

DATED

2011

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NATURAL ENGLAND  
-and-  
HAMPSHIRE COUNTY COUNCIL  
-and-  
BRACKNELL FOREST BOROUGH COUNCIL  
-and-  
ELMBRIDGE BOROUGH COUNCIL  
-and-  
GUILDFORD BOROUGH COUNCIL  
-and-  
HART DISTRICT COUNCIL  
-and-  
ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD  
-and-  
RUNNYMEDE BOROUGH COUNCIL  
-and-  
RUSHMOOR BOROUGH COUNCIL  
-and-  
SURREY HEATH BOROUGH COUNCIL  
-and-  
WAVERLEY BOROUGH COUNCIL  
-and-  
WOKING BOROUGH COUNCIL  
-and-  
WOKINGHAM BOROUGH COUNCIL

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**AGREEMENT**

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**THIS AGREEMENT** is made the

day of

2011

**BETWEEN:**

- (1) NATURAL ENGLAND** of 1 East Parade, Sheffield S1 2EZ; and
- (2) HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire, SO23 8UB ("the Administrative Body"); and
- (3) BRACKNELL FOREST BOROUGH COUNCIL** of Town Square, Bracknell, Berkshire RG12 1AQ; and
- (4) ELMBRIDGE BOROUGH COUNCIL** of Civic Centre, High Street, Esher, Surrey, KT10 9SD ; and
- (5) GUILDFORD BOROUGH COUNCIL** of Millmead House, Millmead, Guildford, Surrey GU2 4BB ; and
- (6) HART DISTRICT COUNCIL** of Civic Offices, Harlington Way, Fleet, Hampshire GU51 4AE; and
- (7) ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD** of Town Hall, St Ives Road, Maidenhead, Berkshire SL6 1RF; and
- (8) RUNNYMEDE BOROUGH COUNCIL** of Runnymede Civic Centre, Station Road, Addlestone, Surrey KT15 2AH; and
- (9) RUSHMOOR BOROUGH COUNCIL** of Council Offices, Farnborough Road, Farnborough, Hampshire GU14 7JU; and
- (10) SURREY HEATH BOROUGH COUNCIL** of Surrey Heath House, Knoll Road, Camberley GU15 3HD; and
- (11) WAVERLEY BOROUGH COUNCIL** of The Burys, Godalming, Surrey GU7 1HR; and
- (12) WOKING BOROUGH COUNCIL** of Civic Offices, Gloucester Square, Woking, Surrey GU21 6YL; and
- (13) WOKINGHAM BOROUGH COUNCIL** of Shute End, Wokingham RG40 1BN

**RECITALS:**

- (A) Under EU Directive 2009/147/EC dated 30 November 2009 on the conservation of wild birds ("the Birds Directive") member states are under a duty to protect and manage wild bird species.
- (B) The Thames Basin Special Protection Area ("the SPA") was classified on the 9 March 2005. The area designated as the SPA contains important populations of three of the species considered to be vulnerable or rare and listed in Annex 1 to the Birds Directive.
- (C) Natural England and the LPAs have agreed to work together to put in place a strategic access management and monitoring programme for the SPA for the purposes of ensuring effective avoidance of any significant effects of new development on the SPA and compliance with the requirements of the Birds Directive and to finance this by means of a tariff levied in respect of developments that could have an impact on the SPA.
- (D) It is intended that at the end of the Project Duration sufficient amounts of tariff will have been collected for implementation of the strategic access management and monitoring programme delivered by the Project to allow for the establishment of a permanent endowment to enable the strategic access management and monitoring programme to continue to be implemented for an indefinite period.
- (E) The purpose of this Agreement is to enable the parties referred to in Recital (C) to give effect to these arrangements.
- (F) The LPAs have power to enter into these arrangements under S2 of Local Government Act 2000, S111 of the Local Government Act 1972 and the Conservation of Habitats and Species Regulations 2010, and contract solely in their capacity as Local Planning Authorities and not in any other capacity.

