

DATED

2018

COLLABORATION AGREEMENT

Between

LONDON BOROUGH OF HAVERING (1)

THAMES CHASE TRUST LIMITED (2)

Relating to

LAND OF THE FANNS LANDSCAPE PARTNERSHIP SCHEME

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THIS AGREEMENT IS MADE ON THE DAY OF 2018

BETWEEN

- (1) **LONDON BOROUGH OF HAVERING** Main Road, Romford, RM1 3BB (“**Accountable Body**”);
- (2) **THAMES CHASE TRUST LIMITED** (Company Number 05687558) Care of Forest Centre Broadfields Farm, Pike Lane, Upminster RM14 3NS, (“**Lead Party**”)

The Lead Party and the Accountable Body together constitute the Delivery Body (“**Delivery Body**”) and reference to the Delivery Body is a reference to these parties working collaboratively in accordance with a Partnership Agreement made or to be made between the members of the Partnership on or around the date hereof.

BACKGROUND

- (A) The Funder has appointed the Accountable Body to be responsible for the administration of the Funding which is to be allocated to Delivery Partner to undertake certain projects within the scope of the Partnership Programme (“**Programme**”).
- (B) London Borough of Havering has agreed to act as Accountable Body in respect of the Funding.
- (C) The Lead Party is the lead partner of the Partnership. The Accountable Body has successfully bid for funding from The Heritage Lottery Fund (HLF) towards the Project.
- (D) The Accountable Body has put in place procedures and safeguards to ensure a separation of functions to avoid any conflict (or potential conflict) in administering its roles of member of the Partnership and Funding administrator under this agreement.
- (E) The Lead Party has submitted the LCAP which received appropriate due diligence by the Partnership with a recommendation for approval. The Partnership subsequently endorsed the payment of Funding to the project in January 2017 and has agreed to authorise the Accountable Body to pay the Lead Party in arrears to assist it in carrying out the Project as part of the Programme save for project management, tree nursery and community action costs which shall be paid in advance.
- (F) The parties have, prior to this deed and since 1st April 2017, been working towards the purposes of the Project as set out in (H) below and this agreement is intended to codify the previous oral contractual arrangement between the parties. The parties intend to honour their mutual rights and obligations prior to and in accordance with the terms of this agreement.
- (G) This agreement sets out the terms and conditions on which the Funding shall be granted to the Lead Party.

- (H) These terms and conditions are intended to ensure that the Funding is used for the creation, protection, management and sustainability of the Project for which it is awarded and in accordance with the LCAP.

AGREED TERMS

1. DEFINITIONS

In this agreement the following terms shall have the following meanings:

Accountable Body	London Borough of Havering, which shall, on behalf of the Partnership, hold and distribute the Funding to the Lead Party in accordance with the terms of this agreement.
Accountable Body Representative	the person identified as such in Schedule 1 or such other person as shall be nominated by the Accountable Body as provided under clause 6.2 to liaise with the Lead Party in writing from time to time.
Bribery Act	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
Capital Expenditure	shall be as defined from time to time by the Chartered Institute of Public Finance and Accountancy (CIPFA).
Commencement Date	the date of completion of this agreement subject to clause F of the Background.
Completion Date	Midnight on 31 st July 2022, subject to any extensions as shall be agreed from time to time under clause 5.3 or otherwise or the completion of the Project if earlier or the earlier termination of this agreement pursuant to clause 3.2.
Delivery Partner	the party designated to complete a particular part of the Project which may include the Lead Party or the Accountable Body

Funder	the Heritage Lottery Fund through its Grant funding.
Funding	the sums to be paid to the Lead Party in accordance with this agreement as set out in Schedule 2.
Funding Claim	the claim to be submitted separately by the Lead Party, each Quarter for the Delivery Partners eligible expenditure
Funding Period	the period for which the Funding is awarded starting on the Commencement Date and ending on the Completion Date or the earlier termination of this agreement pursuant to clause 32
Grant Distribution Methodology	as set out in Schedule 3
LCAP	Landscape Conservation Action Plan, produced by the Heritage Lottery Fund (September 2016)
Lead Party Representative	the person identified in Schedule 1 or their replacement as provided for under clause 6.2.
Monitoring Report	the report submitted by the Lead Party to the Accountable Body quarterly pursuant to clause 9.3 which includes details of its progress with the Project against the LCAP, its use and expenditure of the Funding, delivery of the Project, and any other information required by the Accountable Body, and such reports shall be in such a format as the Accountable Body may reasonably require from time to time.
Partnership	being The Lead Party (as Lead Party), London Borough of Havering (as Accountable Body), London Borough of Barking and Dagenham, Thurrock Council, Brentwood Borough Council and the Forestry Commission. Essex County Council, Thames 21 Thames Estuary Partnership
Programme	as defined in the Background.
Prohibited Act	means

(a) offering, giving or agreeing to give to any staff member of the Funder or the Accountable Body or the Lead Party any gift or consideration of any kind as an inducement or reward for:

(i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this agreement or any other contract with the Lead Party the Accountable Body or the Funder; or

(ii) showing or not showing favour or disfavour to any person in relation to this agreement or any other contract with the Lead Party, the Accountable Body or the Funder;

(b) entering into this agreement or any

other contract with the Lead Party, Accountable Body or the Funder where a commission has been paid or has been agreed to be paid, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Lead Party Accountable Body or the Funder;

(c) committing any offence

(i) under the Bribery Act;

(ii) under legislation creating offences in respect of fraudulent acts; or

(iii) at common law in respect of fraudulent acts in relation to this agreement or any other contract with the Funder; or

(d) defrauding or attempting to defraud or conspiring to defraud, the Lead Party, Accountable Body or the Funder.

Project

the project more particularly described in the LCAP

as the Land of the Fanns Landscape Partnership Scheme as may be developed and amended in writing between the Heritage Lottery Fund and the parties from time to time.

Public Contracts Regulations the Public Contracts Regulations 2015 (SI 2015/102) together with any guidance and/or codes of practice issued by the European Union or relevant government department in relation to such regulations.

Quarter a period of 3 consecutive calendar months ending on 31st March, 30th June, 30th September and 31st December as appropriate;

Representative The Accountable Body Representative, and the Lead Party Representative as the context requires.

Required Insurances shall have the same meaning as given in Clause 20

Revenue Expenditure means any expenditure that is not Capital Expenditure.

State Aid Laws Articles 107(1) and 109 of the Treaty on the Functioning of the European Union and all applicable laws and regulations relating to state aid, including where applicable the guidance and codes of practice issued by European Union body (including but not limited to the European Commission).

Working Day Monday to Friday, excluding any public holidays in England and Wales and the days between and including December 27th and December 31st

2. ROLES AND RESPONSIBILITIES

2.1 The Accountable Body is responsible for the administration of the Funding and the Lead Party shall be the primary source of day-to-day contact for the Delivery Body in respect of the delivery of the Project.

2.2 The Accountable Body is required by the Funder to provide assurance in relation to the due process and proper administration adopted by the Lead Party and the Delivery Body in relation to the use of the Funding in accordance with funding conditions and guidance.

- 2.3 The parties to this agreement each undertake to work in an open and transparent manner with regard to the delivery of the Project and use of the Funds and the Lead Party and the Delivery Body shall respond in a full and timely manner to any request for documents or information required by the Accountable Body from time to time in order to effectively discharge its obligations to the Funder and in the role generally and the Accountable Body shall respond in a full and timely manner to any request for release of funding, documents or information required by the Lead party in order for the Lead Party to discharge its obligations..
- 2.4 This Agreement shall commence on the Commencement Date and shall continue unless terminated in accordance with clause 3.2 until the Completion Date unless it is extended by mutual written agreement by the parties and the Heritage Lottery Fund to finalise or restore any residual or outstanding issues
- 2.5.1 The parties shall cooperate to deliver the Project during the term of the Agreement
- 2.5.2 Each party shall exercise its rights and perform its obligations pursuant to this Agreement: -
- With all due care and attention
 - Using appropriately trained qualified and experienced personnel and contractors
 - In accordance with all applicable laws and regulations
 - With regards to the interests and objectives of each party
 - In good faith

3. PURPOSE OF FUNDING & GRANT

- 3.1 The Lead Party shall apply the Funding only for the delivery of the Project and in accordance with the provisions of this agreement and the Partnership Agreement. The Funding shall not be applied for any other purpose without the prior written agreement of the parties
- 3.2 The Lead Party acknowledges that the Funding is for, and shall only be used to fund, Revenue Expenditure. In particular and without limitation, the parties agree that no element of the Funding shall be used to meet Capital Expenditure.
- 3.3 The Lead Party shall not make any changes to the scope and agreed outputs of the Project as detailed in the LCAP without the consent of the Delivery Body.
- 3.4 The Lead Party and the Accountable Body acknowledge that where they consent to a change in the scope or output of a Project the information contained within the LCAP will need to be amended to reflect the agreed changes in writing.
- 3.5 Where the Lead Party intends to apply to a third party for other funding for the Project, it will notify, in writing, the Accountable Body 15 (fifteen) Working Days in advance of its intention to do so and, where such funding is obtained, it will provide the Accountable Body with details of the amount and purpose of that funding. The Accountable Body agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Project.

4. PAYMENT OF FUNDING

- 4.1 The Lead Party acknowledges and agrees that, regardless of any other provision of this agreement to the contrary, the Accountable Body will have no obligation to authorise or pay the Funding unless the Lead Party has fulfilled the pre-conditions set out in the LCAP.
- 4.2 All Funding shall be claimed by the Lead Party in arrears save for as set out in the Background unless by prior written agreement with the Lead Party and the Accountable Body. Where funding is paid in advance it shall be paid in accordance with the provisions of Schedule 4
- 4.3 Within twenty (20) Working Days of the end of each Quarter the Lead Party shall, independently, submit to the Accountable Body a properly completed Funding Claim in accordance with the requirements set out in Grant Distribution Methodology.
- 4.4 the Lead Party shall review all documents submitted by a Delivery Partner in accordance with clause 4.3 within 15 Working Days of receipt and, if satisfied that all information is present and correct and knowing of no other reason why payment should not be made, shall forward the documents submitted by the Delivery Party and any other relevant documents to the Accountable Body in accordance with the requirements set out in Grant Distribution Methodology.
- 4.5 Within ten (10) Working Days of receipt of the original documents and the relevant assurances from the Lead Party in accordance with clause 4.4 above, the Accountable Body shall either notify the Lead Party of further documents, information or assurance that it will require to process payment in accordance with the LCAP and this agreement, or it shall submit to the HLF the Funding Claim. Once payment from the HLF is received by the Accountable Body, the Accountable Body will instruct its bank to release payment of the Funding to the Lead Party, on the terms of this Agreement and within 5 (five) Working Days save for payments made pursuant to Schedule 4 which shall be released in accordance with the terms of that Schedule.
- 4.6 The Lead Party agrees and accepts that payments of the Funding can only be made to the extent that the Accountable Body, has funds available save in the event of a breach of the terms of this Agreement or negligence by or on behalf of the Accountable Body and following receipt of complete and accurate information and documents, and the Accountable Body shall use their best endeavours to ensure that these funds are available. The Accountable Body must ensure all Funding is applied for and passed onto the Lead Party without unreasonable delay.
- 4.7 Any overspend in the delivery of the Project will be the responsibility and for the sole account of the overspending party of the Delivery Body. Any application made for additional funds will be considered by the Accountable Body on a case-by-case basis and, without limitation, shall be subject to additional funds being available following consideration of all relevant considerations and competing interests.

- 4.8 The Lead Party shall promptly repay to the Accountable Body any money held by the Lead Party and not correctly utilised in accordance with the terms of this Agreement that is incorrectly paid to it whether as a result of an administrative error or otherwise. The foregoing includes (without limitation) situations where either an incorrect sum of money has been paid or where Funding monies have been paid in error before all conditions attaching to the Funding have been complied with by the Lead Party or Delivery Partner
- 4.9 The Project is to benefit the local communities identified in the LCAP and the Funding granted to the Accountable Body is not intended to be for the benefit of the Delivery Body or the Lead Party and nor is it intended to be for the provision of services for the benefit of the Delivery Body or the Lead Party or the Accountable Body. If all or part of the Funding is deemed to attract VAT or other tax then such instalments of the Funding already paid to the Lead Party or the Accountable Body shall be deemed to include such taxable amounts and no additional payment shall be due from the Accountable Body in respect of such instalments; and the Lead Party shall be entitled to retain any sum or sums recovered from HMRC in respect of such payment VAT to the extent that this covers losses or shortfalls suffered by the Lead Party.
- 4.10 If at any time the Lead Party has reason to believe that the costs for full delivery of the Project will be less than the amount set out in LCAP and the Lead Party will notify the Accountable Body as soon as reasonably possible. The Delivery Body will determine how any underspend will be dealt with including withholding such sums from the Funding.
- 4.11 The Lead Party shall not, without the prior written consent of the Accountable Body, transfer any part of the Funding to bank accounts which are not ordinary business accounts within the UK clearing bank system.

5. USE OF FUNDING

- 5.1 The Funding shall be applied by the Lead Party for the delivery of the Project in accordance with the agreed budget set out in LCAP.
- 5.2 The LCAP provides a summary of the total project budget along with details of individual project budgets. The Lead Party has responsibility for updating the cash flow and fundraising plan. The purpose of the LCAP shall be to enable the Accountable Body to discharge its function as Accountable Body by obtaining a complete picture of the funding streams relevant to any particular project and, where it is reasonably able to do so in light of all relevant obligations and restrictions and other considerations affecting it, the Accountable Body shall seek to consent to the flexible application of the Funding in order that the detail provided in LCAP does not unduly restrict the activities of the Lead Party beyond any applicable laws, guidance or regulations applicable to the Funding in all circumstances.
- 5.3 The Lead Party shall not spend any part of the Funding on the delivery of the Project incurred after the Funding Period unless this has been approved in writing by the Lead Party and the Accountable Body and the Funding Body.

5.4 Should any part of the Funding received by the Lead Party remain unspent at the end of the Funding Period, save for an extension on spending in 5.3 above, the Lead Party shall ensure that any unspent monies are promptly (and in any event within nine months of the end of the financial year following the end of the Funding Period) returned to the Accountable Body, and that it notifies the Accountable Body of the return.

5.5 Unless forming part of the Funding any liabilities arising at the end of the Project including those costs relating to the close-down of the project and any redundancy liabilities for staff employed by the Lead Party to deliver the Project must be managed and paid for by the Lead Party using other resources of the Lead Party. The parties agree that there will be no funding available from the Accountable Body for this purpose

6. CONTRACT MANAGEMENT

6.1 Each party shall appoint a Representative named as such in Schedule 1. The Representatives shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Project. Each Representative shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.

6.2 Each party shall inform the other parties of the identity, background, location and contact details of any replacement Representative from time to time appointed, such notice to be in writing and provided within fifteen (15) Working Days of the replacement being appointed.

7. COMPLIANCE

7.1 Each party or any individual party thereof must comply with the Public Contracts Regulations when using the Funding to select and contract with a third party.

7.2 Each party shall at all times assist the other in ensuring the Project improves the economic, social and environmental well-being of the area where the Project is to be delivered. This assistance shall include, where reasonably and economically practicable, the incorporation of any Accountable Body or the Lead Party guidance, advice or recommendations.

8. ACCOUNTS AND RECORDS

8.1 The Funding shall be shown in the Lead Party's and Accountable Bodies accounts an appropriate designated fund and shall not be included under general funds.

8.2 Each party shall keep copies of all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Funding for a period of at least six (6) years following receipt of any Funding monies to which they relate.

8.3 Each party shall provide quarterly (or, if reasonably requested, such other frequency including monthly) statements to the Accountable Body of total project expenditure and financing for their aspect of the Project (as set out in Schedule 2). The statement will detail both Revenue and

Capital Expenditure for the project together with a detailed financing statement showing the application of individual funding streams for the period.

- 8.4 The Accountable Body shall have the right to review, at their reasonable request, the accounts of the Lead Party together with records that relate to the expenditure of the Funding and shall have the right to take copies of such accounts and records including evidence of defrayal of expenditure as may be required from time to time.
- 8.5 If reasonably requested by the Lead Party the Accountable Body agrees to provide a copy of its annual accounts within nine (9) months (or such other period as may be reasonably required) of the end of the relevant financial year in respect of each year in which the Funding is paid.
- 8.6 Where the Lead Party has obtained funding from a third party for its delivery of part of the Project, the Lead Party shall include the amount of such funding in its statements (in a frequency as agreed under Clause 8.3) and annual accounts together with evidence of receipt and application of such funds to the Project.
- 8.7 The Lead Party shall comply and facilitate compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable.
- 8.8 The Lead Party will allow the Accountable Body access to internal and external audit statements relating to the Project and will provide signed audit statements or equivalent stating that its expenditure of the Funding is in accordance with the terms and conditions of this agreement.

9. MONITORING AND REPORTING

- 9.1 The Lead Party shall closely monitor the delivery and success (or otherwise) of the Project throughout the Funding Period and for a period of one (1) year following its completion, to ensure that the aims and objectives of the Project and the wider Programme are being met and that the terms of this agreement are being adhered to.
- 9.2 The Lead Party shall monitor progress against the LCAP Project (whether acting on its own behalf or on behalf of the Accountable Body or Funding Body).
- 9.3 The Lead Party shall, every quarter (or in other frequency as agreed under Clause 8.3) during the term of this agreement, provide the Accountable Body with a Funding Claim and a Monitoring Report in a formal template.
- 9.4 The Lead Party shall on request provide the Accountable Body with such further information, explanations and documents as the Accountable Body may reasonably require in order for it to establish that the Funding has been used properly in accordance with this agreement.
- 9.5 The Lead Party shall permit any person authorised by the Accountable Body reasonable access, at least once every quarter, to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Lead Partners fulfilment of the Project and its obligations under this agreement. Where, in their reasonable opinion, the Accountable Body

considers that additional visits are necessary to monitor the Project, it shall be entitled to authorise any person to make such visits on its behalf upon provision of no less than four (4) weeks' notice in writing.

9.6 The Lead Party shall provide the Accountable Body with a final report and completion certificates on completion of the Funding Period, including an extension by the parties thereto, which shall confirm whether the Project has been successfully and properly completed.

9.7 The Lead Party acknowledges that the Accountable Body is under an obligation to provide regular evaluation reports to the Funder in respect of the Project and the Lead party agrees to assist the Accountable Body in so far as possible with the delivery of its evaluation reports.

10. ACKNOWLEDGMENT AND PUBLICITY

10.1 Each party shall separately acknowledge the Funding in its annual report and accounts, and such acknowledgement shall include acknowledgement of the Funder and if appropriate the Lead Party as the source of the Funding.

10.2 The Lead Party agrees to and shall use all reasonable endeavours to ensure each Delivery Partner agrees to participate in and co-operate with promotional activities relating to the Project that may be instigated and/or organised by the Lead Party and/or the Funder which includes a statement that the Funding is provided by the Funder.

10.3 The Lead Party shall comply with all reasonable requests from the Funder to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Funder in its promotional and fundraising activities relating to the Project.

11. INTELLECTUAL PROPERTY RIGHTS

The parties agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, know-how and any other intellectual property rights whatsoever owned by either party before the Commencement Date or developed by each party during the Funding Period, shall remain the property of that party subject to the terms of the Partnership Agreement.

12. CONFIDENTIALITY

12.1 Subject to clause 13. (Freedom of Information), each party shall during the term of this agreement and for a period of five (5) years after the expiry or termination of this agreement, keep secret and confidential all affairs, customers, clients, suppliers, technical or commercial information disclosed to it as a result of this agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this agreement or save as expressly authorised in writing by the other party.

12.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any, technical or commercial information which:

- 12.2.1 at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this agreement by the receiving party;
- 12.2.2 is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or
- 12.2.3 is at any time after the date of this agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party; or
- 12.2.4 is independently developed by the receiving party; or
- 12.2.5 the receiving party is specifically required to disclose in order to fulfil an order of any court of competent jurisdiction provide that in the case of disclosure under the FOIA 2000, none of the exemptions in that act applies to the confidential Information.

13. FREEDOM OF INFORMATION

- 13.1 The parties acknowledge that they are all subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the requirements of the Environmental Information Regulations 2004 (**EIRs**). Accordingly, each party shall assist and co-operate with each other (at their own expense) to enable the parties, to comply with these information disclosure requirements.
- 13.2 The party receiving a FOIA request shall:
 - 13.2.1 send the request for information to the other parties and the Funder (if applicable or deemed necessary) as soon as practicable after receipt and in any event within three (3) Working Days of receiving a request for information.
 - 13.2.2 provide the other parties and the Funder (if applicable or deemed necessary) with a copy of all information in its possession or power in the form that the other parties require within five (5) Working Days (or such other period as the parties may agree) of them requesting that information; and
 - 13.2.3 provide all necessary assistance as reasonably requested by the other parties or the Funder to enable the appropriate party to respond to a request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.
- 13.3 The parties shall agree with each other and the Funder (if applicable or deemed necessary) whether the information:

- 13.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs;
- 13.3.2 is to be disclosed in response to a request for information, and in no event shall a party respond directly to a request for information unless expressly authorised to do so by the Funder and the other parties;
- 13.4 The parties acknowledge that the Funder and the parties may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the EIRs to disclose confidential information:
- 13.4.1 without consulting with the other parties; or
- 13.4.2 following consultation with the other parties and having taken their views into account, provided always that where clause 13.4 applies the parties shall procure that the Funder shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the other parties advanced notice, or failing that, to draw the disclosure to the other party's attention after any such disclosure.
- 13.5 The parties shall ensure that all information produced in the course of this agreement or relating to this agreement is retained for disclosure and shall permit each other to inspect such records as requested from time to time.

14. DATA PROTECTION

- 14.1 For the purposes of this clause, Data Protection Legislation means the Data Protection Act 2018, the EU Data Protection Directive 2016/679 EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
- 14.2 Each party shall (and shall procure that any of its staff involved in connection with the activities under this agreement) comply with any notification requirements under the Data Protection Legislation and both parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with this agreement.

15. WITHHOLDING, SUSPENDING AND REPAYMENT OF FUNDING

- 15.1 The Accountable Body may decide to withhold or suspend payment of the Funding and/or (to the extent that Funding or part of it to be repaid has been used for purposes other than those permitted under this agreement) require repayment of all or part of the Funding from any party individually in breach of this agreement if one or more of the following circumstances arise and subject to the issue being incapable of remedy through the dispute procedure set out in Clause 26:

- 15.1.1 any party obtains duplicate funding from a third party for the Project;
- 15.1.2 any party commits or has committed a Prohibited Act;
- 15.1.3 any party ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- 15.1.4 any party becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due;
- 15.1.5 any party constituting part of the Delivery Body fails to comply with any of the material terms and conditions set out in this agreement and fails to rectify any such failure within thirty (30) days of receiving written notice detailing the failure or such longer period as would reasonably be required to rectify such failure;
- 15.1.6 the Funder is disbanded and/or the Funding is cancelled or the Funder withholds or withdraws funding and is not replaced by a similar authority which continues the work of the Funder.
- 15.2 Without prejudice to the Accountable Body's other rights and remedies, the Accountable Body may at its sole discretion withhold or suspend payment of the Funding and/or require repayment of all or part of the Funding from the Lead Party, the Accountable Body is aware of any of the events set out in Clause 15.1 occurring;
- 15.3 Whenever under this agreement any sum of money is recoverable from or payable by the Lead Party the Accountable Body may after the dispute resolution procedure set out in Clause 26 has concluded deduct that sum from any sum then due, or which at any later time may become due to the Lead Party.

16. ANTI-DISCRIMINATION

- 16.1 The parties shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.
- 16.2 The parties shall take all reasonable steps to secure the observance of clause 16.1 by all servants, employees or agents of the parties, suppliers and sub-contractors engaged on the Project.

17. HUMAN RIGHTS

The parties shall at all times comply with the provisions of the Human Rights Act 1998 (**HRA**) in the performance of this agreement

18. LIMITATION OF LIABILITY

18.1 Unless resulting from its default, omission or negligent act or those of its servants, agents, and employees the Accountable Body accepts no liability for any consequences, whether direct or indirect, that may arise from the Lead Party delivering the Project, the use of the Funding or from withdrawal of the Funding. The Delivery Body shall indemnify and hold harmless the Accountable Body its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Delivery Body in relation to the Project, the non-fulfilment of obligations of the Delivery Body under this agreement or its obligations to third parties.

18.2 Nothing in this agreement limits or excludes any party's liability for:

18.2.1 death or personal injury resulting from its negligence; or

18.2.2 negligence fraud or fraudulent misrepresentation.

