

# FREETHS

- (1) THE FIRST OWNER (HUSBANDS) OF FAYE ROSE, FIDELITY INVESTMENTS LTD, 100 THE PETER RAY, 682A, 21-41 THE SPIN, BARNLEY, SOUTH YORKSHIRE, WF10 1AA (the "First Owner")
- (2) THE SECOND OWNER (WIFE) OF FAYE ROSE, FIDELITY INVESTMENTS LTD, 100 THE PETER RAY, 682A, 21-41 THE SPIN, BARNLEY, SOUTH YORKSHIRE, WF10 1AA (the "Second Owner")
- (3) BARNESLEY METROPOLITAN BOROUGH COUNCIL, 100 THE PETER RAY, 682A, 21-41 THE SPIN, BARNLEY, SOUTH YORKSHIRE, WF10 1AA (the "Licensor")

23rd March 2022

## OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION
- (1) [REDACTED]
- 1.1 The meaning of "Licence" shall be as defined in clause 2.1
- (2) [REDACTED]
- (3) BARNESLEY METROPOLITAN BOROUGH COUNCIL shall grant a Licence pursuant to the Planning Permission for up to 118 dwellings and associated works.
- 2.1 Licence has the meaning given to it in clause 6.2
- 3.1 Relating to land known as land on the south side of Hay Green Lane, Birdwell, Barnsley registered with title number SYK531126
- 4.1 a Repetition
- 5.1 With the exception of Development and the carrying out of the works, the Licence shall be subject to the provisions of the relevant planning permission.
- 6.1 any and all relevant notices, including notices relating to the carrying out of the works, shall be served on the Licensor.

THIS AGREEMENT is made on 23<sup>rd</sup> March, 2022

**BETWEEN**

- (1) [REDACTED] (the "First Owner"),
- (2) [REDACTED] (the "Second Owner"); and  
(the First Owner and the Second Owner are together referred to as "the Owner")
- (3) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall, Church Street, Barnsley, South Yorkshire, S70 2TA (the "Licensee").

**OPERATIVE PROVISIONS**

**1. DEFINITIONS AND INTERPRETATION**

1.1 The following words and expressions shall have the following meanings in this Agreement:

**Development** means the residential development of the Site pursuant to the Planning Permission for up to 118 dwellings and associated works

**Expert** has the meaning given to it in **clause 6.2**

**First Owner's Property** the land known as land on the south side of Hay Green Lane, Birdwell, Barnsley registered with Title Number SYK631129

**Licence Fee** a Peppercorn

**Licence Period** from the commencement of Development until the earlier of the date the Works have been completed or two years from the date of this agreement

**Necessary Consents** any and all licences, certificates, consents, permissions (including without limitation planning permissions), approvals and permits needed, whether of a public or private nature, to undertake properly the Works

including without limitation consent required from any owner of any property adjoining or neighbouring the Owner's Property

<b>Owner's Property</b>	means together the First Owner's Property and the Second Owner's Property
<b>Plan 1</b>	the plan annexed to this Agreement and marked 'Plan 1'
<b>Plan 2</b>	the plan annexed to this Agreement and marked 'Plan 2'
<b>Planning Application</b>	outline planning application with all matters reserved apart from means of access for the Development validated by the Licensee on 30 June 2020 and carrying reference number 2020/0577
<b>Planning Permission</b>	means the planning permission to be issued pursuant to the Planning Application
<b>Premises</b>	that part of the Owner's Property which is indicatively shown coloured green on Plan 1 or such other areas as the Owner designates and the Licensee agrees
<b>Public Path Creation Agreement</b>	means an agreement of even date herewith between the Owner and the Licensee and made under section 25 of the Highways Act 1980 in respect of the creation of a footpath/bridleway
<b>Regulations</b>	the regulations relating to the use and conduct of the Premises set out in <b>clause 3</b> subject to any variations to these regulations that the parties hereto may mutually agree
<b>Second Owner's Property</b>	the land known as land at and land lying to the north of Dearne Valley Parkway, Wombwell, Barnsley registered with Title Numbers SYK635907 and SYK540835

**Site** means the land shown edged red on Plan 2

**Works**

- (a) the works to be carried out in accordance with the **Schedule**; and
- (b) such other works the specification of which the Owner may approve from time to time

1.2 Words and expressions set out in **clause 1.1** above are defined terms in this Agreement.

1.3 In this Agreement the clause headings do not affect its interpretation and references to clauses and schedules are to clauses of and schedules to this Agreement.