## **1 Definitions**

“Administrative Body”	Hampshire County Council or such other organisation as may assume responsibility for receipt of the tariff collected by the LPAs and payments under the direction of the JSPB in accordance with the terms of this Agreement;
“Commencement Date”	means the date of this Agreement;
“Current Expenditure Account”	means the Administrative Body’s L790B internal cost centre against which the Administrative Body is required to pay a proportion of the Guideline Tariffs in accordance with clause 3.2 and out of which it is required to pay both itself in accordance with clause 6.2 and Natural England in accordance with clause 4 and clause 7.2;
“Delivery Bodies”	Natural England, and any other body which may be employed by Natural England to carry out services connected with the delivery of the Project;
“EIR”	the Environmental Information Regulations 2004 or any re-enactment or replacement of these regulations;
“Endowment Account”	means the Administrative Body’s L790A internal cost centre against which a proportion of the Guideline Tariffs are to be paid by the Administrative Body in accordance with Clause 5 and any other account into which those monies are paid or any investment purchased with those monies;
“Financial Plan and Budget”	the financial plan and budget for each year of the Project approved by the JSPB

“Financial Reporting Requirements”	the requirements set out at Schedule 2;
“Financial Year”	the period from 1 April in any year until 31 March in the following year;
“FOIA”	the Freedom of Information Act 2000 and any re-enactment or replacement of the Act;
“Guideline Tariff”	an amount payable by way of an obligation pursuant to s106 of the Town and Country Planning Act 1990 in respect of each unit of residential accommodation within a Relevant Development to ensure that there is no significant effect to the SPA, in accordance with the Natural England Guideline Methodology set out in Schedule 1 provided always that such amount may be adjusted in the light of all relevant circumstances relating to the proposed development and shall be a matter for each individual LPA to determine;
“Index”	means the Consumer Prices Index published by the Office for National Statistics;
“Indexed”	means adjusted by the change to the Index over the preceding twelve month period using the last version of the Index to be published preceding the date on which the adjustment is to be undertaken;
“Independent Financial Adviser”	means an individual or firm licensed by the Financial Services Authority to carry out the business of advising on and selling financial products;
“JSPB”	the Thames Basin Heaths Joint Strategic Partnership Board, comprising elected member representatives from the affected planning authorities with voting

	rights, and representatives of key stakeholder interests without voting rights;
“Local Planning Authorities” (LPAs)	means Bracknell Forest Borough Council, Elmbridge Borough Council, Guildford Borough Council, Hart District Council, Royal Borough of Windsor and Maidenhead, Runnymede Borough Council, Rushmoor Borough Council, Surrey Heath Borough Council, Waverley Borough Council, Woking Borough Council and Wokingham Borough Council;
“Natural England Guideline Methodology (“NEGM”)	the methodology for calculating the Guideline Tariff as set out at Schedule 1, or such revised methodology as may take its place following a review in accordance with clause 2.4 of this Agreement;
“Project”	the delivery of a strategic access management and monitoring programme for the SPA further details of which are set out at Schedule 3;
“Project Current Expenditure”	expenditure on payment of salaries, revenue and capital costs together with any VAT properly chargeable thereon in relation to the delivery of the Project as approved from year to year in each Financial Plan and Budget;
“Project Duration”	means the period for which the JSPB agrees that the tariff will be required to be collected before sufficient funds exist in the Endowment Account to ensure the forward funding of the Project for an indefinite period. The period is initially set at 15 years from the Commencement Date but may be revised by the JSPB if required;
“Quarter”	means a period of 3 months ending on 31 March, 30 June, 30 September and 31 December and

“Quarterly” shall be defined accordingly

“Relevant Development”

any proposed residential development taking place more than 400 metres and less than 5 kilometres from the boundary of the SPA authorised by a planning permission in respect of which the application was received by the Local Planning Authority on or after the Commencement Date which will involve the construction of one or more units of residential accommodation, or in the case of replacement dwellings, which will result in a net gain of one or more units of residential accommodation. Residential developments between 5 kilometres and 7 kilometres from the boundary of the SPA involving the construction of 50 or more units of residential accommodation are assessed on an individual basis and constitute Relevant Development if in the opinion of the applicable LPA they are considered likely to have a significant effect on the SPA;

“Project Board”

the strategic access management and monitoring project board appointed by the JSPB to make decisions and recommendations regarding the implementation of the Thames Basin Heaths Strategic Access Management and Monitoring Project.

