

**DATED 4<sup>th</sup> October 2023**

**BETWEEN**

- (1) CAMBRIDGESHIRE COUNTY COUNCIL of New Silk Mill, Emery Crescent, Enterprise Campus, Addenbrooke Park, Peterborough (the "Council")
- (2) ALBORO DEVELOPMENTS LIMITED whose registered office is at The Estate Office, Dickering, Indipendence Way, Westwood, Westwood, Cambridge CB25 9PG (company number 00669057) (the "Developer")
- (3) MEDWORTH ENERGY FROM WASTE COMBINED HEAT AND POWER (the "Medworth CHP Family") (company number 13130012) (the "Developer")

**WHEREAS**

- (1) CAMBRIDGESHIRE COUNTY COUNCIL
  - (2) ALBORO DEVELOPMENTS LIMITED
  - (3) MEDWORTH CHP LIMITED
- (A) The Council is the local planning authority for the area in which the Site is situated and is the enforcing authority for the purposes of section 196 of the 1990 Act;
  - (B) The Council is the registered owner of the Site;
  - (C) On 7 July 2022 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 2 August 2022;

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**DEED OF PLANNING OBLIGATIONS**

**pursuant to Section 106 of the Town and Country  
Planning Act 1990 (as amended)  
relating to the  
Medworth Energy from Waste Combined Heat and Power  
Project**

**1. DEFINITIONS AND INTERPRETATION**

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

"1990 Act"

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

"2002 Act"

means the Planning Act 2002 (as amended);

"Application"

means the application for a development to be carried out made under section 37 of the 2002 Act in relation to the Project and submitted to the Secretary of State on 7 July 2022 and given reference number SA010410 as modified by change application;

"BCIS Index"

means the BCIS RICS Community Infrastructure Levy Index;

"Biodiversity Net Gain"

means the biodiversity net gain identified through the Biodiversity Net Gain Strategy pursuant to Requirement 9 of Schedule 2 of the Development Consent Order;

"Biodiversity Net Gain Strategy"

means the Biodiversity Net Gain Strategy identified and established through the Biodiversity Net Gain Strategy pursuant to



**Pinsent Masons**

**BETWEEN:**

- (1) **CAMBRIDGESHIRE COUNTY COUNCIL** of New Shire Hall, Emery Crescent, Enterprise Campus, Alconbury Weald, Huntingdon PE28 4YE (the "**Council**");
- (2) **ALBORO DEVELOPMENTS LIMITED** whose registered office is at The Estate Office Dickerson Industrial Estate Ely Road Waterbeach Cambridge CB25 9PG (company number 00669057) ("the "**Landowner**"); and
- (3) **MEDWORTH CHP LIMITED** whose registered office is at 40 Devonport EfW CHP Facility, Creek Road, Plymouth, United Kingdom, PL5 1FL (company number 13130012) (the "**Developer**")

**WHEREAS:**

- (A) The Council is the local waste 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) The Landowner is the freehold owner of the Site.
- (C) On 7 July 2022 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 2 August 2022.
- (D) 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 may be constructed and operated by Anglian Water and Eastern Power Networks).
- (G) The Parties have agreed to enter into this Deed 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);
"2008 Act"	means the Planning Act 2008 (as amended);
"Application"	means the application for a development consent order made under section 37 of the 2008 Act in relation to the Project and submitted to the Secretary of State on 7 July 2022 and given reference number EN010110 as modified by change application;
"BCIS Index"	means the BCIS RICS Community Infrastructure Levy Index;
"Biodiversity Net Gain"	means the biodiversity net gain identified through the Biodiversity Net Gain Strategy pursuant to Requirement 6 of Schedule 2 of the Development Consent Order;
"Biodiversity Net Gain Land"	means the land to be identified and established through the Biodiversity Net Gain Strategy pursuant to

	Requirement 6 of Schedule 2 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>“CPI Index”</b>	means the Consumer Prices Index;
<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 as made pursuant to the Application;
<b>“Enabling Activities”</b>	has the same meaning as in Article 2 of the Development Consent Order;
<b>“Expert”</b>	means the expert appointed by any of the Parties pursuant to clause 23;
<b>“Highways Agreement”</b>	means an agreement pursuant to section 278 of the Highways Act 1980 (as amended), relating to the execution of highway works to Cromwell Road and New Bridge Lane, which must be substantially in the form set out in Schedule 3 unless the Council and the Developer agree otherwise;
<b>“Index Linked”</b>	means indexed in accordance with Clause 24;
<b>“Interest”</b>	means 4% above the Bank of England base rate applicable at the date the relevant payment is due;
<b>“Land Plans”</b>	has the same meaning as in Article 2 of the Development Consent Order;
<b>“NMU”</b>	means non-motorised user;
<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 23;
<b>“Parties”</b>	means the Council, Landowner and the Developer and <b>“Party”</b> means any one of them as the context so requires;
<b>“Payment Date”</b>	means the date when the PROW and NMU Enhancements Contribution or other sum of money is due to be paid, provided or made available by the Developer pursuant to this Deed or its Schedules;
<b>“Permissive Path Agreement”</b>	means a written agreement between the Developer, or Landowner if the land is not owned by the Developer, and the Council substantially in the same form as the template attached at Schedule 4;
<b>“Plan”</b>	means the plan annexed and executed relative to this Deed and which identifies the PROW and Local Road Connectivity Enhancements Area;

<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>“PROW”</b>	means a public right of way;
<b>“PROW and Local Road Connectivity Enhancements Area”</b>	means the community areas identified and shaded yellow on the Plan, being the four Parishes of: <ul style="list-style-type: none"> <li>(a) Wisbech CP in Cambridgeshire;</li> <li>(b) Wisbech St Mary in Cambridgeshire;</li> <li>(c) Elm in Cambridgeshire; and</li> <li>(d) Emneth in Norfolk;</li> </ul>
<b>“PROW and NMU Enhancements Contribution”</b>	means the sum of £400,000 (four hundred thousand pounds sterling) to be used by the Council for the purposes set out in paragraph 2.2 of Schedule 1 of this Deed and such sum shall be Index Linked;
<b>“Secretary of State”</b>	means the Secretary of State for Energy Security and Net Zero or such other Secretary of State of His Majesty's Government that has the responsibility for determining projects relating to energy development;
<b>“Site”</b>	means the land against which this Deed may be enforced, being plots 11/6a and 11/6b as shown on the Land Plans;
<b>“Working Day(s)”</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 Council includes the successors to its statutory function as a local planning authority;
- 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 section 106 of the 1990 Act, 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 planning obligations pursuant to and for the purposes of the power referred to in clause 2.1 and so as to bind the Site and, subject to clauses 3, 9, 10 and 11, the said obligations, covenants and undertakings on the part of the Developer are entered into with the intent that they shall be enforceable by the Council 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 with the intent that they shall be enforceable under contract.
- 2.3 It is hereby agreed that the Parties enter into this Deed with the effect of binding the Site.

## 3. **CONDITIONALITY**

- 3.1 Subject to clause 3.2, the Parties agree that:
  - 3.1.1 clauses 1, 2, 3, 7, 20, 21 and 22 shall have operative effect upon the date of this Deed; and
  - 3.1.2 clauses 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 23 shall not have operative effect unless and until the Development Consent Order has come into force.
- 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. DEVELOPER'S OBLIGATIONS**

- 4.1 The Developer covenants with the Council to observe and perform the obligations, undertakings, covenants and agreements in Schedule 1 and Schedule 2.
- 4.2 The Developer shall give three months advanced notice in writing to the Council of the anticipated date of:
  - 4.2.1 Commencement; and
  - 4.2.2 the carrying out of the first Enabling Activities.
- 4.3 The Developer shall give 20 Working Days advanced notice in writing to the Council of the anticipated date of:
  - 4.3.1 Commencement; and
  - 4.3.2 the carrying out of the first Enabling Activities.

**5. COUNCIL'S OBLIGATIONS**

- 5.1 The Council covenants with the Developer to observe and perform the covenants and obligations on their part contained in Schedule 1 and Schedule 2.

**6. HIGHWAYS AGREEMENT**

- 6.1 Following technical approval by the Council of the highway drawings and specifications pursuant to Requirement 7(2) of Schedule 2 to the Development Consent Order, the Council must enter into the Highways Agreement within 30 Working Days of receipt of a notice from the Developer requesting that the Council execute the Highways Agreement.
- 6.2 The Developer must not Commence any part of Work No. 4A as defined in Schedule 1 to the Development Consent Order unless and until the Developer and Council have entered into the Highways Agreement and the Highways Agreement has completed.

**7. REGISTRATION AS LOCAL LAND CHARGE**

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

**8. 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 Council 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.

9. **RELEASE**

No person shall be liable for any breach of the 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 Council in respect of any antecedent breach of those obligations.

10. **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.

11. **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 Council shall request that all entries made on Fenland District Council's register of local land charges in respect of this Deed are cancelled.

12. **CERTIFICATES OF COMPLIANCE**

The Council shall upon written request certify compliance with the obligations in this Deed.

13. **NOTICES**

13.1 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.

13.2 Any such notice must be delivered by hand or by pre-paid special delivery post and shall conclusively be deemed to have been received:

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

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

13.3 A notice or communication shall be served or given:

13.3.1 on the Council 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 the Head of Planning and Sustainable Development (or equivalent should that role no longer exist);

13.3.2 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 Medworth EfW Project Manager; and

13.3.3 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 Mark Davenport.

14. **INTEREST**

Where any obligation in this Deed is expressed to require the Developer to pay any sum of money, and that sum of money is not paid on the due date, Interest 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.

15. **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.

16. **COUNCIL'S POWERS**

Nothing in this Deed shall fetter the statutory rights, powers or duties of the Council.

17. **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.

18. **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.

19. **JURISDICTION**

19.1 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.

19.2 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).

20. **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.

21. **DATE OF DELIVERY**

This Deed is delivered on the date of this Deed.

22. **COSTS**

The Developer shall pay on completion of this Deed the reasonable legal and planning costs of the Council incurred in the preparation, negotiation and execution of this Deed.

23. **DISPUTE RESOLUTION**

23.1 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.

23.2 The Notice must specify:

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

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

23.2.3 the proposed Expert.



- 23.3 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 ten (10) Working Days after the date of the Notice then any Party may request:
- 23.3.1 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;
  - 23.3.2 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;
  - 23.3.3 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;
  - 23.3.4 in all other cases, the President of the Law Society to nominate the Expert.
- 23.4 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.
- 23.5 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.
- 23.6 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 ten (10) 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 five Working Days in respect of any such submission and material.
- 23.7 In the absence of fraud or manifest error the Expert's decision shall be binding on the Parties.**INDEXATION**
- 24.1 The proportion of the PROW and NMU Enhancements Contribution to be paid, provided or made available pursuant to paragraph 1.1 of Schedule 1 to this Deed will be increased by reference to the amount of the increase in the BCIS Index from the Index Date until the date payment is due in accordance with the following formula (where the Index at Payment Date / Index Date is equal to or greater than one (1)):
- $$\text{Amount Payable} = \text{Sum} \times (\text{Index at Payment Date} / \text{Index Date})$$
- where:
- "Amount Payable" is the amount of money required to be paid;
  - "Sum" is fifty percent (50%) of the amount of the PROW and NMU Enhancements Contribution;
  - "Index at Payment Date" is the BCIS Index published two months before the Payment Date (for example, the CPI Index published in January where the Payment Date is in March); and
  - "Index Date" is the BCIS Index with a base rate of February 2024.
- 24.2 The proportion of the PROW and NMU Enhancements Contribution to be paid, provided or made available pursuant to paragraph 1.2 of Schedule 1 to this Deed will be increased by reference to the amount of the increase in the CPI Index from the Index Date until the date payment is due in

accordance with the following formula (where the Index at Payment Date / Index Date is equal to or greater than one (1)):

$$\text{Amount Payable} = \text{Sum} \times (\text{Index at Payment Date} / \text{Index Date})$$

where:

"Amount Payable" is the amount of money required to be paid;

"Sum" is fifty percent (50%) of the PROW and NMU Enhancements Contribution;

"Index at Payment Date" is the CPI Index published two months before the Payment Date (for example, the CPI Index published in January where the Payment Date is in March); and

"Index Date" is the CPI Index with a base rate of February 2024.