18.3 The Accountable Body shall indemnify the Lead Party its employees, agents, officers, or subcontractors with respect to all claims demands actions costs expenses losses damages and all other liabilities arising from or incurred by reason of the actions of the Accountable Body in relation to the Project including but not limited to the generality failure to release Funding in accordance with the terms of this Agreement

19. WARRANTIES

19.1 Each party individually, warrants, undertakes and agrees with the other that:

19.1.1 they each have necessary resources and expertise to deliver the Project (assuming due receipt of the Funding);

19.1.2 they have not committed, nor shall it commit, any Prohibited Act;

19.1.3 they will shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the other immediately of any significant departure from such legislation, codes or recommendations;

19.1.4 they will comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Project;

19.1.5 they have and shall keep in place adequate procedures for dealing with any conflicts of interest;

19.1.6 they have and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;

- 19.1.7 all financial and other information relating to the Project which they have disclosed to the other is to the best of its knowledge and belief, true and accurate;
- 19.1.8 they are not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Funding;
- 19.1.9 they are not aware of anything in its own affairs, which they have not disclosed to the other, of anything which might reasonably have influenced the decision of the other to proceed with this agreement;
- 19.1.10 since the date of their last accounts there has been no material change in their financial position or prospects;

20. INSURANCE

- 20.1 Each party of the Delivery Body shall affect and maintain with a reputable insurance company a policy or policies (in their own name) in respect of all risks which may be incurred by that party of the Delivery Body, arising out of delivery of the Project and performance of this agreement, including death or personal injury, loss of or damage to property or any other loss (the Required Insurances).
- 20.2 The Required Insurances referred to above include (but are not limited to):
- 20.2.1 public liability insurance with a limit of indemnity of not less than TEN MILLION POUNDS [(£10,000,000)] in relation to any one claim or series of claims arising from the Project; and
- 20.2.2 employer's liability insurance with a limit of indemnity of not less than TEN MILLION POUNDS [(£10,000,000)] in relation to any one claim or series of claims arising from the Project; and
- 20.2.3 professional indemnity insurance with a limit of indemnity of not less than ONE MILLION POUNDS (£1,000,000.00) in relation to any one claim or series of claims arising from the Project.
- 20.3 Each party of the Delivery Body shall (on request) supply to The Lead Party a copy of such insurance policies and evidence that the relevant premiums have been paid.

21. DURATION

- 21.1 Except where otherwise specified, the terms of this agreement shall apply from the Commencement Date and shall continue until the expiry of the Funding Period or such period of extension of spending as envisaged under 5.3 or earlier termination of this agreement pursuant to clause 32.
- 21.2 Any obligations under this agreement that remain unfulfilled following the expiry or termination of this agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

22. FORCE MAJEURE

No party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, and in such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed

23. ASSIGNMENT

Save as expressly provided in this agreement neither party may, without the prior written consent of the other, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this agreement or, except as contemplated as part of the Project, transfer or pay to any other person any part of the Funding.

24. WAIVER

No failure or delay by any party to exercise any right or remedy under this agreement shall be construed as a waiver of any other right or remedy.

25. NOTICES

All notices and other communications in relation to this agreement shall be in writing and shall be deemed to have been duly given if personally delivered, emailed, or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered or if e-mailed all such communications shall be deemed to have been given when received (except that if received on a non-Working Day or after 5.00 pm on any Working Day they shall be deemed received on the next Working Day) and if mailed all such communications shall be deemed to have been given and received on the second Working Day following such mailing.

26. DISPUTE RESOLUTION

26.1 In the event of any complaint or dispute arising between the parties in relation to this agreement the matter should first be referred for resolution to the meeting of the parties Representatives who shall, within five (5) Working Days (or such longer period agreed between the parties) of a written request from one party to the other, meet in good faith to attempt to resolve the dispute.

26.2 Should the complaint or dispute remain unresolved after that meeting, the parties shall refer the matter to the respective Chief Executives (or other lead senior post) with an instruction to attempt to resolve the dispute by agreement within Ten (10) Working Days, or such other period as may be mutually agreed by the parties.

26.3 In the absence of agreement under clause 26.2, the parties will attempt to settle the dispute by mediation under the Centre for Effective Dispute Resolution Model Mediation Procedure (CEDR). Unless otherwise agreed between the parties, the mediator will be nominated by CEDR

Solve. To initiate the mediation, a party must give notice in writing (**ADR Notice**) to the other parties requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than ten (10) Working Days after the date of the ADR Notice. Unless otherwise agreed, the parties shall bear the costs and expenses of the mediation equally.

26.4 No party may commence any court proceedings in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or another party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

27. NO PARTNERSHIP OR AGENCY

This agreement shall not create any partnership or joint venture between the Accountable Body, the Lead Party and the Delivery Body, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other parties.

