

# **DEVELOPMENT AGREEMENT**

## **relating to South Westminster Area Network project**

<b>Department for Energy Security and Net Zero (DESNZ)</b>	<b>(1)</b>
<b>SWAN Heat Network Limited (Development Partner)</b>	<b>(2)</b>
<b>SWAN ESCO Limited (Project Company)</b>	<b>(3)</b>

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This **Development Agreement** is made on

2024

**Between**

- (1) **Department for Energy Security and Net Zero** whose registered office is 1 Victoria Street London SW1H 0ET (**DESNZ**);
- (2) **SWAN Heat Network Limited**, a company registered in England (registration number 15901864) whose registered office is at Castletown Office Castletown, Rockcliffe, Carlisle, Cumbria, United Kingdom, CA64BN (**Development Partner**); and
- (3) **SWAN ESCO Limited**, a company registered in England (registration number 15903072) whose registered office is at Castletown Office Castletown, Rockcliffe, Carlisle, Cumbria, United Kingdom, CA64BN (**Project Company**).

**Whereas**

- (A) DESNZ intends to promote the development and implementation of the South Westminster Area Network (the **SWAN Network**), a large-scale, low carbon heat network serving the SWAN area (comprising the St James, Vincent Square, Pimlico North and Pimlico South wards) (the **Project**).
- (B) The Project is one project of several heat network opportunities that form part of the Advanced Zoning Programme (**AZP**) for early delivery of zone-scale heat networks in England.
- (C) The Development Partner has been selected by DESNZ, following a competitive procurement process to develop the Project on and subject to the provisions of this Development Agreement.
- (D) The Project Company is a wholly owned subsidiary of the Development Partner whose only business during the Term is to own and control all of the Development Assets and deal with them in accordance with this Development Agreement.
- (E) The Energy Act 2023 introduces heat network zoning in England and empowers the Secretary of State to make regulations concerning their regulation and about heat network zones. At the date of this Development Agreement no regulations have been made.
- (F) This Development Agreement sets out how the Development Partner will provide the Development Services and regulates how the Development Assets may be used once the Project has been Fully Developed.

## **1 DEFINITIONS AND INTERPRETATION**

This Development Agreement shall be interpreted according to the provisions of Schedule 1 (*Definitions and Interpretation*).

## **2 COMMENCEMENT AND DURATION**

This Development Agreement enters into force on the date it is executed and shall continue until it terminates in accordance with Clause 14.9(e) (*Approvals Gateway Process*), Clause 16 (*Termination by DESNZ*) or Clause 17 (*Termination by the Development Partner*) (**Term**).

## **3 REPRESENTATIONS AND WARRANTIES**

3.1 DESNZ represents and warrants that it has full capacity and authority to enter into and to perform this Development Agreement, and that:

- (a) this Development Agreement is executed by its duly authorised representative;
- (b) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Development Agreement; and
- (c) its obligations under this Development Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

3.2 The Development Partner represents and warrants that as at the date of this Development Agreement:

- (a) both it and the Project Company are duly incorporated under the laws of England and Wales;
- (b) no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Development Partner, are threatened) for the winding-up of either the Development Partner or the Project Company or for their dissolution or for the appointment of a receiver, administrative receiver, liquidator, administrator or similar officer in relation to any of their assets or revenue;

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- (c) it has obtained and will obtain and maintain all licences, authorisations, permits and regulatory permissions to enter into and perform its obligations under this Development Agreement;
  - (d) it has not, and the Project Company has not, committed or agreed to commit a Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it of a Prohibited Act, save where details of any such arrangement have been disclosed in writing to DESNZ before the date of this Development Agreement;
  - (e) the execution, delivery and performance by the Development Partner of its obligations under this Development Agreement does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a breach of any agreement by which it is bound;
  - (f) all information and statements made by the Development Partner as a part of the procurement process, including without limitation the Development Partner's bid in response to the ITT Tender Pack, remains true, accurate and not misleading; and
  - (g) it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, have been or are threatened) for the winding up of the Development Partner or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Development Partner's assets or revenue.
- 3.3 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation or warranty in this Development Agreement.
- 3.4 If at any time a party to this Development Agreement becomes aware that a representation or warranty given by it under Clauses 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other party of the relevant occurrence in sufficient detail to enable that party to understand such breach or inaccuracy and act accordingly.
- 3.5 For the avoidance of doubt, the fact that any provision of this Development Agreement is expressed as a warranty shall not preclude any right of termination DESNZ may have in respect of the breach of that provision by the Development Partner which constitutes a material breach of the Development Partner's obligations under this Development Agreement.

3.6 The Development Partner:

- (a) acknowledges that the commitments made by, and the obligations of, DESNZ in this Development Agreement are subject to all relevant Laws; and
- (b) agrees that nothing in this Development Agreement shall be construed as the grant by DESNZ of a right or entitlement which it does not have legal authority to grant.

**4 PROVISION OF DEVELOPMENT SERVICES**

4.1 DESNZ hereby engages the Development Partner, and the Development Partner hereby agrees to provide the Development Services, develop the Project Documents and other Project Materials and perform its other obligations:

- (a) with a view to achieving a Positive Outcome at the end of the Approvals Gateway Process; and
- (b) in accordance with the provisions of this Development Agreement.

4.2 The Development Partner shall provide the Development Services and develop the Project Documents and other Project Materials:

- (a) using the Project Company as the primary delivery vehicle; and
- (b) so that:
  - (i) subject to securing all necessary authorisations, consents and permissions and a Positive Outcome at the end of the Approvals Gateway Process, the Project Company will be in a position, at and from Financial Close, to construct, operate and maintain the SWAN Network and supply heat to Customers in accordance with the Project Documents and Law; and
  - (ii) in any other circumstances, the benefit of the Development Services, the Project Documents and other Project Materials can be made available fully, effectively and at no cost to such other person as DESNZ may direct (subject to payment by DESNZ of the relevant Termination Amount).

4.3 Without limiting Clause 4.2, the Development Partner and the Project Company shall:

- (a) engage professional advisers and consultants, apply for authorisations, consents, licenses and permissions, develop and negotiate contracts and otherwise deal with third parties in the name of, and for the benefit of, the Project Company; and



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- (b) unless DESNZ agrees otherwise, only deal with third parties on the basis that any rights, entitlements and interests granted to the Project Company (and, if relevant, the Development Partner) can, in the circumstances contemplated by this Development Agreement, be made available to such other person as DESNZ directs fully, effectively and at no cost (subject to payment by DESNZ of the relevant Termination Amount).
- 4.4 The Development Partner shall devote sufficient resources and expertise to providing the Development Services in a competent and timely manner and otherwise in accordance with the standards and requirements set out in Clause 4.5.
- 4.5 The Development Partner warrants and undertakes to DESNZ that in the performance of the Development Services and development of the Project Documents and other Project Materials it and the Project Company shall each act:
- (a) with the degree of skill and care that would reasonably be expected of a competent heat network developer experienced in carrying out development services similar to the Development Services for projects of a similar nature, scope, complexity, size and value as the Project;
- (b) in accordance with:
- (i) all relevant Law; and
- (ii) any guidance that may be issued by the Authority, a Zone Coordinator or the Regulator from time to time;
- (c) in accordance with Schedule 10 (*Sustainability and Social Value*);
- (d) in accordance with Schedule 12 (*Development Partner's Proposals*), provided that, where the Development Partner's Proposals identify specific individuals or roles as being allocated to the provision of the Development Services, the Development Partner / Project Company shall be entitled to use alternative personnel / roles without the prior approval of DESNZ unless required pursuant to Clause 10 (Development Partner Personnel); and
- (e) to the extent not in conflict with an express obligation of, or standard imposed on, the Development Partner under this Development Agreement, or where there is no express obligation or standard imposed, in accordance with Good Industry Practice.
- 4.6 The Development Partner hereby warrants and undertakes to DESNZ that it and the Project Company shall not and shall procure that their respective Sub-Contractors do not:

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- (a) use or specify for use anything in the Project which is Prohibited at the time of specification; or
    - (b) enter into any Sub-Contract with a Prohibited Person.
  - 4.7 The Development Partner shall, subject to the provisions of this Development Agreement, provide the Development Services regularly and diligently and shall perform the same as from time to time may be necessary and in accordance with the Development Programme.
  - 4.8 The Development Partner and/or the Project Company (as applicable) shall not be responsible for any failure to perform or any delay in completion of the Development Services to the extent that the Development Partner and/or the Project Company (as applicable) is prevented or delayed in the performance of the whole or any part of the Development Services because of:
    - (a) any negligence or other default by DESNZ or any other party beyond the Development Partner's and/or the Project Company's (as applicable) reasonable control (excluding the Development Partner's Personnel); or
    - (b) any event outside of the reasonable control of the Development Partner and/or the Project Company (as applicable) which prevents the Development Partner and/or the Project Company (as applicable) from performing its obligations under this Development Agreement, and

if such a delay occurs, then the Development Partner and/or the Project Company (as applicable) shall notify DESNZ, resume performance as soon as possible and use reasonable endeavours to expedite the performance of the Development Services so as to complete the same with all reasonable speed and in any event before the Approvals Gateway Notice Longstop Date.
  - 4.9 The Development Partner shall have the right at its own risk to issue orders, enter into contracts or Sub-Contracts or make commitments of any nature whatsoever to Sub-Contractors, suppliers or other third parties for carrying out the Development Services before this Development Agreement is entered into (**Pre-Contract Commitments**). The Development Partner acknowledges and agrees that the Development Fee does not include or relate to any costs associated with Pre-Contract Commitments entered into or given by the Development Partner and DESNZ shall not under any circumstances be liable for any Breakage Costs.
  - 4.10 If and to the extent that the provision of the Development Services requires the Development Partner or the Project Company to be authorised by the Regulator or requires the consent of the Authority or a Zone Coordinator, then the Development Partner and the Project Company shall not commence the provision of the relevant

Development Services until it has the required consent and can comply with its obligations under Clause 4 (*Provision of the Development Services*).

- 4.11 Subject to Clause 4.8(a), no enquiry, inspection, approval, sanction, comment, consent or decision at any time made or given by or on behalf of DESNZ, nor any failure to make or give the same, shall operate to exclude or limit the Development Partner's obligations and/or liability under this Development Agreement.
- 4.12 The Development Partner shall be wholly responsible for all Development Costs and DESNZ shall have no obligation to reimburse the Development Partner for Development Costs except: (i) through payment of the Abort Fee in accordance with Clause 18.2(b) (*Consequences for Termination*); (ii) through payment of the Development Fee in accordance with Clause 13 (*Development Fee*) and Schedule 6 (*Development Fee*); and (iii) through payment of the grant funding in accordance with the GHNF Grant Funding Agreement.
- 4.13 In respect of the provision of Development Services and development of the Project Documents and other Project Materials, the Development Partner shall provide or procure a collateral warranty (in a form approved by DESNZ acting reasonably) from the Approved Sub-Contractors in favour of DESNZ.

## **5 INTELLECTUAL PROPERTY RIGHTS**

- 5.1 Each party acknowledges and agrees that all Background IPRs are and shall remain the exclusive property of the party owning it (or, where applicable, the third party from whom its right to use the Background IPRs has derived).
- 5.2 All DESNZ Foreground IPRs vest in and be owned absolutely by DESNZ.
- 5.3 Subject to Clause 5.9, all Development Partner Foreground IPRs shall vest in and be owned absolutely by the Project Company.
- 5.4 The Development Partner shall and shall procure that the Project Company and any of their respective Sub-Contractors capture and record all Development Partner Foreground IPRs and all Project Materials. The Development Partner shall disclose to DESNZ all Development Partner Foreground IPRs and Project Materials designed, drafted, developed, prepared, produced or delivered by the Development Partner or the Project Company and/or any of their respective Sub-Contractors, promptly following their creation and in any event at any time (during or after the Term) promptly on request by DESNZ.
- 5.5 During the Term, DESNZ hereby grants to the Development Partner and the Project Company a non-exclusive, royalty free, non-transferable licence to use and to permit its Sub-Contractors to use: (a) the DESNZ Foreground IPRs; and (b) the DESNZ Background IPRs provided or made available by or on behalf of DESNZ to the

Development Partner or the Project Company for use in relation to the development of the Project, strictly to the extent necessary to provide the Development Services and develop the Project Materials. Where the DESNZ Background IPRs are owned by a third party, DESNZ grants this licence only to the extent it is free and able to do so.

5.6 During the Term, the Development Partner and the Project Company each hereby grants to DESNZ a non-exclusive, royalty free licence to use and to permit its Sub-Contractors and/or sub-consultants to use: (a) the Development Partner Foreground IPRs; and (b) the Development Partner Background IPRs strictly to the extent necessary to:

- (a) carry out DESNZ's obligations under this Development Agreement; and
- (b) ensure interoperability (including as set out in paragraph 1.3(d) of Schedule 3 (*Mandatory Requirements*)) in relation to other low carbon heat networks, including sharing the same with other third parties as reasonably required (including bidders, operators, contractors and suppliers for other low carbon heat network projects).

5.7 The parties acknowledge that the Project is one of the first projects of several heat network opportunities that form part of the AZP and is intended to act as a pathfinder for future projects. Notwithstanding any other provisions of this Clause 5, DESNZ shall be entitled to use (and share with any interested third party) any general, non-Project specific know-how acquired during the Term for the purposes of carrying out future projects (including, without limitation, in respect of processes, protocols and ways of working).

5.8 If a valid a Termination Notice has been served the Development Partner hereby assigns (including by way of present assignment of future rights), and shall procure that the Project Company assigns, all of its right, title and interest in the Development Partner Foreground IPRs existing as at the date of termination to DESNZ absolutely in accordance with Clause 18.1 (*Consequences of Termination*) (subject to payment by DESNZ of the relevant Termination Amount).

5.9 If this Development Agreement terminates automatically in accordance with Clause 14.9(e) (*Approvals Gateway Process*), with effect from the date of termination (subject to payment by DESNZ of the relevant Termination Amount), DESNZ hereby assigns to the Project Company (including by way of present assignment of future rights) all of its right, title and interest in the DESNZ Foreground IPRs, subject to receipt of the Development Assets Payment in accordance with Clause 14.9(d) (*Approvals Gateway Process*).

