the Developer shall thereafter carry out the approved Education Scheme for a period of five years from the Date of Final Commissioning.
4. The Developer shall be entitled to vary the Education Scheme, such variation to be agreed between the Developer and the Councils in accordance with the requirements of Clause 4.2.1 of this Deed.

## SCHEDULE 2

### THE LOCAL EMPLOYMENT SCHEME

1. Prior to Commencement of the Project, the Developer shall submit the Local Employment Scheme to the Councils for approval. The Developer and the Councils agree that the following contracts will not be included within the Local Employment Scheme:
  - (a) the EPC Contracts;
  - (b) the LTSA Contract; and
  - (c) any contracts for works undertaken by NGET or NGG..
2. The Developer and the Councils shall work together to establish the initiatives set out within the Local Employment Scheme.
3. The Developer shall not Commence the Project until the Local Employment Scheme has been approved by the Councils and the Developer shall thereafter carry out the approved Local Employment Scheme until the Project is decommissioned in accordance with requirement 18 of Schedule 2 of the Development Consent Order.
4. The Developer shall use reasonable endeavours to procure that the contractors engaged in the construction of the Project assist in the implementation of the Local Employment Scheme.
5. For the avoidance of doubt, the Local Employment Scheme shall not require the Developer or any contractors, to award any contract for the construction or operation of the Project to any specific company.
6. The Developer shall implement the Local Employment Scheme in accordance with the timetable contained in the approved Local Employment Scheme **PROVIDED THAT** the Developer may from time to time seek approval for revisions of the Local Employment Scheme from the Councils.
7. The Developer shall use reasonable endeavours to procure that the contractors engaged in the construction of the Project interview and if appropriate recruit suitably qualified applicants as part of the Local Employment Scheme including providing such assistance as is reasonably practicable to those contractors.
8. The Developer shall:
  - 8.1.1 advertise invitations to tender for all contracts for the provision of services and materials to the Project in at least one local newspaper with a circulation in all areas within a 25 mile radius of the Site (save in respect of the EPC Contract and the LTSA Contract and any contracts for works undertaken by NGET or NGG); and
  - 8.1.2 invite at least two companies who have responded to an advertisement published in accordance with paragraph 8.1.1 of this Schedule 2 and whose principal offices are located within a 25 mile radius of the Site to tender for each contract in relation to the construction of the Project including in relation to the supply of materials and services

**PROVIDED THAT** nothing in this paragraph shall require the Developer to award any contract for the construction or operation of the Project to any such company.
9. The Developer shall be under no obligation in respect of paragraph 8 of this Schedule 2 to invite any company or advertise any contract for the provision of services and materials where, to the Developer's knowledge, there is no company within a radius of 25 miles of the Site that is capable of fulfilling any such contract **PROVIDED THAT** it notifies the Councils of the contracts to which this paragraph 9 applies.



### SCHEDULE 3

#### FOREST OF MARSTON VALE

##### 1. DEVELOPER'S OBLIGATIONS

1.1 Following approval of the Landscape and Ecological Mitigation and Management Strategy by CBC, the Developer shall:

1.1.1 calculate whether the Landscape and Ecological Mitigation and Management Strategy provides for the Forest of Marston Vale Tree Planting or Part of the Forest of Marston Vale Tree Planting; and

1.1.2 where only Part of the Forest of Marston Vale Tree Planting is provided in the Landscape and Ecological Mitigation and Management Strategy, calculate the Residual Forest of Marston Vale Contribution

and shall provide such details (including the calculations) to CBC and the Forest of Marston Vale Trust for approval.

1.2 Where the Developer calculates that the Forest of Marston Vale Tree Planting is to be provided for in the approved Landscape and Ecological Mitigation and Management Strategy and CBC and the Forest of Marston Vale Trust approve such calculation pursuant to paragraph 1 of this Schedule 3, the Developer shall provide the Forest of Marston Vale Tree Planting in accordance with the implementation timetables approved within the Landscape and Ecological Mitigation and Management Strategy.

1.3 Where the Developer calculates that Part of the Forest of Marston Vale Tree Planting is to be provided for in the approved Landscape and Ecological Mitigation and Management Strategy and CBC and the Forest of Marston Vale Trust approve such calculation, together with the calculation of the Residual Forest of Value Contribution, the Developer shall:

1.3.1 within 21 working days of such approval, pay the Residual Forest of Marston Vale Contribution to the Forest of Marston Vale Trust; and

1.3.2 provide the Part of the Forest of Marston Vale Tree Planting in accordance with the implementation timetables approved within the Landscape and Ecological Mitigation and Management Strategy.

1.4 In the event that the Developer does not comply with paragraph 1.3.1 of this Schedule 3, the Developer shall pay interest on any amount of the Residual Forest of Marston Vale Contribution outstanding at the Interest Rate calculated from the date on which the Residual Forest of Marston Vale Contribution was due under paragraph 1.3.1 of this Schedule 3 to the date of payment.

##### 2. FOREST OF MARSTON VALE TRUST'S COVENANTS IN RESPECT OF THE RESIDUAL FOREST OF MARSTON VALE CONTRIBUTION

2.1 Following receipt of the Residual Forest of Marston Vale Contribution pursuant to paragraph 1.3.2 of this Schedule 3, the Forest of Marston Vale Trust covenants and undertakes to:

2.1.1 use the Residual Forest of Marston Vale Contribution for the purposes of the aims and objectives of the Forest of Marston Vale Plan relating to tree planting and woodland creation; and

2.1.2 provide, on written request from the Developer, reports to the Developer setting out the expenditure from the Residual Forest of Marston Vale Contribution up to the date of the relevant request.

2.2 On receipt of the Residual Forest of Marston Vale Contribution by the Forest of Marston Vale Trust, CBC and the Forest of Marston Vale Trust agree that the Developer is released from its obligations

in this Schedule 3 with immediate effect provided that the obligations in paragraph 1.3.2 shall continue to apply for the duration of the timetables approved within the Landscape and Ecological Mitigation and Management Strategy.

**SCHEDULE 4**  
**FOREST OF MARSTON VALE PLAN 2000**

**SCHEDULE 5**  
**PLANNING PERFORMANCE AGREEMENT**

**Plan 1**

**Site**

**Plan 2**  
**Forest of Marston Vale**

**IN WITNESS** whereof this Deed has been duly executed by the parties to this Deed on the date which appears at the head of this document.

The **COMMON SEAL** of **CENTRAL BEDFORDSHIRE COUNCIL** was hereunto affixed in the presence of:

)  
)  
)

Authorised signatory

The **COMMON SEAL** of **BEDFORD BOROUGH COUNCIL** was hereunto affixed in the presence of:

)  
)  
)

Authorised signatory

**EXECUTED** as a **DEED** by **MILLBROOK POWER LIMITED**

)  
)

acting by two directors or one director and the company secretary:

Director

Director / Secretary

**EXECUTED as a DEED by O&H Q7 LIMITED**

)  
)

acting by two directors or one director and  
the company secretary:

Director

Director / Secretary

**EXECUTED as a DEED by FOREST OF  
MARSTON VALE TRUST**

)  
)

acting by: