

Dated 23 August **2024**

Conservation Covenant

pursuant to section 117 of the Environment Act 2021

relating to land at Heacham Bottom Farm, Snettisham, King's Lynn, Norfolk (KL06)

(1) EBL HB Limited

(2) RSK Biocensus Limited

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This Conservation Covenant is dated 23 August 2024

Between:

- (1) **EBL HB Limited** (Company Number 13489265) whose registered office is at 35 Ballards Lane, London N3 1XW (the **Gain Site Operator**).
- (2) **RSK Biocensus Limited** (Company Number 04364279) whose registered office is at Spring Lodge, 172 Chester Road, Helsby, Frodsham, England WA6 0AR (the **Responsible Body**)

Introduction

- (A) The Gain Site Operator is a person with an interest in the Gain Site pursuant to section 117(4) of the 2021 Act who shall undertake the requirements set out in Regulations 6(2) to 6(7) of the BNG Regs and the Gain Site Operator terms and covenants contained in this Conservation Covenant.
- (B) The Gain Site Operator is the leasehold owner of the Gain Site which is registered at the Land Registry under title number NK528102.
- (C) The Gain Site Operator agrees to enter into this agreement with the Responsible Body regarding the Gain Site with the intention to create provisions which are of a qualifying kind, have a conservation purpose and are intended by the parties to be for the public good (the **Conservation Covenant**).
- (D) The Responsible Body (pursuant to section 119 of the 2021 Act) is the body responsible for enforcing the terms of this Conservation Covenant.
- (E) This Conservation Covenant is made pursuant to Section 117 of the 2021 Act and the parties agree that this Conservation Covenant is intended to be a Conservation Covenant and shall bind the Gain Site Operator and all successors in title and assigns and the persons claiming under or through the Gain Site Operator.
- (F) This Conservation Covenant is entered into to ensure that the Gain Site provides a Biodiversity Net Gain to satisfy the requirements of Schedule 7A of the 1990 Act.
- (G) The Gain Site Operator covenants with the Responsible Body on their own behalf and on behalf of their successors in title and assigns and any person claiming title through or under them to perform the obligations contained in Schedule 1 of this Conservation Covenant.

Agreed Terms

1 Interpretation

- 1.1 The following definitions and rules of interpretation apply in this Conservation Covenant:

1990 Act	the Town and Country Planning Act 1990.
2021 Act	the Environment Act 2021.
Alternative Responsible Body	a body approved pursuant to section 119 of the 2021 Act.

Acceptable Surety (a) a bank or financial institution that has a rating for its long-term debt obligations of B or higher by S&P Global Ratings or B or higher by Moody's Investors Services (or in each case any successor to their respective rating business) or a comparable rating from an internationally recognised credit rating agency; or

(b) any other bank or financial institution of good commercial standing, acceptable to the Responsible Body.

Allocation the attribution of any BNG Capacity, whether in respect of Biodiversity Units or Gain Site, by the Gain Site Operator toward a development's requirement to deliver biodiversity (and **Allocate** and **Allocated** and **Allocations** shall be construed accordingly).

Biodiversity Metric the statutory Biodiversity Metric and statutory Biodiversity Metric User Guide, published by the Department for Environment Food & Rural Affairs (Defra) dated February 2024 or any other superseding metric published by Defra or Natural England from time to time to measure and account for biodiversity losses and gains resulting from development or land management change (or in the absence of any metric published by Natural England or Defra such other metric as may be agreed in writing by the Gain Site Operator and the Responsible Body);

Biodiversity Unit(s) the measure of biodiversity resource as quantified and assessed in accordance with the Biodiversity Metric;

Biodiversity Unit Completed Sale or Transfer Certificate a certificate issued by the Gain Site Operator to a Biodiversity Unit Purchaser confirming the completed Sale or Transfer of a Biodiversity Unit from the Gain Site Operator to the Purchaser which shall specify the following:

- (a) the identity of the Biodiversity Unit Purchaser including the address (which, if the Biodiversity Unit Purchaser is a company shall be its registered office address) and contact details to include an email address and telephone number;
- (b) the specific development (with planning reference number) in relation to which the Biodiversity Unit(s) has or have been Sold or Transferred;
- (c) where possible the area in hectares of the Gain Site (or in the case of a linear habitat the length in kilometres of the Gain Site) delineated on a plan that has been 'retired' to deliver the Biodiversity Unit(s) which has or have been Sold or Transferred;
- (d) the number of Biodiversity Units Sold or Transferred;
- (e) the biodiversity value of the Sold or Transferred Biodiversity Units in relation to the specific development referred to at (b);