5.10 If and with effect from the date that the Development Partner Foreground IPRs are assigned to DESNZ under Clause 5.8 the Development Partner and the Project Company hereby grant to DESNZ a non-exclusive, royalty free licence to use and to permit its Sub-Contractors and/or sub-consultants to use the Development Partner Background IPRs

strictly to the extent necessary to use and/or exploit the Development Partner Foreground IPRs for the purposes of the Project.

- 5.11 The licences granted in Clause 5.10 shall be irrevocable and transferable by DESNZ to an acquirer of the Foreground IPRs and DESNZ shall be entitled to sub-license its rights under such licence to third parties. The Development Partner shall ensure that it has, and shall ensure that the Project Company has, all necessary rights to grant the licences granted under Clause 5.10 and that it binds the successors in title of the Development Partner and the Project Company.
- 5.12 The Development Partner shall procure that its contracts with Sub-Contractors and/or sub-consultants (if any), and those of the Project Company, shall assign to the Development Partner or the Project Company (as the case may be) absolutely all Development Partner Foreground IPRs arising from the work of that Sub-Contractor and/or sub-consultant and contains sufficient licence terms in respect of the Sub-Contractor/sub-consultant's Background IPRs to enable the Development Partner and the Project Company to effect or grant the assignments and/or licences granted under this Clause 5.
- 5.13 The Development Partner and the Project Company shall, and shall procure that any necessary third party shall, execute all such documents and perform such acts as DESNZ may from time to time reasonably require for the purpose of:
- (a) giving full effect to the provisions of this Clause 5, including executing a written assignment or assignments of the Development Partner Foreground IPRs as necessary to give effect to Clause 5.8;
  - (b) registering DESNZ as applicant or (as applicable) proprietor of any applications for and registrations for any Development Partner Foreground IPRs assigned to DESNZ under Clause 5.8; and
  - (c) assisting DESNZ in obtaining, defending and enforcing any Development Partner Foreground IPRs assigned to DESNZ under Clause 5.8.
- 5.14 The Development Partner and Project Company shall immediately give written notice to DESNZ of any challenge by a third party to the Development Partner Background IPRs, the DESNZ Background IPRs and/or the Development Partner Foreground IPRs which comes to its knowledge.
- 5.15 During and after the Term, the Development Partner shall indemnify and keep indemnified DESNZ against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses (including professional fees and fines) whatsoever whether arising in tort (including negligence) default or breach of this Development Agreement, which arises out of or in relation to actual or threatened claim that:

- (a) the exercise of the licences granted under this Clause 5; and/or
- (b) the use and/or exploitation by DESNZ and/or its licensees (in accordance with the terms of the licences granted under this Clause 5) of the Development Partner Foreground IPRs, the Project Documents and/or Project Materials in each case that arise, are designed, drafted, developed, prepared, produced or delivered by or on behalf of the Development Partner or the Project Company (including by their respective Sub-Contractors and/or sub-consultants),

infringes the Intellectual Property Rights of any third party.

5.16 Where the legal status of DESNZ changes, such that it ceases to be a Crown Body:

- (a) the licences granted by the Development Partner and Project Company under this Clause 5 shall remain unaffected; and
- (b) any successor body of DESNZ that is a Crown Body shall have the benefit of such licences.

## **6 DESIGN OBLIGATIONS**

6.1 The Development Partner shall develop the design and technical specification of the SWAN Network in accordance with this Development Agreement. In respect of such design work and any other design work undertaken by or on behalf of either the Development Partner or the Project Company as part of the Development Services, the Development Partner warrants to DESNZ that such design will be carried out:

- (a) using Good Industry Practice; and
- (b) at all times in accordance with the Design and Quality Management Protocol.

6.2 The Development Partner shall be responsible for and liable to DESNZ for the entire design of the Project, including any design which has already been carried out as at the date of this Development Agreement and for each and every act, omission, default, solvency and other output of any professional consultant and/or Sub-Contractor appointed by the Development Partner or the Project Company insofar as the same relates to the Project and/or this Development Agreement.

6.3 Without prejudice to Clause 6.2, the Development Partner shall be fully responsible in all respects for any design work carried out by any professional consultant or any specialist designer or Sub-Contractor that the Development Partner or the Project Company appoints in relation to the Project.

6.4 The parties agree that the Project Company is to be treated as the only 'Client' for the purposes of the CDM Regulations in respect of the Project and the Development Partner

warrants to DESNZ that the Project Company has and shall maintain the competence and resource to assume the role of 'Client' and that the Project Company will allocate adequate resources to enable it to perform its duties as 'Client' under the CDM Regulations and to enable the CDM Principal Designer(s) to perform their duties under the CDM Regulations.

- 6.5 The Development Partner shall procure that the Project Company appoints the CDM Principal Designer(s) in respect of the Project to perform all the duties and functions required to be performed by the principal designer under the CDM Regulations.
- 6.6 The parties agree that the Project Company is to be treated for the purposes of the Building Regulations 2010 (SI 2010/2214) (**Building Regulations**) as the only "Client" in respect of the Project and the Development Partner warrants to DESNZ that the Project Company has and shall maintain the competence and resource to assume the role of 'Client' and that it will allocate adequate resources to enable it to perform its duties as 'Client' under the Building Regulations and to enable the Building Regulations Principal Designer(s) to perform their duties under the Building Regulations.
- 6.7 The Development Partner shall procure that the Project Company appoints the Building Regulations Principal Designer(s) in respect of the Project to perform all the duties and functions required to be performed by the principal designer and principal contractor under the Building Regulations.
- 6.8 The Development Partner undertakes that it and the Project Company have complied and shall continue to comply with (and it will ensure that the CDM Principal Designer has complied with and continues to comply with) the requirements, obligations and prohibitions imposed by the CDM Regulations. Without prejudice to the foregoing generality, the Development Partner warrants and undertakes that it, the Project Company and the CDM Principal Designer will not by its act, omission, breach, default or negligence cause or contribute to any breach by DESNZ of the CDM Regulations.
- 6.9 The Development Partner undertakes that it and the Project Company have complied and shall continue to comply with (and it will ensure that the Building Regulations Principal Designer has complied with and continues to comply with) the requirements, obligations and prohibitions imposed by the Building Regulations. Without prejudice to the foregoing generality, the Development Partner warrants and undertakes that it, the Project Company and the Building Regulations Principal Designer will not by its act, omission, breach, default or negligence cause or contribute to any breach by DESNZ of the Building Regulations.
- 6.10 The Development Partner confirms that it and the Project Company have each taken (or shall take) all reasonable steps to be reasonably satisfied that any party it appoints in

respect of the Project is suitable and competent having regards to its responsibilities in relation to the CDM Regulations and Building Regulations and shall ensure that:

- (a) the Project is carried out in accordance with the CDM Regulations and the Building Regulations; and
- (b) all duty holders comply with their respective obligations under the CDM Regulations and the Building Regulations.

6.11 The Development Partner shall indemnify and keep DESNZ indemnified against liability for any breach of the Development Partner's obligations or the Project Company's obligations under or in connection with Clauses 6.4 and 6.5.

## **7 PROJECT COMPANY**

The Development Partner warrants and undertakes to DESNZ that, at the date of this Development Agreement:

- (a) the Project Company:
  - (i) has no assets, employees, indebtedness, Encumbrances or any liabilities, except for those associated with the opening up of bank accounts for the Project Company and the costs of incorporation of the Project Company (including Companies House costs) whatsoever whether actual or contingent;
  - (ii) has not entered into any contracts, other than any Sub-Contracts with the Approved Sub-Contractors (approved by DESNZ in accordance with Clause 25.1) entered into on the date of this Development Agreement for the purposes of procuring the provision of the Development Services;
  - (iii) has not declared any distribution;
  - (iv) has not prepared any accounts;
  - (v) has complied with all relevant requirements of the Companies Act 2006; and
  - (vi) owns (either directly or indirectly) no shares or interests in any body corporate, partnership or venture; and
- (b) the particulars of the Project Company as set out in this Clause 7(b) are true and accurate in all respects:



<b>Name:</b>	SWAN ESCO Limited
<b>Nature of ESCo:</b>	A company limited by shares pursuant to the Companies Act 2006
<b>Date of Incorporation:</b>	19 August 2024
<b>Country of Incorporation:</b>	England and Wales
<b>Registered Number:</b>	15903072
<b>Registered Office:</b>	Castletown Office Castletown, Rockcliffe, Carlisle, Cumbria, United Kingdom, CA64BN
<b>Issued Capital Share:</b>	100 ordinary shares with a nominal value of £1.00 per share
<b>Shareholders:</b>	Development Partner (100%)

## 8 TRANSFER OF INITIAL DEVELOPMENT ASSETS

- 8.1 Immediately upon the execution of this Development Agreement by each of the parties, DESNZ shall take all steps required to transfer ownership of the Initial Development Assets to the Project Company.
- 8.2 Subject to the occurrence of a Negative Outcome or the service of a Termination Notice, the Development Partner shall ensure that, at all times during the Term following the transfer of ownership of the Initial Development Assets by DESNZ pursuant to Clause 8.1, the Development Assets are owned or controlled by the Project Company free from Encumbrances.

## 9 DUE DILIGENCE

- 9.1 The Development Partner acknowledges that:
- (a) DESNZ has delivered or made available to the Development Partner all of the information and documents that the Development Partner considers necessary or relevant for the performance of its obligations under this Development Agreement;
  - (b) it shall not be excused from the performance of any of its obligations under this Development Agreement on the grounds of, nor shall the Development Partner be entitled to recover any additional costs or expenses, arising as a result of any:
    - (i) misinterpretation of the requirements of DESNZ in the ITT Tender Pack or elsewhere; and/or

- (ii) failure by the Development Partner to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information;
- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with DESNZ prior to the date of this Development Agreement) of all relevant details relating to the performance of its obligations under this Development Agreement; and
- (d) it has entered into this Development Agreement in reliance on its own due diligence.

## **10 DEVELOPMENT PARTNER'S PERSONNEL**

- 10.1 The Development Partner shall use the Development Partner's Representative (or any replacements appointed under this Clause 10) to supervise and oversee the performance of the Development Services. The Development Partner shall procure that the Development Partner's Representative (or any replacements appointed under this Clause 10) allocates as much of their time as is necessary to properly fulfil the duties and obligations of the Development Partner under this Development Agreement.
- 10.2 The Development Partner shall immediately appoint the Development Partner's Representative. The Development Partner's Representative shall have full authority to act on behalf of the Development Partner for all purposes in connection with this Development Agreement and the Development Partner's Representative, or their suitably qualified and experienced nominee, shall represent the Development Partner at meetings convened by DESNZ or by others in relation to the Project, including meetings of the Steering Group.
- 10.3 The Development Partner shall not change the Development Partner's Representative and/or any replacements appointed under this Clause 10 for the purposes of overseeing performing the Development Services except with DESNZ's prior written approval (such approval not to be unreasonably withheld or delayed) or except where such person dies, retires, is dismissed, leaves their employment or is otherwise prevented from carrying out its functions.
- 10.4 The Development Partner shall, as soon as reasonably practicable, be responsible for appointing replacement personnel of suitable calibre, qualifications, competence and experience who shall have previously been approved in writing by DESNZ (such approval not to be unreasonably withheld or delayed). If DESNZ does not approve the proposed replacement or replacements then the Development Partner shall propose alternative replacements until DESNZ approves a proposed replacement.
- 10.5 DESNZ shall immediately appoint the DESNZ Representative. The DESNZ Representative shall have authority to act on behalf of DESNZ for all purposes in

connection with this Development Agreement, shall allocate as much of their time as is necessary to properly fulfil the duties and obligations of DESNZ's functions under this Development Agreement and the DESNZ Representative or their suitably qualified and experienced nominee shall represent DESNZ or shall be responsible for nominating other persons to represent DESNZ at meetings convened in relation to the Development Services.

- 10.6 DESNZ shall use reasonable endeavours to notify the Development Partner of any anticipated change to DESNZ's Representative in a timely manner prior to such a change occurring.
- 10.7 If DESNZ (acting reasonably) is not satisfied with the performance or conduct of any of the Development Partner's Representative, DESNZ will be entitled, after consulting with the Development Partner, to require the replacement of such person and the Development Partner shall in such circumstances ensure that such person is replaced in accordance with Clause 10.4 and this Clause 10 shall apply (with necessary changes) to such replacement. Such replacement shall not constitute any admission of liability on the part of the Development Partner.

## **11 STEERING GROUP**

- 11.1 The Steering Group shall be established by the parties as soon as possible following the execution of this Development Agreement and will operate in accordance with the Steering Group Terms of Reference set out in Schedule 4 (*Steering Group Terms of Reference*).
- 11.2 Notwithstanding anything to the contrary in the Steering Group Terms of Reference each of the Development Partner and DESNZ shall have the right to appoint two (2) Members to represent it on the Steering Group and each shall have the right to remove Members that it appoints. Any such appointment or removal of a Member shall be by notice in writing served on DESNZ or the Development Partner (as the case may be) and shall take effect as at the date of the notice.
- 11.3 The Development Partner and DESNZ shall use reasonable endeavours:
- (a) to ensure that their respective appointees as Members shall attend each meeting of the Steering Group; and
  - (b) to procure that a quorum (in accordance with Schedule 4 (*Steering Group Terms of Reference*)) is present throughout each such meeting.
- 11.4 Each party will use reasonable endeavours to ensure that its appointed members comply with the Steering Group Terms of Reference set out in Schedule 4 (*Steering Group Terms of Reference*).

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**12 GHNF FUNDING**

12.1 The Development Partner and the Project Company each:

- (a) represent and warrant that they have reviewed the GHNF Application; and
- (b) confirm that they accept and endorse:
  - (i) the content of the GHNF Application as if the Project Company had been the applicant; and
  - (ii) the commitments made in the GHNF Application as commitments of the Development Partner and the Project Company, including those in the Statement of Intent to Implement the Market Transformation Commitments.

12.2 If the GHNF Application is successful, then as soon as reasonably practicable:

- (a) DESNZ shall enter into the GHNF Grant Funding Agreement and the GHNF Guarantee and Indemnity;
- (b) the Development Partner shall procure that the Project Company enters into the GHNF Grant Funding Agreement; and
- (c) the Development Partner shall procure that the Guarantors enter into the GHNF Guarantee and Indemnity.