## **2 Guideline tariff**

- 2.1 Each LPA when granting a planning permission in respect of a Relevant Development shall apply the Natural England Guideline Methodology (NEGM). Any amounts payable to an LPA in accordance with the NEGM shall be payable by way of an obligation pursuant to s106 of the Town and Country Planning Act 1990.

- 2.2 In the event of an appeal against a refusal of a Relevant Development the LPAs shall use all reasonable endeavours to ensure that if planning permission is granted on appeal, such grant shall be subject to the application of the NEGM.
- 2.3 The NEGM shall be applied by the LPAs in a way that is consistent with each LPA's Local Development Framework and any relevant Supplementary Planning Documents. The NEGM is subject to the statutory obligations of the LPAs and the application of the NEGM will take account of the individual circumstances of each application in respect of a Relevant Development.
- 2.4 The NEGM shall be reviewed every two years as a minimum from the Commencement Date of this Agreement unless further review is required by the JSPB or Natural England, for as long as Natural England is a party to the Agreement. When undertaking such review Natural England shall consult with the LPAs and take account of all comments made by the LPAs relating to the operation of the NEGM. Subject to the JSPB approving such review, Natural England shall then issue a revised NEGM to the LPAs.

### **3 Payment arrangements**

- 3.1 On 31 March, 30 June, 30 September and 31 December each year throughout the Project Duration of this Agreement the LPAs shall pay to the Administrative Body all the amounts they have received by way of Guideline Tariff during the previous Quarter, together with any amounts they have received specifically for strategic access management and monitoring in connection with applications for planning permission received before the Commencement Date, exclusive of any interest accrued.
- 3.1.1 Additionally, on the first occasion that one of the payment dates listed in clause 3.1 occurs after the Commencement Date, the LPAs shall pay to the Administrative Body any and all amounts of Guideline Tariff they have received prior to the Commencement Date, in accordance with their Thames Basin Heath SPA avoidance and mitigation strategies amended to include collection of the Guideline Tariff for strategic access management and monitoring measures, exclusive of any interest accrued.



3.1.2 For the avoidance of doubt each of the LPAs shall pay to the Administrative Body the following amounts on the first occasion that one of the payment dates in clause 3.1 occurs after the Commencement Date, in accordance with clause 3.1.1 above:

- a Bracknell Forest Borough Council shall pay £0.00
- b Elmbridge Borough Council shall pay £[ ]
- c Guildford Borough Council shall pay £[ ]
- d Hart District Council shall pay £[ ]
- e Royal Borough of Windsor and Maidenhead shall pay £[ ]
- f Runnymede Borough Council shall pay £[ ]
- g Rushmoor Borough Council shall pay £[ ]
- h Surrey Heath Borough Council shall pay £[ ]
- i Waverley Borough Council shall pay £[ ]
- j Woking Borough Council shall pay £[ ]
- k Wokingham Borough Council shall pay £[ ]

3.2 During the first Financial Year after the Commencement Date, the Administrative Body shall pay up to 60% of the amounts it receives pursuant to clause 3.1 above into the Current Expenditure Account and the remainder into the Endowment Account immediately upon receipt. During the second Financial Year after the Commencement Date, the Administrative Body shall pay up to 50% of the amounts it receives pursuant to clause 3.1 above into the Current Expenditure Account and the remainder into the Endowment Account immediately upon receipt. In the third Financial Year after the Commencement Date, and for each Financial Year thereafter, the Administrative Body shall pay up to 30% of the amounts it receives pursuant to clause 3.1 above into the Current Expenditure Account and the remainder into the Endowment Account immediately upon receipt provided that, if Natural England considers that at the end of the third Financial Year after the Commencement Date the payments into the Current Expenditure Account are insufficient to meet the Project Current Expenditure up until that point, the JSPB shall direct the Administrative Body to make additional payments into the Current Expenditure Account from the Endowment Account, subject to the payment of additional sums into the Endowment Account over the following two Financial Years, using best endeavours to ensure that by the end of the fifth Financial Year after the Commencement Date payments into the Endowment Account are not less than 70% of the total amounts received in the fourth and fifth Financial Years. Natural England shall in any event use best endeavours to comply with the Financial Plan and

