**Agreement for MANAGEMENT OF nature conservation areas of conningbrook lakes country park**

**T H I S A G R E E M E N T** is made the day of 2022

**B E T W E E N**

**ASHFORD BOROUGH COUNCIL** whose office is at Civic Centre, Tannery Lane, Ashford, Kent TN23 1PL (“the Council”) and

XXXXX of (“the Operator”)

**Background**

## 1 The Council wishes to procure an operator to manage the Conningbrook Lakes Country Park

## 2 The Council and the Operator have agreed to work together and with other appropriate organisations to promote and develop the operation of Conningbrook Lakes Country Park and assist with its management and operation as set out in this agreement.

## 3 the Operator will provide management skills and expertise in their field and agrees to perform the management and operational duties on behalf of the Council in accordance with this Agreement.

## 4 the Operator will form part of the Operating Partner Steering Group and assist in effective cooperation with other key operators on the Land.

## 5. The obligations of the Council and the Operator under this Agreement may be varied as agreed in writing between the parties.

**Definitions**

#### The following terms shall have the following meanings. For the avoidance of doubt the meanings ascribed to the following terms shall also apply to the Schedules of this Agreement:

Agreement shall mean this Agreement, and any and all schedules, annexures and exhibits attached to it or incorporated in it by reference.

Agreement Period shall mean for a period of 5 years from the Commencement Date to **………..** inclusive.

Bioscan Ecological Management Strategy the Bioscan Ecological Management Strategy produced by Bioscan Ltd (October 2012) a copy of which is provided at Schedule 7

Commencement Date shall mean **1st April 202**2

Confidential Informationwritten, electronic or oral information relating to the operation of the Council or the Operator which is received as a result of this agreement and the discussions leading up to it;

Country Park Manager Shall mean the Council’s Nature Conservation Officer or such other person as nominated by the Council from time to time.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

Ecological Management Plan

 Shall mean the Conningbrook Lakes Country Park Ecological Management Plan 2014 at Schedule 6

Enabling Works works that the freehold or Leasehold owner of the Land may wish to carry out on the Land

Freehold Owner the owner of the freehold interest in the Land being Brett Aggregates Limited or its successor/s in title or its agents employees and contractors

The Operator Site shall mean that part of the Land that falls within the remit of management by the Operator shown shaded light green (and labelled Compartments 1, 3 and 4) on Plan at Schedule 1

Land the land shown edged red on Plan at schedule 1

Management Objectives shall mean the Conningbrook Lakes Management Objectives 2021-2025 at Schedule 3a

Management Plan shall mean the Conningbrook Lakes Country Park Management Plan 2016-20 at Schedule 3 (and any subsequent updates)for the management of the nature conservation areas denoted as compartments 1, 3 and 4 on Plan at Schedule 1

Notice means a notice complying with the terms of clause 13.

Operating Partner Steering Group chaired by the Council and formed to support and coordinate the operations of the country park.

Payment shall mean all those payments as detailed in Clause 4.

Permitted Use that Permitted Use in favour of the Council as detailed in the lease entered into between the Council and Brett Ltd and dated ………..

Senior Manager shall mean a senior representative of the Operator that has the appropriate management experience to advise the Operating Partner Steering Group.

The Management Services shall mean those Management Services to be performed by the Operator within The Operator Site as detailed by Schedule Two.

Working Day any day other than a Saturday or Sunday or a public holiday or bank holiday in England or a day falling in the period from 25 December to 1 January inclusive.

**1. The Appointment**

1.1 The Council appoints the Operator to perform and the Operator agrees to perform The Management Services.

1.2 Furthermore the Operator covenants with the Council to comply with the obligations in clause 2 of this Agreement.

**2. the Operator’s obligations and Permitted Use**

2.1 the Operator shall perform The Management Services in accordance with those detailed in Schedule Two (The *Management Services Requirement)*.