**13 DEVELOPMENT FEE**

13.1 In consideration of the provision of the Development Services in accordance with this Development Agreement, DESNZ shall pay the Project Company the Development Fee on and subject to the provisions of Schedule 6 (*Development Fee*).

13.2 The Project Company shall submit a valid invoice to DESNZ for payment of each instalment of the Development Fee which becomes payable in accordance with Clause 13.1 no later than twenty (20) Business Days after the end of the relevant month.

13.3 DESNZ shall pay the Development Partner each instalment of the Development Fee which becomes payable in accordance with Clause 13.1 no later than thirty (30) days from the date of receipt of a valid invoice pursuant to Clause 13.2.

13.4 All payments under this Development Agreement shall be made in pounds sterling by electronic transfer of funds for value on the day in question to the bank account of the recipient (located in the United Kingdom) specified in the relevant invoice, quoting the invoice number against which payment is made.

- 13.5 If either party (acting in good faith) disputes all or any part of any sum payable hereunder, the undisputed amount shall be paid by the relevant party and:
- (a) the parties shall use all reasonable endeavours to resolve the dispute in question within ten (10) Business Days of the dispute arising. If they fail so to resolve it, any relevant party may refer the dispute for agreement or determination pursuant to Clause 21 (*Dispute Resolution*); and
  - (b) following resolution of the dispute, any further or balancing amount agreed or determined to be payable shall be paid as soon as reasonably practicable by the relevant party, together with interest on such amount calculated in accordance with Clause 13.6.
- 13.6 Each party shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not duly made pursuant to the terms of this Development Agreement on the due date calculated from day to day at a rate per annum equal to the Default Interest Rate from the day after the date on which payment was due up to and including the date of payment.
- 13.7 Whenever any sum of money shall be agreed, or determined, as due and payable by the Development Partner to DESNZ, such sum may, at DESNZ's discretion, be deducted from or applied to reduce the amount of any sum then due to the Development Partner from DESNZ under this Development Agreement provided that DESNZ has given the Development Partner not less than five (5) Business Days' notice of its intention to deduct or apply such sum.
- 13.8 Whenever any sum of money shall be agreed, or determined as due and payable by DESNZ to the Development Partner, such sum may at the Development Partner's discretion be deducted from or applied to reduce the amount of any sum then due from the Development Partner to DESNZ under this Development Agreement provided that the Development Partner has given DESNZ not less than five (5) Business Days' notice of its intention to deduct or apply such sum.
- 13.9 All amounts stated to be payable by any party under this Development Agreement shall be exclusive of any VAT properly chargeable on any amount. For the avoidance of doubt, this sub-Clause shall apply to all forms of consideration provided by any party under this Development Agreement.
- 13.10 Each party shall pay to the relevant other party any VAT properly chargeable on any supply made to it under this Development Agreement provided that it shall first have received from the other party a valid tax invoice in respect of that supply which complies with the requirements of Part III VAT Regulations 1995.

## 14 APPROVALS GATEWAY PROCESS

- 14.1 When the Development Partner considers that the Project is Fully Developed, it shall give notice to DESNZ to initiate the Approvals Gateway Process (**Approvals Gateway Notice**).
- 14.2 The Development Partner shall issue an Approvals Gateway Notice no later than the Approvals Gateway Notice Longstop Date, failing which DESNZ may terminate this Development Agreement in accordance with Clause 16.1(f) (*Termination by DESNZ*).
- 14.3 Within ten (10) Business Days of the date of an Approvals Gateway Notice, the Development Partner shall provide DESNZ with:
- (a) the Approvals Gateway Briefing Materials; and
  - (b) final form versions of all relevant Project Documents required for the Pioneer Network,
- (the **Approvals Gateway Materials**).
- 14.4 No later than fifty (50) Business Days after receipt of the Approvals Gateway Materials DESNZ shall in its absolute discretion either:
- (a) approve the Project (**Positive Outcome**); or
  - (b) notify the Development Partner of any questions or comments as DESNZ requires to be resolved in order to determine whether to approve the Project.
- 14.5 If DESNZ raises further questions or comments pursuant to clause 14.4(b) then the Development Partner shall provide a substantive response to such questions or comments within ten (10) Business Days of receipt by the Development Partner of the questions or comments. The parties shall then engage in good faith discussions to address any reasonable concerns raised by DESNZ.
- 14.6 No later than forty (40) Business Days after entering into good faith discussions pursuant to Clause 14.5, DESNZ shall in its absolute discretion either:
- (a) approve the Project (**Positive Outcome**); or
  - (b) decide not to approve the Project (**Negative Outcome**),
- and shall give notice to the Development Partner accordingly (a **Decision Notice**).
- 14.7 In the case of a Negative Outcome, the Decision Notice shall specify either:

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- (a) that the Mandatory Requirements have not been satisfied as required by this Development Agreement and accordingly DESNZ has not approved the Project; or
  - (b) that the Mandatory Requirements have been satisfied as required by this Development Agreement but DESNZ has nonetheless decided not to approve the Project.
- 14.8 If the result of the Approvals Gateway Process is a Positive Outcome then the Development Partner shall, no later than ten (10) Business Days after the Decision Notice, in its absolute discretion elect either:
- (a) to proceed with the Project; or
  - (b) not to proceed with the Project,
- and shall give notice to DESNZ accordingly (**Election Notice**).
- 14.9 If, in the circumstances to which Clause 14.8 relates, the Development Partner elects to proceed with the Project, then:
- (a) the Development Partner shall use, and shall procure that the Project Company uses, all reasonable endeavours to achieve Financial Close as soon as reasonably practicable;
  - (b) the Development Partner shall enter into, and procure that the Project Company enters into, all relevant Project Documents (including the GFA Variation Deed, if required) at Financial Close;
  - (c) DESNZ shall enter into the GFA Variation Deed at Financial Close, if required;
  - (d) the Development Partner shall pay DESNZ the Development Assets Payment no later than Financial Close; and
  - (e) this Development Agreement will terminate automatically at Financial Close.
- 14.10 If, in the circumstances to which Clause 14.8 relates, the Development Partner elects not to proceed with the Project, then:
- (a) the Development Partner may terminate this Development Agreement in accordance with Clause 17.1(d) (*Termination by the Development Partner*); and
  - (b) DESNZ may terminate this Development Agreement in accordance with Clause 16.1(g) (*Termination by DESNZ*).
- 14.11 If the result of the Approvals Gateway Process is a Negative Outcome then:

- (a) the Development Partner may terminate this Development Agreement in accordance with Clause 17.1(e) (*Termination by the Development Partner*); and
- (b) DESNZ may terminate this Development Agreement in accordance with Clause 16.1(h) (*Termination by DESNZ*).

## 15 PROJECT NOT VIABLE

15.1 If, having made best efforts to develop the Project, the Development Partner reasonably considers that:

- (a) the Project cannot be Fully Developed by the Approvals Gateway Notice Longstop Date; or
- (b) having made a positive election within the Election Notice served pursuant to Clause 14.8, Financial Close can no longer be achieved,

it shall notify DESNZ that it intends to exit the Project.

15.2 The Development Partner shall, no later than twenty (20) Business Days after giving notice under Clause 15.1, provide a report to DESNZ, in a format and level of detail previously approved by DESNZ (such approval not to be unreasonably withheld or delayed), which deals amongst other things with:

- (a) the status of the Project;
- (b) the costs incurred in developing the Project to date and the projected costs of developing it to the point of being Fully Developed;
- (c) the progress in performing the Development Services and delivering the Project Documents;
- (d) the basis on which the Development Partner has concluded that the Project cannot be Fully Developed by the Approvals Gateway Notice Longstop Date or that Financial Close cannot be achieved (as applicable); and
- (e) if the Development Partner considers that:
  - (i) amendments can be made to the Mandatory Requirements; and/or
  - (ii) an extension to the Approvals Gateway Notice Longstop Date can be made,

which would make it feasible to Fully Develop the Project by the Approvals Gateway Notice Longstop Date and/or to achieve Financial Close (as applicable), the changes it proposes together with an explanation of how/why, if made, they would address the relevant issues,



(the **Viability Report**).

- 15.3 The Viability Report shall be accompanied by an up-to-date financial model for the Project.
- 15.4 The Development Partner will produce the Viability Report exercising the standard of care referred to in Clause 4.5 (*Provision of Development Services*) and will act in good faith in doing so.
- 15.5 If requested to do so, the Development Partner will meet DESNZ as soon as reasonably practicable (and in any case no later than ten (10) Business Days after such a request) to review the Viability Report and discuss the issues identified in it (a **Viability Review Meeting**).
- 15.6 DESNZ may request other people attend the Viability Review Meeting and the Development Partner will use reasonable endeavours to ensure that anyone for whom it is responsible complies with any such request.
- 15.7 The Development Partner will use all commercially reasonable endeavours to address any issues raised by DESNZ in a Viability Review Meeting.
- 15.8 The Development Partner and DESNZ will each, acting in good faith:
- (a) make and consider proposals for how the issues identified in a Viability Report, or raised by DESNZ in connection with it, might be addressed including whether any amendments to the Mandatory Requirements made in accordance with Clause 15.10(a) would overcome the issues; and
  - (b) seek solutions that will overcome the issues, deciding on the actions which will be taken and who, in accordance with this Development Agreement, will take them.
- 15.9 The Development Partner will perform the actions allocated to it at any Viability Review Meeting in accordance with this Development Agreement.
- 15.10 If DESNZ and the Development Partner agree:
- (a) on amendments which can be made to the Mandatory Requirements; and/or
  - (b) an extension to the Approvals Gateway Notice Longstop Date,
- which would address the issues identified and make it feasible to Fully Develop the Project by the Approvals Gateway Notice Longstop Date and/or Financial Close cannot be achieved, then the parties shall amend this Development Agreement to give effect to those changes in accordance with Clause 34 (*Amendments*).

15.11 If:

- (a) a Viability Report concludes that the Project cannot be Fully Developed by the Approvals Gateway Notice Longstop Date or that Financial Close cannot be achieved (as applicable);
- (b) DESNZ has not raised any reasonable objections to that conclusion; and
- (c) the parties (having used all commercially reasonable endeavours and acting in good faith) have not resolved the issue of viability sixty (60) Business Days after the date of the Development Partner's notice under Clause 15.1,

then development of the Project in accordance with this Development Agreement shall be deemed to be unviable for the purposes of Clause 16.1(e) (*Termination by DESNZ*) and Clause 17.1(c) (*Termination by the Development Partner*).

## 16 TERMINATION BY DESNZ

16.1 DESNZ may terminate this Development Agreement by the service of written notice (a **DESNZ Termination Notice**) on the Development Partner in any of the following circumstances:

- (a) if the Development Partner is in breach of any material obligation under this Development Agreement, provided that if the breach is capable of remedy, DESNZ may only terminate this Development Agreement under this Clause 16.1 (*Termination by DESNZ*) if the Development Partner has failed to remedy such breach within twenty-eight (28) days of receipt of notice from DESNZ (a **DESNZ Remediation Notice**) requiring it to do so;
- (b) if there is an Insolvency Event in relation to the Development Partner or the Project Company;
- (c) if there is a change of control of the Development Partner or the Project Company within the meaning of section 1124 of the Corporation Tax Act 2010 to which DESNZ has not given its prior written approval;
- (d) DESNZ reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply;
- (e) development of the Project in accordance with this Development Agreement has been determined to be unviable in accordance with Clause 15 (*Project not Viable*);
- (f) the Development Partner fails to issue an Approvals Gateway Notice by the Approvals Gateway Notice Longstop Date;

- (g) the result of the Approvals Gateway Process is a Positive Outcome but the Development Partner has elected in accordance with Clause 14.8 (*Approvals Gateway Process*) not to proceed with the Project;
- (h) the result of the Approvals Gateway Process is a Negative Outcome because the Mandatory Requirements have not been satisfied;
- (i) the result of the Approvals Gateway Process is a Negative Outcome because, although the Mandatory Requirements have been satisfied, DESNZ has decided not to approve the Project; and
- (j) at any time without reason by giving the Development Partner not less than 6 (six) months' notice.

16.2 If a DESNZ Termination Notice relates to:

- (a) Clause 16.1(a), this Development Agreement shall terminate only in the circumstances referred to in that Clause; or
- (b) any of Clauses 16.1(b) to 16.1(i) (inclusive), this Development Agreement shall terminate with immediate effect.

16.3 The provisions of this Clause 16 are without prejudice to DESNZ's ability to terminate this Development Agreement in accordance with the provisions of Clause 24 (*Prohibited Acts*).

## 17 TERMINATION BY THE DEVELOPMENT PARTNER

17.1 The Development Partner may terminate this Development Agreement by the service of written notice (a **Development Partner Termination Notice**) on DESNZ in any of the following circumstances:

- (a) if DESNZ is in breach of any material obligation under this Development Agreement, provided that if the breach is capable of remedy, the Development Partner may only terminate this Development Agreement under this Clause 17.1 (*Termination by the Development Partner*) if DESNZ has failed to remedy such breach within twenty-eight (28) days of receipt of notice from the Development Partner (a **Development Partner Remediation Notice**) requiring it to do so;
- (b) non-payment by DESNZ of an amount due under this Development Agreement (which is not in dispute) exceeding ten thousand pounds (£10,000) for sixty (60) Business Days after a written notice is served on DESNZ stating the amount due and the date when such amount became due;

- (c) development of the Project in accordance with this Development Agreement has been determined to be unviable in accordance with Clause 15 (*Project not Viable*);
- (d) the result of the Approvals Gateway Process is a Positive Outcome but the Development Partner has elected in accordance with Clause 14.8 (*Approvals Gateway Process*) not to proceed with the Project;
- (e) the result of the Approvals Gateway Process is a Negative Outcome because the Mandatory Requirements have not been satisfied; or
- (f) the result of the Approvals Gateway Process is a Negative Outcome because, although the Mandatory Requirements have been satisfied, DESNZ has decided not to approve the Project.