Budget and act in accordance with such plan. For the avoidance of doubt, the end of the third Financial Year after the Commencement Date will be 31 March 2014.

3.3 Within 14 days of the dates referred to in clause 3.1 above the LPAs shall in addition provide to the Administrative Body and Natural England the following details:

- 3.3.1 the number of Relevant Developments granted planning permission by the LPA during the preceding Quarter;
- 3.3.2 a description of each Relevant Development paying the Guideline Tariff including the number and type of units (i.e. house/flat/maisonette), numbers of bedrooms in each unit and location of the proposed development;
- 3.3.3 the amounts by way of Guideline Tariff which have been paid or will be payable in respect of all such Relevant Developments.

#### **4 Current Expenditure**

4.1 As soon as practicable after each of the dates referred to in clause 3.1 above, Natural England shall forward to the Administrative Body an invoice for the amounts it requires to meet its Project Current Expenditure during the preceding Quarter. Provided that at the time the invoice is received the total value of invoices relating to any one Financial Year does not exceed the amounts allowed for such payments in the Financial Plan and Budget for that year and that there are sufficient funds in the Current Expenditure Account the Administrative Body shall pay the said invoice within 28 days.

4.2 Natural England funded the post of Project coordinator for a period of one year from 1 July 2009. The costs of funding the Project coordinator for this year were £41,439.29. Natural England shall be reimbursed this amount as soon as possible after the Commencement Date on submission of an invoice to the Administrative Body and no later than 31 July 2013 provided sufficient funds are available within the Current Expenditure Account.

4.3 Natural England also funded a part-time Project coordinator post from 1 August 2010 to 31 March 2011, the cost of which was £10,741.76. The JSPB has agreed that Natural England will be reimbursed for this amount on submission of an invoice to the

Administrative Body as soon after the Commencement Date as there are sufficient funds in the Current Expenditure Account.

- 4.4 Following approval from the JSPB on 28 March 2011 Natural England may also recover its costs for funding the posts of Project coordinator and one warden incurred from 1 April 2011 up until the Commencement Date.
- 4.5 If Natural England enters into third party contracts in good faith, and the third party defaults on their contractual obligations for whatsoever reason, then, subject to the agreement of the JSPB, Natural England shall be reimbursed out of the Project Current Expenditure for any monies that it is required to expend either meeting the third parties contractual obligations or in taking reasonable steps to enforce the contract against the third party .

## **5 Endowment**

- 5.1 The balance of the amounts received by the Administrative Body in accordance with clause 3.2 above shall be paid into the Endowment Account.
- 5.2 The amounts in the Endowment Account shall be used for the future funding of the Project and the long term protection and maintenance of the SPA. The Administrative Body will only make changes to the way in which the Endowment Account is managed under the direction of the JSPB.
- 5.3 It is envisaged that the Endowment Account will be managed by Independent Financial Advisers, rather than the Administrative Body, in order to maximise the return achieved within the investment guidelines set by the JSPB. In the short term the Administrative Body will collect the funds to form the Endowment Account as per 5.1. The JSPB will review the value and performance of the Endowment Account on a regular basis and will provide direction as to when, how and from whom the services of an Independent Financial Adviser are to be procured.
- 5.4 In the event that the Agreement is terminated in accordance with clause 10, then any sums of money held by the Administrative Body or invested on the advice of an Independent Financial Adviser will be liquidated and used to cover any outstanding financial commitments in accordance with clause 10.4 below,