1.4 An obligation on the Licensee not to do or omit to do any act or thing includes an obligation not to permit or allow that act or thing to be done or omitted, as the case may be.

1.5 The obligations of the Licensee bind the Licensee's workmen, contractors, agents and employees and the Licensee is to be liable for any breach of the terms of this Agreement by them.

1.6 Where two or more persons form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually.

1.7 Any notice under this Agreement is to be given in accordance with section 196 Law of Property Act 1925.

1.8 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.





## 2. **OCCUPATION BY THE LICENSEE**

2.1 The Owner permits the Licensee, its workmen, contractors, agents and employees the right with or without vehicles, plant and equipment to enter onto the Premises at all times for the purposes of undertaking (in accordance with the Licensee's obligations under this Agreement) the Works during the Licence Period.

Hay Green Cottage

Post

Legend

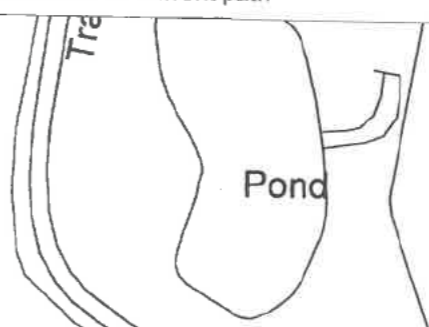
-  Proposed Bridleway (4m Wide) = 0.76 acres
-  Footpath to be dedicated
-  Licence Area for Construction Work (1m Wide)
-  Existing Footpath
- A - B 4m measured from fence line (to East)
- B - C 4m measured from a point 0.5m from fence line (to West)
- C - D 4m measured from fence line (to Southwest)
- D - E 4m
- D Path to run to the East of the manhole
- E - F 2m measured from centre line of current path
- E - G 4m measured from centre line of current path