## SCHEDULE 1

### PROW AND NMU ENHANCEMENT CONTRIBUTION

#### 1. DEVELOPER'S OBLIGATIONS

- 1.1 On or prior to carrying out any Enabling Activities the Developer must pay to the Council fifty percent (50%) of the PROW and NMU Enhancements Contribution.
- 1.2 On or prior to Commencement of any part of the Project the Developer must pay to the Council fifty percent (50%) of the PROW and NMU Enhancements Contribution.
- 1.3 The Developer will not:
- 1.3.1 Carry out, cause or permit the carrying out of any Enabling Activities; or
  - 1.3.2 Commence, cause or permit Commencement of any part of the Project;
- until such time as it has paid to the Council and the Council has received payment of the PROW and NMU Enhancements Contribution in accordance with paragraphs 1.1 and 1.2 (as applicable).

#### 2. COUNCIL'S OBLIGATIONS

- 2.1 Improvements and enhancements to the existing PROW and local road NMU connectivity network will be undertaken within the PROW and Local Road Connectivity Enhancements Area and for the benefit of the communities within the PROW and Local Road Connectivity Enhancements Area.
- 2.2 The PROW and NMU Enhancement Contribution will be utilised by the Council in consultation with Norfolk County Council, Fenland District Council and the Borough Council of King's Lynn and West Norfolk and statutory consultees as defined by Schedule 3 of the Public Path Orders Regulations 1993 and relevant public rights of way and NMU user groups as appropriate for the following purposes:
- 2.2.1 Dedicated project officer resource;
  - 2.2.2 Public path creation agreements and public path orders and associated costs;
  - 2.2.3 Improvements to existing PROW and NMU links; and
  - 2.2.4 Permissive path creations and improvements.
- 2.3 The Council must publish an annual report outlining the progress made towards fulfilling the purposes of the PROW and NMU Enhancement Contribution and provide a copy to the Developer within 30 days of each anniversary of the date of payment of the PROW and NMU Enhancement Contribution.
- 2.4 If on the tenth (10<sup>th</sup>) anniversary of the date of payment of the PROW and NMU Enhancement Contribution any part of the PROW and NMU Enhancement Contribution remains unspent the Council must notify the Developer and within twenty-eight (28) days thereof must account to the Developer for the PROW and NMU Enhancement Contribution and must repay to the Developer any unexpended sum. The Council shall not be liable to repay any part of the PROW and NMU Enhancement Contribution transferred to Norfolk County Council prior to the tenth (10<sup>th</sup>) anniversary of the date of payment of the PROW and NMU Enhancement Contribution.

## SCHEDULE 2

### PUBLIC ACCESS IN BIODIVERSITY NET GAIN LAND

1. Subject to paragraphs 2 and 3 of this Schedule, the Developer will use reasonable endeavours to ensure that appropriate permissive non-motorised public access is made available to the Biodiversity Net Gain Land.
2. The Developer and the Council agree that any such public access to the Biodiversity Net Gain Land shall not be to the detriment of the Biodiversity Net Gain or contrary to health and safety or any other legal requirements.
3. The details of any such public access will be set out in the Biodiversity Net Gain Strategy submitted to the Council pursuant to Requirement 6 of Schedule 2 of the Development Consent Order and the approval of the Biodiversity Net Gain Strategy by the Council shall be regarded as compliance by the Developer with the obligations in this Schedule.
4. Any permissive access to, within or across the Biodiversity Net Gain Land as detailed in the approved Biodiversity Net Gain Strategy shall be recorded in a Permissive Path Agreement and shown on the Council's permissive paths GIS layer on its web mapping in order to assist dissemination of knowledge of the facility within the local community and to protect the Landowner against permanent access rights accruing.

**SCHEDULE 3**  
**THE HIGHWAYS AGREEMENT**

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

**CAMBRIDGESHIRE COUNTY COUNCIL**

**- and -**

**MEDWORTH CHP LIMITED**

\_\_\_\_\_  
**AGREEMENT WITH BOND**

**pursuant to Section 278 of the Highways Act 1980**  
**relating to the execution of highway works to Cromwell Road and New Bridge Lane, Cambridgeshire**

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**THIS AGREEMENT** is made the                    day of

**BETWEEN:**

1. **CAMBRIDGESHIRE COUNTY COUNCIL** of New Shire Hall, Emery Crescent, Enterprise Campus, Alconbury Weald, Huntingdon PE28 4YE (“**the County Council**”)
2. **MEDWORTH CHP LIMITED** whose registered office address is at Devonport EfW CHP Facility, Creek Road, Plymouth, United Kingdom, PL5 1FL (“**the Developer**”)

**WHEREAS:**

- A. The Developer has been granted development consent pursuant to the Order to carry out the Authorised Development
- B. The Order requires that certain road improvement works be carried out on the Highway which include the Works
- C. The County Council is the local highway authority for the purposes of the Highways Act 1980 for the area in which the Highway is situated
- D. The County Council being satisfied that the Works will be of benefit to the public has agreed that they should be carried out but entirely at the Developer’s expense.

**NOW THEREFORE** in pursuance of the powers under Sections 38 and 278 of the Highways Act 1980, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and section 111 of the Local Government Act 1972 and Article 16 of the Order and all other powers enabling the parties hereto including the Order **IT IS HEREBY AGREED AND DECLARED** as follows:-

**1. Definitions**

In this Agreement the following definitions shall apply:-

- |                                      |  |
|--------------------------------------|--|
| <b>“10 New Bridge Lane”</b>          | means the property known as 10 New Bridge Lane and shown coloured [ ] on the Plan annexed to this Agreement  |
| <b>“the Additional Requirements”</b> | means any requirements of the Council’s Engineer in connection with the Works including but not limited to the management of access for motorbike users and non-motorised users to the extent that such management measures are not set out in the construction traffic management plan approved pursuant to Requirement 11 of Schedule 2 to the Order |
| <b>“Agreement Fee”</b>               | means the sum of £[XX] (            POUNDS) being a sum equal to eight and a half per cent (8.5%) of the Works Sum in respect of the County Council’s technical approval, administration and inspection costs for keeping the  |



construction works under observation and inspection during the period of construction

**“the Approved Programme and Method Statement and Traffic Management Proposals”**

means respectively the detailed programme of works and the method statement and traffic management proposals as approved by the Council’s Street Works Officer in accordance with Clause 5 and the term **“the Programme”** shall be construed accordingly

**“Approval Fee”**

means the sum of [£XX] ( POUNDS) towards the costs associated with approving structures, signals and checking designs

**“Asset Management Fee”**

means the sum of [£XX] ( POUNDS) towards amending the County Council’s legal records

**“Asset Planning Fee”**

means the sum of [£XX] ( POUNDS) towards adding and amending the County Council’s highway asset inventory

**“Authorised Development”**

means the authorised development as defined in the Order

**“Business Days”**

means all weekdays on which banks are open for domestic business in the City of London

**“Bond Sum”**

means the sum of £[XX] ( POUNDS) being the Works Sum plus 10% and the Commuted Sum taken together

**“the CDM Regulations”**

means The Construction (Design and Management) Regulations 2015 (as amended)

**“Cessation of Works Notice”**

means a notice served by the County Council on the Developer requiring the Developer to forthwith cease carrying out the Works specified in the notice

**“the Commencement Notice”**

means at least twenty (20) Business Days’ notice to be given by the Developer to the Council’s Engineer of the Developer’s intention to commence the Works on the Highway

**“Commuted Sum”**

means the sum set out in the Second Schedule and calculated in accordance with the County Council’s

Commuted Sums Policy and the principles set out in the Second Schedule

**“the Conditions of Contract”**

means the contract for the Works which shall be let by the Developer or the EPC Contractor (as applicable) using the NEC3 or a suitable form of contract to be agreed between the Developer and the Contractor and approved by the County Council (such approval not to be unreasonably withheld or delayed);

**“the Contractor”**

mean a suitably qualified contractor nominated by the Developer or the EPC Contractor (as applicable) and approved by the County Council (such approval not to be unreasonably withheld or delayed)

**“Contractor Warranty”**

means a deed of collateral warranty substantially in the form set out in the Fourth Schedule to this Agreement or as otherwise agreed between the Developer and the Contractor and approved by the County Council (such approval not to be unreasonably withheld or delayed)

**“the Council’s Engineer”**

means the Executive Director for the time being of the Office of Place & Sustainability of the County Council and such other Officers of the County Council and others as the said Director may from time to time identify to the Developer or the EPC Contractor (as applicable) as being authorised to act as Engineer for the purposes of this Agreement

**“the Council Specification & Approved Drawings”**

means the requirements set out in this Agreement and the drawings set out in the First Schedule and the DMRB or CCC Specification as agreed with the Council’s Engineer with amendments as modified and extended by the County Council's standard additional and supplementary clauses

**“Date of Final Commissioning”**

means the date of final commissioning as defined in the Order

**“the Defects”**

means any damage or defects to the Works identified through the Stage 3 Safety Audit and/or any Stage 4 Safety Audit

**“the Designer”**

means a suitably qualified designer nominated by the Developer or the EPC Contractor (as applicable) and approved by the County Council (such approval not to be unreasonably withheld or delayed)

**“Designer Warranty”**

means a deed of collateral warranty in the form set out in the Fifth Schedule to this Agreement

**“EPC Contractor”**

means the entity appointed by the Developer to design, procure, construct and commission the whole or any part of the Authorised Development, in accordance with the provisions of the EPC contract concluded between them

**“the Final Certificate”**

means the certificate issued by the Council’s Engineer at the end of the Maintenance Period and following the Stage 3 Safety Audit signifying the Works are satisfactory and any defects have been remedied and other wise made good to the satisfaction of the Council’s Engineer

**“the Health and Safety File”**

means the health and safety documentation required under the CDM Regulations prepared by the Developer or the EPC Contractor (as applicable) and submitted to the Council’s Engineer

**“Highway”**

means the parts of the publicly maintainable highways known as Cromwell Road and New Bridge Lane shown coloured [ ] on the Plan annexed to this Agreement

**“Late Payment Interest”**

means interest on a daily basis at a daily rate of 1/365<sup>th</sup> of the annual rate of interest of 4% (four percent) per annum greater than the Bank of England base rate in force at the time

**“the Land”**

means the land known as [ ] registered under Title Number [ ] as shown edged red on the Plan annexed to this Agreement to be dedicated as highway maintainable at public expense

**“Maintenance Period”**

means a period of 12 months commencing with the Date of Final Commissioning

<b>“Network Rail Agreement”</b>	means an agreement between the Developer, the County Council and Network Rail Infrastructure Limited relating to any works required to New Bridge Lane to facilitate the reopening of the March to Wisbech Railway Line.
<b>“Network Rail Land”</b>	means the land owned by Network Rail Infrastructure Limited and shown coloured [ ] on the Plan annexed to this Agreement;
<b>“the Order”</b>	means the Medworth Energy from Waste Combined Heat and Power Facility Order 202[ ];
<b>“the Post Construction Inventory”</b>	means an inventory of new highway assets listing the number and area of each element of the new assets within the Works as specified by the Council’s Engineer
<b>“Protective Provisions”</b>	means the protective provisions for the benefit of the County Council set out in Part 9 of Schedule 11 to the Order
<b>“the Provisional Certificate of Completion”</b>	means the certificate issued by the Council’s Engineer confirming the Works have been completed and have been found to be satisfactory to the Council’s Engineer
<b>“Street Lighting Design Review”</b>	means a review of street lighting comprised in the Works such review to include layout design and specification
<b>“the Site”</b>	means all that piece or pieces of land, being adopted highway on which the Works are due to be carried out
<b>“Street Works Officer”</b>	means such officer of the County Council as being authorised to approve and inspect traffic management
<b>“Stage 3 Safety Audit”</b>	means the audit undertaken following completion of the Works in compliance with the requirements of GG119 of the Design Manual for Roads and Bridges.
<b>“Stage 4 Safety Audit”</b>	means the safety audit as described in GG119 of the Design Manual for Roads and Bridges undertaken at the discretion of the Council’s Engineer following expiration of Maintenance Period to assess the Works in order to determine whether

any remedial works are required prior to issue of the Final Certificate.