- (f) by reference to the Baseline Condition of the Gain Site the projected type size and condition of each habitat to which the Sold or Transferred Biodiversity Unit(s) relate at the end of the Covenant Period as a result of the Habitat Creation and Enhancement Works, the Habitat Maintenance Works and the Habitat Monitoring Works;
- (g) the age of the Gain Site at the time of Sale or Transfer of the Biodiversity Unit(s) with age measured from the date of the commencement of the first Habitat Creation and Enhancement Works within the Gain Site;
- (h) the specific Biodiversity Metric that has been used to measure the Biodiversity Unit(s), Sold or Transferred whether the statutory Biodiversity Metric or another;
- (i) confirmation that payment in full (including VAT) for the Sold or Transferred Biodiversity Units has been received by the Gain Site Operator; and
- (j) the Gain Site Register unique registration number of the Gain Site Biodiversity Units.

Biodiversity Unit Purchaser

a purchaser or transferee of a Biodiversity Unit(s).

Biodiversity Unit Sale Register

an electronic register maintained by the Gain Site Operator containing the following:

- (a) the Gain Site Register unique registration number of the Gain Site Biodiversity Units;
- (b) the total available units from the Gain Site (updated after each and every Biodiversity Unit Sale or Transfer);
- (c) all the details listed at (a) to (j) within the definition Biodiversity Unit Reserved Sale or Transfer Certificate for each Biodiversity Unit reserved to be Sold or Transferred;
- (d) all the details listed at (a) to (j) within the definition of Biodiversity Unit Completed Sale or Transfer Certificate for each Sale or Transfer of Biodiversity Units from the Gain Site;
- (e) a copy of the application made by the Gain Site Operator to record on the Gain Site Register the allocation of Biodiversity Units in relation to each Biodiversity Unit Sale or Transfer; and
- (f) a copy of Natural England's determination of an application to record on the Gain Site Register the allocation of Biodiversity Units in relation to each Biodiversity Unit Sale or Transfer.

BNG Capacity	the total Biodiversity Units resulting from the implementation of the Habitat Management and Monitoring Plan on the Gain Site.
BNG Regs	the Biodiversity Gain Site Register Regulations 2024.
Bond	any of the following (alone or in combination): (a) a standby letter of credit (or equivalent or replacement form of security or guarantee); (b) a bond, in either case from an Acceptable Surety in favour of the Responsible Body for the Bond Sum for the Covenant Period or until termination of this Conservation Covenant.
Bond Sum	the sum of [REDACTED] decreasing each year in accordance with Schedule 1 as the relevant Gain Site Monitoring Contributions are paid and actions required under the Habitat Management and Monitoring Plan are delivered.
CIEEM	the Chartered Institute of Ecology and Environmental Management.
Commencement Date	the date upon which the Habitat Creation and Enhancement Works have commenced.
Conservation Purpose	the use of the Gain Site for a qualifying purpose of a qualifying kind in accordance with section 117 of the Environment Act 2021, which has a conservation purpose and is intended by the parties to be for the public good.
Covenant Period	the 30 (thirty) year period commencing on the Habitat Creation and Enhancement Works Completion Date.
Deed of Release	a deed of release substantially in the form contained in Appendix 2.
Default Interest Rate	8% (eight percent) over the Bank of England Base Rate from time to time.
Dispute	has the meaning set out in clause 9.1.
Expected Minimum Metric Biodiversity Value	the projected minimum value of the Gain Site (in Biodiversity Units) calculated by comparing the Baseline Condition of the Gain Site with the projected type size and condition of each habitat on the Gain Site at the end of the Covenant Period as a result of the Habitat Creation and Enhancement Works, the Habitat Maintenance Works and the Habitat Monitoring Works as detailed in the Habitat Management and Monitoring Plan.
Expert	an independent and professionally qualified expert with not less than ten (10) years relevant experience in the field of the matter in dispute who has been appointed pursuant to

clause 10.4 of this Conservation Covenant and for the avoidance of doubt any expert on ecology matters shall be a member of CIEEM and for the further avoidance of doubt the Expert shall be entitled to get legal support in any matter referred to them where appropriate to do so.