## **6 The Administrative Body**

- 6.1 The Administrative Body shall undertake the following functions in relation to the financial administration of the Project:
- 6.1.1 Acceptance of the Guideline Tariffs in accordance with clause 3.1 above and notification to Natural England of any non-payment of the Guideline Tariffs or failure to submit a nil return.
  - 6.1.2 Administering the accounts into which the payments are made.
  - 6.1.3 Making payments to Natural England in accordance with clauses 4 and 7.2.
  - 6.1.4 Providing reports every 3 months to the Strategic Access Management and Monitoring Project Board and the JSPB in accordance with the Financial Reporting Requirements.
  - 6.1.5 Providing such financial information as may reasonably be requested by the Strategic Access Management and Monitoring Project Board, the JSPB or Natural England, and in such format as may reasonably be required.
- 6.2 In consideration of the provision of the services set out in clause 6.1 above and after all current expenditure due for payment under clause 4 has been paid but before the Natural England management fee is paid in accordance with clause 7.2, the Administrative Body shall be entitled to receive the sum of £20,000.00 [indexed] from the Current Expenditure Account payable on each anniversary of the Commencement Date (subject to Clause 6.5) while it carries out the role of Administrative Body in accordance with the terms of this agreement.
- 6.3 In the event that there are insufficient sums available in the Current Expenditure Account to reimburse invoices submitted in accordance with clauses 4, 6.2 and 7.2 within 28 days of receipt, payment shall be made as soon as sufficient funds are available and in accordance with the priority established in clause 6.2.
- 6.4 At the end of each Financial Year all unpaid invoices shall be carried forward for payment in the following year. Such invoices shall rank for payment in accordance with clause 6.2 and ahead of all subsequent expenditure.

- 6.5 On the third anniversary of the Commencement Date and every third anniversary thereafter the Administrative Body shall be entitled to cease undertaking the functions of the Administrative Body under this Agreement provided that it has given at least six months prior written notice to Natural England and the LPAs. At least seven months prior to the third anniversary of the Commencement Date the annual sum payable to the Administrative Body for each subsequent three year period will be reviewed and revised by the JSPB to reflect future financial management requirements and in order to inform the Administrative Body's decision about whether to continue undertaking its functions under this Agreement.
- 6.6 It is agreed and understood that the role of the Administrative Body is limited to the functions set out in Clause 6.1 above and that the Administrative Body is not assuming any role in providing either financial advice or strategic avoidance and mitigation advice.
- 6.7 The Administrative Body shall keep full records relating to the functions in this clause and allow Natural England and the LPAs, and their statutory auditors access at all reasonable times to such records and the right to take copies of them.
- 6.8 In the event that the Administrative Body for the time being states in accordance with clause 6.5 above that it no longer wishes to carry out its functions under the Agreement, then the LPAs shall use their best endeavours to ensure that the Project continues to be delivered and appoint an organisation with relevant experience and expertise to take over the role of Administrative Body. The LPAs shall carry out such advertising and competition in relation to the appointment of a successor to the Administrative Body as may be necessary to ensure that an open and transparent procedure is followed in relation to such appointment and all applicable laws and rules governing public sector procurement are complied with.
- 6.9 If the Administrative Body for the time being ceases to be responsible for delivery of the Project it shall cease to be a party to this Agreement and any organisation that takes over the functions of the Administrative Body shall be joined as a party to this Agreement.