**“Statutory Undertaker”**

means a statutory undertaker as defined in Section 329(1) of the Highways Act 1980 and all those bodies deemed to be statutory undertakers for the purposes of the Highways Act 1980 and all those undertakers licensed in accordance with the New Roads and Street Works Act 1991

**“Third Party Notices”**

means at least twenty (20) Business Days’ notice to be given by the Developer to:

- (a) the Parish, City or Town Council for the area in which the Works are located; and
- (b) the owner and occupier of every premises adjoining the part of the Highway on which the Works are to be carried out by letter addressed to “the owner/occupier of (address)” and sent by first class post or delivered to each premises containing the Third Party Notice Information

**“Third Party Notice Information”**

means:

- (a) a brief description of the Works emphasising any changes to the appearance of the streetscape (e.g. removal of grass verges or significant changed in materials used);
- (b) planned start date;
- (c) contract period or planned completion date;
- (d) name and address of contractor carrying out the Works;
- (e) details of the person responsible for supervision of the Works including an address and telephone number to contact should a query arise;
- (f) where further details of the proposed Works may be viewed

**“the Works”**

means:

- (a) upgrades to the junction of Cromwell Road and New Bridge Lane to facilitate access, including provision of signal controls;

- (b) widening of New Bridge Lane (to include carriageway reconstruction if required) to facilitate access
- (c) any other works that involve the breaking of the surface of any highway under powers authorised by the DCO over which the County Council is the local highway authority;
- (d) such ancillary works as appropriate, to include:
  - i. swept path analysis and consequential works to accommodate abnormal indivisible loads;
  - ii. kerb realignment and tying into existing footways and carriageways;
  - iii. alternations to existing highway drainage systems or any other drainage;
  - iv. lighting columns and other street furniture;
  - v. alterations to carriageway markings;
  - vi. changes to speed limits;
  - vii. temporary traffic management measures; and
  - viii. landscaping of verges

**“Works Estimate”** means the sum of £[XX] ( POUNDS) representing the accepted tender figure for the Works

**“Works Sum”** means the sum of £[XX] ( POUNDS) being the Works Estimate plus 10% (contingency)

## 2. Interpretation

2.1 In this Agreement where the context so requires:-

- (a) reference to plant machinery or equipment shall include any goods materials erections or other structures (including a structure in the nature of a building);
- (b) words importing one gender shall be construed as importing any other genders;
- (c) words importing the singular shall be construed as importing the plural and vice versa;
- (d) words importing persons shall be construed as importing a corporate body and/or a partnership and vice versa;
- (e) where any party comprises more than one person the obligations and liabilities of that party under this Agreement shall be joint and several obligations and liabilities of those persons;
- (f) references to clauses and schedules are references to clauses and schedules in this Agreement unless expressly stated otherwise.

2.2 References to any statutory provision order regulation instrument and other subordinate legislation are to be construed as references to that statutory provision order regulation instrument and other subordinate legislation as amended supplemented re-enacted or replaced from time to time (whether before or after the date of this Agreement) and shall also include any orders regulations instruments

and other subordinate legislation made under or deriving validity from any statutory provision referenced

- 2.3 The words "other" and "otherwise" are not to be construed ejusdem generis with any foregoing words where a wider construction is possible
- 2.4 The words "including" and "in particular" are to be construed as being by way of illustration or emphasis only and are not to be construed as nor shall they take effect as limiting the generality of the foregoing words
- 2.5 The clause headings in this Agreement are for convenience only and do not affect its interpretation and references in this Agreement to a clause paragraph schedule plan or recital is a reference to a clause paragraph schedule plan or recital of or (in the case of a plan) attached to this Agreement.
- 2.6 The expression "the County Council" shall include its successors in title and function and the expression "the Developer" shall include any and all persons who are the undertaker as defined in the Order.
- 2.7 In the case of any conflict between any of the following then the order of precedence shall be:-
- (a) the Additional Requirements
  - (b) the Council Specification & Approved Drawings
- 2.8 The parties agree that any consent or approval issued by the County Council for the Works pursuant to this Agreement shall constitute consent or approval of the Works pursuant to the Protective Provisions.
- 2.9 Where there is any conflict between the terms of this Agreement and the Protective Provisions the terms of this Agreement shall prevail.

### **3. Preliminary**

- 3.1 This Agreement shall take effect and be binding on the parties hereto on the date hereof.
- 3.2 The Developer may at its own expense appoint the Contractor to execute the Works **PROVIDED THAT** the Contractor shall be approved by the Council's Engineer prior to the commencement of the Works and the Contractor shall have the competence to perform the duties imposed by the CDM Regulations.
- 3.3 Until issue of the Final Certificate (pursuant to paragraph 15) the Developer shall give the County Council written notice of any transfer of the benefit of the Order within 21 days of completion of such transfer.
- 3.4 The County Council appoints the Developer to act as the only client in respect of the project comprising the Works within the meaning of the CDM Regulations.
- 3.5 The Developer agrees to comply with the requirement of making a declaration of his appointment as client specified in the CDM Regulations.
- 3.6 The Works shall not be commenced until:-
- (a) the Council's Engineer has approved in writing the detailed design of the Works and the Council Specification & Approved Drawings, including any Additional Requirements;
  - (b) the Council's Street Works Officer has approved the Approved Programme and Method Statement and Traffic Management Proposals;
  - (c) the Commencement Notice has been duly served on the County Council by the Developer in accordance with the provisions of Clause 5.6;

- (d) the Third Party Notices have been duly served by the Developer in accordance with the provisions of Clause 5.6;
  - (e) reasonably satisfactory documentary evidence of the estimated total cost of construction of the Works has been supplied by the Developer to the County Council
  - (f) if required, the Developer has obtained consent from the County Council under the New Roads and Street Works Act 1991 or the Traffic Management Act 2004 to carry out the Works within the Highway (such consent not to be unreasonably withheld or delayed); and
  - (g) the Contractor Warranty and the Designer Warranty have been entered into.
- 3.7 No compensation shall be payable by the County Council to any party to this Agreement arising from the terms of this Agreement and all works and activities to be executed hereunder (including such as are of a preparatory ancillary or maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Developer and at no cost to the County Council.
- 3.8 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of the parties.
- 3.9 The failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.
- 3.10 Any consent or approval of the County Council required under this Agreement must not be unreasonably withheld or delayed.
- 3.11 Following receipt of any request for consent or approval required under this Agreement the County Council and/or the Council's Engineer and/or the County Council's Street Works Officer shall within twenty (20) Business days either:
- 3.11.1 issue its consent or approval;
  - 3.11.2 request further information and clarification in respect of the request for consent or approval; or
  - 3.11.3 withhold its consent or approval.
- 3.12 If the County Council and/or the Council's Engineer and/or the County Council's Street Works Officer requests further information in accordance with Clause 3.11.2 or decides to reasonably withhold its consent or approval in accordance with Clause 3.11.3 the County Council and/or the Council's Engineer and/or the County Council's Street Works Officer shall inform the Developer in writing giving reasons.
- 3.14 Subject to Clause 3.15, the parties agree that the withholding of any approval or consent pursuant to Clause 3.11.3 for reasons relating to the impact of the Works on the future reopening of the March to Wisbech Railway Line shall be deemed to be unreasonable.
- 3.15 Clause 3.14 shall not apply unless the Network Rail Agreement has been entered into.



3.16 If the County Council and/or the Council's Engineer and/or the County Council's Street Works Officer fails to respond to a request for consent or approval in accordance with Clause 3.11 it shall be deemed to have issued its consent or approval.

#### 4. The Works

4.1 The County Council hereby authorises the Developer to carry out and complete the Works entirely at the Developer's own expense in accordance with the terms hereafter set out.

4.2 **WITHOUT PREJUDICE** to the generality of the foregoing the Developer shall carry out the Works or procure the carrying out of the Works by the Contractor:-

- (a) in a good and workmanlike manner using all professional skill and care and in accordance with good practice for works of the type size and complexity comprised in the Works;
- (b) in accordance with any reasonable instructions of the Council's Engineer given in writing to the Developer in accordance herewith **PROVIDED THAT** the Council's Engineer shall give instructions only to the Developer and not to the Contractor appointed by the Developer to carry out the Works;
- (c) in accordance with the Specification & Approved Drawings;
- (d) with good and suitable materials of their several kinds;
- (e) in accordance with all relevant consents and approvals;
- (f) in compliance with planning and other obligations whether under Section 106 of the Town and Country Planning Act 1990 or other statutory provisions applicable to the Works;
- (g) in compliance with all relevant legislation statutory orders and regulations and any requirement and codes of practice of local and other competent authorities affecting the Works or the Site;
- (h) with due diligence.

4.3 If the Developer fails to carry out or procure the carrying out of the Works in accordance with clause 4.2 to the reasonable satisfaction of the Council's Engineer, the County Council shall give the Developer not less than thirty (30) working days' notice for the Developer to execute all such reasonable works and rectify any defects, as shall be specified in any such notice, which are reasonably required for the completion of the Works in accordance with clause 4.2. The Developer and the County Council may, at any time, agree a reasonable extension to the time period specified in any notice served under this clause 4.3.

4.4 If upon the expiration of the period (including any extension agreed between the Developer and the County Council) referred to in clause 4.3, the Developer has failed to undertake or procure the carrying out of the Works to the reasonable satisfaction of the Council's Engineer, the County Council shall have all rights and powers in relation to the construction completion and maintenance of the Works as if he were the "employer's representative" for the Works as defined in the Conditions of Contract.

4.5 The Developer shall at its own expense:-

- (a) make provision in accordance with the Council's Engineer's requirements to prevent mud and other materials from being carried onto highways adjacent to the Site by vehicles and plant whilst the Works are being carried out (such provision to include on site mechanical wheel

cleaning apparatus and mechanical road sweeping equipment) and for adjacent highways to be swept by mechanical means at the end of each working day and at such other times during working hours as the Council's Engineer shall (acting reasonably) require **PROVIDED THAT** subject as hereinafter mentioned and the Council's Engineer raising no reasonable objections the Developer may remove the said apparatus from the Site;

- (b) carry out or pay to be carried out such works as may reasonably be required from time to time by Statutory Undertakers and public utility companies or by the Council's Engineer at the request of the Statutory Undertakers and public utility companies in relation to or in consequence of the construction of the Works in accordance with Clause 10;
- (c) as soon as reasonably practicable after receipt of a written request from the Council's Engineer so to do and in a manner and by such reasonable time determined by the County Council (acting reasonably) construct within the Highway such:-
  - (i) boundary fence;
  - (ii) road barrier safety fencing; and
  - (iii) temporary and permanent regulatory warning signs (including foundation bases and the provision of road traffic sign illumination).

as may in the Council's Engineer's opinion be required in relation to or in consequence of the construction of the Works;

- (d) ensure the lighting and signing of the Works comply with the Council Specification & Approved Drawings and the provisions of Chapter 8 of the current edition of the Traffic Signs Manual (published by the Department for Transport) or any amendment thereto or republication thereof;
- (e) without prejudice to the provisions of Section 174 of the Highways Act 1980 until the issue of the Provisional Certificate of Completion the Developer shall keep the Works safe and in a good state of repair;
- (f) pay the reasonable energy costs of any street lighting provided as part of the Works from the date of commissioning/switching on of such street lighting until the issue of the Final Certificate, where such costs are to be determined by verified meter readings or other appropriate mechanisms agreed between the Developer and the County Council;
- (g) during the period when the Works are being executed:-
  - (i) institute measures approved or reasonably required by the County Council's Street Works Engineer to maintain the traffic flows on the highways in the vicinity of the Works with such temporary traffic management arrangements to be operated to the satisfaction of the Council's Engineer PROVIDED that the Council's Engineer shall except in cases of any emergency be given five working days' notice of any intention by the Developer to change the layout of any traffic management arrangements ; and
  - (ii) request and be responsible for the cost and expense of any orders or notices statutorily required in connection therewith;
- (h) ensure that all operations necessary for the execution of the Works shall insofar as this Agreement allows and is reasonably practicable be carried on so as not to interfere

unnecessarily or improperly with the public convenience or the access to or use or occupation of public or private roads and footpaths; and

- (i) provide road markings on the roads at the time and in the manner to be determined by the Council's Engineer.