# A (Access Control)

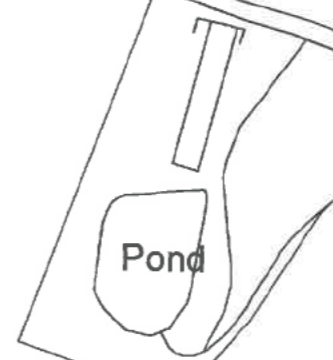
The Cottage

Track

## B



Pond



Pond

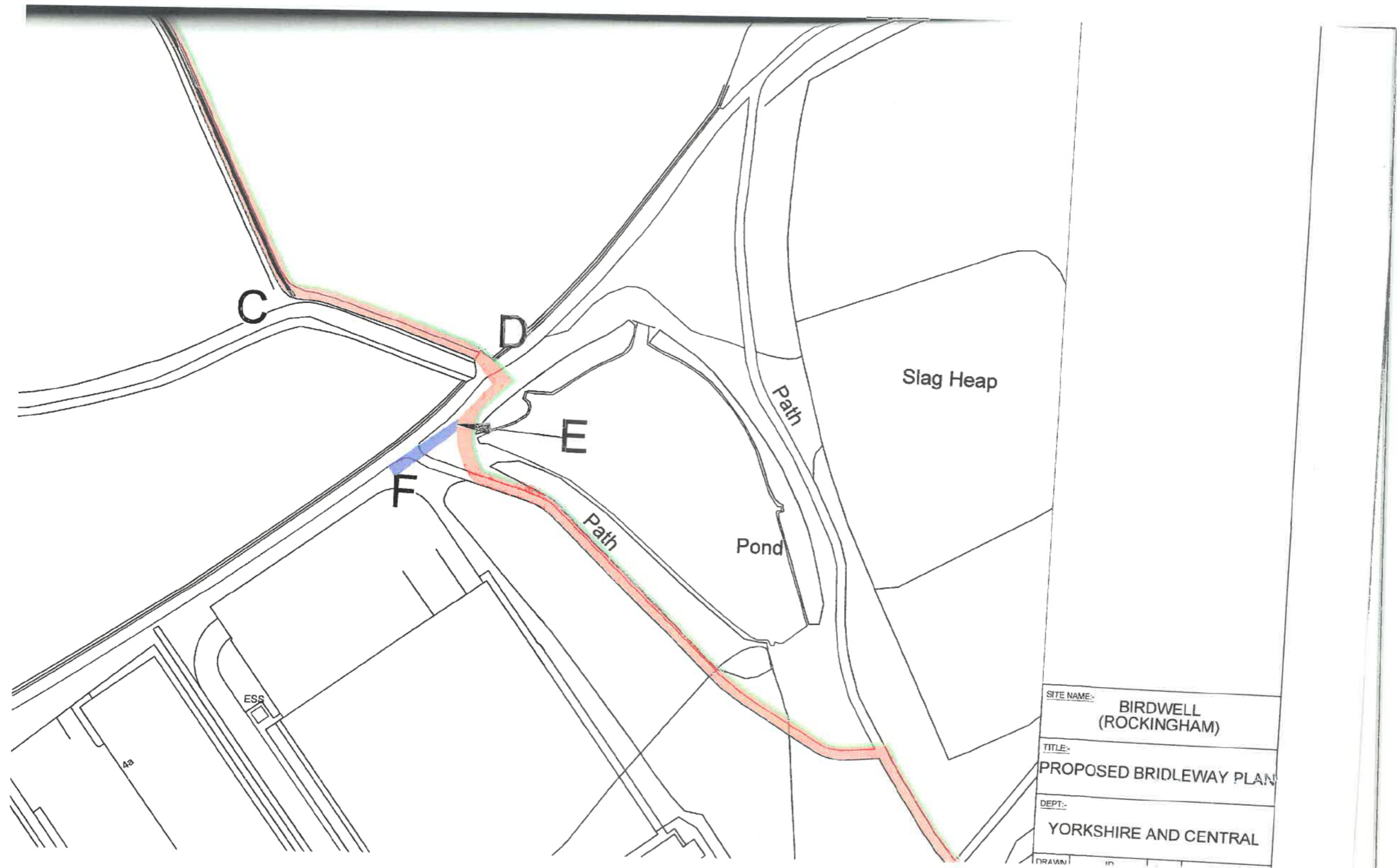
Path



*M.P. Handscomb*

*M.P. Handscomb*





SITE NAME:-	BIRDWELL (ROCKINGHAM)
TITLE:-	PROPOSED BRIDLEWAY PLAN
DEPT:-	YORKSHIRE AND CENTRAL
DRAWN	



Hay Green Plantation

Haywell Primary School

HAY GREEN LANE

HAY GREEN COURT

2.2 This Licence is granted to the Licensee to facilitate the Works which are to be carried out by the Licensee pursuant to the Public Path Creation Agreement an agreement of even date herewith between the Owner and the Licensee and made under section 25 of the Highways Act

2.3 Prior to carrying out the Works, the parties will agree a risk assessment method statement to:

2.3.1 manage traffic using the access to the Premises; and

2.3.2 manage health and safety issues and any other measures reasonably required by the Owner; and

the Licensee shall not carry out any Works until the Owner has reviewed and approved the risk assessment method statement for the Works (approval not to be unreasonably withheld or delayed) and the Licensee shall carry out the Works only in accordance with such risk assessment method statement.

2.4 The Licensee acknowledges that:

2.4.1 the Owner is entitled to control and possession of the Premises and the Licensee has no right to exclude the Owner from the Premises, subject to the Owner causing as little interference as reasonably practicable in the circumstances with the Licensee's undertaking of the Works; and

2.4.2 nothing in this Agreement is intended to create a letting of the Premises or to confer any rights on the Licensee, whether under common law or any enactment, greater than a bare licence on the terms of this Agreement.

2.5 The Owner and all those authorised by it may pass over the Premises at all times and on reasonable notice.

2.6 On reasonable notice, the Owner and all those authorised by it may carry out any works required by the Owner on the Premises.