28. NO JOINT AND SEVERAL LIABILITY

The parties agree and acknowledge that if, for any reason, the project is terminated without satisfying grant funding conditions, the Accountable Body may seek to recover the project funding. In this event, the Delivery Body agrees to work collaboratively and in good faith with the Accountable Body and relevant grant awarding body in accordance with their obligations under the funding agreement. No partnership exists and each party will be liable for delivering its respective responsibilities but without joint and several liabilities.

29. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

29.1 Save those clauses of this agreement which confer a benefit on the Funder (and which shall be enforceable by it as though it were a party to this agreement), this agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

29.2 Notwithstanding clause 29.1, the rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

30. GOVERNING LAW

This agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

31. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties or their authorised representatives.

32. TERMINATION OF AGREEMENT

32.1 Without affecting any other right or remedy available to it, either party may terminate this agreement by giving at least three months written notice to the other party in the following circumstances:

- If the other party commits a material breach of any term of this Agreement which breach is irremediable or, if such a breach is remediable, the other party fails to remedy that breach within a period of thirty days after being notified in writing to do so;
- If the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debtors; or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- If the other party commences negotiations with all or any class of its creditors with a view to re-scheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- If a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- If an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- If the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- If a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- If a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within ten Working Days; or
- If the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

33. CONSEQUENCES OF TERMINATION

33.1 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or which are expressly stated to, or by implication are intended to, continue beyond the date of this Agreement, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

33.2 On termination of this Agreement, unless such things are needed by it to perform its surviving obligations under this Agreement, each party shall as soon as is reasonably practicable after termination of this Agreement:

- Return or destroy (as directed in writing by the other party) any documents, handbooks, or other information or data provided to it by the other party for the purposes of this Agreement; and
- Return all of the other party's equipment and materials, failing which the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, that party shall be solely responsible for their safekeeping.

34. PROCURATION

The Parties to this agreement each agree that any provisions for procurement set out in the Scheme Management Structure and Method of Buying Goods and Services as set out in Schedule 5 shall apply to this agreement, save for the following:

34.1 where there is a justifiable need for an exception to the normal procurement rules, to enable delivery partners to transfer funds or contract with a single supplier, the following will be necessary:

- 34.1.1 a report detailing the reasons why only a single supplier is suitable for the project;
- 34.1.2 approval of this exception by the Strategic Board referred to in the Partnership Agreement;
- 34.1.3 approval of this exception by the Accountable Body Representative

This document has been executed as an agreement and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED as an AGREEMENT

by **LONDON BOROUGH OF HAVERING**

by affixing its common seal

Authorised Signatory

Authorised Officer

in the presence of:

EXECUTED as an AGREEMENT

by **THAMES CHASE TRUST LIMITED**

by an authorised signatory

Authorised Signatory

in the presence of: -

SCHEDULE 1

REPRESENTATIVES

Accountable Body Representative

Director of Neighborhoods

Lead Party Representative

Benjamin Sanderson

SCHEDULE 2

DETAILS OF FUNDING

(As attached)

Approved costs set out in the letter dated 2nd December 2016 from Heritage Lottery Fund to the Approved Body

SCHEDULE 3
GRANT DISTRIBUTION METHODOLOGY
(As attached)

SCHEDULE 4

ADVANCE FUNDING PAYMENTS

In October 2017 LBH Cabinet approved forward funding 56% of total costs estimated to be £0.800m for 3 projects to be completed within the Land of the Fanns scheme.

Overheads

Community Action Fund

Community Tree Nursery

Total amount agreed through Cabinet £0.448m over 5 years.

As of August 2018, the spend profiles have been updated, these now show the forward funding requirement of 56% of total estimated costs of £0.539m for 3 projects to be completed within the Land of the Fanns scheme.

Overheads

Community Action Fund

Community Tree Nursery

Total forward funding now £0.302m over 3.5years.

Amounts shown under '56% of total anticipated spend to be transferred from LBH to TCT in advance' should transferred from LBH using Payment Request Forms to TCT by the dates shown under 'Funding to be transferred from LBH to TCT on or by'

These amounts will be claimed from the HLF and retained by LBH no later than 11 weeks / 50working days post spend quarter closure.

SCHEDULE 5

SCHEME MANAGEMENT STRUCTURE AND METHOD OF BUYING GOODS AND SERVICES

(As attached)