2.2 the Operator will not use the Land other than for the Permitted Use

2.3 the Operator shall only display such sign boards, notices and inscriptions as are required for the exercise of The Management Services and no others without the prior written consent of the Council where the erection of such sign boards, notices and/or inscriptions are compatible with The Management Services;

2.4 the Operator insofar as reasonably practical shall not do on the Land or permit to be done on the Land anything by anyone (including (inter alia) any workmen contractors or other parties permitted access to the Land by the Operator) insofar as they are in the control of the Operator and for the avoidance of doubt excluding any independent parties who are not invitees/agents or employees of the Operator which is illegal or which may be or become a nuisance (whether actionable or not) or cause damage, to tenants or other occupiers or any owner or occupier of land adjoining the Land;

2.5 the Operator shall observe any reasonable rules and regulations the Council makes and notifies to the Operator in writing from time to time governing the the Operator’s use of the Land;

2.6 the Operator shall leave the Operator Site in a clean and tidy condition to the reasonable satisfaction of the Council in the event that this Agreement is terminated and shall remove the Operator’s plant, equipment and goods from the Land in the event that this Agreement is terminated within 1 month of the date on which this Agreement is terminated.

2.7 the Operator shall not keep on the Land any article or thing which is or might become dangerous combustible inflammable radioactive or explosive except to the extent that this is contemplated by the Permitted Use of the Land and/or comprises normal requirements for heating any required spaces and/or structures and for the cooking of food stuffs;

2.8 the Operator shall not discharge into any service media any contaminating or corrosive substances oil grease or any noxious or deleterious effluent or substance which might cause an obstruction or be a source of danger.

2.9 The Operator may alter The Management Services in order to improve them following consultation with the Council and with its written approval.

2.10 The Operator shall in the provision of The Management Services comply with all relevant Acts of Parliament, statutory orders, regulations and codes of practice relating to The Management Services including any such directives, legislation, regulations and codes of practice which may come into force during the Agreement Period.

2.11 The Operator shall provide The Management Services at all times in such a manner as shall promote and enhance the image and reputation of the operation of a country park on the Land and the Council.

2.12 The Operator shall use best endeavours to review and update as necessary the Management Plan in consultation with and approval of the Council.

2.13 The Operator shall assess the impact and quality of its delivery of The Management Services and provide an annual performance report to the Council.

2.14 The Operator shall attend quarterly performance review meetings with the Council (unless otherwise agreed with the Council) to assess the Operator’s performance against The Management Services and Management Plan.

2.15 The Operator may not prevent or delay access to the Land by the Council.

2.16 A representative of the Operator of appropriate seniority will attend all meetings of the Operating Partner Steering Group which will meet at least four times per year at each party’s own expense to review progress.

2.17 Not to carry out any works that add to or alter the Land (including the erection of physical structures and buildings on the Land) but not including those maintenance and management activities carried out in accordance with clause 2.1 and save for those works permitted by the Council’s Planning Permission and such other works as may be compatible with the Permitted Use and authorised in advance by the Council.

2.18 Provided that the Council gives the Operator prior written notice of Enabling Works of at least 5 working days (unless in the event of an emergency where no notice will be given) to be carried out on the Land the Operator shall not interfere with or disrupt any such Enabling Works and shall not enter the area affected by the Enabling Works and shall modify its use of the area affected by the Enabling Works in the manner reasonably required by the Council until and if the Council confirm to the Operator in writing that the Operator may resume its original use of and/or re-enter the affected area.

2.19 the Operator shall not apply for any planning permission and/or apply to vary the terms of the Council’s Planning Permission without the prior written consent of the Council.

2.20 the Operator shall not do anything that will or might constitute a breach of the Council’s Planning Permission affecting the Land or which will or might vitiate in whole or in part any insurance effected by the Council in respect of the Land from time to time.

2.21 Notwithstanding the provisions of the Management Objectives, the Management Plan and the Management Services the Operator shall manage:-

1. all grassed areas within the Operator Site (Compartments 1, 3 & 4) and
2. all other trees and vegetation within the same area/s as described at clause 2.21 (a) above;

in accordance with the “management aims” set out for each “compartment” within the Land as detailed by the Management Plan and Management Objectives and the Bioscan Ecological Management Strategy or in accordance with such other aims and/or performance measures as are approved by the Council in writing.