17.2 If a Development Partner Termination Notice relates to:

- (a) Clause 17.1(a), this Development Agreement shall terminate only in the circumstances referred to in that Clause; and
- (b) any of Clauses 17.1(b) to 17.1(f) (inclusive), this Development Agreement shall terminate with immediate effect.

17.3 The Development Partner shall not exercise, or purport to exercise, any right to terminate this Development Agreement (or accept any repudiation of this Development Agreement) except as expressly set out in this Clause 17 (*Termination by the Development Partner*).

## **18 CONSEQUENCES OF TERMINATION**

18.1 Where a valid Termination Notice has been served:

- (a) DESNZ shall pay the Termination Amount to the Development Partner; and
- (b) the Development Partner shall:
  - (i) transfer, or procure that the Project Company transfers, all Development Assets as DESNZ directs;
  - (ii) take such steps, and procure that the Project Company takes such steps, as may be necessary to handover to DESNZ all aspects of the Project which form part of the Development Partner's responsibilities under this Development Agreement; and
  - (iii) deliver, and procure that the Project Company delivers, to DESNZ all of the Project Documents and other Project Materials in its possession or

under its control (whether in the course of preparation or completed) in a useable, editable and compatible format.

- 18.2 If DESNZ serves a DESNZ Termination Notice in accordance with:
- (a) Clauses 16.1(a) to 16.1(h) (inclusive), then the Termination Amount shall be one pound (£1); and
  - (b) Clauses 16.1(i) and 16.1(j), then the Termination Amount shall be the Abort Fee.
- 18.3 If the Development Partner serves a Development Partner Termination Notice in accordance with:
- (a) Clauses 17.1(a), 17.1(b) or 17.1(f), then the Termination Amount shall be the Abort Fee; and
  - (b) Clauses 17.1(c), 17.1(d) or 17.1(e), then the Termination Amount shall be one pound (£1).
- 18.4 Termination of this Development Agreement shall be without prejudice to the rights and remedies of DESNZ and the Development Partner in relation to any negligence, default or breach of contract by the other prior to such termination.
- 18.5 Payment of the Termination Amount pursuant to Clause 18.2 shall be in full and final settlement of any claim which either party may have arising from or in connection with the termination of this Development Agreement.
- 18.6 As soon as reasonably practicable and no later than ten (10) Business Days following termination of this Development Agreement the Development Partner shall provide to DESNZ details of all Development Partner Foreground IPRs and copies of all Project Materials (whether complete or in development/part finished) to the extent not already provided to DESNZ under Clause 5.4 (*Intellectual Property Rights*).
- 18.7 On termination of this Development Agreement for whatever reason, the licences granted to the Development Partner to use the DESNZ Background IPRs and the Foreground IPRs under Clause 5.5 (*Intellectual Property Rights*) and the licences granted to DESNZ under Clause 5.6(a) (*Intellectual Property Rights*) shall terminate.
- 18.8 Termination of this Development Agreement pursuant to Clause 16 (*Termination by DESNZ*) shall be without prejudice to any antecedent claims which DESNZ may have against the Development Partner, or the Development Partner may have against DESNZ, pursuant to the terms of this Development Agreement.
- 18.9 Following termination of this Development Agreement the Development Partner shall deal with the Confidential Information of DESNZ as follows:

- (a) where DESNZ notifies to the Development Partner that any item(s) of Confidential Information of DESNZ should be destroyed, the Development Partner shall destroy such items in accordance with Good Industry Practice (and to the extent reasonably possible); and
- (b) subject to paragraph (a) above, within ten (10) Business Days of the date of termination or expiry of this Development Agreement, the Development Partner shall return to DESNZ any and all of DESNZ's Confidential Information in the Development Partner's possession, power or control, either in its then current format or in a format specified by DESNZ, and any other information and all copies thereof owned by the Development Partner,

save that it may keep one copy of any such data or information to the extent reasonably necessary to comply with its obligations under this Development Agreement or under any Law, for a period of up to twelve (12) Months (or such other period as approved in writing by DESNZ).

### ***Surviving provisions***

- 18.10 Termination or expiry of this Development Agreement shall be without prejudice to the survival of any provision of this Development Agreement which either expressly or by implication is to be performed or observed notwithstanding termination or expiry of this Development Agreement, including the provisions of: Clauses 1 (*Definitions and interpretation*), 3 (*Representations and Warranties*), 5 (*Intellectual Property Rights*), 13 (*Development Fee*), 16 (*Termination by DESNZ*), 17 (*Termination by the Development Partner*), 18 (*Consequences of Termination*), 19 (*Liability*), 21 (*Dispute Resolution*), 22 (*Records and Audit Access*), 23 (*Insurance provisions*), 24 (*Prohibited Acts*), 25 (*Assignment and Sub-Contracting*), 29 (*Confidentiality*), 30 (*Freedom of Information*), 32 (*Notices*), 35 (*Waiver*), 38 (*Entire Agreement*), 41 (*Third Party Rights*) and 45 (*Governing Law and Jurisdiction*).

## **19 LIABILITY**

- 19.1 Neither party to this Development Agreement excludes or limits its liability for:
- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
  - (b) bribery or fraud by it or its employees; or
  - (c) any liability to the extent it cannot be excluded or limited by Law.
- 19.2 The Development Partner's liability in respect of the indemnities in Clauses 5 (*Intellectual Property Rights*), 6 (*Design Obligations*) and 28 (*Tax*) shall be unlimited.

19.3 DESNZ's capped liability pursuant to Clause 19.4(c) (*Liability*) shall exclude the payment of the Development Fees and the Termination Amount in accordance with the terms of this Development Agreement.

19.4 Subject to Clauses 19.1 and 19.2:

- (a) the Development Partner's aggregate liability in respect of all Losses incurred by DESNZ under or in connection with this Development Agreement as a result of any breach by the Development Partner of this Development Agreement shall in no event exceed the higher of (i) five hundred thousand pounds (£500,000), or (ii) one hundred and fifty percent (150%) of the Development Fee;
- (b) the Project Company's aggregate liability in respect of all Losses incurred by DESNZ under or in connection with this Development Agreement as a result of any breach by the Project Company of this Development Agreement shall in no event exceed the higher of (i) five hundred thousand pounds (£500,000), or (ii) one hundred and fifty percent (150%) of the Development Fee; and
- (c) DESNZ's aggregate liability in respect of all Losses incurred by the Development Partner under or in connection with this Development Agreement as a result of any breach by DESNZ of this Development Agreement shall in no event exceed the higher of (i) five hundred thousand pounds (£500,000), or (ii) one hundred and fifty percent (150%) of the Development Fee.

19.5 Subject to Clause 19.1, no party shall be liable to any other party for any:

- (a) indirect, special or consequential Loss; or
- (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

19.6 Each party shall use all reasonable endeavours to mitigate any loss or damage suffered, arising out of or in connection with this Development Agreement.

## **20 SUSTAINABILITY AND SOCIAL VALUE**

The Parties shall comply with their obligations in relation to sustainability and social value, as set out in Schedule 10 (*Sustainability and Social Value*).

## **21 DISPUTE RESOLUTION**

21.1 Any dispute arising in relation to any aspect of this Development Agreement shall be resolved in accordance with this Clause 21 (*Dispute Resolution*).

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- 21.2 If a dispute arises in relation to any aspect of this Development Agreement, the Development Partner and DESNZ shall first consult in good faith in an attempt to come to an agreement in relation to the disputed matter.
- 21.3 If the Development Partner and DESNZ fail to resolve the dispute through such consultation, either party may refer the matter to an adjudicator selected in accordance with Clause 21.4 (the **Adjudicator**).
- 21.4 The Adjudicator nominated to consider a dispute referred to them shall be selected on a strictly rotational basis from the relevant panel of experts appointed in accordance with the following:
- (a) all the experts on the panel shall be wholly independent of the Development Partner and DESNZ;
  - (b) the panel shall be comprised of three (3) experts who shall be appointed jointly by the Development Partner and DESNZ. Such appointments shall take place within twenty (20) Business Days of the date of this Development Agreement;
  - (c) if any member of a panel resigns during the Term, a replacement expert shall be appointed by the Development Partner and DESNZ as soon as practicable; and
  - (d) if DESNZ and the Development Partner are unable to agree on the identity of the experts to be appointed to the panel, the President for the time being of the Chartered Institute of Arbitrators shall appoint such expert(s) within thirty (30) Business Days of any application for such appointment by either party.
- 21.5 Within five (5) Business Days of nomination in relation to a particular dispute, the Adjudicator shall require the parties to submit in writing their respective arguments. The Adjudicator shall, in their absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.
- 21.6 In any event, the Adjudicator shall provide to each party their written decision on the dispute, within twenty (20) Business Days of the Adjudicator's nomination to consider the relevant dispute (or such other period as the parties may agree after the reference) or thirty (30) Business Days from the date of reference if the party which referred the dispute agrees. The Adjudicator's decision shall not state any reasons for their decision. Unless and until revised, cancelled or varied by the courts of England and Wales, the Adjudicator's decision shall be binding on all parties who shall forthwith give effect to the decision.
- 21.7 The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the Development Partner and DESNZ. Each party shall bear its



own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.

- 21.8 The Adjudicator shall be deemed not to be an arbitrator but shall render their decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or their determination or the procedure by which they reached their determination.
- 21.9 The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Development Agreement.
- 21.10 All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with their appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by Clauses 29 (*Confidentiality*) or 30 (*Freedom of Information*), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work.
- 21.11 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of their functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.
- 21.12 If:
- (a) any party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with Clause 21.6; or
  - (b) both parties agree,
- then any party may (within twenty (20) Business Days of receipt of the Adjudicator's decision, where appropriate), notify the other parties of its intention to refer the dispute to the courts.
- 21.13 The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this Clause 21 and shall give effect forthwith to every decision of the Adjudicator and the courts delivered under this Clause 21.

## 22 RECORDS AND AUDIT ACCESS

22.1 Without prejudice to any other requirement of this Development Agreement the Development Partner shall keep and maintain and shall procure that the Project Company keeps and maintains until the later of:

- (a) seven (7) years after the termination of this Development Agreement; or
- (b) such other date as may be agreed in writing between DESNZ and the Development Partner,

full and accurate records and accounts of the operation of this Development Agreement and the amounts paid by DESNZ under this Development Agreement.

22.2 The Development Partner and the Project Company shall keep the records and accounts referred to in Clause 22.1 (*Records and Audit Access*) in accordance with Good Industry Practice and Law.

22.3 The Development Partner and the project Company shall on request by DESNZ allow any Auditor to access the records and accounts referred to in Clause 22.1 (*Records and Audit Access*) at the Development Partner's or Project Company's premises and/or provide copies of the same in such format and manner as reasonably required by the Auditor, in order that the Auditor may carry out an inspection to assess compliance by the Development Partner with any of the Development Partner's obligations under this Development Agreement, including (but not limited to) where the Auditor wishes to:

- (a) verify the Development Fees and any other amounts payable by DESNZ under this Development Agreement; and/or
- (b) verify the Development Partner's compliance with Law; and/or
- (c) identify or investigate actual or suspected Prohibited Acts, impropriety or accounting mistakes or any breach or threatened breach of security; and/or
- (d) obtain such information as is necessary to fulfil DESNZ's obligations to supply information including for judicial or administrative purposes; and/or
- (e) carry out DESNZ's internal and statutory processes (including, without limitation, accounting processes) and to prepare, examine and/or certify DESNZ's annual and interim reports and accounts; and/or
- (f) enable the National Audit Office to carry out an examination pursuant to the National Audit Act 1983 of the economy, efficiency and effectiveness with which DESNZ has used its resources; and/or

- (g) review the Development Partner's quality management systems (including all relevant quality plans and any quality manuals and procedures).
- 22.4 The Development Partner and the Project Company each agrees and acknowledges that the level of information to be provided by the Development Partner or the Project Company in respect of any Audit shall be a matter for the Auditor (in their complete discretion) and a lack of information regarding the purpose or objective of any Audit shall have no bearing on the requirement for the Development Partner and the Project Company to comply with any access request made pursuant to this Clause 22.
- 22.5 Except where an Audit is imposed on DESNZ or where DESNZ has reasonable grounds for believing that the Development Partner has not complied with its obligations under this Development Agreement, DESNZ may not conduct an Audit of the Development Partner more than once prior to the termination of this Development Agreement.
- 22.6 Nothing in this Development Agreement shall prevent or restrict any Audit, examination or investigation of the Development Partner or the Project Company under this Development Agreement.
- 22.7 DESNZ shall use reasonable endeavours to ensure that the conduct of any Audit does not unreasonably disrupt the Development Partner or the Project Company or obstruct the provision of the Development Services and the Development Partner and the Project Company each accepts and acknowledges that control over the conduct of Audits carried out by the Auditors is outside of the control of DESNZ.
- 22.8 Subject to DESNZ's obligations of confidentiality, the Development Partner and the Project Company shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including by providing:
- (a) all information within the scope of the Audit requested by the Auditor; and
  - (b) access to the Development Partner's Personnel.

## **23 INSURANCE PROVISIONS**

The Development Partner shall procure and maintain the Required Insurances listed in Schedule 8 (*Required Insurances*).

## **24 PROHIBITED ACTS**

- 24.1 The Development Partner represents and warrants that neither it, the Project Company, nor to the best of its knowledge any of the Development Partner's Personnel, have at any time prior to the date of this Development Agreement:

- 
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 24.2 The Development Partner shall not and shall procure that the Project Company does not during the Term:
- (a) commit a Prohibited Act; and/or
  - (b) do or suffer anything to be done which would cause DESNZ or any of DESNZ's employees, consultants, contractors, Sub-Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 24.3 The Development Partner shall and shall procure that the Project Company does during the Term:
- (a) establish, maintain and enforce and require that its Development Partner Related Parties establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
  - (b) have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Development Partner do not commit tax evasion facilitation offences as defined under the Criminal Finance Act 2017;
  - (c) keep appropriate records of its compliance with its obligations under Clause 24.3(a) and make such records available to DESNZ on request; and
  - (d) take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.
- 24.4 The Development Partner shall immediately notify DESNZ in writing if it becomes aware of any breach of Clause 24.1 and/or 24.2 (*Prohibited Acts*), or has reason to believe that it has, the Project Company has or any of the Development Partner's Personnel have been subject to an investigation or prosecution which relates to an alleged Prohibited Act.
- 24.5 If the Development Partner makes a notification to DESNZ pursuant to Clause 24.4 (*Prohibited Acts*), the Development Partner shall respond promptly to DESNZ's enquiries,

co-operate with any investigation, and allow DESNZ to Audit any books, records and/or any other relevant documentation in accordance with Clause 22 (*Records and Audit Access*).