2.7 This Agreement may be terminated by serving written notice in the following circumstances:

2.7.1 the Licensee serves one month's written notice of termination on the Owner;

- 2.7.2 if the Licensee breaches any of the terms of this Agreement and on being notified of the breach has not remedied the breach within a reasonable period of time in which case the Owner may serve written notice of immediate termination on the Licensee;
- 2.7.3 if the Owner parts with its interest in the Premises or any part of it.
- 2.8 This Agreement is personal to the Licensee and is not assignable and the rights in this Agreement may only be exercised by the Licensee, its workmen, contractors, agents and employees but not further or otherwise.
- 2.9 The parties acknowledge and agree that the Owner is not liable for:
- 2.9.1 the death of, or injury to, the Licensee or its workmen, contractors, agents and/or employees;
- 2.9.2 damage to or theft of any property of the Licensee or that of the Licensee's workmen, contractors, agents and/or employees;
- 2.9.3 any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by the Licensee or the Licensee's workmen, contractors, agents and/or employees in the exercise of any of the rights granted under this Agreement.
- 2.10 The Licensee acknowledges that it is permitted to have access to the Premises for the purpose only of carrying out the Works and no other works or activities will be carried out on or to the Premises.
- 2.11 The Licensee acknowledges that the Works shall be undertaken at the Licensee's own risk and the Owner gives no warranty that the Premises are fit or indeed suitable for the Works.
3. **LICENSEE'S COVENANTS**
- 3.1 In consideration of the rights granted by the Owner, the Licensee covenants with the Owner as follows:
- Undertaking the Works**
- 3.1.1 to pay the Licence Fee to the Owner promptly following completion of this Agreement and in any event before gaining access to the Premises;

3.1.2 to undertake or to procure the undertaking of the Works:

3.1.2.1 in a good and workmanlike manner using good quality materials of their various kinds;

3.1.2.2 in accordance with industry practice;

3.1.2.3 with all due diligence and speed;

3.1.2.4 in accordance with:

(a) all statutes, regulations and bye-laws and the recommendations of any government and/or regulatory body;

(b) the requirements and recommendations of the Owner's insurers;

3.1.2.5 in accordance with all Necessary Consents; and

3.1.2.6 to the Owner's reasonable satisfaction;

3.1.3 to ensure that the Premises are secured from unauthorised intrusion 24 hours per day;

## 3.2 Use of the Premises

3.2.1 not to use the Premises other than for undertaking the Works;

3.2.2 not at any time to obstruct the Owner or its employees, contractors or agents in their use, access to and from, and occupation of the Owner's Property or any adjoining land or interfere with the operational use or occupation of the Owner's Property or any adjoining land save as reasonably necessary to undertake the Works;

3.2.3 not to do or permit to be done on the Premises anything which is illegal or which causes or may cause a nuisance, inconvenience, disturbance to the Owner or any tenants or occupiers of the Owner's Property or neighbouring property or which causes damage to the Owner's Property or any neighbouring property or which places the Owner in breach of any of the Owner's obligations arising in respect of the Premises;

- 3.2.4 to comply with all statutes, regulations and bye-laws, the Necessary Consents and the recommendations of any government and/or regulatory body affecting the Premises;
- 3.2.5 not without the prior written consent of the Owner to enter upon any part of the Owner's Property which is not included within the Premises;
- 3.2.6 not to:
  - 3.2.6.1 infringe, interrupt or destroy any right or easement serving the Owner's Property (including without limitation the Premises);
  - 3.2.6.2 interrupt any service to or from or within any adjoining or neighbouring property;
  - 3.2.6.3 damage or disturb any service media within on under or serving the Owner's Property (including without limitation the Premises) except for works forming part of the Works to gas, electricity, water or telephone services to the Owner's Property (including without limitation the Premises);
  - 3.2.6.4 display any signs adverts or notices on the Owner's Property (including the Premises) unless permitted to do so in writing by the Owner or except as may be required by any statute, regulation or bye-law;
  - 3.2.6.5 erect any structure on the Owner's Property save for those on the Premises reasonably required for the undertaking of the Works;
  - 3.2.6.6 do, omit to do anything or permit anything to be done which has the effect of making the Owner's insurance policy for the Owner's Property void or voidable or which increases the insurance premium payable for that insurance; or
  - 3.2.6.7 (excluding materials reasonably needed to carry out the Works including fuel for plant and machinery) bring any hazardous materials or contaminants onto the Premises;