2.22 the Operator acknowledges that the Council has entered into a 500-year lease with Brett Aggregates Ltd (the “Licensor” or Landlord” respectively) and that pursuant thereto the Council has certain obligations in respect of those documents and that such obligations are detailed as far as possible within clause 2 and Schedule 4 (the Lease Management Obligations). The Operator shall not do or omit to do anything in the course of carrying out its obligations under this Agreement which would put the Council in breach of its lease obligations.

2.23 The Operator acknowledges it has taken legal advice and that this Agreement does not create a tenancy in respect of any part of the Land or of the Operator Site.

2.24 The Operator undertake to comply with their obligations in Schedule 6.

2.25 The Operator shall take all necessary measures to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the performance of the Agreement. The Operator shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Council on request.

2.26 The Operator shall consent to the Council holding and processing data relating to the Operator and the Operator’s Personnel for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined in the Data Protection Legislation) relating to the Operator and its Personnel.

2.27 The Operator shall comply, and shall procure that its Personnel shall comply, with the Council's data protection policy and relevant obligations under the Data Protection Legislation and associated codes of practice when processing personal data relating to any employee, worker, customer, Council, supplier, or agent of the Council or Operator.

**3. The Council’s Obligations and the Premises**

**3.1 The Council shall:-**

3.1.1 arrange quarterly (unless otherwise agreed) performance review meeting(s) with the Operator, the fourth meeting of which will be to review the Operator’s delivery of The Management Services, and

3.1.2 arrange quarterly meetings of the Operating Partner Steering Group.

3.2 The Council will provide adequate access for the Operator to the Land (such route to be designated by the Council from time to time) as an invitee in order to perform The Management Services for the duration of the Agreement Period (and any extensions thereof) and the permission as invitee shall terminate immediately upon the termination (howsoever occurring) or expiry without extension of this Agreement or the Licence or the Lease.

3.3 The Council will give assistance and information within its available resources and capability to the Operator as the Operator may request in order that the Operator may perform The Management Services.

4. Payment

4.1 The Council will pay the Operator the sum of **£30,000 p.a.** to be paid at six monthly intervals in advance with payment within 30 days upon receipt of a valid invoice from the Operator. The first payment will be due upon signature of the Agreement.

**5. VAT**

5.1 All sums payable under this Agreement unless otherwise stated are exclusive of VAT and other duties or taxes.

5.2 Any VAT or other duties or taxes payable in respect of such sums shall be payable in addition to such sums.

**6. Confidential Information**

* 1. The parties to this Agreement will at all times keep Confidential Information acquired in the consequence of this Agreement, except for information which they may be entitled or bound to disclose under compulsion of law including the Freedom of Information Act 2000 or under the Environmental Information Regulations 2004 or where requested by regulatory agencies or to their professional advisers where reasonably necessary for the performance of their professional services.
	2. The Operator acknowledges that the Council cannot prevent disclosure by individual Council members of Confidential Information conveyed to members during the normal course of the Council's business or otherwise.
	3. Neither party shall make any press announcement or publicise this agreement in any way, without the prior written consent of the other

**7. Termination**

7.1 This Agreement shall end on the earliest occurrence of any of the following:

7.1.1 Either party wish to terminate the Agreement during the Agreement Period without any recourse on it by formally giving to the other party 6 months’ notice. By mutual consent both parties can agree to terminate this Agreement at an earlier date following the service of such notice.

Or

7.1.2 Subject to clause 7.2 the Council giving notice to the Operator at any time of a material breach of any of the Operator’s obligations contained in this Agreement whereupon this Agreement shall immediately terminate.

7.2 The Council will be able to terminate the Agreement pursuant to clause 7.1.2 if it considers the Operator to be in material breach of their obligations under this Agreement, but where the breach is not irremediable every effort shall be made prior to service of notice under clause 7.1.2 to resolve the issue through joint discussions and if that is not possible the Parties shall resort to the Dispute Resolution mechanism referred to in clause 19 below.

7.3 This Agreement may be terminated with immediate effect where:

(i) despite a previous written warning by the Council giving the Operator 15 Working Days to rectify the failure(s), the Council consider the Operator’s performance of The Management Services is unsatisfactory;

(ii) there is a substantial change to The Management Services that the Council has not approved;

(iii) there is a continued failure to comply with The Management Services;

1. insufficient measures are being taken by the Operator to investigate and resolve any reported irregularity; or
2. The Operator acts in such a way as to bring the Council’s name into disrepute.
3. The Council receives notice to terminate its Licence (the Council giving as much notice to the Operator as is reasonably practicable).