- 24.6 If the Development Partner breaches this Clause 24, DESNZ may by notice:
- (a) require the Development Partner to remove from the performance of this Development Agreement any of the Development Partner's Personnel whose acts or omissions have caused the Development Partner's breach; or
  - (b) immediately terminate this Development Agreement.
- 24.7 Any notice served by DESNZ under Clause 24.6 shall specify the nature of the Prohibited Act, the identity of the party who DESNZ believes has committed the Prohibited Act and the action that DESNZ has elected to take (including, where relevant, the date on which this Development Agreement shall terminate).

## **25 ASSIGNMENT AND SUB-CONTRACTING**

- 25.1 Subject to Clause 25.6, no party shall assign, novate, Sub-Contract or otherwise dispose of any or all of its rights and obligations under this Development Agreement without the prior written consent of the other parties, neither may the Development Partner nor the Project Company Sub-Contract the whole or any part of its obligations under this Development Agreement except with the express prior written consent of DESNZ, such consent not to be unreasonably withheld.
- 25.2 In the event that the Development Partner or the Project Company enters into any Sub-Contract in connection with this Development Agreement it shall:
- (a) remain responsible to DESNZ for the performance of its obligations under the Development Agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts, omissions and neglects of its Sub-Contractor;
  - (b) impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to this Development Agreement and shall procure that the Sub-Contractor complies with such terms;
  - (c) ensure that all Sub-Contractors are paid, in full, within thirty (30) days of receipt of a valid, undisputed invoice; and
  - (d) provide a copy, at no charge to DESNZ, of any such Sub-Contract on receipt of a request for such by DESNZ.
- 25.3 The Development Partner and the Project Company must exercise due skill and care when selecting and appointing Sub-Contractors to ensure that they are able to:

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- (a) manage Sub-Contractors in accordance with Good Industry Practice; and
  - (b) comply with their obligations under this Development Agreement.
- 25.4 For Sub-Contracts in the Development Partner's or the Project Company's supply chain entered into by the Development Partner or the Project Company wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Development Agreement (i) where such Sub-Contracts are entered into after the date of this Development Agreement, the Development Partner or the Project Company (as relevant) will ensure that the Sub-Contracts contain provisions that; or (ii) where such Sub-Contracts are entered into before the date of this Development Agreement, the Development Partner or the Project Company (as relevant) will take all reasonable endeavours to ensure that the Sub-Contracts contain provisions that:
- (a) allow the Development Partner or the Project Company (as relevant) to terminate the Sub-Contract if the Sub-Contractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
  - (b) require the Development Partner or the Project Company (as relevant) to pay all Sub-Contractors in full, within thirty (30) days of receiving a valid, undisputed invoice; and
  - (c) allow DESNZ to publish the details of the late payment or non-payment if this thirty (30) day limit is exceeded.
- 25.5 At DESNZ's request, the Development Partner or the Project Company (as relevant) must terminate any Sub-Contracts entered into by the Development Partner or Project Company in any of the following events:
- (a) there is a change of control of a Sub-Contractor within the meaning of section 1124 of the Corporation Tax Act 2010 which is not pre-approved by DESNZ in writing;
  - (b) the acts or omissions of the Sub-Contractor have caused or materially contributed to a right of termination under Clause 16.1 (*Termination by DESNZ*);
  - (c) a Sub-Contractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in DESNZ;
  - (d) the Sub-Contractor fails to comply with its obligations in respect of environmental, social, equality or employment Law; and/or
  - (e) DESNZ has found grounds to exclude the Sub-Contractor in accordance with Regulation 57 of the Public Contracts Regulations 2015.

- 25.6 DESNZ shall be entitled to novate (and the Development Partner and the project Company shall be deemed to consent to any such novation) the Development Agreement or any part thereof to any Crown Body, public or private sector body which substantially performs any of the functions that previously had been performed by DESNZ.
- 25.7 If at any time DESNZ asks the Development Partner for details about Sub-Contractors, the Development Partner must provide details of Sub-Contractors at all levels of the supply chain including:
- (a) their name;
  - (b) the scope of their appointment;
  - (c) the duration of their appointment; and
  - (d) a copy of the relevant Sub-Contract.

## 26 DATA PROTECTION

- 26.1 In this Clause 26, the following definitions shall apply:

**“Data Controller”**, **“Data Processor”**, **“Data Subject”**, **“Process”**, **“Processing”**, **“Personal Data”** and **“Personal Data Breach”** have the meanings given to those terms in the Data Protection Legislation.

**“Data Protection Legislation”** means any Law (as amended, consolidated or re-enacted from time to time) which relates to the protection of Personal Data to which a party is subject, including the Data Protection Act 2018 and the UK GDPR and all other legislation enacted in the UK in respect of the protection of Personal Data and privacy; and (b) any code of practice or guidance published by the ICO (or equivalent regulatory body) from time to time.

- 26.2 The parties acknowledge and agree that DESNZ and the Development Partner shall act as independent Data Controllers in respect of any Personal Data Processed under this Development Agreement.
- 26.3 In respect of any Personal Data Processed under this Development Agreement, each party shall:
- (a) Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other party to be in breach of it;
  - (b) only Process (and share) such Personal Data to the extent necessary to perform their respective obligations under this Development Agreement;

- (c) be responsible for their own compliance with the transparency and notice requirements under the Data Protection Legislation in respect of the Processing of Personal Data for the purposes of this Development Agreement;
  - (d) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, and the measures shall at a minimum comply with Article 32 of the UK GDPR; and
  - (e) not transfer any Personal Data outside of the UK or EEA.
- 26.4 Each party shall promptly notify the other party upon becoming aware of any Personal Data Breach involving any Personal Data Processed in connection with this Development Agreement and shall do all such things as reasonably necessary to assist the other party in mitigating the effects of such Personal Data Breach.

## **27 TUPE**

27.1 In this Clause 27, the following definitions shall apply:

**"TUPE"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

**"New Provider"** means any person or party which supplies (either directly or indirectly) services or activities following any termination of this Development Agreement which are identical or substantially similar to any or all of the Development Services (as provided for by TUPE).

27.2 The Parties confirm that TUPE does not apply on entry into this Development Agreement.

27.3 The Development Partner shall ensure that:

- (a) the cessation or termination of any of the Development Services (in whole or in part); and/or
- (b) the termination of this Development Agreement (in whole or in part),

will not constitute a "relevant transfer" for the purpose of TUPE, and shall ensure that individuals or liabilities do not transfer to DESNZ and/or any New Provider pursuant to TUPE.

## **28 TAX**

28.1 In this Clause 28, the following definitions shall apply:



**"National Insurance"** means contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004).

**"Worker"** means any one of the Development Partner's Personnel which DESNZ, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees)<sup>1</sup> applies in respect of the Development Services.

- 28.2 The Development Partner must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. DESNZ cannot terminate this Development Agreement where the Development Partner has not paid a minor tax or social security contribution.
- 28.3 Where the Development Partner or any Development Partner's Personnel are liable to pay income tax, social security contributions and/or to pay National Insurance contributions in the UK relating to payments made to the Development Partner or the Development Partner Personnel in connection with the performance of the Development Services under this Development Agreement, the Development Partner must both:
- (a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and
  - (b) indemnify DESNZ against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Term in connection with the provision of the Development Services by the Development Partner or any of the Development Partner's Personnel.
- 28.4 If any of the Development Partner's Personnel are Workers who receive payment relating to the Development Services, then the Development Partner must ensure that its contract with the Worker contains the following requirements:
- (a) DESNZ may, at any time during the Term, request that the Worker provides information which demonstrates they comply with Clause 28.3(a), or why those requirements do not apply, DESNZ can specify the information the Worker must provide and the deadline for responding;

<sup>1</sup> <https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees>.

- (b) the Worker's contract may be terminated at DESNZ's request if the Worker fails to provide the information requested by DESNZ within the time specified by DESNZ;
- (c) the Worker's contract may be terminated at DESNZ's request if the Worker provides information which DESNZ considers is not good enough to demonstrate how it complies with Clause 28.3(a) or confirms that the Worker is not complying with those requirements; and
- (d) DESNZ may supply any information they receive from the Worker to His Majesty's Revenue and Custom for revenue collection and management.

## **29 CONFIDENTIALITY**

29.1 Subject to Clause 29.2, each party shall keep each other party's Confidential Information confidential and shall not:

- (a) use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this Development Agreement; or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 29.

29.2 The obligation to maintain the confidentiality of the Confidential Information does not apply to any Confidential Information:

- (a) which the relevant other party confirms in writing is not required to be treated as Confidential Information;
- (b) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
- (c) which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the FOIA or the EIRs;
- (d) which is in or enters the public domain other than through any disclosure prohibited by this Development Agreement;
- (e) which a party can demonstrate was lawfully in its possession prior to receipt from the relevant other party;
- (f) which is disclosed by DESNZ on a confidential basis to any central government or regulatory body; or

- (g) which is disclosed by the Development Partner or the Project Company to a regulator.
- 29.3 A party may disclose another party's Confidential Information to those of its representatives and advisors who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this Development Agreement, provided that:
- (a) it informs such representatives and advisors of the confidential nature of the Confidential Information before disclosure;
  - (b) it procures that its representatives and advisors shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this Clause as if they were a party to this Development Agreement; and
  - (c) at all times, it is liable for the failure of any representatives and advisors to comply with the obligations set out in this Clause 29.3.
- 29.4 DESNZ may disclose Confidential Information in any of the following cases:
- (a) on a confidential basis to any other Crown Body, any successor body to a Crown Body or any company that DESNZ transfers or proposes to transfer all or any part of its business to;
  - (b) if DESNZ (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions; and
  - (c) where requested by Parliament.
- 29.5 The Development Partner must not make any press announcement or publicise this Development Agreement or any part of it in any way, without the prior written consent of DESNZ and must use all reasonable endeavours to ensure that the Development Partner's Personnel do not either.

## **30 FREEDOM OF INFORMATION**

- 30.1 The Development Partner acknowledges that DESNZ is subject to the requirements of the FOIA and the EIRs. The Development Partner shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by DESNZ to enable DESNZ to comply with its obligations under the FOIA and EIRs;
  - (b) transfer to DESNZ all Requests for Information relating to this Development Agreement that it receives as soon as practicable and in any event within two (2) Business Days of receipt;

- (c) provide DESNZ with a copy of all information belonging to DESNZ requested in the Request for Information which is in its possession or control in the form that DESNZ requires within five (5) Business Days (or such other period as DESNZ may reasonably specify) of DESNZ's request for such Information; and
  - (d) not respond directly to a Request for Information unless authorised in writing to do so by DESNZ.
- 30.2 The Development Partner acknowledges that DESNZ may be required under the FOIA and EIRs to disclose information (including Commercially Sensitive Information) without consulting or obtaining consent from the Development Partner. DESNZ shall take reasonable steps to notify the Development Partner of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Development Agreement) DESNZ shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
- 30.3 Notwithstanding any other term of this Development Agreement, the Development Partner consents to the publication of this Development Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.
- 30.4 DESNZ shall, prior to publication, consult with the Development Partner on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Development Partner shall assist and co-operate with DESNZ to enable DESNZ to publish this Development Agreement.

### **31 CONFLICTS OF INTEREST**

- 31.1 The Development Partner shall take appropriate steps to ensure that neither the Development Partner nor any of the Development Partner's Personnel are placed in a position where (in the reasonable opinion of the Development Partner, considering such conflict from the perspective of DESNZ) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Development Partner or the Development Partner's Personnel and the duties owed to DESNZ under the provisions of this Development Agreement.
- 31.2 As soon as the Development Partner recognises there is a conflict or a potential conflict of interest, the Development Partner shall immediately inform DESNZ of the conflict of interest or potential conflict of interest (as the case may be) and the arrangements the

Development Partner has made to manage the identified conflict of interest or potential conflict of interest as the case may be.

- 31.3 DESNZ reserves the right to terminate this Development Agreement immediately by giving notice in writing to the Development Partner and/or to take such other steps as it deems necessary where, in the reasonable opinion of DESNZ, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Development Partner and the duties owed to DESNZ under the provisions of this Development Agreement. The actions of DESNZ pursuant to this Clause 31 shall not prejudice or affect any right of action or remedy which has accrued or shall accrue to DESNZ.

## 32 CLAIMS PROCEDURE

- 32.1 In this Clause 32, the following definitions shall apply:

**“Beneficiary”** means a Party having (or claiming to have) the benefit of an indemnity under this Development Agreement.

**“Claim”** means any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Development Agreement.

**“Indemnifier”** means a Party from whom an indemnity is sought under this Development Agreement.

- 32.2 If a Beneficiary is notified of a Claim, then it must notify the Indemnifier as soon as reasonably practical and no later than ten (10) Business Days.

- 32.3 At the Indemnifier's cost the Beneficiary must both:

- (a) allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and
- (b) give the Indemnifier reasonable assistance with the claim if requested.

- 32.4 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.

- 32.5 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn't damage the Beneficiary's reputation.

- 32.6 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.

- 32.7 Each Beneficiary must use all reasonable endeavours to minimise and mitigate any losses that it suffers because of the Claim.

32.8 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:

- (a) the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; and
- (b) the amount the Indemnifier paid the Beneficiary for the Claim.

### 33 NOTICES

33.1 Any notice issued under this Development Agreement must be in writing. For the purpose of this Clause 33, an e-mail is considered as being in writing.