Force Majeure Event	a circumstance not within the control of the Gain Site Operator comprising an act of God such as drought, flood or other natural disaster or the compulsory acquisition of the Gain Site by an acquiring authority under compulsory purchase powers.
Fundamental Breach	a breach of the obligations in this Conservation Covenant resulting in substantial material habitat destruction or substantial material habitat failure in respect of the Gain Site that wholly undermines the Conservation Purpose excluding a Force Majeure Event, Provided That a Fundamental Breach shall not be deemed to have arisen where the Habitat Creation and Enhancement Works, the Habitat Maintenance Works and the Habitat Monitoring Works have been materially complied with.
Gain Site	land at Heacham Bottom Farm, Snettisham, King's Lynn, Norfolk PE31 7PQ registered at HM Land Registry under title number NK528102 as shown edged red on the Plan at Appendix 1.
Gain Site Deed of Variation	a deed of variation to be agreed and entered into between the Parties in the event of the release of any part of the Gain Site from the obligations contained in this Conservation Covenant pursuant to clause 4.
Gain Site Register	means a register created and maintained in accordance with section 100 of the 2021 Act to be established and maintained by Natural England or other successor body.
Habitat Condition Assessment Report	a habitat condition assessment report to be prepared by the Gain Site Operator which assesses the condition type and size of the habitats at the Gain Site.
Habitat Creation and Enhancement Works	works for the purpose of habitat creation and enhancement at the Gain Site or at any part of the Gain Site set out in the Habitat Management and Monitoring Plan to deliver at least the Expected Minimum Metric Biodiversity Value as set out in the Habitat Management and Monitoring Plan for the Gain Site or any part of the Gain Site.
Habitat Creation and Enhancement Works Completion Date	the date by which the Habitat Creation and Enhancement Works for the Gain Site are completed as demonstrated by submission of the notice pursuant to paragraph 4.1.4 of Schedule 1 and for the avoidance of doubt a Gain Site may have a number of Habitat Creation and Enhancement Works Completion Dates reflecting the Sale or Transfer of different tranches of Biodiversity Units from the Gain Site.

Habitat Maintenance Works	the management and maintenance works at the Gain Site to manage and maintain at least to the Expected Minimum Metric Biodiversity Value as detailed in the Habitat Management and Monitoring Plan.
Habitat Management and Monitoring Plan	the plan(s) at Appendix 3 of this Conservation Covenant which, except in relation to the Expected Minimum Metric Biodiversity Value, may be amended pursuant to paragraph 8.2 of Schedule 1 to deliver at least the Expected Minimum Metric Biodiversity Value of the Gain Site which includes the following: (a) the completed Biodiversity Metric evidencing the Baseline Condition of the Gain Site; (b) the completed Biodiversity Metric evidencing the Expected Minimum Metric Biodiversity Value of the Gain Site; (c) full description of the Habitat Creation and Enhancement Works; (d) full description of the Habitat Maintenance Works including descriptions and evaluation of all of the habitat to be managed and maintained; (e) detailed design and working methods (management and maintenance prescriptions) to achieve and maintain at least the Expected Minimum Metric Biodiversity Value at the Gain Site for the Covenant Period; (f) ecological trends and constraints on the Gain Site that may influence management and maintenance; (g) aims, objectives and targets for management and maintenance including any links with local and national species and habitat action plans; (h) preparation of a works schedule, including ongoing maintenance works and an annual works schedule for a minimum of 30 years; (i) full details of the Habitat Monitoring Works including details of the monitoring needed to measure the effectiveness of management; (j) details of the timetable for each element of the monitoring programme; and (k) details of the persons responsible for the implementation and monitoring and demonstration.
Habitat Monitoring Works	works for the monitoring of habitats to ensure that the habitat enhancement to be achieved by the Habitat Creation and Enhancement Works is maintained at the Gain Site or any part of the Gain Site to achieve at least the Expected Minimum Metric Biodiversity Value for the Gain Site or any part of the Gain Site