## **7 Project delivery**

- 7.1 Natural England shall be responsible for the delivery of the Project with a view to achieving the objectives set out at Schedule 3, Part 1 by undertaking the operations set out at Schedule 3, Part 2.
- 7.2 In consideration of the services set out in clause 7.1 above Natural England shall be entitled to receive a management fee of the sum of £10,000 [indexed], payable on each anniversary of the Commencement Date to cover additional costs incurred in delivering the service relating to procurement, finance, human resources & computer support services.
- 7.3 Natural England's responsibilities under clause 7.1 above shall continue for three years with effect from the Commencement Date. No less than 6 months prior to the third anniversary of the Commencement Date, Natural England shall notify the Administrative Body and the LPAs whether it is able to continue to carry out the functions referred to at clause 7.1. In the event that it is able to then it shall carry out the functions for a further three year period and the provisions of clause 7.1 shall continue to apply for such period. The provisions of this clause 7.3 shall apply in relation to the expiry of such further three year period. The same provisions shall apply in relation to any subsequent three year period.
- 7.4 In the event that Natural England states in accordance with clause 7.3 above that it will no longer be able to continue to deliver the Project, then the LPAs shall use their best endeavours to ensure that the Project continues to be delivered and appoint an organisation with relevant experience and expertise to take over the role of Natural England. The LPAs shall carry out such advertising and competition in relation to the appointment of a successor to Natural England as may be necessary to ensure that an open and transparent procedure is followed in relation to such appointment and all applicable laws and rules governing public sector procurement are complied with.
- 7.5 Natural England shall ensure that any contracts entered into with third parties for the purposes of delivering the Project in accordance with clause 7.1 above are assignable, and if Natural England ceases to be responsible for delivery of the Project shall use best endeavours to ensure that all such contracts are assigned or novated to any organisation that takes over the functions of Natural England as a party to the Agreement.

- 7.6 If Natural England ceases to be responsible for delivery of the Project it shall cease to be a party to this Agreement and any organisation that takes over the functions of Natural England shall be joined as a party to this Agreement via a deed of variation or novation agreement agreed by all parties in accordance with clause 9.1 below.
- 7.7 Ownership of capital assets purchased with money paid to Natural England under this Agreement shall lie with Natural England. If Natural England ceases to be responsible for delivery of the Project ownership of such assets will be transferred at zero cost to any organisation that takes over the functions of Natural England as a party to the Agreement. Natural England will endeavour to maintain the capital assets in reasonable repair and condition (fair wear and tear accepted) throughout the time of its ownership but provides no warranty as to the condition of the assets at the date of any such transfer.
- 7.8 Natural England shall report on the progress of the implementation and delivery of the Project to each meeting of the JSPB in accordance with the template for such reports set out at Schedule 4. Natural England shall in addition provide such information about the Project to the Administrative Body and/or the LPAs as may be reasonably required.

## **8 Governance arrangements**

- 8.1 The delivery of the Project shall be overseen by the Project Board. The terms of reference of the Project Board and its membership are set out at Schedule 5, Parts 1 and 2 respectively. The Project Board shall meet every three months during the first year of the Project and every six months thereafter, unless an extraordinary meeting is requested by any Project Board member or so directed by the JSPB. This provision shall remain in place unless the JSPB agree to change the frequency, structure or terms of reference of the Project Board.
- 8.2 The Project Board shall report to the JSPB which shall give final approval to the reviews and recommendations of the Project Board. The terms of reference of the JSPB and its membership are set out at Schedule 5, Parts 3 and 4 respectively.
- 8.3 The governance arrangements referred to in this clause are summarised in the diagram set out at Schedule 5, Part 5.

## **9 Variation**

- 9.1 No variation to this Agreement shall take place without the consent in writing of all parties. Any such variation shall state that it is a variation for the purposes of this clause and shall be signed for and on behalf of the parties to this Agreement.

## **10 Contract term/termination**

- 10.1 This Agreement shall come into force on the Commencement Date and shall continue in force unless terminated in accordance with this clause or ended by mutual agreement.
- 10.2 In the event that any party is in material and substantial breach of this Agreement then any other party may by notice in writing to all the other parties require such breach to be remedied by the party in breach within such reasonable period as may be set out in the notice. The notice shall set out what steps are required to remedy the breach. In the event that the party in breach fails to remedy the breach in accordance with the notice then the issue shall be subject to the dispute resolution procedure set out in clause 11.
- 10.3 This Agreement shall be subject to review every third anniversary of the Commencement Date. In the event that any party considers that the Agreement should be terminated then, subject to satisfying the provisions of Clause 11, it shall notify the other parties to this effect no later than six months prior to such anniversary, setting out its reasons. The parties shall consider the issue of termination and the Agreement shall terminate if and when a majority of two-thirds of the parties to this Agreement agree to such termination.
- 10.4 Following termination of the Agreement in accordance with this clause and in lieu of any substantially similar agreement taking this Agreement's place then under the direction of the JSPB any sums of money held by the Administrative Body shall be used to discharge any liabilities incurred by Natural England or any Delivery Body in relation to the Project including the payment of redundancy payments to any employees undertaking work in connection with the Project and in the event that any balance is left this shall be paid to the LPAs in the proportion of their payments of the Guideline Tariffs during the period from the Commencement Date until the date of termination, for the LPAs to spend on implementing alternative avoidance measures under the direction of the JSPB.