**8. Delivery up of documents on termination**

8.1 The Operator shall upon the termination of its engagement immediately deliver up to the Council all correspondence documents briefs papers and property belonging to the Council, which may be in its possession or under its control.

**9. Status of the Operator**

9.1 During the Agreement Period the Operator shall be independent and not the servant or agent of the Council nor shall this Agreement constitute a Partnership as defined in the Partnership Act 1890.

**10. Supersedes prior agreement**

10.1 This Agreement supersedes any prior agreement between the parties whether written or oral and any such prior agreements are cancelled as at the Commencement Date and there are no promises, terms, conditions or obligations expressed or implied other than those contained in this Agreement.

**11. Headings**

11.1 Headings contained in this Agreement are for reference purposes only and should not be incorporated in to this Agreement and shall not be deemed to be any indication of the meaning of the Clauses to which they relate.

**12. Proper Law and Jurisdiction**

12.1 This Agreement shall be governed by the laws of England.

**13. Notice**

13.1 Any notice to be served on either of the parties by the other shall be sent by pre-paid recorded delivery or registered post to the address of the relevant party shown at the head of this Agreement or by Facsimile transmission or by electronic mail and shall be deemed to have been received by the addressee within 32 hours of posting or 24 hours if sent by Facsimile transmission or by electronic mail to the correct Facsimile number of electronic mail number of the addressee (with correct answer back).

**14. Survival of terms**

14.1 No term shall survive expiry or termination of this Agreement unless expressly provided.

**15. No assignment or sub-contracting**

15.1 The Operator shall not assign or transfer any of its rights or duties under this Agreement without the consent in writing of the Council.

15.2 The Operator may not sub-contract or assign any of its rights or obligations without the Councils prior written consent, but the Operator may at its own expense engage some other person acceptable to the Council to perform such of the Operators duties as the parties agree and which the Operator is unable to perform. The Operator shall remain fully liable to the Council for the acts and omissions of any such person or sub-contractor.

15.3 The Council may assign, novate or otherwise dispose of its rights and obligations under the Agreement or any part thereof to:

(a) any Local Authority; or

(b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or

(c) any private sector body which substantially performs the functions of the Council,

Provided that any such assignment, novation or other disposal shall not increase the burden of the Operator’s obligations under the Agreement.

**16. Void provisions**

16.1 If any provision of this Agreement shall be held void or unenforceable in whole or part by any court or other competent authority, the remaining provisions, and the remainder of the provisions affected, shall remain in full force and effect.

**17. Exclusion of the Contacts (Rights of Third Parties) Act 1999 and no Partnership**

* 1. A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this Agreement.
	2. Nothing in this Agreement shall create or be deemed to create any agency or partnership between the parties.

**18. Equalities and Anti-slavery Laws**

18.1 the Operator shall in respect of all persons employed or seeking to be employed by the Operator (whether in and about the provision of The Management Services or otherwise) comply with each and every of the provisions of law which encourage the promotion of equality of opportunity training and promotion regardless of sex, colour, race, ethnic origin, nationality, sexual orientation or religion.

18.2 In performing its obligations under this Agreement, the Operator shall:

18.2.1. Comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and

18.2.2. Not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;

18.3 The Operator represents and warrants that at the date of this Agreement it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

18.4 The Council may terminate this Agreement with immediate effect by giving written notice to the Operator if the Operator commits a breach of this Clause 18.2 to 18.3.

**19. Dispute Resolution**

19.1 In the event of any dispute or disagreement arising out of or in connection with this Agreement or any breach thereof ("a Dispute") the Council and the Operator agree first to use their reasonable endeavours to negotiate in good faith a settlement of such dispute

19.2     To this end at any time after a Dispute has arisen either party may serve upon the other a notice to commence mediation to settle the Dispute and on receipt of such notice the other party may within seven days notify the Centre for Effective Dispute Resolution (CEDR) and request that the mediator be appointed

19.3     Any such mediation shall be conducted in accordance with the rules prescribed by CEDR

19.4     The mediation shall be deemed to have commenced on the notification to both parties in writing of the appointment of a mediator by the CEDR and upon written confirmation having been received by the parties of the mediator's acceptance of the appointment

19.5     If at any time after 10 days from the commencement of the dispute or mediation no settlement has been achieved or the party on whom notice was served did not notify CEDR within seven days of receipt of notice to request mediation, then either party may refer to the courts for settlement.