## **5. Programme and Method Statement / Commencement of the Works**

- 5.1 Prior to the commencement of any of the Works within the Highway the Developer must carry out a condition survey of the Highway in accordance with the County Council's reasonable specifications at the expense of the Developer and provide a copy of the condition survey to the County Council.
- 5.2 Prior to commencement of any of the Works within the Highway the Developer shall produce a programme and method statement in respect of the Works for approval by the Council's Engineer. The programme and method statement shall provide in such detail as the Council's Engineer may reasonably require information pertaining to the methods of construction (including details of the Developer or Contractor's plant (as applicable) and duration of the Works) which the Developer proposes to adopt or use so as to enable the Council's Engineer to decide whether if the programme and method statement are adhered to the Works can be constructed and completed in accordance with this Agreement and without any material detriment to the Works when completed.
- 5.3 The Council's Engineer may notify the Developer in writing if (acting reasonably) he requires further information to satisfy himself as to whether the programme and method statement proposals are satisfactory for the County Council's purposes and reasonable having regard to the Developer's obligations hereunder.
- 5.4 The Council's Engineer shall notify the Developer in writing within ten (10) Business Days of receipt thereof if he rejects the programme and method statement submitted pursuant to Clause 5.2 or that he requires further information in accordance with Clause 5.3 then the Developer shall within ten (10) Business Days of such notification submit to the Council's Engineer either a revised programme and method statement or the further information (as the case may be) for approval by the Council's Engineer and the procedure of this clause may be repeated as many times as may be necessary and the timing provisions herein contained shall apply in each case.
- 5.5 The Developer shall not under any circumstances commence any part of the Works on the Highway or any part of the Works having any direct or indirect effect on highway traffic movement in the vicinity of the Works until the programme and method statement and detailed traffic management proposals referred to in Clause 5.4 has been approved in writing by the County Council's Street Works Officer (such approval not to be unreasonably withheld or delayed) including a permit in accordance with the County Council's permit scheme for road works and street works and the requirements of the New Roads and Street Works Act 1991 or the Traffic Management Act 2004 have been complied with.
- 5.6 Following approval by the Council's Engineer and street works team of the programme and method statement and detailed traffic management proposals the Developer shall serve the Commencement Notice and the Third Party Notices stating the date on which the Developer intends to commence any part of the Works on the Highway or any part of the Works having any direct or indirect effect on highway traffic movement in the vicinity of the Works **PROVIDED THAT** the Commencement Notice shall only be valid if accompanied by a copy of the declaration made to the Health and Safety Executive

in compliance with the CDM Regulations. Thereafter a copy of the declaration should be available for inspection on the Site for the duration of the carrying out of the Works.

5.7 **NOTWITHSTANDING** Clause 5.6 above the Developer shall not under any circumstances implement the Approved Programme and Method Statement and Traffic Management Proposals and commence the Works or any part thereof on the Highway or any part of the Works having any direct or indirect effect on highway traffic movement in the vicinity of the Works without the prior written approval of the County Council's Street Works Engineer which shall not be unreasonably withheld or delayed.

5.8 The Developer shall not enter onto the Highway other than at the time indicated therefor in accordance with the Approved Programme and Method Statement and Traffic Management Proposals unless prior written approval to make the appropriate variation to the Approved Programme and Method Statement and Traffic Management Proposals has been obtained from the County Council's Street Works Engineer and in respect of which the provisions of Clause 5.4 shall apply.

## 6. **Deviations from Approved Programme and Method Statement and Traffic Management Proposals**

6.1 If following approval of the Programme the Developer shall wish to review the Programme the Developer shall submit any revisions to the Programme in writing to the County Council's Street Works Officer for his approval at least twenty five (25) Business Days before the intended implementing of such revisions.

6.2 Following receipt of any proposed revision of the Programme in accordance with Clause 6.1 the Council's Engineer shall within twenty (20) Business days either:

6.2.1 approve the proposed revision(s);

6.2.2 request further information and clarification in respect of the proposed revision(s); or

6.2.3 withhold his approval.

6.3 If the Council's Engineer requests further information in accordance with Clause 6.2.2 or decides to reasonably withhold his approval in accordance with Clause 6.2.3 he shall inform the Developer in writing giving reasons and the Programme shall not be revised unless and until the County Council's Street Works Officer shall subsequently decide to give approval upon hearing representations from the Developer.

6.4 If the Council's Engineer fails to respond to a request for approval in accordance with Clause 6.2 he shall be deemed to have approved the proposed revision(s).

6.5 If at any time during construction of the Works it appears to the Council's Engineer that the Contractor is likely to materially deviate from the Approved Programme and Method Statement and Traffic Management Proposals then he may require the Developer in writing to provide detailed information as to the method and working arrangement which the Developer proposes using to remedy such deviation. The Developer shall supply such information in writing within five (5) Business Days of receipt of such written request. The Council's Engineer may either accept such proposals or where he reasonably considers that such proposals will not adequately remedy the deviation to ensure that the Works revert to being carried out in accordance with the programme of the Works at the earliest possible opportunity then he may issue his own instructions to the Developer.

6.6 The Developer shall as soon as reasonably practicable carry out such proposals referred to in Clause 6.1 as approved by the Council's Engineer and/or comply with such other reasonable requirements given by the Council's Engineer in writing.

## **7. Completion of the Works**

7.1 The Developer shall complete the Works in accordance with the agreed Programme.

## **8. Access, Inspection and Testing**

8.1 The Developer shall during the progress of the Works upon reasonable request give or procure for the Council's Engineer free access to each and every part of the Works and the Site and permit the Council's Engineer to inspect the Works as the Works proceed and all materials used or intended to be used therein and shall give effect to any reasonable and proper requirements made or reasonable and proper direction given by the Council's Engineer to conform to the Programme, the Council Specification & Approved Drawings.

8.2 The Developer unless otherwise directed by the Council's Engineer shall not cover up or put out of view any works without the approval of the Council's Engineer and shall afford full opportunity for the Council's Engineer to examine any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon and shall give at least five (5) Business Days' notice to the Council's Engineer whenever any such work or foundations is or are ready or about to be ready for examination.

8.3 The Council's Engineer shall without unreasonable delay unless he considers it unnecessary and advises the Developer in writing accordingly attend when required by the Developer upon at least five (5) Business Days' notice for the purpose of examining such works or of examining such foundations.

8.4 The Council's Engineer shall have power in his reasonable discretion to test or require the testing of materials plant and workmanship used or proposed to be used in the Works and to reject any materials plant or workmanship so tested which he may reasonably and properly find to be not in accordance with the Council Specification & Approved Drawings and the costs reasonably incurred by the County Council in connection with such testing shall be payable by the Developer.

8.5 The Developer shall as soon as is reasonably practicable replace or repair any materials plant or workmanship which have been found not in accordance with the Council Specification & Approved Drawings with such as are so in accordance.

8.6 The Council's Engineer shall for the purpose of Clause 8.4 be allowed reasonable access and admission to the places where materials or plant for the Works may be stored or are in the course of preparation manufacture or use.

8.7 The Developer shall as soon as is reasonably practicable remove such materials plant and workmanship as are rejected by the Council's Engineer pursuant to Clause 8.4 above which are not capable of repair or remedy from the site of the Works and if the Developer shall wish to continue to store any rejected irreparable materials plant or workmanship on the Site they shall be stored separately from those materials plant and workmanship which have not been so rejected or which the Developer shall wish in future to use in execution of the Works.

## **9. Inspection and Testing (Covered Work and Foundations)**

9.1 During the construction of the Works and prior to the issue of any Provisional Certificate of Completion:-

9.1.1 the Council's Engineer may issue instructions to the Developer to open up or expose any of the Works which may have been covered up without previously being inspected by the Council's Engineer; and

9.1.2 should the Developer fail within a reasonable time to comply with any such instructions the County Council may so take up or expose the relevant part of the Works causing as little damage or inconvenience as is possible to or in respect of any other part or parts of the Works and the reasonable and proper costs of such taking up exposure and reinstatement shall be met by the Developer.

## **10. Statutory Undertakers**

10.1 During the construction of the Works prior to the issue of any Provisional Certificate of Completion the Developer shall at no cost to the County Council carry out or procure the carrying out of such works of protection or alteration as are reasonably necessary as a result of the construction of the Works to the plant equipment and other apparatus of statutory undertakers on the Site.

10.2 The Developer shall cause all new highway or other drains or sewers gas and water mains pipes electric cables (if any) or telecommunication cables and ducts (if any) or other apparatus which are to be laid by the Developer under the Works together with all necessary connections from them to the boundary of the Works to be laid insofar as is reasonably practicable under the Works before the foundation of the Works are laid and shall also insofar as is practicable cause the connections from electric cables to street lamps to be laid before the paving of any footways comprised in the Works is carried out.

## **11. Progress of the Works**

11.1 The Developer shall keep the Council's Engineer regularly informed of:-

- (a) material measures taken and stages reached by the Developer in performing its obligations;
- (b) the progress of the Works;
- (c) material problems or delays affecting the Works

and shall promptly within 10 working days supply to the Council's Engineer a summary of all minutes and other written records of site and other formal meetings and reports given by the project team relating to the Works

11.2 The Developer shall arrange for site meetings to be held as necessary between the Council's Engineer the Developer the Contractor and the project team in order to discuss the carrying out and execution of the Works in accordance with the provisions of this Agreement.

## **12. Provisional Certificate of Completion**

12.1 Subject to Clause 12.2 below when the Council's Engineer is notified by the Developer that the Works have been substantially completed which shall mean that the Works can be permanently

used for the purpose and operate in the manner for which they were designed and traffic management measures have been removed from the site of the Works he shall inspect the Works and seek undertaking of the Stage 3 Safety Audit of the Works.

- 12.2 The County Council shall notify the Developer as soon as reasonably possible of any remedial works identified by the Council's Engineer both as a result of the inspection and the Stage 3 Safety Audit referred to in Clause 12.1 above.
- 12.3 Where the Works have not been completed within 24 months of the date of this Agreement the Developer shall within fourteen (14) days of the Developer notifying the Council's Engineer that the Works have been substantially completed undertake and submit to the Council's Engineer a Street Lighting Design Review and the County Council shall notify the Developer as soon as reasonably possible of any works of alteration or reconstruction required to the street lighting
- 12.4 The Developer shall comply in full to the Council's Engineer's satisfaction with all reasonable requirements identified by the Council's Engineer both as a result of the inspection, the Stage 3 Safety Audit referred to in accordance with Clause 12.2 and the Street Lighting Design Review referred to in accordance with Clause 12.3.
- 12.5 The Developer shall thereafter notify the Council's Engineer that the Works are ready for a further inspection and the Council's Engineer shall (subject to Clause 12.6 below) as soon as reasonably practicable following such further inspection issue the Provisional Certificate of Completion.
- 12.6 The Council's Engineer shall be under no obligation whatsoever to issue any Provisional Certificate of Completion before:-

12.6.1. the Developer shall (if necessary) have secured without cost to the County Council a Deed of Easement or such other deeds or general vesting declaration as are necessary to secure to the County Council full drainage rights in respect of any parts of the surface water drainage system of the Works lying outside the limits of the existing publicly maintainable highway and/or as may be required to satisfy the requirements of the Environment Agency and/or securing any lighting required by the Works and the County Council shall not be liable for payment of compensation or legal or any other costs or fees arising on account of the execution of any such deeds and the Developer shall indemnify the County Council in respect thereof;

12.6.2 the Developer shall have complied in full to the Council's Engineer's satisfaction with all requirements arising as a result of the Stage 3 Safety Audit and (as the case may be) the Street Lighting Design Review;

12.6.3 the Council's Engineer shall have issued all approvals in principle for all highway structures to be constructed as part of or in connection with the Works;

12.6.4 the Developer has demonstrated to the County Council that it has secured a Deed of Easement or such other deeds or general vesting declaration as are necessary to secure rights of access over the Network Rail Land for the benefit of 10 New Bridge Lane.

### **13. Maintenance and Defects Correction**

- 13.1 The Developer shall at its own expense maintain to the reasonable satisfaction of the Council's Engineer all the Works executed pursuant to this Agreement during the Maintenance Period.
- 13.2 During the Maintenance Period the Developer shall at its own expense execute all such works of repair reconstruction and rectification of any and all defects and imperfections and of any and all other faults arising out of defective design materials or workmanship or of any other nature whatsoever (which for the avoidance of doubt shall include all traffic damage whether accidental or otherwise arising out of defective design materials or workmanship) that may be reasonably required in writing by the Council's Engineer in relation to the Works.
- 13.3 If the Developer fails to carry out or procure the carrying out of any such works as aforesaid the County Council may carry out such work by its own employees or by contractors or otherwise and the Developer shall within twenty (20) Business Days of demand pay to the County Council the total amount of the costs and expenses (including traffic management costs) reasonably incurred or to be incurred by the County Council in completing such works
- 13.4 The Developer shall at its own expense carry out under the direction of the Council's Engineer such searches tests or trials as may reasonably be necessary or considered by the Council's Engineer to be reasonably necessary in order to ascertain the cause of any defects or faults but only if so required in writing by the Council's Engineer.
- 13.5 On receipt of a written request from the Council's Engineer the Developer shall allow access to the Works for the purpose of conducting at the Developer's expense any reasonably required borehole test and the Developer shall be responsible for reinstatement of the Works.