33.2 Subject to Clause 33.4, the following table sets out the method by which notices may be served under this Development Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of delivery	Proof of Service
<b>Email (Subject to Clause 33.3)</b>	9.00am on the first Business Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
<b>Personal delivery</b>	On delivery, provided delivery is between 9.00am and 5.00pm on a Business Day. Otherwise, delivery will occur at 9.00am on the next Business Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
<b>Royal Mail Signed For™ 1st Class or other prepaid, next Business Day service providing proof of delivery</b>	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Business Day. Otherwise, delivery will occur at 9.00am on the same Business Day (if delivery before 9.00am) or on the next Business Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

33.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid service in the manner set out in the table in Clause 33.2:

- (a) any notice from one party to the others terminating this Development Agreement;
- (b) any notice pursuant to or in respect of:

- (i) Clause 16 (*Termination by DESNZ*);
- (ii) Clause 17 (*Termination by the Development Partner*);
- (iii) Clause 18 (*Consequences of Termination*); and
- (iv) Clause 21 (*Dispute resolution*).

33.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 33.3 shall invalidate the service of any related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 33.2) or, if earlier, the time of response or acknowledgement by the receiving party to the email attaching the notice.

33.5 This Clause 33 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a notice under Clause 21 (*Dispute Resolution*)).

33.6 For the purposes of this Clause 33 (*Notices*) the address of each party shall be:

- (a) For DESNZ:

Department for Energy Security and Net Zero Address: 1 Victoria Street London SW1H 0ET For the attention of: Redacted under FOIA Section 40 Personal Information

Email: Redacted under FOIA Section 40 Personal Information

Redacted under FOIA Section 40 Personal Information

- (b) For the Development Partner:

SWAN Heat Network Limited

Address: Castletown Office Castletown, Rockcliffe, Carlisle, Cumbria, United Kingdom, CA64BN

For the attention of: Redacted under FOIA Section 40 Personal Information

Email: Redacted under FOIA Section 40 Personal Information  
Redacted under FOIA Section 40 Personal Information  
Redacted under FOIA Section 40 Personal Information

- (c) For the Project Company:

SWAN ESCO Limited

Address: Castletown Office Castletown, Rockcliffe, Carlisle, Cumbria, United Kingdom, CA64BN

For the attention of: [Redacted under FOIA Section 40 Personal Information]

Email: [Redacted under FOIA Section 40 Personal Information]

- 33.7 Each party may change its address for service by serving a notice in accordance with this Clause 33.

#### **34 AMENDMENTS**

This Development Agreement may not be varied except by an agreement in writing signed by duly authorised representatives of all the parties to this Development Agreement.

#### **35 WAIVER**

Any relaxation, forbearance, indulgence or delay (together **Indulgence**) of any party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right (whether against that party or any other person).

#### **36 NO AGENCY**

- 36.1 Nothing in this Development Agreement shall be construed as creating a partnership, joint venture or as a contract of employment between DESNZ and the Development Partner or the Project Company.
- 36.2 The Development Partner and the project Company shall not be, or be deemed to be, an agent of DESNZ and neither the Development Partner nor the Project Company shall hold itself out as having authority or power to bind DESNZ in any way.

#### **37 DESNZ FUNCTIONS AND POWERS**

- 37.1 Nothing contained or implied in this Development Agreement, or any consent or approval granted pursuant to it, shall be construed as a fetter or restriction on:
- (a) the performance by DESNZ of its functions; or
  - (b) the exercise of its rights, powers, duties and obligations.
- 37.2 Any approval, consent, direction or authority given by DESNZ in the performance of its functions or the exercise of its rights, powers, duties or obligations shall not be, or be deemed to be, an approval, consent, direction or authority given under this Development Agreement (or vice versa).



**38 ENTIRE AGREEMENT**

- 38.1 Except where expressly provided otherwise in this Development Agreement, this Development Agreement (and, following entry into the same, the GHNF Grant Funding Agreement) constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Development Agreement.
- 38.2 Each party acknowledges that it does not enter into this Development Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Development Agreement or not) except those expressly repeated or referred to in this Development Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Development Agreement.
- 38.3 Nothing in this Clause 38 shall exclude any liability in respect of misrepresentations made fraudulently.

**39 SEVERABILITY**

If any provision of this Development Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Development Agreement.

**40 COUNTERPARTS**

This Development Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full original of this Development Agreement for all purposes.

**41 THIRD PARTY RIGHTS**

- 41.1 A person who is not a party to this Development Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Development Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contract (Rights of Third Parties) Act 1999.
- 41.2 Any amendments or modifications to this Development Agreement may be made by the parties to this Development Agreement.

**42 MITIGATION**

DESNZ, the Development Partner and the Project Company shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant party is entitled to bring a claim against the other party pursuant to this Development Agreement and to take all reasonable steps to minimise and mitigate any effects or circumstances and/or events adversely affecting the performance of their obligations under this Development Agreement which would otherwise entitle that party to relief and/or to claim compensation hereunder.

**43 COSTS AND EXPENSES**

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Development Agreement.

**44 FURTHER ASSURANCE**

Each party shall do all things and execute all further documents necessary to give full effect to this Development Agreement.

**45 GOVERNING LAW AND JURISDICTION**

45.1 This Development Agreement shall be considered as a contract made in England and Wales and shall be subject to the laws of England and Wales.

45.2 Subject to the provisions of Clause 21 (*Dispute Resolution*), the parties agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Development Agreement and irrevocably submit to the jurisdiction of those courts.





## Schedule 1– Definition and Interpretation

### 1 DEFINITIONS

In this Development Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

- Abort Fee** means an amount equal to the lesser of:
- (a) 120% of the difference between the Forecast Development Costs and the DESNZ Contribution; and
  - (b) 120% of the difference between the Actual Development Costs and the DESNZ Contribution.
- Actual Development Costs** means all costs and expenses reasonably and properly incurred by the Development Partner or the Project Company in providing the Development Services and/or developing the Project Materials (and for which the Development Partner has produced evidence to DESNZ's reasonable satisfaction), including:
- (a) costs associated with external consultants; and
  - (b) costs associated with Sub-Contractors (including sums paid to Sub-Contractors under the terms of the Sub-Contracts and any amounts paid or due to a Sub-Contractor to discharge debts owed by the Project Company to the Sub-Contractors in connection with the provision of the Development Services); and
  - (c) costs incurred with relevant utilities, authorities and agencies;
- but Actual Development Costs shall not include:
- i. any Breakage Costs;
  - ii. Development Partner's or Project Company's overheads;
  - iii. Development Partner's or Project Company's profit; and
  - iv. entertainment costs.
- Adjudicator** has the meaning given to it in Clause 21.3 (*Dispute Resolution*).
- Affiliate** means, in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and "holding company" and "subsidiary" shall have the meaning given to them in Section 1159 of the Companies Act 2006 provided that DESNZ shall not be construed for any purposes as being an Affiliate of the Development Partner.

<b>Approvals Gateway Briefing Materials</b>	means an overview of the Development Partner's proposals for the Project including the Final Design and a statement of compliance with the Development Partner's Proposals.
<b>Approvals Gateway Notice Longstop Date</b>	means 31 March 2027 or such later date as DESNZ agrees in writing.
<b>Approvals Gateway Materials</b>	has the meaning given to it in Clause 14.3 ( <i>Approvals Gateway Process</i> ).
<b>Approvals Gateway Notice</b>	has the meaning given in Clause 14.1 ( <i>Approvals Gateway Process</i> ).
<b>Approvals Gateway Process</b>	means the process by which the Project, when Fully Developed, is considered for approval by DESNZ, as set out in Clause 14 ( <i>Approvals Gateway Process</i> ).
<b>Approved Sub-Contractor</b>	means (i) Hemiko Limited (company number 08331646) with registered address at Castletown Office, Rockcliffe, Carlisle, Cumbria, United Kingdom, CA6 4BN, and (ii) Vital Energi Utilities Limited (company number 04050190) with registered address at Century House, Roman Road, Blackburn, Lancashire, United Kingdom, BB1 2LD.
<b>Associated Persons</b>	has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017.
<b>Audit</b>	means any exercise by DESNZ of its rights to audit the Development Partner or the Project pursuant to the terms of this Development Agreement.
<b>Auditor</b>	means: <ul style="list-style-type: none"> <li>(a) DESNZ's internal and external auditors;</li> <li>(b) DESNZ's statutory or regulatory auditors;</li> <li>(c) representatives of the National Audit Office;</li> <li>(d) HM Treasury or the Administering Authority;</li> <li>(e) any party formally appointed by DESNZ to carry out audit or similar review functions; and</li> <li>(f) successors or assigns of any of the above.</li> </ul>
<b>Authority</b>	means a person designated in accordance with regulations made pursuant to section 227 of the Energy Act 2023 to act as the Heat Networks Zones Authority.
<b>Background IPRs</b>	means any Intellectual Property Rights owned or controlled by or licensed to a party and/or its Sub-Contractors and/or sub-consultants prior to the date of this Development Agreement and/or created independently from this Development Agreement (whether prior to the

date of this Development Agreement or otherwise), including in any Project Materials, and which are: (a) used, provided and/or made available by a party (including in the case of the Development Partner or the Project Company, by its Sub-Contractors and/or sub-consultants) for the Project and/or Development Services; and/or (b) contained in, used or required to be used in the Foreground IPRs, the Project Documents and/or Project Materials.

<b>Breakage Costs</b>	means any costs, losses, expenses or claims incurred by the Development Partner as a result of termination of any Pre-Contract Commitments including any Sub-Contractor breakage costs or claims in respect of expectation of contract or for any loss of profits, loss of contracts, loss of opportunity or any other compensation of whatsoever nature.
<b>Buildings Regulations</b>	has the meaning given in Clause 6.6 ( <i>Design Obligations</i> ).
<b>Business Day</b>	means a day other than a Saturday, Sunday or a bank holiday in England.
<b>CDM Regulations</b>	means the Construction (Design and Management) Regulations 2015, the guidance "Managing Health and Safety in Construction" issued by the Health and Safety Executive (ISBN 9780717666263) and any modification, extension, amendment or re-enactment to/of the aforesaid regulations or guidance current at the time the Tasks are carried out and any code of practice or other guidance approved and issued by the Health & Safety Executive.
<b>Commercially Sensitive Information</b>	means the information listed in Schedule 9 ( <i>Commercially Sensitive Information</i> ) comprising the information of a commercially sensitive nature relating to the Development Partner, its intellectual property rights or its business or which the Development Partner has indicated to DESNZ that, if disclosed by DESNZ, would cause the Development Partner significant commercial disadvantage or material financial loss.
<b>Confidential Information</b>	<p>means all confidential information (however recorded or preserved) disclosed by a party or its representatives and Advisors to the other party and that party's representatives and advisors in connection with this Development Agreement, including but not limited to:</p> <ul style="list-style-type: none"> <li>(a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;</li> <li>(b) any information developed by the parties in the course of carrying out this Development Agreement; and</li> <li>(c) any Commercially Sensitive Information.</li> </ul>
<b>Crown Body</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf.

<b>Customer</b>	means any potential customer connecting into and receiving a heat supply from the SWAN Network.
<b>Decision Notice</b>	has the meaning given to it in Clause 14.6 ( <i>Approvals Gateway Process</i> ).
<b>Default Interest Rate</b>	means 8% above the Bank of England base rate for business to business transactions.
<b>Delivery Period</b>	means the period beginning at Financial Close in which the SWAN Network is designed, constructed, operated and maintained and used to supply heat to Customers.
<b>Design and Quality Management Protocol</b>	means the Design and Quality Management Protocol for the SWAN Network, set out in Schedule 7 ( <i>Design and Quality Management Protocol</i> ).
<b>DESNZ Contribution</b>	means, for the purposes of calculating the Abort Fee, the aggregate of: <ul style="list-style-type: none"> <li>(a) all instalments of the Development Fee paid by DESNZ; and</li> <li>(b) all payments made by DESNZ pursuant to the GHNF Grant Funding Agreement.</li> </ul>
<b>DESNZ Foreground IPRs</b>	means all Foreground IPRs obtained, created or developed by or on behalf of DESNZ (including by its Sub-Contractors and/or sub-consultants).
<b>DESNZ Representative</b>	means George Robinson (Head of Finance and Investment, Heat Networks) or such other person as DESNZ shall notify to the Development Partner in writing from time to time in accordance with Clause 10.5 ( <i>Development Partner's Personnel</i> ).
<b>DESNZ Remediation Notice</b>	has the meaning given in Clause 16.1(a) ( <i>Termination by DESNZ</i> ).
<b>DESNZ Termination Notice</b>	has the meaning given in Clause 16.1 ( <i>Termination by DESNZ</i> ).
<b>Development Assets</b>	means, collectively: <ul style="list-style-type: none"> <li>(c) the Initial Development Assets;</li> <li>(d) all designs, studies, plans, know-how, authorisations, consents, licences, permissions, agreements, commitments and other materials relevant to the development of the Project, and associated goodwill, developed, created, established or otherwise acquired by or under the control of the Development Partner or the Project Company; and</li> </ul>



(e) benefit of the GHNH Grant Funding Agreement.

**Development Assets Payment** means £100,000.00 (one hundred thousand pounds sterling) Indexed.

**Development Costs** means all costs and expenses incurred or to be incurred by the Development Partner or the Project Company in providing the Development Services and/or developing the Project Materials.

**Development Fee** means an amount equal to £100,000.00 (one hundred thousand pounds sterling), which amount is not subject to Indexation.

**Development Partner's Personnel** means the Development Partner's Representative and all other directors, officers, employees, agents and consultants of the Development Partner or the Project Company engaged in the performance of the Development Partner's obligations under this Development Agreement.

**Development Partner's Proposals** means the proposals made by the Development Partner in response to the Invitation to Tender set out in Schedule 12 (*Development Partner's Proposals*).

**Development Partner Related Party** means:

- (a) an officer, servant or agent of the Development Partner or the Project Company or any Affiliate of the Development Partner or the Project Company and any officer, servant or agent of such a person; and
- (b) any Sub-Contractor of the Development Partner or the Project Company of any tier and any of their officers, servants or agents,

and references to **Development Partner Related Parties** shall be construed accordingly.

**Development Partner Remediation Notice** has the meaning given in Clause 17.1(a) (*Termination by the Development Partner*).

**Development Partner's Representative** means Jim Birse (Commercial Director) or such other person appointed by the Development Partner in accordance with Clause 10.4 (*Development Partner's Personnel*).

**Development Partner Termination Notice** has the meaning given in Clause 17.1 (*Termination by the Development Partner*).

**Development Programme** means the programme for the execution and completion of the Development Services developed or revised by the Development Partner in consultation with DESNZ. The initial Development Programme is set out in Schedule 5 (*Development Programme*).