Insolvency Event	one of the following: (a) a winding up order is made by the Court; (b) an administrator is appointed pursuant to the provisions of Schedule B1 of the Insolvency Act 1986; (c) a receiver, liquidator provisional liquidator, administrative receiver is appointed in respect of it or any of its assets; (d) a resolution is passed for its winding up, liquidation or reorganisation (save for the purposes of a solvent reorganisation); or (e) an order is made for a moratorium under Part A1 and Schedule ZA1 of the Insolvency Act 1986.
Monitoring Report	monitoring reports to be issued to the Responsible Body as specified in the monitoring plan at Schedule 3.
Monitoring Fees	the fees set out in paragraph 1 of Schedule 2.
Parties	the Gain Site Operator and the Responsible Body and the word 'Party' shall mean any one of them.
Plan	the plan attached at Appendix 1.
Remaining BNG Capacity	the available BNG Capacity on the Biodiversity Gain Site Register which can be Allocated to a development.
Sale/Sold	the allocation of any Biodiversity Unit or part thereof to a third party for a monetary value following full payment of the balance payable following an earlier deposit payment.
Secretary of State	the secretary of state for the department of food and rural affairs.
Transfer/Transferred	the allocation of any Biodiversity Unit or part thereof to a third party for any arrangement other than a monetary value.
Variation Event	any of the following events that would have a material impact on the calculation of any un-Allocated Biodiversity Net Gain: (a) a change in Natural England's guidance or policies; (b) a change in scientific opinion based on evidence; (c) a change in industry practices or in the generally accepted calculation methods for the type or extent of land required to achieve Biodiversity Net Gain; (d) the Biodiversity Metric is amended, updated, or replaced by Natural England and/or DEFRA; (e) the Gain Site becomes designated under law or is otherwise encumbered by any right which would be

incompatible with the Biodiversity Net Gain or any existing Allocation; or

- (f) such other event as may be agreed between the Parties as constituting a Variation Event.

Working Day

any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England and **Working Days** shall be construed accordingly.

- 1.2 Clause headings shall not affect the interpretation of this Conservation Covenant.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 A reference to this Conservation Covenant or to any other deed or document referred to in this Conservation Covenant is a reference to this Conservation Covenant or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this Conservation Covenant) from time to time.
- 1.7 References to recitals, clauses, schedules, paragraphs, appendices and plans are to the recitals, clauses, plans and paragraphs to the schedules and appendices of this Conservation Covenant. For the avoidance of doubt all schedules and appendices attached to this Conservation Covenant form part of this Conservation Covenant and are legally binding.
- 1.8 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 1.9 References to any party to this Conservation Covenant shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Responsible Body the successors to its statutory functions.
- 1.10 Any obligation, covenant, undertaking or agreement by any party to this Conservation Covenant not to do any act or thing includes an obligation, covenant, undertaking or agreement not to permit, procure or allow the doing of that act or thing.
- 1.11 Where the agreement consent approval or satisfaction of the Responsible Body or the Gain Site Operator is required under the terms of this Conservation Covenant such agreement consent approval or satisfaction shall not be unreasonably withheld or delayed.
- 1.12 If any provision or part-provision of this covenant is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 1.12 shall not affect the validity and enforceability of the rest of this Conservation Covenant.

- 1.13 The covenant constitutes the whole agreement between the parties and supersedes all previous agreements, whether written or oral, between the parties relating to its subject matter.

2 **Statutory Provisions**

- 2.1 This Conservation Covenant is made pursuant to Section 117 of the 2021 Act with the intention that it is a Conservation Covenant between the Gain Site Operator and the Responsible Body.
- 2.2 This Conservation Covenant requires the Gain Site Operator to undertake the requirements and covenants in Schedule 1 on the Gain Site and permits the Responsible Body to undertake the requirements on the Gain Site in Schedule 1 and Schedule 3 in the events set out in those schedules which are of a qualifying kind.
- 2.3 The Parties agree that the Gain Site Operator's interest in the Gain Site is a qualifying estate pursuant to section 117(4) of the 2021 Act.
- 2.4 The purpose of the provisions of this Conservation Covenant is to have a Conservation Purpose for the Covenant Period and to provide a Biodiversity Net Gain on the Gain Site.
- 2.5 The Parties intend that this Conservation Covenant is to be for the public good.