### **14. Stage 4 Safety Audit**

- 14.1 When the Council's Engineer is notified by the Developer that the Maintenance Period has expired he shall inspect the Works and at his discretion and seek the undertaking of a Stage 4 Safety Audit.
- 14.2 The Developer shall comply in full to the Council's Engineer's reasonable satisfaction with all requirements identified by the Council's Engineer as a result of the inspection and where applicable the Stage 4 Audit and shall at no cost whatsoever to the County Council reinstate and make good the Defects including those which in the reasonable and proper opinion of the Council's Engineer shall have arisen out of any defect in the design of the Works or the use of defective workmanship or materials not in accordance with the Council Specification & Approved Drawings during the construction of the Works or shall have been caused by contractors engaged in carrying out the Development which shall become apparent during the Maintenance Period.
- 14.3 The Developer shall thereafter notify the Council's Engineer that the Works are ready for a further inspection.

### **15. Final Certificate**

- 15.1 If after the expiration of the Maintenance Period and if following the further inspection referred to in Clause 14.3 the Works have been shown to be satisfactory and the defects have been remedied and the Works reinstated and otherwise made good to the satisfaction of the Council's Engineer he shall as soon as reasonably practicable issue the Final Certificate and from the date of the Final Certificate



the Works shall in all respects be maintained by and at the cost of the County Council PROVIDED ALWAYS that no Final Certificate shall be issued until:-

- 15.1.1 the Developer has carried out a condition survey of the Highway in accordance with the County Council's reasonable specifications at the expense of the Developer and provided a copy of the condition survey to the County Council;
- 15.1.2 any lighting columns erected pursuant to Clause 4.5(d) and the Council Specification & Approved Drawings have been renewed PROVIDED ALWAYS that such renewal will only be required where if:
- (i) a period of 10 years has elapsed since the completion of this Agreement; and
  - (ii) the Works have not during the period specified in Clause 15.1.1(i) become highway maintainable at public expense.
- 15.1.3 the Developer has provided the County Council with:
- (i) a plan showing the land over which the Works have been constructed;
  - (ii) a complete set of as-built drawings for the whole of the Works showing (inter alia) undertakers' plant and equipment such drawings to be to such scale or scales as the Council's Engineer may reasonably require for the purpose of subsequent maintenance and further works;
  - (iii) the Health and Safety File;
  - (iv) the Post Construction Inventory; and
  - (v) the Commuted Sum has been received.
- 15.1.4 the requirements of Clause 16 of this Agreement have been complied with so far as relevant.
- 15.2 If upon the expiration of the Maintenance Period referred to in Clause 13.1 the Developer fails to reinstate remedy and otherwise make good the Defects to the satisfaction of the Council's Engineer the County Council after giving not less than twenty (20) working days written notice of its intention to the Developer may execute and/or complete the relevant work and recover its reasonable and proper costs from the Developer.
- 15.3 Following the execution of works by the County Council in accordance with Clause 15.2 above, the County Council shall issue the Final Certificate PROVIDED the requirements of Clauses 15.1.1 to 15.1.4 have been complied with and the costs of the Works have been recovered from the Developer.
- 15.4 On the issuance of the Final Certificate, the Developer covenants to dedicate the Land as highway maintainable at public expense pursuant to s.38 of the Highway Act 1980 and the County Council covenants to accept and maintain the Land in perpetuity and upon acceptance of the Land serve and publish such notices and do all such acts and things as may be required to ensure that the Land shall become a highway maintainable at public expense and shall inform the Developer in writing once such notices, acts and things have been completed.
- 15.5 The parties agree that Network Rail will continue to be responsible for the maintenance of the Network Rail Land.

## **16. Site Clearance**

- 16.1 On completion of the Works the Developer shall clear away and remove from the Site all construction plant and temporary works of every kind and leave the Site and the Works in a good workmanlike condition and fully suitable for use as public highway to the reasonable satisfaction of the Council's Engineer.

## **17. CDM Regulations**

- 17.1 The Developer shall assume the obligations of the client for the purposes of the CDM Regulations and shall ensure that the execution of the Works complies with the CDM Regulations and in the course of carrying out those obligations the Developer shall appoint a principal designer and principal contractor in respect of the Works in accordance with the CDM Regulations.

## **18. Compliance with Statutory and Other Requirements**

- 18.1 The Developer shall:-

- (a) obtain all necessary consents required under and comply in all respects with the provisions of any Act of Parliament or any regulation or any byelaw of any local or other statutory authority and any amendments or modifications thereof for the time being in force replacing or amending those and any other relevant legislation applicable to the Works and until the issue of the Final Certificate keep the County Council indemnified against all penalties costs expenses losses liabilities proceedings and claims arising from any breach of such provision;
- (b) at all times keep itself fully informed about current professional standards and about all matters relating to or which may have a bearing on the performance of the Works;
- (c) consult with the County Council before utilising the powers granted pursuant to Article 11 (Power to alter layout, etc. of streets), Article 12 (Construction and maintenance of new or altered means of access), Article 13 (Temporary prohibition or restriction of use of streets and public rights of way), Article 15 (Access to Works) or Article 17 (Traffic regulation measures) of the Order in respect of the Highway; and
- (d) consult with the County Council in respect of any temporary traffic management measures relating to the Highway, including but not limited to measures relating to non-motorised users, prior to submitting the construction traffic management plan for approval pursuant to Requirement 11 of Schedule 2 to the Order.

- 18.2 **WITHOUT PREJUDICE** to Clause 18.1 the Developer shall:-

- (a) carry out the Works in accordance with the requirements of any relevant legislation relating to health and safety at work and all other Acts Regulations Orders or rules of law pertaining to health and safety and any additional safety requirements specified by the County Council in the Council Specification & Approved Drawings or otherwise identified in the Approved Programme and Method Statement and Traffic Management Proposals; and
- (b) ensure that the Works shall be carried out in a manner which shall cause as little noise and disturbance as practicable and the Developer shall indemnify the County Council from and against any liability for damages on account of noise or other disturbance created while or in

carrying out the Works and from and against all claims demands proceedings damages costs charges and expenses whatsoever in regard or in relation to such liability **PROVIDED THAT** this clause shall not apply to any noise or disturbance created as a direct or indirect result of a requirement made by the Council's Engineer and not envisaged at the time of the preparation of the Council Specification & Approved Drawings or any subsequent variation thereof as hereinbefore provided.

## **19. Indemnity**

19.1 The Developer hereby fully indemnifies and must keep indemnified:-

19.1.1 the County Council and all persons authorised by it in respect of all actions liabilities claims demands and proceedings arising out of or in connection with or incidental to the carrying out of the Works or the provisions of this Agreement including claims relating to the infringement or destruction of any right easement or privilege, including but not limited to:

19.1.1.1 the negligent and defective design and/or construction of the Works including the use of defective workmanship or materials or methods of construction not in accordance with the Council Specification & Approved Drawings and good practice current when the Works are constructed;

19.1.1.2 in respect of depreciation in the value of any interest in land caused by or resulting from the proper execution and/or use of the Works or any part thereof; and

19.1.1.3 in respect of nuisance loss or damage caused during or by the proper execution and/or use of the Works or any part thereof;

19.1.2 the County Council in respect of any and all actions, liabilities, claims, demands, proceedings or expenses arising out of or in connection with the use of the Highway as modified by the Works including for the avoidance of doubt claims under Part 1 of the Land Compensation Act 1973.

19.2 The County Council must give to the Developer reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the Developer.

19.3 The County Council must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, losses, demands and penalties to which any indemnity under this Agreement applies where it is within the County Council's reasonable ability and control to do so.

19.4 Nothing in this Agreement imposes any liability on the Developer with respect to any actions, liabilities, claims, demands and proceedings to the extent that it is attributable to the act, neglect or default of the County Council.

## **20 Insurance**

20.1 Without in any way limiting the Developer's responsibilities and liabilities under this Agreement the Developer shall take out and maintain (or shall procure that the Contractor shall take out and maintain) and whenever so required shall produce to the Council's Engineer satisfactory evidence that it has so taken out and maintained insurances:-

(a) against all liability (whether at common law or under statute) in respect of injury (fatal or otherwise) to persons employed or engaged in the execution of the Works; and

(b) against all third party risks (in respect of persons or property including employees of the County Council) arising out of or incidental to the Works to the extent of not less than Ten Million Pounds (£10,000,000.00) for any one claim.

20.2 The insurances referred to in Clause 20.1 above shall be effected with reputable insurance companies and shall be continued until the issue of the Final Certificate or sooner determination of this Agreement. Every policy of insurance so effected as aforesaid shall be in such terms as to indemnify fully the County Council from any claim or demand made against it in respect of any accident injury or damage either to persons or property and from such costs charges or expenses incurred by the County Council in consequence of such claim or demand.

20.3 If the Developer shall fail upon written request to produce to the Council's Engineer satisfactory evidence that there is in force the insurances which it is required to effect under the terms of this Agreement then in any such case the County Council may as agent for and on behalf of the Developer effect and keep in force any such insurance and pay such premium or premiums as may be reasonably necessary for that purpose and from time to time to recover the costs charges and expenses of so doing from the Developer as a civil debt.

20.4 Whenever insurance is arranged in the joint names of the parties or on terms containing provisions for indemnity to principals the party effecting such insurance shall procure that the subrogation rights of the insurers against the other party are waived and that such policy shall permit either the co-insured or the other party to the Agreement as the case may be to be joined to and be a party to any negotiations litigation or arbitration upon the terms of the policy or any claim thereunder.

## **21. Variation to Council Specification & Approved Drawings**

21.1 Save as provided in Clause 21.2 the Developer shall not make any variations (that is to say any alterations or additions or omission of anything from the Council Specification & Approved Drawings nor the use of any materials in substitution for any specified in the Council Specification & Approved Drawings) without the Council's Engineer giving prior written approval thereto (such approval not to be unreasonably withheld or delayed).

21.2 The Developer shall be entitled to make such variations as are insubstantial and immaterial and of a routine nature provided that this entitlement shall not apply in respect of any variation consisting of substitution of materials specified in the Council Specification & Approved Drawings.

21.3 The Developer shall keep the Council's Engineer furnished throughout the execution of the Works with a complete set of the Approved Drawings as amended and revised from time to time.

21.4 The Developer shall take such steps as are necessary effectually to procure for the County Council the full right and entitlement to use the 'as built' drawings on licence without further payment or liability for further payment for the purpose of constructing repairing rectifying adjusting and/or maintaining the Works and will execute all such deeds and documents as may be required to perfect such licence.

## **22. The Developer's Personnel**

22.1 The Developer shall appoint or procure the appointment by the Contractor of one or more competent representatives whose name or names as the case may be shall have been notified previously to the Council's Engineer by the Developer to superintend the carrying out of the Works at the Site. At least

one such representative shall be present at the Site whilst the Works are being carried out and any instructions or orders which the Council's Engineer may give to the said representatives shall be deemed to have been given to the Developer. The Developer shall be at liberty by giving five (5) Business Days prior written notice to the Council's Engineer to substitute for any one or more such representatives such other person or persons identified in such notice and whose qualifications are acceptable to the Council's Engineer acting reasonably.

22.2 The Council's Engineer shall be at liberty to object to and require the Developer to remove from the Works any person employed or engaged by the Developer who in the reasonable opinion of the Council's Engineer misconducts himself or is not sufficiently qualified or capable or is negligent in the performance of his duties or persists in any conduct which is prejudicial to safety or health and such persons shall not be again employed upon the Works without the permission of the Council's Engineer. No compensation shall be payable by the County Council in respect of such objection and removal and the Developer shall indemnify the County Council against any claims losses damages or other liability resulting therefrom.

### **23. Suitability of the Site**

23.2 No warranty is given or deemed to be given that the Site is suitable for the execution of the Works or for the purpose thereof.

### **24. Default and Termination**

24.1. If the Developer shall fail to perform or observe any of its obligations under this Agreement or if the Developer shall become bankrupt or have a receiving order made or make any assignment for the benefit of its creditors or make any voluntary arrangement with its creditors or have an interim receiver appointed by order or have an administration order made against its property or being a Company shall be wound up compulsorily or voluntarily (other than a voluntary liquidation of a solvent company for the purposes of amalgamation or reconstruction) or shall have a receiver appointed or an administration order made then the County Council may without previous notice to the Developer and without prejudice to any of their rights claims or remedies against the Developer for any such non-performance or non-observance and **WITHOUT PREJUDICE** to the rights and remedies of the County Council under the next following clauses terminate this Agreement by notice in writing signed by County Council's solicitor for the time being and delivered to the Developer or sent by post to the Developer's address as stated in this Agreement..