<b>Development Services</b>	means the services and outputs to be delivered by the Development Partner in accordance with this Development Agreement, including the services described in Schedule 2 ( <i>Development Services</i> ).
<b>Due Diligence Information</b>	means any information provided by DESNZ to the Development Partner prior to the date of this Development Agreement, including the GHNF Application.
<b>Election Notice</b>	has the meaning given to it in Clause 14.8 ( <i>Approvals Gateway Process</i> ).
<b>Encumbrance</b>	means any mortgage, charge, pledge, assignment, title retention, lien, hypothecation or other form of security, trust, right of set off or other third party right, claim or encumbrance including any right of option or pre-emption howsoever created or arising or any other arrangement having similar effect (or an agreement or commitment to create any of them).
<b>Environmental Information Regulations or EIRs</b>	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
<b>Financial Close</b>	means completion and delivery of all Project Documents.
<b>FOIA</b>	means the Freedom of Information Act 2000 and any subordinate legislation (as defined in Section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such Act.
<b>Forecast Development Costs</b>	means all costs and expenses forecast by the Development Partner in its bid in response to the ITT Tender Pack to be reasonably and properly incurred by the Development Partner or the Project Company in providing the Development Services and/or developing the Project Materials.
<b>Foreground IPRs</b>	means any Intellectual Property Rights that arise or are obtained, created or developed by or on behalf of a party (including in the case of the Development Partner and the Project Company, by its Sub-Contractors and/or sub-consultants) in the course of or in connection with this Development Agreement, the Project and/or the provision of the Development Services, including in any Project Documents and Project Materials.
<b>Fully Developed</b>	means the Project having reached a level of maturity such that: <ul style="list-style-type: none"> <li>(a) it satisfies the Mandatory Requirements;</li> <li>(b) each of the relevant Project Documents is in agreed form as between the parties to the relevant document; and</li> <li>(c) all parties to the relevant Project Documents other than DESNZ have confirmed that they are willing to proceed with the Project.</li> </ul>

<b>GFA Variation Deed</b>	means a deed of amendment to the GHNF Grant Funding Agreement to be entered into by the Project Company and DESNZ at Financial Close, if required.
<b>GHNF Application</b>	means the application for provisional award of grant funding by the Green Heat Network Fund in relation to the Project including the Statement of Intent to Implement the Market Transformation Commitments.
<b>GHNF Grant Funding Agreement</b>	means an agreement between the Project Company and DESNZ for the provision of a grant pursuant to Section 98 of the Natural Environment and Rural Communities Act 2006.
<b>GHNF Guarantee and Indemnity</b>	means a deed of guarantee and indemnity between the Guarantors and DESNZ in relation to the obligations of the Project Company under the GHNF Grant Funding Agreement.
<b>Good Industry Practice</b>	means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances from time to time.
<b>Guarantors</b>	means either: <ul style="list-style-type: none"> <li>(i) Vital Holdings Limited (company number 06395526) and Cypress District Energy HoldCo Limited (company number 14663723), on a joint and several basis; or</li> <li>(ii) such other guarantor(s) as may be agreed with DESNZ (acting reasonably and in good faith).</li> </ul>
<b>Indulgence</b>	has the meaning given to it in Clause 35 ( <i>Waiver</i> ).
<b>Initial Development Assets</b>	means all designs, materials, studies, licenses and agreements developed by DESNZ before the date of this Development Agreement in relation to the Project.
<b>Insolvency Event</b>	means any of the following: <ul style="list-style-type: none"> <li>(a) any arrangement or composition with or for the benefit of the Development Partner's creditors which does not involve a continuation of the Development Partner's business in the same or substantially the same form (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into by or in relation to the person in question;</li> <li>(b) a supervisor, receiver, administrator, administrative receiver or other encumbrancers taking possession or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within five (5) Business Days) upon, the whole or part of the assets of the Development Partner;</li> <li>(c) the Development Partner ceasing to carry on business;</li> </ul>

	<p>(d) a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of the Development Partner; or</p> <p>(e) the Development Partner suffering any event analogous to any of the foregoing in any jurisdiction in which it is incorporated, established or resident.</p>
<b>Intellectual Property Rights</b>	means patents, utility models, rights in and to inventions, copyright and related rights, moral rights, trade marks and service marks, logos, trade names and business names and rights in and/or to domain names and website addresses, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets), in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>ITT Tender Pack</b>	means the Invitation to Tender and associated materials issued to participants in the competitive procurement process for the Project.
<b>Law</b>	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Development Partner or the Project Company is bound to comply.
<b>Losses</b>	means losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise and references to <b>Loss</b> shall be construed accordingly.
<b>Mandatory Requirements</b>	means the minimum mandatory requirements that need to be satisfied for purposes of the Approvals Gateway Process, as set out in Schedule 3 ( <i>Mandatory Requirements</i> ).
<b>Negative Outcome</b>	has the meaning given to it in Clause 14.6(b) ( <i>Approvals Gateway Process</i> ).
<b>Pioneer Network</b>	means the first phase of the SWAN Network to be developed at Financial Close in accordance with the relevant Project Documents.
<b>Positive Outcome</b>	has the meaning given to it in Clause 14.6(a) ( <i>Approvals Gateway Process</i> ).
<b>Pre-Contract Commitments</b>	has the meaning given to it in Clause 4.9 ( <i>Provision of Development Services</i> ).
<b>Principal Designer</b>	means the role of principal designer under and as more particularly describe in the CDM Regulations.

**Prohibited** means materials, equipment, products or kits that are generally accepted, or generally suspected, in the district heating industry at the relevant time as:

- (d) posing a threat to the health and safety of any person;
- (e) posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project;
- (f) reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project;
- (g) not being in accordance with any relevant British Standard, relevant code of practice or good building practice; or
- (h) having been supplied or placed on the market in breach of the Construction Products Regulations 2013 (SI 2013/1387) and the UK Construction Products Regulation 2011,

and any materials that do not comply with the guidelines set out in "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices or any such later edition current at the time of specification.

**Prohibited Act** means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Development Agreement;
- (c) an offence:
  - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
  - (ii) under legislation or common law concerning fraudulent acts; or
  - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority (including offences by the Integrator under Part 3 of the Criminal Finances Act 2017); or
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

<b>Prohibited Person</b>	<p>means an individual or entity:</p> <ul style="list-style-type: none"> <li>(a) which is a company incorporated in or an individual resident in a country outside the United Kingdom unless it agrees to be bound by the jurisdiction of the English Courts, and in respect of which a legal opinion from a reputable independent law firm in the relevant jurisdiction is provided in a form reasonably satisfactory to DESNZ (acting reasonably) relating to: <ul style="list-style-type: none"> <li>(i) the authority and capacity of the company or individual to act as the assignee, guarantor or funder (as applicable); and</li> <li>(ii) the enforceability of the obligations of the company or individual as assignee, guarantor or funder (as applicable);</li> </ul> </li> <li>(b) which enjoys sovereign or state immunity, unless it is a department, body or agency of the UK government;</li> <li>(c) which uses funds that are derived from illegal or illegitimate activities;</li> <li>(d) which has been convicted of criminal activities, or is or has been involved in organised crime;</li> <li>(e) which is named on the Consolidated List of Terrorists maintained by the Bank of England pursuant to any authorising statute, regulations or guideline;</li> <li>(f) which is, or professes to be, resident in a nation state which at the relevant time is not recognised by the UK government;</li> <li>(g) which is otherwise prohibited from entering into the proposed transaction pursuant to any applicable law or requirements of any country or governmental authority (including any exchange control regulations applicable thereto);</li> <li>(h) with whom DESNZ may not lawfully contract, or with whom the established policy of the UK government is that they should not contract;</li> <li>(i) whose activities would prevent the discharge by DESNZ of its statutory duties or other legal functions;</li> <li>(j) which has a substantial direct interest(s) in illegal gambling, gaming, pornography, the production or sale of alcoholic drinks, the production or sale of products containing or derived from tobacco or the manufacture or sale of arms and weapons (provided that any organisation that is engaged in legitimate investment and lending to any such business shall not constitute a Prohibited Person); or</li> <li>(k) whose activities could pose a threat to national security.</li> </ul>
<b>Project</b>	has the meaning given to it in Recital (A).
<b>Project Documents</b>	means all of the transaction documents required to implement the Project at and from Financial Close.

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<b>Project Information</b>	means any information relating to: <ul style="list-style-type: none"> <li>a) the connection of the SWAN Network to a Customer's property;</li> <li>b) the proposed supply of heat to any Customers from the SWAN Network;</li> <li>c) the outputs of the Development Services; or</li> <li>d) any other information relating to the Project and/or this Development Agreement.</li> </ul>
<b>Project Materials</b>	means any and all documents (including the Project Documents), materials, deliverables, works, products, solutions, reports, surveys, designs, specifications and/or Project Information: (a) designed, drafted, developed, prepared, produced or delivered by any party (including in the case of the Development Partner or the Project Company, by its Sub-Contractors and/or sub-consultants) for or in connection with this Development Agreement, the Project and/or the Development Services; and/or (b) embodying any of the Foreground Intellectual Property Rights.
<b>Regulator</b>	means the Gas and Electricity Markets Authority.
<b>Relevant Requirements</b>	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.
<b>Remediation Notice</b>	has the meaning given in Clause 16.1(a) ( <i>Termination by DESNZ</i> ).
<b>Request for Information</b>	shall have the meaning set out in the FOIA or the Environmental Information Regulations, as relevant.
<b>Required Insurances</b>	means the insurances listed in Schedule 8 ( <i>Required Insurances</i> ).
<b>Sub-Contract</b>	means any contract or agreement (or proposed contract or agreement), other than this Development Agreement, pursuant to which a third party: (a) provides the Development Services (or any part of them); (b) provides facilities or services necessary for the provision of the Development Services (or any part of them); and/or (c) is responsible for the management, direction or control of the provision of the Development Services (or any part of them).
<b>Sub-Contractor</b>	means any person other than the Development Partner, who is a party to a Sub-Contract and the servants or agents of that person.
<b>Steering Group</b>	means the steering group constituted in accordance with paragraph 2 of Schedule 4 ( <i>Steering Group Terms of Reference</i> ).
<b>Steering Group Terms of Reference</b>	means the terms of reference of the Steering Group, as set out in Schedule 4 ( <i>Steering Group Terms of Reference</i> ).

**SWAN Network** has the meaning given to it in Recital (A).

**Term** means the period described in Clause 2 (*Commencement and Duration*).

**Termination Amount** has the meaning given in Clause 18.2(a) or Clause 18.2(b) (*Consequences of Termination*) as the case may be.

**Termination Notice** means a DESNZ Termination Notice or a Development Partner Termination Notice, as the case may be.

**Third Party Provisions** has the meaning given to it in Clause 41.1 (*Third Party Rights*).

**VAT** means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994.

**Zone Coordinator** means a person designated in accordance with regulations made pursuant to S.228 of the Energy Act 2023 in relation to particular heat network zones.

## 2 INTERPRETATION

This Development Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings and marginal notes and references to them in this Development Agreement shall be deemed not to be part of this Development Agreement and shall not be taken into consideration in the interpretation of this Development Agreement.
- (b) Except where the context expressly requires otherwise, references to Clauses, sub-Clauses, paragraphs, sub-paragraphs, parts and schedules are references to Clauses, sub-Clauses, paragraphs, sub-paragraphs and parts of and schedules to this Development Agreement and references to Paragraphs, Appendices, Annexures and Attachments (if any) are references to Paragraphs, Appendices, Annexures and Attachments to or contained in this Development Agreement.
- (c) The schedules to this Development Agreement are an integral part of this Development Agreement and a reference to this Development Agreement includes a reference to the schedules. In the event of any inconsistency between the provisions of the body of this Development Agreement and the schedules, the body of this Development Agreement shall take precedence.
- (d) Words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governments, governmental



bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity.

- (e) Where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter or vice versa.
- (f) The language of this Development Agreement is English. All correspondence, notices, drawings, test reports, certificates, specifications and information shall be in English. All operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Development Agreement shall be in English.
- (g) References to any agreement or document include (subject to all relevant approvals and any other provisions of this Development Agreement concerning amendments to agreements or documents) a reference to that agreement or document as amended, supplemented, substituted, novated or assigned.
- (h) References to any Law are to be construed as references to that Law as from time to time amended or to any Law from time to time replacing, extending, consolidating or amending the same.
- (i) References to a public organisation (other than DESNZ) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons (other than DESNZ) shall include their successors and assignees.
- (j) The words in this Development Agreement shall bear their natural meaning. The parties have had the opportunity to take legal advice on this Development Agreement and no term shall, therefore, be construed contra proferentem.
- (k) Reference to "parties" means the parties to this Development Agreement and references to "a party" mean one of the parties to this Development Agreement.
- (l) In construing this Development Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Development Agreement and accordingly general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

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- (m) All of the Development Partner's obligations, duties and responsibilities shall be construed as separate obligations, duties and responsibilities owed to DESNZ and to be performed at the Development Partner's own cost and expense.
- (n) Where this Development Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of Business Days after a stipulated date or event, the latest time for performance shall be noon on the last Business Day for performance of the obligations concerned.
- (o) Where this Development Agreement states that an obligation shall be performed "no later than" or "by" a prescribed number of Business Days before a base date or "by" a date which is a prescribed number of Business Days before a base date, the latest time for performance shall be noon on the last Business Day for performance of the obligations concerned.
- (p) References to this Development Agreement, a Project Document or to a provision thereof shall be construed at a particular time as a reference to it as it may have been amended, varied, supplemented, modified or appended.
- (q) References to amounts expressed to be "Indexed" are references to such amounts multiplied by:

**Index<sub>1</sub>**

**Index<sub>2</sub>**

where:

**Index<sub>1</sub>** is the value of CPI most recently published prior to the relevant calculation date; and

**Index<sub>2</sub>** is the value of CPI on 1 April 2024.

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**Schedule 2 – Development Services****1 OVERARCHING REQUIREMENT**

To carry out such activities as may be required to achieve a Positive Outcome at the end of the Approvals Gateway Process.