3 **Gain Site Operator's Consent**

- 3.1 The parties acknowledge that the Responsible Body enters into this agreement after reviewing the title documentation, ecological reports and surveys provided to the Responsible Body by the Gain Site Operator and after completing its own due diligence checks on the viability of the proposals for the Gain Site in the Habitat Management and Monitoring Plan from those documents.
- 3.2 The Gain Site Operator agrees that if it unreasonably fails to provide information that it has knowledge of from the date of this agreement to the end of the Covenant Period relating to the land and/or title of the Gain Site which could affect the viability of the proposed habitat creation and or enhancement AND which then results in any loss to the Responsible Body, then the Client shall accept liability and compensate the Responsible Body for any such loss.
- 3.3 The Gain Site Operator covenants with the Responsible Body so as to bind its interest in the Gain Site as set out in Schedule 1 of this Conservation Covenant.

4 **Release of Gain Site from the Obligations Contained in This Conservation Covenant**

- 4.1 The Gain Site Operator may modify or discharge all or part of the Gain Site from the obligations contained in this Conservation Covenant by giving notice to the Responsible Body (the **Release Notice**) where, at the date of the Release Notice no Biodiversity Units have been realised from that part of the Gain Site to be released or no Biodiversity Units realised from the Gain Site have been Sold or Transferred from that part of the Gain Site to offset development impacts to comply with a planning policy requirement or to comply with Schedule 7A of the 1990 Act or to comply with this Conservation Covenant.
- 4.2 Where the Release Notice has been given in accordance with the provisions of clause 4.1 and requests release of all of the Gain Site the Parties shall enter into a Deed of Release as soon as is reasonably possible and the Responsible Body shall within five (5) Working

Days of completion of the Deed of Release seek to secure the release of this Conservation Covenant from its registration as a local land charge from the Land Registry.

- 4.3 Where the Release Notice is given in accordance with clause 4.1 and requests release of part of the Gain Site the Parties may modify the Gain Site by agreement in the form of a Gain Site Deed of Variation.
- 4.4 Where the Release Notice is given in accordance clause 4.1, the Responsible Body shall confirm within twenty (20) Working Days whether it accepts the details contained in the Release Notice and the Parties shall acting reasonably seek to agree to release the covenants and obligations within this Conservation Covenant on such part of the Gain Site:
 - 4.4.1 as has not been realised to create any Biodiversity Units in favour of a Biodiversity Unit Purchaser or
 - 4.4.2 as relates to Biodiversity Units realised from the Gain Site which have not at the date of Release Notice been Sold or Transferred and will not be Sold or Transferred in the future,

in either case in accordance with all relevant details of that part of the Gain Site submitted by the Gain Site Operator to the Responsible Body.

- 4.5 Where the Responsible Body and the Gain Site Operator agree to release the covenants and obligations contained in this Conservation Covenant on part of the Gain Site in accordance with clause 4.4 or following resolution of a Dispute in accordance with clause 10 following the completion of a Gain Site Deed of Variation the Responsible Body shall within five (5) Working Days of the date of the Gain Site Deed of Variation update or replace the entry regarding the Gain Site as a local land charge with the Gain Site Deed of Variation to the Land Registry.

5 **Miscellaneous Provisions**

- 5.1 No person shall be liable for any breach of a covenant, restriction or obligation contained in this Conservation Covenant after parting with all of its interest in the Gain Site, or parting with its interest in that part of the Gain Site to which the relevant covenants, restrictions or obligation relates save in respect of any breach subsisting prior to parting with such interest.
- 5.2 Insofar as any provision of this Conservation Covenant is found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Conservation Covenant.

6 **Transitional Period**

The Parties shall, acting reasonably and in good faith, and at the request of the Gain Site Operator, agree such variations to this Conservation Covenant as shall be required by the Gain Site Operator and or the Responsible Body in order to achieve registration of the Gain Site on the Gain Site Register and to enable the Sale and Transfer of Biodiversity Units in accordance with the 2021 Act, the 1990 Act and such other regulations enacted pursuant to them regarding Biodiversity Net Gain.

7 **Local Land Charge**

This Conservation Covenant is a local land charge and application for registration shall be sent to the Land Registry or applicable local authority by the Responsible Body within three business days of execution of this Conservation Covenant.