24.2 **WITHOUT PREJUDICE** to Clause 24.1 above if the Developer shall fail to complete or maintain the Works in accordance with this Agreement the County Council may after not less than ten (10) Business Days' notice in writing to the Developer enter on the Site and by its own employees or by contractors or otherwise carry out the Works or any such part or parts thereof as is or are not completed by the Developer in accordance with this Agreement and the Developer shall within ten (10) Business Days of written demand pay to the County Council the total amount of the reasonable costs and expenses incurred or to be incurred by the County Council in completing the Works or if such payment is not made the County Council shall recover the total amount of the reasonable costs from the Developer in accordance with Clause 35.

24.3 In the event of termination under Clause 24.1 or the County Council executing the Works pursuant to Clause 24.2 the Developer shall vacate the Site and remove any temporary buildings plant tools equipment goods and materials belonging to or hired by it and in the event of any failure to so do the County Council may sell or otherwise dispose of such items and from the proceeds of sale of any such items the County Council may retain any costs or expenses incurred in connection with such sale and disposal and may apply any surplus in set off against any costs and expense incurred pursuant to Clause 24.2 before accounting to the Developer.

## **25. Suspension of the Works**

25.1 **WITHOUT PREJUDICE** to Clause 24 above the Council's Engineer shall be entitled without terminating this Agreement to serve a Cessation of Works Notice at any time where:-

- (a) in the Council's Engineer's opinion all or any part of the Works are being carried out in material breach of the terms of this Agreement; or
- (b) the Council's Engineer wishes to suspend the Works for safety or operational reasons.

25.2 The Developer shall forthwith upon receipt of a Cessation of Works Notice stop carrying out any works specified in that notice and shall not recommence those works without the Council's Engineer's prior written approval (which shall not be unreasonably withheld or delayed) or until the Council's Engineer gives further notice to the Developer withdrawing the Cessation of Works Notice **PROVIDED THAT** in respect of any period of cessation of works arising out of a notice served pursuant to Clause 25.1 the period provided for completion of the Works referred to in Clause 7 shall be extended by an equivalent period.

## **26. Decommissioning of the Development Consent Order**

26.1 The Developer will enter into discussions with the County Council within 24 months of the permanent cessation of the commercial operation of the Authorised Development and in good faith enter into an agreement in respect of mitigating the impacts to the Highway from the decommissioning of the Authorised Development provided that where measures mitigating the impacts to the Highway are included within the decommissioning plan approved pursuant to Requirement 28 of Schedule 2 to the Order no such agreement will be required pursuant to this Clause 26.

## **27. Telecommunications Apparatus**

27.1 **EXCEPT AS PROVIDED** in the Council Specification & Approved Drawings the Developer shall not at any time give consent to any telecommunications company for the installation of any services in the Works without the prior written consent in writing of the Council's Engineer such consent not to be unreasonably withheld or delayed.

## **28. Assignment**

28.1 The Developer shall not assign any right, interest or responsibility under this Agreement without the express written consent of the County Council, such consent not to be unreasonably withheld or delayed and shall within twenty (20) Business Days thereof inform the Council's Engineer of any change in the ownership of the Land provided that no such consent shall be required to assign any

right, interest or responsibility under this Agreement where the Developer has transferred the benefit of the Order to the assignee.

**29. Commuted Sum**

29.1 The Developer shall on or before the issue of the Provisional Certificate, pay to the County Council the Commuted Sum for future maintenance of Works.

**30. County Council's Costs**

30.1 The Developer shall pay to the County Council prior to the completion of this Agreement:-

30.1.1 the Agreement Fee;

30.1.2 the Approval Fee;

30.1.3 the Asset Planning Fee;

30.1.4 the Asset Management Fee;

30.1.5 the County Council's reasonable legal and administrative costs incurred in respect of this Agreement.

30.2 The Developer shall pay for or reimburse the Council's Engineer for all costs reasonably and properly incurred in testing of materials and in the carrying out of the Stage 2, 3 and 4 Safety Audits.

**31. Late Payment**

31.1 In the event of any delay in making any payment required under this Agreement, Late Payment Interest shall be payable on the amount payable from the date the relevant payment falls due to the date of actual payment.

**32. Costs of Enforcement**

32.1 The Developer shall pay to the County Council any reasonable and properly incurred engineering and legal fees incurred by it in enforcing this Agreement provided that an estimate of such fees is provided to the Developer in advance of being incurred.

**33. Notices**

33.1 Any notice to be given to the County Council or the Council's Engineer under this Agreement shall be deemed to have been properly served if sent by pre-paid recorded delivery to The Highway Development Manager, Infrastructure & Growth, East Highways Depot, Stirling Way, Witchford CB6 3NR or such other address or officer as the County Council may from time to time nominate for that purpose in writing.

33.2 Any notice to be given to the Developer under this Agreement shall be deemed to have been properly served if sent by pre-paid recorded delivery post to the Developer at the address given in this Agreement or such other address as the Developer may from time to time nominate for that purpose in writing.

**34. Waiver**

34.1 Any failure or delay by any party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement or to exercise any of the rights or powers thereunder shall not be a waiver of it or any of them or the right at any time subsequently to enforce all terms and conditions of this Agreement or exercise such rights and powers or take any other action available to it under this Agreement.

34.2 **WITHOUT PREJUDICE** to the foregoing any express or implied waiver by the County Council of any term of this Agreement or of any breach default omission or non-observance thereof by the Developer shall be without prejudice to the County Council's rights and shall not operate as a continuing waiver nor be deemed to operate as a waiver of any subsequent breach default omission or non-observance.

**35. [The Bond] [Security Deposit]**

35.1 [Prior to or concurrently with completion of this Agreement the Developer shall at no cost whatsoever to the County Council enter into and deliver to the County Council a performance bond in the Bond Sum, in the form set out in the Third Schedule to this Agreement, the terms of which shall be to the reasonable satisfaction of the County Council to the effect that if the Developer shall default in the execution of its obligations to carry out complete and maintain the Works then the County Council may itself carry out complete and/or maintain the Works or rectify any damage associated with the Works (as the case may be) and can call upon the Bond provider to reimburse the lesser of:

- (a) the costs expended in so doing, or
- (b) the Bond Sum

PROVIDED THAT the Bond shall be reduced by fifty per cent (50%) following issue of the Provisional Certificate of Completion referred to in paragraph 12 above AND discharged upon both issue of the Final Certificate referred to in paragraph 15 above and the payment (where relevant) of all accrued costs properly due to the County Council in respect of the works under the terms of this Agreement.

35.2 The Bond provider must be approved by the County Council.]

OR

35.1 [The Developer shall prior to completion of this agreement deposit with the County Council the sum of [ POUNDS (£00.00)]("the Deposit") as security for the performance by the developer of their obligations under this Agreement and IT IS HEREBY DECLARED THAT if the Developer:-

- 35.1.1 carry out, complete and maintain the Works specified herein in a good proper efficient and workmanlike manner in accordance with the Council Specification and Approved Drawings; and
- 35.1.2 make all payments in respect of damages, indemnity, reimbursement or otherwise which shall become payable by the Developer under the terms hereof or in respect of any breach non-observance or non-performance of any of the terms hereof; and
- 35.1.3 in all other respects duly perform their obligations hereunder

the Deposit plus any accrued interest shall be refunded to the Developer **OTHERWISE** the Deposit and interest or any proportion thereof is to be used by the County Council to defray the costs to the County Council arising from the failure of the Developer to fulfil their said obligations or any of them.



- 35.2 In the event of such costs being less than the amount of the Deposit plus the net interest accrued due the balance shall be repaid to the Developer within 28 days of the final costs to the County Council arising from the default of the Developer having been ascertained.
- 35.3 In the event of such costs being greater than the amount of the Deposit plus the net interest accrued due the balance of such costs shall be a debt due to the County Council and payable by the Developer within 28 days of notice to the Developer of the amount of the said balance
- 35.4 Interest on the said deposited sum shall accrue at the rate of 2% below the Bank of England base rate applicable from time to time, or 0%, whichever is the higher, during the period of the Deposit.
- 35.5 Following issue of the Provisional Certificate the County Council shall refund to the Developer so much of the Deposit so that the amount of the Deposit retained by the County Council amounts to [ **THOUSAND POUNDS (£,000)**] (being fifty percent (50%) of the original value referred to in Clause 35.1).
- 35.6 The remainder of the Deposit shall subject to paragraph 35.1 be refunded in full by the County Council to the Developer upon issue of the Final Certificate.]

### 36. **Dispute Provisions**

- 36.1 In the event of a dispute between the parties each agree that:
- (i) They will use their reasonable endeavours to seek to resolve the dispute by entering into negotiation and discussion;
  - (ii) Should such negotiation and discussion not resolve the dispute then the Developer the Contractor and the County Council will use their best endeavours to agree to jointly instruct and enter into mediation on the basis of both parties paying their own costs;
  - (iii) In the event of mediation not resulting in an agreed solution (within a reasonable time of such process), then either one or both parties may refer the dispute to an expert for determination.
    - (a) Such expert shall be an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the President for the time being of the Institution of Civil Engineers, unless otherwise agreed between the parties. Such person shall act as an expert whose decision shall be final and binding on both parties in the absence of any manifest error or fraud;
    - (b) Any expert howsoever appointed shall be subject to the express requirement that a decision shall be reached and communicated to both relevant parties within the minimum practical timescale allowing for the nature and complexity of the dispute and in any event not more than 28 Business Days after the conclusion of any hearing that takes place or 28 Business Days after he has received any file or written representation;
    - (c) The expert shall be required to give notice to each of the said parties requiring them to submit to him within 10 Business Days of notification of his appointment written

submissions and supporting material and the other party will be entitled to make a counter written submission within a further 10 Business Days.

36.2 Nothing in this clause shall prevent either party having recourse to law, including necessity for court action in relation to public safety.

**37. Third Party Rights**

37.1 It is further agreed and declared that nothing herein contained or implicit shall give or be construed as giving any rights privileges powers or enforceability other than to the specific parties executing this document and their successors (if any) and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise therefrom are expressly excluded to the intent that no third party within the meaning of that Act shall have any rights of enforcement in respect of matters contained in this Agreement.

**38. English Law**

38.1 This Agreement shall be governed by and construed in accordance with the law of England and the parties submit to the exclusive jurisdiction of the English Courts.

**39. Local Land Charge**

39.1 This Agreement may be registered in accordance with the Local Land Charges Act 1975 on the local land charges register.

**FIRST SCHEDULE  
Drawings**

Drawing Number	Revision	Description	Date

or any subsequent revisions thereof approved in writing by the Council's Engineer

## SECOND SCHEDULE

### The Commuted Sum

The Commuted Sum is to be calculated on the following basis:

- (a) in accordance with the County Council's Commuted Sums Policy; plus
- (b) a sum representing any additional maintenance burden due to the number and weight of HGVs that is directly attributable to the use of Cromwell Road (between the A47 roundabout and the junction with New Bridge Lane) and New Bridge Lane (between the Cromwell Road junction and the entrance to the Authorised Development) by HGVs for the purposes of the operation of the Authorised Development taking into account:
  - a. the proportion of HGV movements for the purposes of the Authorised Development compared to the existing baseline;
  - b. the condition of Cromwell Road and New Bridge Lane prior to the commencement of the construction of the Authorised Development;
  - c. the Works undertaken pursuant to this Agreement;
  - d. any works to Cromwell Road and/or New Bridge Lane undertaken or contractually committed to be undertaken by the County Council or any third party; and
  - e. any financial contributions paid or contractually committed to be paid by any third party relating to the future maintenance of Cromwell Road and/or New Bridge Lane.