## **11 Dispute Resolution**



11.1 The following provisions shall apply in the event of any disputes arising between the parties relating to this Agreement;

11.1.1 The parties will endeavour to notify each other of any anticipated dispute arising under or in relation to the terms of this Agreement to the intent that it can be avoided by negotiation between them.

11.1.2 The parties will endeavour to resolve any dispute which does arise by direct negotiations in good faith between senior executives. The dispute may on the request of any party, be referred to mediation if it cannot be resolved by direct negotiation. The mediator shall be appointed, on the application of any party, by the Centre for Dispute Resolution. In the event of a referral to mediation each party shall pay its own costs in respect of the mediation.

11.2 Any dispute not resolved in accordance with clause 11.1 above shall be referred to and finally be resolved by arbitration in accordance with the Arbitration Act 1996. The identity of the arbitrator shall be agreed between the parties or in default of agreement appointed by the President of the Law Society.

## **12 Third Party Rights**

12.1 The parties do not intend any term of this Agreement to be enforceable by any third party.

## **13 Entire Agreement**

13.1 This Agreement constitutes the entire understanding and agreement between the parties relating to the subject matter of this Agreement and, save as may be expressly referred to stated or referenced herein, supersedes all prior representations, documents, negotiations or understandings with respect hereto and neither party has entered into this Agreement in reliance upon any representation whether written or oral by the other party or anyone acting or purporting to act on such other parties behalf.

## **14 Waiver**

14.1 The failure of any party to insist upon strict performance of any provision of this Agreement, or the failure of any party to exercise any right or remedy to which it is

entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligation established by this Agreement.

14.2 A waiver of any default shall not constitute a waiver of any subsequent default.

14.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated by the waiving party to the other party in writing.

## **15 Law and jurisdiction**

This Agreement shall be considered as a contract made in England and according to English Law, and shall be subject to the exclusive jurisdiction of the English Courts to which all parties hereby submit.

## **16 Assignment**

This Agreement is personal to the parties hereto and may not be assigned without the prior consent of all parties.

## **17 Freedom of Information and Transparency**

17.1 The parties shall comply with their obligations under FOIA and the EIR.

17.2 In the event that a party receives a request for information under FOIA or the EIR that includes a request for information relating to any other party to the agreement, the party receiving the request shall forward it to that other party as soon as practicable and shall take account of any representations made by that other party received in time to respond to such request.

17.3 The parties shall provide each other with reasonable assistance in responding to requests for information under FOIA or the EIR when requested to do so by a party to this agreement.

17.4 Notwithstanding any other term of this Agreement the parties acknowledge and agree that except for any information which is exempt from disclosure in accordance with the provisions of FOIA or the EIR the content and/or text of this Agreement and any

Schedules thereto (including details of any payments made by or to the Administrative Body) does not constitute confidential information.

- 17.5 Notwithstanding any other term of this Agreement, each party acknowledges that any other party may publish this Agreement in its entirety, including from time to time any agreed changes to the Agreement, in order to comply with their transparency duties. Each party further gives its consent to the other parties to publish any payments made or received under the terms of this Agreement.

## **18 Data Protection**

The parties shall comply with their obligations under the Data Protection Act 1998 insofar as performance of this Agreement gives rise to obligations under this legislation.

**IN WITNESS** whereof the parties hereto have executed this deed the day and year first before written

## **SCHEDULE 1**

### **National England Guideline Methodology**