8 **Interest on Late Payment**

Any sum or amount that has not been paid to the Responsible Body by the date it is due under the terms of this Conservation Covenant shall accrue interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

9 **Disputes**

- 9.1 The Parties shall act in good faith to resolve any dispute, claim or proceeding arising out of or relating to this Conservation Covenant (a **Dispute**) and where applicable in accordance with clause 9.2.
- 9.2 The Parties agree and acknowledge that no Party shall be liable for the breach of any covenant contained in this Conservation Covenant including those relating to the Habitat Creation and Enhancement Works, the Habitat Maintenance Works or the Habitat Monitoring Works which arises as a direct result of a Force Majeure Event.
- 9.3 Where the Responsible Body considers that there has been a breach of the covenants of this Conservation Covenant the Responsible Body shall:
 - 9.3.1 give written notice to the Gain Site Operator stating the nature of the breach, and the steps that it considers are required to remedy the breach (the **Initial Notice**);
 - 9.3.2 discuss with the Gain Site Operator and give the Gain Site Operator a reasonable opportunity to discuss the alleged breach;
 - 9.3.3 take into account any reasonable representations made by the Gain Site Operator in relation to the alleged breach, the proposed remedial actions and the proposed timetable for undertaking such actions.
- 9.4 Following the steps set out at clause 9.3, the Responsible Body will give written notice to the Gain Site Operator detailing the breach of this Conservation Covenant, the steps it requires to be taken to remedy the breach and the timetable for undertaking such actions.
- 9.5 If after a period of three (3) months from the date the Responsible Body served the Initial Notice referred to at clause 9.3.1 on the Gain Site Operator and in accordance with clause 9.3 of this Conservation Covenant, the Responsible Body and the Gain Site Operator have been unable to agree on the issues the Parties or either Party may refer the issue(s) to an Expert in accordance with clause 10.
- 9.6 If the Gain Site Operator does not disagree with the Initial Notice and does not use reasonable endeavours to remedy the breach in accordance with the written notice at clause 9.4 within thirty (30) Working Days, the Responsible Body will be able to pursue all legal remedies.

10 Expert Determination

- 10.1 If at any time the Responsible Body acting reasonably notifies the Gain Site Operator in writing that it believes that a Fundamental Breach has arisen and the Fundamental Breach has not been remedied as per clause 9 then the Gain Site Operator may be required to pay to the Responsible Body within thirty (30) Working Days of the date of such notification a sum which the Responsible Body estimates to be reasonably necessary to make good the Fundamental Breach subject to clause 10.2.
- 10.2 This is unless the Gain Site Operator disputes the sum proposed by the Responsible Body in which case this dispute shall be determined in accordance with clause 10.3 of this Agreement and payment shall then be made in accordance with the determination of the dispute and within thirty (30) Working Days of such determination.
- 10.3 In the event of:
- 10.3.1 a Dispute as to whether or not a Party is, where applicable, performing its obligations, or exercising its rights in this Conservation Covenant; or
 - 10.3.2 any other type of Dispute where the disputing parties agree that Expert dispute resolution is appropriate,
- clauses 10.4 to 10.9.5 shall apply.
- 10.4 If a Dispute to which clause 10.3 applies has not been resolved within twenty (20) Working Days the Parties shall use reasonable endeavours to agree the identity of an Expert and instruct an Expert jointly.
- 10.5 In the event the Parties cannot agree on the identity of an Expert, then after 20 (twenty) Working Days from the date of seeking to agree an Expert either Party may refer the Dispute to an Expert whose decision shall be final and binding on the Disputing Parties in the absence of manifest error and their costs shall be payable by the Disputing Parties in such proportion as the Expert shall determine and failing such determination shall be borne by the Disputing Parties in equal shares.
- 10.6 Any Expert shall be appointed by agreement of the Parties or otherwise by:
- 10.6.1 the President (Vice President) of CIEEM where the matter concerns ecology;
 - 10.6.2 the President (or Deputy) of the Law Society where the matter concerns the construction or meaning of this Conservation Covenant (or related document); and
 - 10.6.3 the President (or Deputy) of the Royal Institute of Chartered Surveyors in all other circumstances
- 10.7 Unless the Expert shall direct to the contrary, not more than twenty (20) Working Days after their appointment the Disputing Parties shall exchange and copy to the Expert written summaries of their cases together with a bundle of key documents relied upon.
- 10.8 The Gain Site Operator shall permit the Expert to visit the Gain Site unaccompanied and the Parties agree that the Expert may call for such written evidence from the Disputing Parties as they may require.
- 10.9 The terms of appointment for the Expert shall include the following terms:

- 10.9.1 that Expert shall not, unless they direct to the contrary, hear oral representations from any Disputing Party;
- 10.9.2 that the Expert shall fully consider all submissions and evidence when making their decision;
- 10.9.3 any decision shall be in writing and reasons for the decision shall be given;
- 10.9.4 that the Expert shall use all reasonable endeavours to give their decision and the reasons for it as speedily as possible and in any event within thirty (30) Working Days of their receipt of the bundle referred to at 10.7;
- 10.9.5 that any Expert howsoever appointed shall be subject to the express requirement that a decision is reached and communicated to all Parties within the minimum practicable timescale allowing for the nature and complexity of the Dispute.

11 **No Fetter of Discretion**

Nothing herein contained or implied shall prejudice or affect the rights discretions powers duties and obligations of the Responsible Body under all statutes, statutory instruments, orders and regulations in the exercise of its functions as a Responsible Body.

12 **Waiver**

No waiver (whether express or implied) by the Responsible Body of any breach or default by the Gain Site Operator performing or observing any of the obligations, terms or conditions of this Conservation Covenant shall constitute a continuing waiver and no such waiver shall prevent the Responsible Body from enforcing any of the said obligations terms or conditions or from acting upon any subsequent breach or default in respect thereto by the Parties.

13 **Notices**

- 13.1 Any notice or other communication to be given under this Conservation Covenant must be in writing and must be:

- 13.1.1 delivered by hand;
- 13.1.2 sent by pre-paid first class post or other next Working Day delivery service;
- 13.1.3 by commercial courier; or
- 13.1.4 by email, and where received after 4pm on a Working Day is deemed to be received on the next Working Day at 9am or where sent on a non- Working Days shall be deemed to be received on the next Working Day at 9am.

- 13.2 Any notice or other communication to be given under this Conservation Covenant must be sent to the relevant Party:

- 13.2.1 in the case of the Responsible Body for the attention of Tim Graham or his replacement or any Director of RSK Biocensus Limited at the address contained in this Conservation Covenant;
- 13.2.2 in the case of the Gain Site Operator to Alexa Culver or her replacement or any Director of EBL HB Limited at the registered address for the Gain Site Operator from time to time,

or as otherwise specified in writing by the Parties to each other from time to time.

- 13.3 Any notice or other communication given in accordance with this clause will be deemed to have been received:

13.3.1 if delivered by hand, on signature of a delivery receipt **Provided That** if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;

13.3.2 if sent by pre-paid first class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting; or

13.3.3 if delivered by commercial courier on the date and at the time that the courier's delivery receipt is signed.

14 **Cancellation of Land Charges Entries**

- 14.1 On the written request of the Gain Site Operator at any time after each or all of the obligations in this Conservation Covenant have been performed or otherwise discharged (and subject to the payment of the Responsible Body's proper costs) the Responsible Body will issue a written confirmation of such performance or discharge **Provided That** the Responsible Body is satisfied that such obligations have been performed in full.

- 14.2 Following the Responsible Body's satisfaction pursuant to clause 14.1 that performance and full satisfaction of all the terms of this Conservation Covenant have been satisfactorily carried out or if this Conservation Covenant is determined other than in the circumstances set out in clause 4.2 and 4.4 of this Conservation Covenant the Responsible Body shall on the written request of the Gain Site Operator seek to secure cancellation of all entries made in the local land charges register in respect of this Conservation Covenant by the Land Registry.

15 **Third Party Rights**

A person who is not a party to this Conservation Covenant shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Conservation Covenant.

16 **Jurisdiction**

This Conservation Covenant is governed by and interpreted in accordance with the law of England.

17 **Mortgagees**

- 17.1 This Conservation Covenant shall not be enforceable against any mortgagee or chargee from time to time which shall have the benefit of a mortgage or charge over the whole or part of the Gain Site unless and until such mortgagee or chargee is in possession of the Gain Site or that part of the Gain Site over which it has a mortgage or charge, in which case it too will (in respect of the Gain Site or relevant part of the Gain Site over which it has a mortgage or charge) be bound by the obligations as if it were a party deriving title from the Gain Site Operator.