3.2.7 to promptly make good to the Owner's reasonable satisfaction any damage caused to the Premises and/or Owner's Property. Prior to carrying out such remedial works, the Licensee will notify the Owner in writing detailing its proposals for such remedial works for the Owner's approval. Should the Owner not approve such proposals, it will notify the Licensee in writing accordingly within 28 working days after receipt of the Licensee's notice and the matter will be referred to an Expert for determination in accordance with the provisions of **clause 6**;

3.2.8 if the Owner does not notify the Licensee pursuant to clause 3.2.7 within the timescale prescribed then the Licensee shall be entitled to deem its proposals as accepted by the Owner.

### 3.3 Insurance

3.3.1 to maintain adequate insurances (as reasonably determined by the Owner) in respect of public or third-party and employer's liability in connection with the Licensee's use of the Premises. The Licensee is to provide details of such insurance to the Owner on reasonable demand together with evidence that the insurance remains in force;

### 3.4 Regulations, consents and notices

3.4.1 prior to the commencement of the Works, to obtain (at its own cost) all Necessary Consents and to provide copies of all such Necessary Consents to the Owner;

3.4.2 to comply with any proper regulations made by the Owner and communicated to the Licensee governing the use and occupation of the Premises or the exercise of the rights granted to the Licensee by this Agreement; and

3.4.3 if the Licensee receives any notice, order or direction from the local or any other competent authority, to provide a copy to the Owner as soon as possible after receipt.

3.5 The Licensee shall be responsible for the payment of all costs of electricity, gas, water, drainage, telephone services, business rates and council tax resulting from the undertaking of the Works and shall indemnify the Owner on a full indemnity basis the Owner in respect of the same.

4. **REINSTATEMENT WORKS AND RETURN OF THE PREMISES**

4.1 When the Works have been completed, the Licensee shall, as soon as reasonably practicable, notify the Owner in writing of the completion of the Works and allow the Owner to inspect them to satisfy itself that they have been carried out and completed in accordance with the terms of this Agreement.

4.2 Within 14 days prior to the end of the Licence Period or earlier termination of this Agreement, the Licensee shall restore the Premises to a state of repair and condition at least equivalent to their state of repair and condition on the date of this Agreement:

4.2.1 in a good and workmanlike manner using good quality materials of their various kinds;

4.2.2 in accordance with industry practice;

4.2.3 with all due diligence and speed;

4.2.4 without causing any nuisance, inconvenience or disturbance to the Owner or any tenants or occupiers of the Owner's Property or neighbouring property or the users of an adopted highway or causing damage to the Owner's Property or any neighbouring property or any adopted highway or placing the Owner in breach of any of the Owner's obligations arising in respect of the Premises;

4.2.5 in accordance with:

4.2.5.1 all statutes, regulations and bye-laws and the recommendations of any government and/or regulatory body;

4.2.5.2 the requirements and recommendations of the Owner's insurers;

4.2.5.3 all Necessary Consents; and

4.2.5.4 to the Owner's reasonable satisfaction,

whereupon the Licensee shall return the Premises to the Owner with vacant possession.

4.3 If the Licensee fails to leave the Premises in the condition as required by this **clause 4** within the requisite timescales, the Owner reserves the right to have such remedial works carried out as are required to achieve the standards referred to in this **clause 4** and shall be entitled to recover the costs of such works from the Licensee on demand.

4.4 If the Licensee leaves any goods or materials on the Premises after the end of the Licence Period, the Owner may remove them from the Premises, store and then dispose of them if they are not claimed by the Licensee within one week after the end of the Licence Period. The costs of removal, storage and disposal are to be paid by the Licensee to the Owner on demand with credit being given for any sums received by the Owner on their disposal.