**THIRD SCHEDULE**  
**Form of Bond**

**BOND AGREEMENT**

**THIS GUARANTEE BOND** is made as a deed **BETWEEN** the following parties

**PARTIES**

- (1) **The Developer:** MEDWORTH CHP LIMITED whose registered office is at 40 Devonport EfW CHP Facility, Creek Road, Plymouth, United Kingdom, PL5 1FL (company number 13130012)
- (2) **The Guarantor:** [ ] with company number [ ] and whose office for receipt of any claim is [ ]
- (3) **The Beneficiary:** CAMBRIDGESHIRE COUNTY COUNCIL of New Shire Hall, Emery Crescent, Enterprise Campus, Alconbury Weald, Huntingdon PE28 4YE

**WHEREAS**

- (A) By an agreement under Section 278 of the Highways Act 1980 for the carrying out of works to the highway (the "Works" as defined in that agreement) entered into or to be entered into between the Developer and the Beneficiary (the "S278 Agreement"), the Developer has agreed with the Beneficiary to carry out and complete highways works at the Site upon and subject to the terms and conditions of the S278 Agreement.
- (B) At the request of the Developer, the Guarantor has agreed to guarantee the performance of the obligations of the Developer under the S278 Agreement upon the terms and conditions of this Guarantee Bond.

**NOW THIS DEED WITNESSES** as follows:

1. The Guarantor guarantees to the Beneficiary that in the event of a breach of the S278 Agreement by the Developer, the Guarantor shall subject to the provisions of this Guarantee Bond satisfy and discharge the reasonable damages sustained by the Beneficiary as established and ascertained pursuant to and in accordance with the provisions of or by reference to the S278 Agreement and taking into account all sums due or to become due to the Developer.
2. The maximum aggregate liability of the Guarantor and the Developer under this Guarantee Bond shall not exceed the **Bond Amount** (as set out in the Schedule) but, subject to such limitation and to clause 4, the liability of the Guarantor shall be co-extensive with the liability of the Developer under the S278 Agreement.
3. The Guarantor shall not be discharged or released by any alteration of any of the terms, conditions and/or provisions of the S278 Agreement and/or alterations in the extent or nature of the Works, unless otherwise agreed in writing by the Beneficiary.
4. Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon **Expiry** (as defined in the Schedule) save in respect of any breach of the S278 Agreement which has occurred and in respect of which a claim in writing and containing particulars of such breach has been made upon the Guarantor before Expiry.
5. The Developer having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Beneficiary or the Guarantor against the Developer) to perform and discharge the obligations on its part set out in the S278 Agreement.
6. This Guarantee Bond and the benefits thereof may not be assigned by the Beneficiary without the prior written consent of the Guarantor and the Developer to any party to whom the benefit of the S278 Agreement is assigned although the Beneficiary may assign to a successor organisation without the consent of the Guarantor and the Developer.
7. The parties to this Guarantee Bond do not intend that any of its terms will be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a party to it except pursuant to any assignment in accordance with clause 6 above.
8. This Guarantee Bond shall be governed by and construed in accordance with the laws of England and Wales and only the courts of England and Wales shall have jurisdiction hereunder.

## SCHEDULE TO BOND AGREEMENT

**Bond Amount:** [£ ] [amount in words] for the period until a final certificate for the completion of the Works has been issued pursuant to clause 15 of the s278 Agreement and reduced thereafter until Expiry.

**Expiry:**

1. The Bond Amount shall be progressively reduced as follows:
  - a. Within twenty working days of completion of the Works as provisionally certified under clause 12 of the S278 Agreement, the Beneficiary shall release the Guarantor in writing from its obligations under the terms of this Bond to the extent of fifty per cent of the Bond Amount (“the Revised Bond Amount”) save insofar as any claim or claims have been made against the Guarantor or liability on its part has arisen under this Guarantee Bond before that date in which case the Beneficiary will retain a sufficient sum to ensure it does not have to meet any costs for or arising from the Works.
  - b. Within twenty working days of completion of the Works as certified under clause 15 of the S278 Agreement, the Beneficiary shall release the Guarantor in writing from its obligations under the Revised Bond Amount in full save insofar as any claim or claims have been made against the Guarantor or liability on its part has arisen under this Guarantee Bond before that date in which case the Beneficiary will retain a sufficient sum to ensure it does not have to meet any costs for or arising from the Works.
2. If the Developer at any time:
  - a. Becomes insolvent; or
  - b. Fails to pay an amount certified as due by the Beneficiary within the respective time limit specified in this Agreement; or
  - c. Commits any other breach of its obligations under this Agreement,the Beneficiary may make a demand under the Bond up to (but not exceeding) the Bond Amount.

**IN WITNESS** whereof the Developer, the Guarantor and the Beneficiary have executed and delivered this Guarantee Bond as a Deed this *[Insert date]*

**EXECUTED AND DELIVERED** as a deed by )  
Medworth CHP Limited, by the signature of )  
two directors of the company )

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

**EXECUTED AND DELIVERED** as a deed by )  
**[GUARANTOR]**, by the signature of a director )  
and the company secretary or of two directors )  
of the company )

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Company Secretary

**OR**

**[The Common Seal of [THE GUARANTOR]** )  
was hereunto affixed in the presence of: )



\_\_\_\_\_  
Director

\_\_\_\_\_  
Secretary

Executed as a Deed by affixing the Common Seal of )  
**Cambridgeshire County Council** the presence of )

..... Authorised Signatory

**FORTH SCHEDULE**  
**Form of Contractor Warranty**

DATED

202[ ]

(1) [.....]  
(Contractor)

- and -

(2) CAMBRIDGESHIRE COUNTY COUNCIL  
(Beneficiary)

- and -

(3) MEDWORTH CHP LIMITED  
(Developer)

---

**CONTRACTOR'S DEED OF COLLATERAL  
WARRANTY**

Relating to highway works at

---

THIS DEED OF WARRANTY is made on

202[ ]

**BETWEEN**

- (1) [.....] (Company Registration Number [.....]) whose registered office is at [.....] (the "**Contractor**")
- (2) **CAMBRIDGESHIRE COUNTY COUNCIL** of New Shire Hall, Emery Crescent, Enterprise Campus, Alconbury Weald, Huntingdon PE28 4YE (the "**Beneficiary**")
- (3) **MEDWORTH CHP LIMITED** whose registered office is at 40 Devonport EfW CHP Facility, Creek Road, Plymouth, United Kingdom, PL5 1FL (company number 13130012) (the "**Developer**")

**WHEREAS:**

- (A) By an agreement under Section 278 of the Highways Act 1980 for the carrying out of works to the highway (the "Works" as defined in that agreement) entered into or to be entered into between the Developer and the Beneficiary (the "S278 Agreement"), the Developer has agreed with the Beneficiary to carry out and complete highway works at the Site upon and subject to the terms and conditions of the S278 Agreement.
- (B) By a contract dated the        day of    20[ ] made between the Developer and the Contractor (the "**Contract**") the Developer has appointed the Contractor to carry out and complete the entirety of the Works; and
- (C) The Contractor has agreed to enter into a Warranty in favour of the Beneficiary in the terms contained in this Deed.

**NOW THIS DEED WITNESSETH** as follows:

**1. DUTY OF CARE**

- 1.1 The Contractor warrants to the Beneficiary that the Contractor has carried out or will carry out and complete the Works with all due diligence according to the terms of the Contract and has observed and performed or will observe and perform all of its duties and obligations expressed in or arising out of the Contract and has exercised and will exercise all reasonable skill care and diligence in and about the performance of the Works.
- 1.2 Without prejudice to the provisions of clause 1.1 the Contractor warrants to the Beneficiary that the Contractor has exercised and will exercise all reasonable skill and care in:
  - 1.2.1 the design of the Works insofar as the Works have been or will be designed by the Contractor;

1.2.2 the selection of materials, goods, equipment and plant for the Works insofar as such materials, goods, equipment or plant have been or will be selected by the Contractor; and

1.2.3 the satisfaction of any performance specification or requirement which according to the Contract the Contractor has agreed to satisfy.

1.3 For the purposes of clause 1.2 above, any design or selection which the Contractor has caused or shall cause to be prepared or made by any third person shall be deemed to be a design or selection prepared or made by the Contractor.

## **2. DESIGN DOCUMENTS**

2.1 The Beneficiary shall be entitled on written request without charge to be supplied by the Contractor with full and proper copies of all and any drawings, details, plans, specifications or other documents prepared by or on behalf of the Contractor relating to the Works.

2.2 The Contractor retains all present and future intellectual property rights (whether or not registered or capable of registration) in all design drawings, plans, specifications, reports and other documents created or to be created by or on behalf of the Contractor in the course of and for the purpose of executing the Works but the Contractor grants to the Beneficiary and its nominees a non-exclusive irrevocable royalty free licence to copy and use such design drawings, plans, specifications, reports and other documents and to reproduce the designs contained in them for any purpose. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties.

2.3 The Contractor shall not be liable for any use of such designs or documents for any purpose other than those for which the same are or were prepared.

## **3. NON-DEROGATION**

It is agreed that neither this Deed nor any term of the S278 Agreement or the Contract shall affect or derogate from any duty or liability otherwise owed to the Beneficiary by the Contractor.

## **4. ASSIGNMENT**

4.1 The Beneficiary shall, with the written consent of the Developer, be entitled to assign to any person or persons acquiring the interest of the Beneficiary in the Works or any part thereof all or any of its rights under this Deed and in this Deed references to the Beneficiary shall where the context admits include its permitted assigns.

4.2 The Contractor undertakes with the Beneficiary not to contend that any person to whom this Deed shall be assigned shall be precluded from recovering under this Deed any loss resulting from any breach of this Deed by reason that such person is an assignee and not the original promisee hereunder

## 5. SUBSTITUTION

- 5.1 The Contractor shall not exercise nor seek to exercise any right of termination of the Contract or to treat the Contract as having been repudiated by the Developer or to discontinue the performance of any of the Contractor's obligations in relation to the Works by reason of breach on the part of the Developer (or otherwise) without giving to the Beneficiary at least 21 days' notice, or such notice as otherwise agreed between the Developer and the Contractor and approved by the Beneficiary (such approval not to be unreasonably withheld or delayed) in writing of its intention to do so and specifying the grounds for the proposed termination.
- 5.2 Compliance by the Contractor with the provisions of clause 5.1 shall not be treated as a waiver of any breach on the part of the Developer giving rise to the right of termination or otherwise prevent the Contractor from exercising its rights after the expiry of the notice unless the right of termination shall have ceased under the provisions of clause 5.3.
- 5.3 The right of the Contractor to terminate the Contract or to treat the Contract as having been repudiated or to discontinue the performance of any of its obligations in relation to the Works shall cease if within the period of notice given in accordance with clause 5.1 the Beneficiary shall give notice to the Contractor:
- 5.3.1 requiring the Contractor to continue its obligations under the Contract;
  - 5.3.2 acknowledging that the Beneficiary is assuming all the obligations of the Developer under the Contract; and
  - 5.3.3 undertaking to the Contractor to discharge all payments which may subsequently become due to the Contractor under the terms of the Contract;
- and shall pay to the Contractor any sums which have become due and payable to the Contractor under the Contract but which were then unpaid.
- 5.4 Upon compliance by the Beneficiary with the requirements of clause 5.3 the Contract shall continue in full force and effect as if the right of termination on the part of the Contractor had not arisen and in all respects as if the Contract had been made between the Beneficiary and the Contractor to the exclusion of the Developer.
- 5.5 The Contractor acting in accordance with the provisions of this clause 5 shall not by so doing incur any liability to the Developer.
- 5.6 Unless and until the Beneficiary has given notice under this clause 5:
- 5.6.1 the Beneficiary has no liability to the Contractor in respect of payments under the Contract; and

5.6.2 the Beneficiary has no authority to issue any direction or instruction to the Contractor in relation to the performance of the Contractor's duties under the Contract save to the extent (if any) provided for in the S278 Agreement.

**6. DEEDS OF WARRANTY**

The Contractor agrees that it will at the request of the Beneficiary made at any time or times execute and deliver to the Beneficiary a deed or deeds in the terms hereof (mutatis mutandis but excluding clauses 5 and 6) in favour of any person or persons acquiring from the Beneficiary any freehold or leasehold interest in the site of the Works or any part thereof.

**7. EXPIRY OF DEED**

Upon the issuance of the Final Certificate under paragraph 15 of the S278 Agreement this Deed shall cease to have effect save in relation to any claims in respect of which proceedings shall then have been commenced.

**8. CONSENT OF DEVELOPER**

The Developer consents to the terms of clause 5 of this Deed.

**9. GOVERNING LAW**

The law of this Deed shall be English law and the English courts shall have jurisdiction with regard to all matters arising therefrom.