19.6     Each party to bear its own costs of the mediation.

19.7     The payment of fees for the mediation process will be as directed by CEDR.

**20. Waiver**

20.1 No failure or delay by the Council to exercise any right , power or remedy will operate as a waiver of it nor, will any partial exercise preclude any further exercise of the same, or of some other right , power or remedy.

**21. Variation**

21.1 No variation or amendment of this Agreement or oral promise or commitment related to it shall be valid unless committed to writing and signed by or on behalf of both parties.

**22. Gifts, Inducements and Rewards**

22.1 the Operator will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and will not give any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972.

**23. Indemnity & Insurance**

23.1the Operator to indemnify and keep indemnified the Council from and against any and all loss damage or liability suffered and legal fees and costs incurred by the Council resulting from a breach of this Agreement by the Operator (save to the extent that the same is directly caused by or directly arises from the negligence or breach of this Agreement by the Council) including:

23.1.1 any act neglect or default of the Operator’s employees or agents; or

23.1.2 breaches in respect of any matter arising from the supply of The Management Services resulting in any claim by any third party.

23.2 the Operator to maintain at its own cost public and employers liability insurance to cover the liability of the Operator in respect of any act or default for which it may become liable to indemnify the Council under the terms of this Agreement. A copy of the insurance policy to be provided to the Council.

23.3 To arrange that the minimum cover per claim of those policies detailed in clause 23.2 is no less than £10 million.

# 24. Liability

## 24.1 Nothing in these Conditions excludes or limits the liability of the Operator for death or personal injury caused by the Operator’s negligence, or for fraudulent misrepresentation.

## 24.2 the Operator’s total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the insurance cover as detailed in clause 23.2.

**25. Warranty excluded**

The Council gives no warranty that the Land including the Operator Site is legally or physically fit for the purposes specified in this Agreement.

25.1. The Council shall indemnify the Operator in respect of all costs or expenses incurred as a consequence of the Council terminating or withdrawing from this Agreement due to no fault of the Operator. Such losses shall include any redundancy costs incurred by the Operator for the person or people employed only in delivery of the Service to the Council as a consequence of the Councils withdrawal, and shall be limited to the sum of fifteen thousand pounds (£15,000.00).

26 **Enabling Works**

 In so far as any Enabling Works are effected which prejudice the ability of the Operator to perform their obligations under this Agreement the Operator shall not be deemed to be in breach of those obligations to that extent and shall not be obliged to make good any damage to the Land caused by such Enabling Works.

AS WITNESS the hands of the authorised representatives of the Parties the day and year first above written.

**EXECUTED AS A DEED** by the affixing of )

**THE COMMON SEAL** of **ASHFORD**

**BOROUGH COUNCIL** in the presence of:- )

Mayor

Solicitor

**EXECUTED AS A DEED by the Operator )**

**acting by two directors or a director )**

**and company secretary: )**

 **Director**

 **Director/Secretary**

**SCHEDULE ONE**

Plan showing conservation areas, country park land, management compartments, access points, residential estate and Julie Rose Stadium (For identification purposes only)

See attached.

**SCHEDULE TWO**

The Management Service Requirement

See attached.

**SCHEDULE THREE**

Conningbrook Lakes Country Park Management Plan 2016-21

See attached.

**SCHEDULE 3 a**

Conningbrook Lakes Management Objectives 2021 – 2025

See attached.

**SCHEDULE FOUR**

**Lease Management Obligations Document**

See attached.

**SCHEDULE FIVE**

Council’s Planning Permission

See attached.

**SCHEDULE SIX**

Conningbrook Lakes Country Park Ecological Management Plan (Feb 2014)

See attached.

**SCHEDULE SEVEN**

Bioscan Ecological Management Strategy

See attached.