5. **INDEMNITY**

5.1 The Licensee shall fully indemnify on a continuing basis the Owner and its successors in title against all losses, actions, proceedings, liabilities, claims, demands, damages, costs or losses (including without limitation any direct, indirect or consequential losses, loss of profit, loss of reputation and all interests, penalties, legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Owner arising from:

5.1.1 the Licensee's undertaking of the Works and/or occupation of the Premises;

5.1.2 any failure by the Licensee to comply with its obligations within this Agreement; and

5.1.3 enforcement of the Agreement.

5.2 If a payment due from the Licensee under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Owner shall be entitled to receive from the Licensee such amounts as shall ensure that the net receipt, after tax, to the Owner in respect of the payment is the same as it would have been were the payment not subject to tax.

5.3 Liability under this indemnity is unlimited.

6. **DISPUTES**

- 6.1 The parties shall use reasonable endeavours to resolve any dispute arising in connection with this Agreement.
- 6.2 In the event that the parties are unable to resolve such dispute then the matter will be referred at any time to a person with appropriate professional qualifications and experience in such matters (the "**Expert**") appointed jointly by the parties or in default of agreement by the parties the Expert shall be appointed by the President of the Royal Institution of Chartered Surveyors on application of any party and the following provisions shall apply to the Expert:
- 6.2.1 the Expert shall act as an expert and not as an arbitrator;
  - 6.2.2 the decision of the Expert shall be final and binding upon the parties save in the case of manifest error or a mistake in the law;
  - 6.2.3 the charges and expenses of the Expert shall be borne equally between the parties or in such other proportions as the Expert may direct;
  - 6.2.4 the Expert shall give the parties an opportunity to make representations to him before making his decision;
  - 6.2.5 the Expert shall be entitled to obtain opinions from others if he so wishes;
  - 6.2.6 the Expert shall make his decision on matters of valuation within the range of any representations made by the parties;
  - 6.2.7 the Expert shall give reasons for his decision; and
  - 6.2.8 the Expert shall comply with any time limits or other directions agreed by both parties on or before his appointment.

7. **VALUE ADDED TAX**

Any sums payable under this Agreement are exclusive of VAT. Where, under the terms of this Agreement, a supply is made that is subject to VAT, the person receiving the supply is to pay the VAT to the person making the supply and a valid VAT invoice is to be issued by the person making the supply.

8. **GENERAL**

8.1 No failure or delay by either party in exercising any right or remedy under this Agreement shall constitute a waiver of such right or remedy and no waiver by the Owner of any breach by the Licensee of its undertakings herein shall be deemed to be a waiver of any other breach. No single or partial exercise by either party of any right or remedy under this Agreement shall preclude or restrict the further exercise of any such right or remedy.

8.2 Should any provision of this Agreement be prohibited or unenforceable in any jurisdiction, the prohibition or unenforceability thereof will not invalidate the remaining provisions or affect the validity or unenforceability of the provisions in any other jurisdiction.

8.3 This Agreement shall be read and construed in accordance with English law and the Licensee agrees to submit to the exclusive jurisdiction of the English courts.

8.4 This Agreement may be executed in any number of counterparts, each of which, when executed, shall be an original, and all the counterparts together shall constitute one and the same instrument.

9. **OWNER'S OBLIGATIONS**

9.1 To enable the Licensee to comply with its relevant obligations contained in this Agreement the Owner will provide to the Licensee as soon as reasonably practicable following written demand a copy of its insurer's requirements and recommendations which may be relevant to the Works.

## THE SCHEDULE

### WORKS

Access with vehicles, materials and equipment to establish a compound within the Premises, and for the purposes of creating an all weather bridleway from Hay Green lane to the junction 36 employment zone.

Works include:

- Cutting back of hedgeline
- Removal of some sections of hedge between fields
- Scrapping and removal of existing natural surface
- Laying and compacting of subbase
- Laying and curing of Flexipave surface
- Appropriate signage for rights of way status
- Access control changes at the Hay Green Lane end to be confirmed with owner

Signed by

[Redacted]

[Redacted]

Signed by

[Redacted]

[Redacted]

Signed by  
for and on behalf of the

[Redacted]

[Redacted]

Authorised Signatory

Signed by  
for and on behalf of the **LICENSEE:**

[Redacted]

Authorised Signatory

[Large redacted area containing faint horizontal lines, likely a signature strip or table]