**EXECUTED** and delivered as a Deed by the parties hereto on the day and year first before written

**EXECUTED** as a deed by **Medworth CHP** )  
**Limited** acting by two directors )  
)  
)

Director

Director

**EXECUTED** as a deed by **Cambridgeshire** )  
**County Council** by the affixing of its Common )  
Seal in the presence of: )  
)

Authorised Signatory

**EXECUTED** as a deed by )  
[.....] by )  
the affixing of its Common Seal in the presence )  
of: )

Director

Director/Secretary



**FIFTH SCHEDULE**  
**Form of Designer Warranty**

DATED

202[ ]

(1) [.....]  
(Designer)

- and -

(2) CAMBRIDGESHIRE COUNTY COUNCIL  
(Beneficiary)

---

**DESIGNER'S DEED OF COLLATERAL  
WARRANTY**

Relating to highway works at

.....

---

**BETWEEN**

- (1) [.....] (Company Registration Number [.....]) whose registered office is at [.....] (the "**Designer**")
- (2) **CAMBRIDGESHIRE COUNTY COUNCIL** of New Shire Hall, Emery Crescent, Enterprise Campus, Alconbury Weald, Huntingdon PE28 4YE (the "**Beneficiary**").

**WHEREAS:**

- (A) By an agreement under Section 278 of the Highways Act 1980 for the carrying out of works to the highway (the "Works" as defined in that agreement) entered into or to be entered into between the Developer and the Beneficiary (the "S278 Agreement"), the Developer has agreed with the Beneficiary to carry out and complete highway works at the Site upon and subject to the terms and conditions of the S278 Agreement.
- (B) By a consultancy contract dated the        day of                                        202[ ] (the "**Design Contract**") made between the Developer and the Designer the Developer has appointed the Designer to carry out and complete the entirety of the design of the Works (the "**Design**"); and
- (C) The Designer has agreed to enter into a Warranty in favour of the Beneficiary in the terms contained in this Deed.

**NOW THIS DEED WITNESSETH** as follows:

**1. DUTY OF CARE**

- 1.1 The Designer warrants to the Beneficiary that the Designer has carried out or will carry out and complete the Design using the reasonable skill and care normally used by professional consulting engineers carrying out design work similar to the design of the Works.
- 1.2 Without prejudice to the provisions of clause 1.1 the Designer warrants to the Beneficiary that the Designer has exercised and will exercise all such reasonable skill and care in:
- 1.2.1 the selection of materials, goods, equipment and plant for the Works insofar as such materials, goods, equipment or plant have been or will be selected by the Designer; and
  - 1.2.2 the satisfaction of any performance specification or requirement which according to the Design Contract the Designer has agreed to satisfy.

- 1.3 For the purposes of clause 1.2 above, any design or selection which the Designer has caused or shall cause to be prepared or made by any third person shall be deemed to be a design or selection prepared or made by the Designer.

## 2. DESIGN DOCUMENTS

- 2.1 The Beneficiary shall be entitled on written request without charge to be supplied by the Designer with full and proper copies of all and any drawings, details, plans, specifications or other documents prepared by or on behalf of the Designer relating to the Works.
- 2.2 The Designer retains all present and future intellectual property rights (whether or not registered or capable of registration) in all design drawings, plans, specifications, reports and other documents created or to be created by or on behalf of the Designer in all relating to the Works but the Designer grants to the Beneficiary and its nominees a non-exclusive irrevocable royalty free licence to copy and use such design drawings, plans, specifications, reports and other documents and to reproduce the designs contained in them for any purpose. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties.
- 2.3 The Designer shall not be liable for any use of such designs or documents for any purpose other than those for which the same are or were prepared.

## 3. NON-DEROGATION

It is agreed that neither this Deed nor any term of the S278 Agreement or the Design Contract shall affect or derogate from any duty or liability otherwise owed to the Beneficiary by the Designer.

## 4. ASSIGNMENT

- 4.1 The Beneficiary shall be entitled to assign to any person or persons acquiring the interest of the Beneficiary in the Works or any part thereof all or any of its rights under this Deed and in this Deed references to the Beneficiary shall where the context admits include its permitted assigns.
- 4.2 The Designer undertakes with the Beneficiary not to contend that any person to whom this Deed shall be assigned shall be precluded from recovering under this Deed any loss resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not the original promisee hereunder or by reason that the Beneficiary named herein or any intermediate owner of the Beneficiary's interest in the Works escaped loss resulting from such breach by reason of the disposal of its interest in the same.

## 5. INSURANCE

The Designer shall use all reasonable endeavours to maintain professional indemnity insurance in the sum of £10,000,000.00 (*ten million*) for each claim or series of claims arising from the same original cause, subject to such insurance being available at commercially reasonable rates.

6. **EXPIRY OF DEED**

Upon the issuance of the Final Certificate under paragraph 15 of the S278 Agreement this Deed shall cease to have effect save in relation to any claims in respect of which proceedings shall then have been commenced.

7. **GOVERNING LAW**

The law of this Deed shall be English law and the English courts shall have jurisdiction with regard to all matters arising therefrom.

**EXECUTED** and delivered as a Deed by the parties hereto on the day and year first before written

**EXECUTED** as a deed by **Cambridgeshire** )  
**County Council** by the affixing of its Common )  
Seal in the presence of: )  
)

Authorised Signatory

**EXECUTED** as a deed by )  
[.....] by )  
the affixing of its Common Seal in the presence )  
of: )

Director

Director/Secretary

**IN WITNESS** whereof this Agreement has been executed as a Deed but remains undelivered until the day and year first before written

**THE COMMON SEAL** of **CAMBRIDGESHIRE** )  
**COUNTY COUNCIL** was hereunto affixed in the )  
presence of:- )

Authorised Signatory

Executed as a Deed by **MEDWORTH CHP LIMITED** )  
acting by two directors:- )

Director

Director

## SCHEDULE 4

### PERMISSIVE PATH AGREEMENT

#### PERMISSIVE PATH AGREEMENT

PPA [     ]

**THIS LICENCE** is made the            day of            Two thousand and            BETWEEN            (hereinafter called 'the Licensor') of the one part and CAMBRIDGESHIRE COUNTY COUNCIL (hereinafter called 'the Licensee') of the other part.

#### WHEREAS:

- (1) The Licensor owns land in the Parish of [            ] which area is shown for the purposes of identification only on the [plan/map] annexed hereto and thereon coloured [     ] and has decided to permit the public to [walk and run with usual accompaniments, bicycle and ride horses] (delete as necessary) along the Path described below across their land at the discretion of the Licensor but not as a right.
- (2) The Licensor wishes to give statutory notice to the Licensee as Highway Authority that the way is not dedicated as a highway.

#### NOW IT IS HERE AGREED as follows:

1. **THE** Licensor hereby declares his/her intent to permit the public to walk, run, bicycle and ride horses (delete as necessary) over a [     ] m wide strip of land in the parish of [            ] and which area is shown for the purposes of identification only on the [plan/map] annexed hereto and thereon marked [            ], (hereinafter called 'the said Path'), until such time as the Licensor decides to close the Path to the public which decision will be communicated in writing to the Licensee by not less than three months' notice.
2. **THE** Licensor hereby reserves the right to withdraw permission to [walk, run, bicycle or ride horses (delete as necessary)] on the said Path at such times as are expedient due to agricultural, ecological or maintenance operations which shall be communicated through due notice of no less than 7 calendar days to the Licensee in writing and to the public through a site notice.
3. **THE** Licensor hereby gives notice and states to the County Council pursuant to Section 31 of the Highways Act 1980 that the said Path is not dedicated as public highway.
4. **THE** Licensor hereby agrees to the said Path being shown on the Licensee's official website in pursuit of improving information and access opportunities for the public in the locality.

5. THIS Agreement shall be referenced PPA [ ].

**SCHEDULE**

1. [Detailed description/Map- *insert as appropriate*] of [permissive footpath/bridleway/restricted byway (delete as necessary)].

As witness the hands of the parties hereto the day and year first before written.

Signed: (for the landowner)

Signed: (for Cambridgeshire County Council)

Date:

Date:

Address:

Highway Records & Definitive Map Team  
Highways Maintenance  
Box No. STA 2101  
Stanton Way Highway Depot  
Huntingdon  
PE29 6PY

.....  
.....  
.....  
.....



**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 **CAMBRIDGESHIRE COUNTY COUNCIL** was hereunto affixed in the presence of:



)  
)  
)  
Authorized signatory



**EXECUTED** as a **DEED** by **MEDWORTH CHP LIMITED**

)  
)

acting by two directors

Director

Director

**EXECUTED** as a **DEED** by **ALBORO DEVELOPMENTS LIMITED**

)  
)

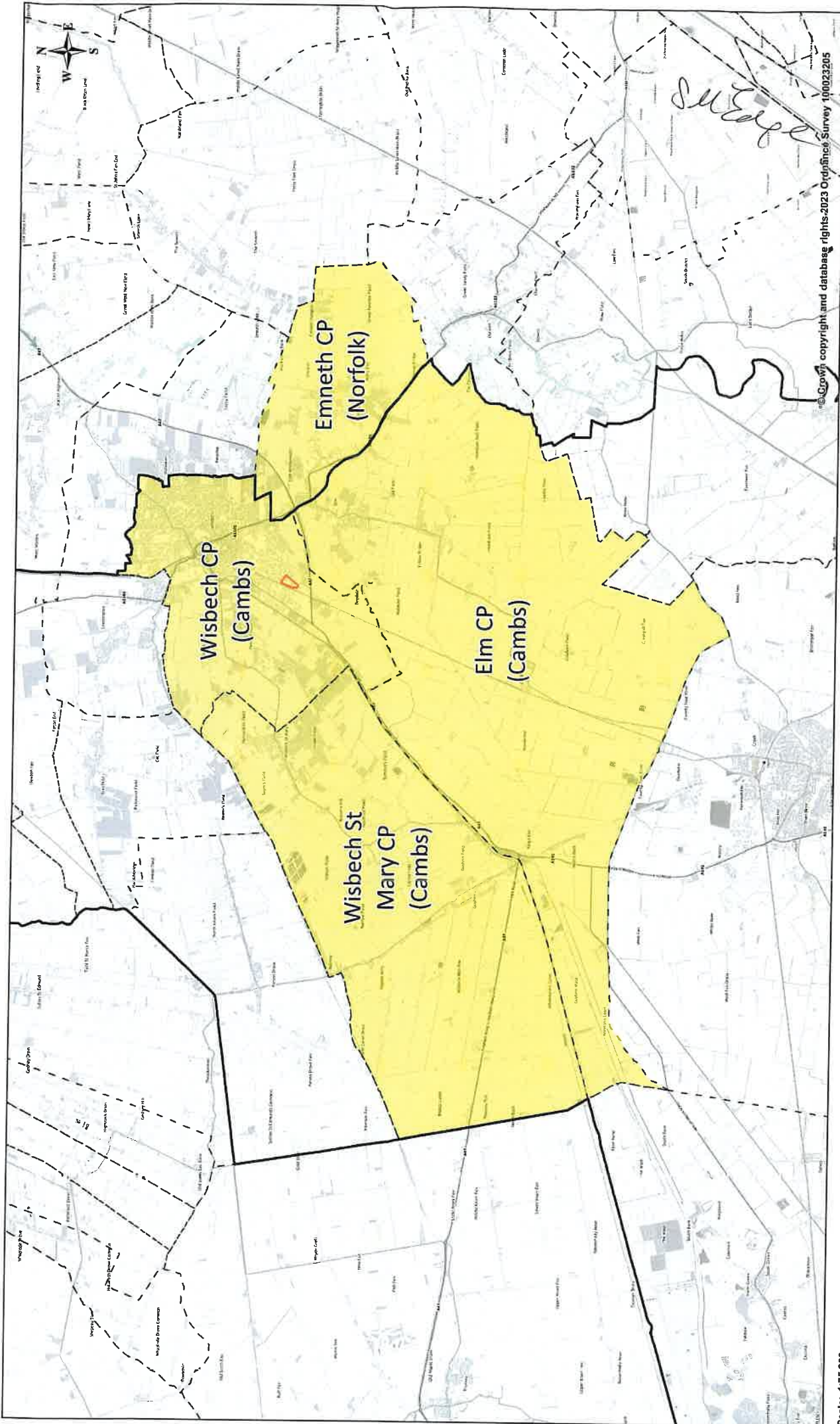
acting by two directors or one director and the company secretary:

Director

Director / Secretary

**Annex 1**  
**Plan**

# PROW and Local Road Connectivity Enhancements Area



*SW Edge*

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Scale: 1:75,000  
Date: 23/06/2023  
By: CCC

### Legend

- Parish / County Boundary
- EMV CHP Facility Site
- PROW and Local Road Connectivity Enhancements Area

PROW and Local Road Connectivity Enhancements Area