- 17.2 For the avoidance of doubt, any buyer purchasing the Gain Site or any part of it from the mortgagee or chargee exercising a power of sale shall be bound by the terms of this Conservation Covenant.

18 **Conditionality**

This Conservation Covenant shall come into effect upon the date of this Conservation Covenant.

19 **Termination**

- 19.1 Subject to clause 19.2, the Responsible Body may at its sole discretion terminate this Conservation Covenant where either:

19.1.1 a Fundamental Breach has occurred (and has not been remedied in accordance with this Conservation Covenant); or

19.1.2 an Insolvency Event has occurred in relation to the Gain Site Operator.

- 19.2 This Conservation Covenant may be otherwise terminated only in respect of any Biodiversity Units realised from the Gain Site which have not yet been Sold or Transferred in accordance with clause 4 or in respect of land within the Gain Site from which no Biodiversity Unit has been realised in accordance with clause 4.

- 19.3 In the event the Responsible Body elects to terminate this Conservation Covenant pursuant to clause 19.1 the Gain Site Operator or in the case of an Insolvency Event the Gain Site Operator's administrator, liquidator or receiver shall seek to modify or release that part of the Gain Site by entering into a Deed of Release this Conservation Covenant.

20 **Insurance**

- 20.1 The Gain Site Operator shall at its own expense maintain insurance in respect of all third party liability risks in relation to the Gain Site to provide cover in respect of each and every claim of not less than ten (10) million pounds.

- 20.2 The Gain Site Operator shall provide evidence that such insurance has been effected and shall provide a copy of the insurance to the Responsible Body prior to the Sale of the first Biodiversity Unit and thereafter upon the reasonable request of the Responsible Body.

- 20.3 The Gain Site Operator shall ensure that the insurance approved in accordance with clause 20.1 shall be kept in place for the Covenant Period.

21 **Limitation of Liability**

- 21.1 The restrictions on liability in this clause 21 apply to every liability arising under or in connection with this Conservation Covenant including liability in contract, tort (including negligence), misrepresentation, restitution, under any indemnity or otherwise.

- 21.2 Nothing in these clauses shall limit or exclude either party's liability for death or personal injury resulting from negligence, for fraud or fraudulent misrepresentation or any matter in respect of which it would be unlawful for either party to restrict or exclude liability.

- 21.3 Subject to clauses 21.1 and 21.2, the Responsible Body's total liability under or in connection with this Conservation Covenant, whether in contract, tort (including negligence), breach of statutory duty or otherwise shall not exceed the level of the Monitoring Fees.

- 21.4 Except as set out in these clauses, all warranties, conditions and other terms whether express or implied by statute, or common law or otherwise are, to the fullest extent permitted by law, excluded from this Conservation Covenant.
- 21.5 This Conservation Covenant shall not be enforceable against:
- 21.5.1 any statutory undertaker who acquires any part of the Gain Site or interest therein for the exclusive purpose of carrying out their statutory undertaking; or
 - 21.5.2 any person whose only interest in the Gain Site or any part of it is in the nature of the benefit of an easement or covenant, or as the Gain Site Operator of the sub-soil of any highway within the Gain Site.

22 **Assignment**

- 22.1 The Responsible Body may novate, assign or otherwise deal or dispose of the benefit or burden of its interests in this Conservation Covenant to an Alternative Responsible Body or the Secretary of State.
- 22.2 The Gain Site Operator shall enter at the Responsible Body's cost, such costs to be reasonable and proper, into a deed of novation in a form reasonably required by the Responsible Body and the Alternative Responsible Body or the Secretary of State as relevant.
- 22.3 Where the Responsible Body does not proceed by way of a novation, the Gain Site Operator shall procure a deed of covenant from the Alternative Responsible Body or the Secretary of State (as relevant) in a form as reasonably required by the Responsible Body, agreeing from then on to be bound by and to perform and observe the obligations of the Responsible Body contained in this Conservation Covenant as if this Conservation Covenant had originally been the Alternative Responsible Body or the Secretary of State. Upon entering into such deed of covenant, the Responsible Body shall be released from all future liability to observe and perform its obligations under this Conservation Covenant.

This Conservation Covenant has been executed as a deed, is delivered, and takes effect on the date stated at the beginning of it.