**2 INDICATIVE ACTIVITIES**

- 2.1 Project leadership, drawing on experience of delivering similar projects.
- 2.2 Project management including management of programme and budgets.
- 2.3 Public and stakeholder engagement (including negotiating and securing connections with Customers).
- 2.4 Securing the necessary consents and third party land rights for the Delivery Period of the Project.
- 2.5 Identifying funding requirements and arranging funding for the Delivery Period of the Project.
- 2.6 Engaging Sub-Contractors and/or supply chain for the Delivery Period of the Project.
- 2.7 Developing the design and technical solution for the SWAN Network.
- 2.8 Developing the financial model for the Project.
- 2.9 Negotiating and finalising the Connection and Supply Agreements with Customers so far as reasonably practicable.
- 2.10 Negotiating and finalising the terms of the other Project Documents.
- 2.11 Undertaking required due diligence work and mobilisation activity in readiness for the Delivery Period.
- 2.12 Undertaking all activities required to ensure that the Project Company will be fully operational for the Delivery Period.
- 2.13 Carrying out all other ancillary activities identified by the Steering Group.

### Schedule 3 – Mandatory Requirements

#### 1 MANDATORY REQUIREMENTS

- 1.1 The Development Partner and Project Company commit:
  - (a) to a robust and credible Programme of Works which delivers the Heat Mains required to connect and supply heat to all premises in the Pioneer Network; and
  - (b) for each subsequent phase of the Project, to a detailed timetable for connecting identified premises by specified dates which provides a high degree of confidence that the requirement in paragraph 1.3(c) below will be achieved.
- 1.2 The Development Partner and Project Company commit to make compliant connection offers to:
  - (a) Westminster City Council to connect the Pimlico District Heating Undertaking (PDHU) within the Pioneer Network; and
  - (b) the Government Property Agency to connect relevant parts of the Whitehall campus, within the subsequent phases of the Project.
- 1.3 The Project Documents and Project Materials provide robust and credible evidence that the Project will:
  - (a) deliver heat with a carbon intensity no greater than the value committed to in the GHNF Grant Funding Agreement, calculated using the same methodology;
  - (b) comply with the minimum air quality standards specified in the prevailing Westminster Air Quality Action Plan (or equivalent);
  - (c) achieve connections to buildings which collectively represent no less than the minimum heat demand shown in the Minimum Growth Table in paragraph 2 by the corresponding dates; and
  - (d) be developed to be technically compatible and interoperable with adjacent heat networks developed by others.
- 1.4 The Final Design for the Project has been completed (in accordance with the Design and Quality Management Protocol) and is not subject to any Adverse Matters.
- 1.5 The Project offers all Customers a standard of service in line with relevant prevailing best practice (eg. Heat Trust, CIBSE CP1, emerging market regulation).
- 1.6 The Project meets the tariff requirements in the GHNF Grant Funding Agreement, including those around customer detriment. The Development Partner and Project Company commit to ensuring tariffs will meet requirements of prevailing regulation.

**2 MINIMUM GROWTH TABLE**

<b>Milestone</b>	<b>Minimum Aggregate Heat Demand Connected to the SWAN Network</b>
<b>Completion of Pioneer Network with PDHU</b>	≥70GWh/Y
<b>Completion of Pioneer Network without PDHU</b>	≥35GWh/Y
<b>2035 network with PDHU</b>	≥400GWh/Y
<b>2035 network without PDHU</b>	≥380GWh/Y

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## Schedule 4– Steering Group Terms of Reference

### 1 PURPOSE AND OBJECT

- 1.1 The main purpose and objective for which the Steering Group is established is to provide a regular forum in which the Development Partner's provision of the Development Services and development of the Project Documents and Project Materials can be discussed with a view achieving a Positive Outcome at the end of the Approvals Gateway process.
- 1.2 The Steering Group shall do this by:
- (a) monitoring progress by the Development Partner toward the achievement of milestones and targets to ensure that the Project is Fully Developed no later than the Approvals Gateway Notice Longstop Date;
  - (b) providing the Development Partner with input relevant to the provision of the Development Services, including from the perspective of key stakeholders; and
  - (c) supporting the Development Partner in respect of any other deliverables of the Project, including the agreed social value delivery plan.

### 2 APPOINTMENT OF MEMBERS

- 2.1 The Steering Group will consist of:
- (a) such duly appointed representatives of the Development Partner and DESNZ as are appointed in accordance with Clause 11.2 (*Steering Group*); and
  - (b) such other persons as may be approved by a majority vote of the members of the Steering Group referred to in paragraph (a), which may include representatives of other stakeholders in the Project (**Stakeholder Representatives**). Any Stakeholder Representative may be removed from the Steering Group by resolution of a majority of the members of the Steering Group referred to in paragraph (a) (with all Stakeholder Representatives excluded from the vote).
- 2.2 The Steering Group may at any time resolve by unanimous decision of the members eligible to vote (excluding the relevant member) to remove a member from the Steering Group but without prejudice to a party's right to appoint a replacement pursuant to paragraph 2.1(a).
- 2.3 Each Member appointed to the Steering Group shall be asked to sign a copy of these Steering Group Terms of Reference by way of acceptance of their terms.

### **3 MEETINGS**

- 3.1 The Steering Group shall meet at least monthly throughout the Term.
- 3.2 The Development Partner and DESNZ shall agree the dates of each meeting during the period of the Development Programme as soon as practicable following the execution of this Development Agreement.
- 3.3 Unless otherwise agreed, notice of each meeting confirming the venue (or digital platform), time and date together with an agenda of items to be discussed and any supporting papers, shall be forwarded to each member of the Steering Group and to any other person requested to attend (in respect only those aspects relevant to their attendance), no later than three (3) Business Days prior to the date of the meeting.
- 3.4 The quorum for meetings of the Steering Group shall be a majority of the members of the Steering Group, excluding any Stakeholder Representatives.
- 3.5 The Development Partner shall procure that the Steering Group maintains minutes of its proceedings and its recommendations/outcomes from each of its meetings, including the names of those present and in attendance.
- 3.6 The Development Partner shall procure that minutes of meetings of the Steering Group are circulated promptly to all members of the Steering Group.

## **Schedule 5 – Development Programme**

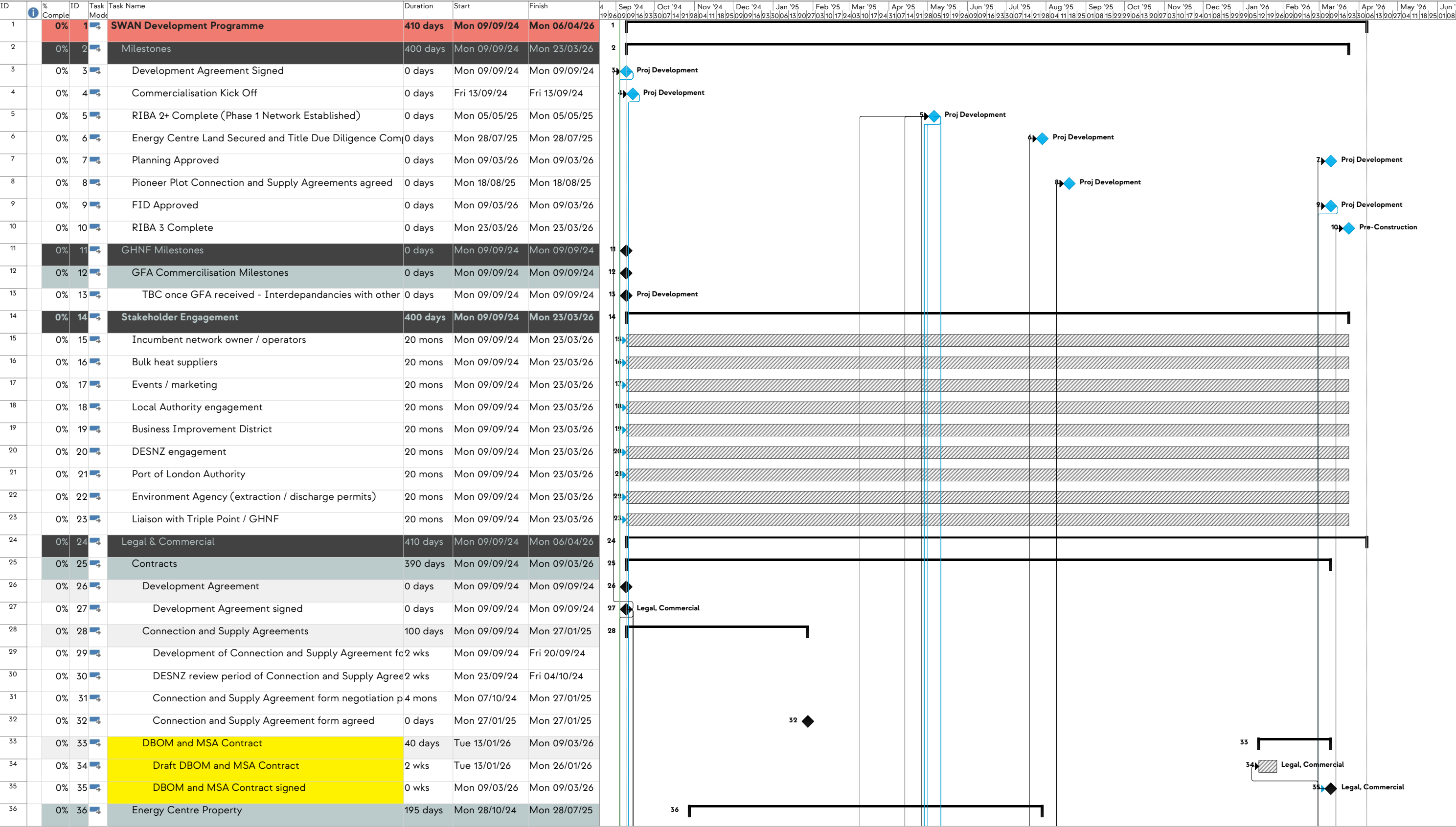




SWAN Development Period

By : Will Cooter  
Date: 07/06/2024

Together to Zero

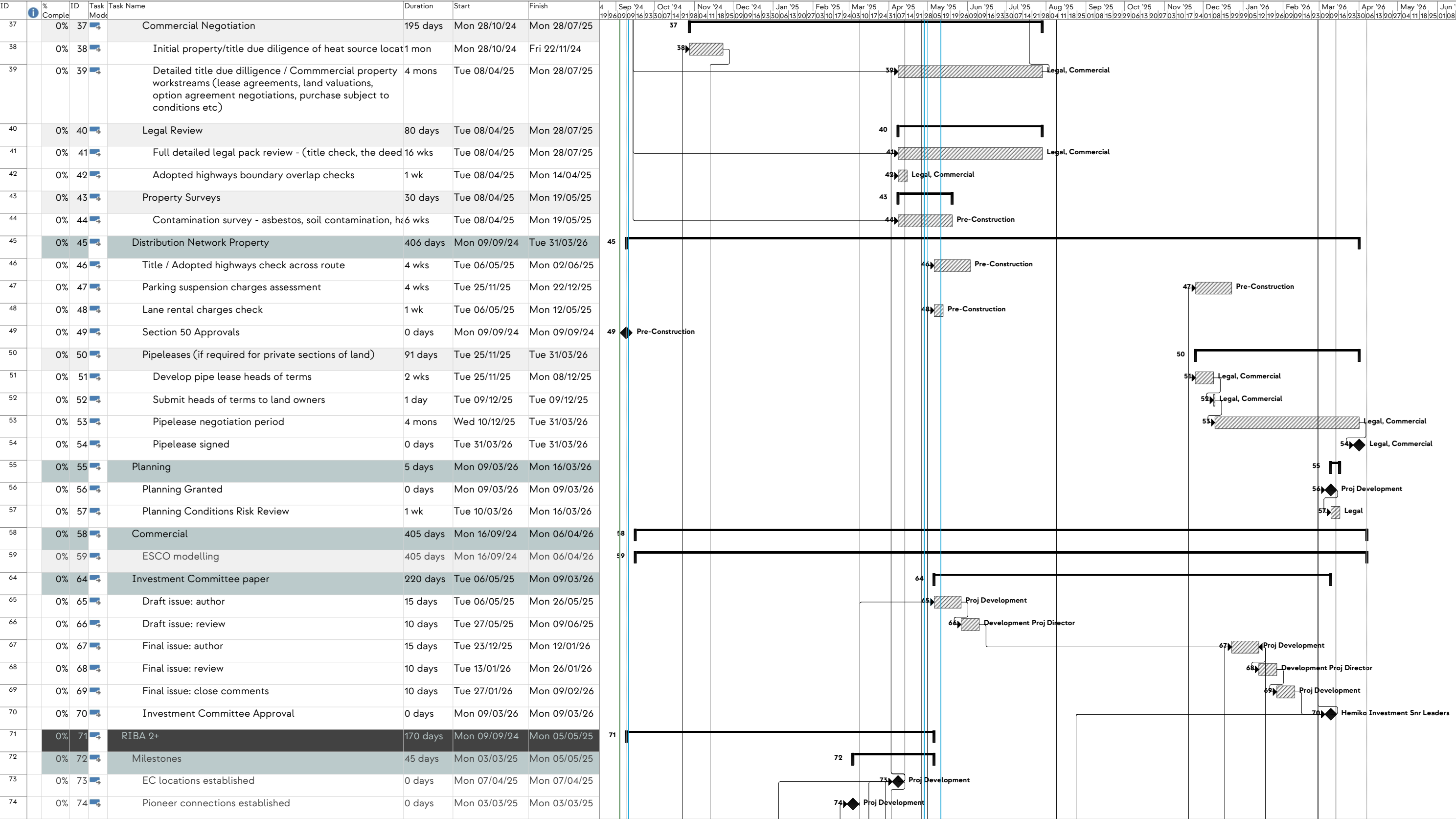




SWAN Development Period

By : Will Cooter  
Date: 07/06/2024

Together to Zero



Project: SWAN  
Date: Wed 04/09/24

Task

Split

Milestone

Summary

Project Summary

Inactive Task

Inactive Milestone

Inactive Summary

Manual Task

Duration-only

Manual Summary Rollup

Manual Summary

Start-only

Finish-only

External Tasks

External Milestone

Deadline

Progress

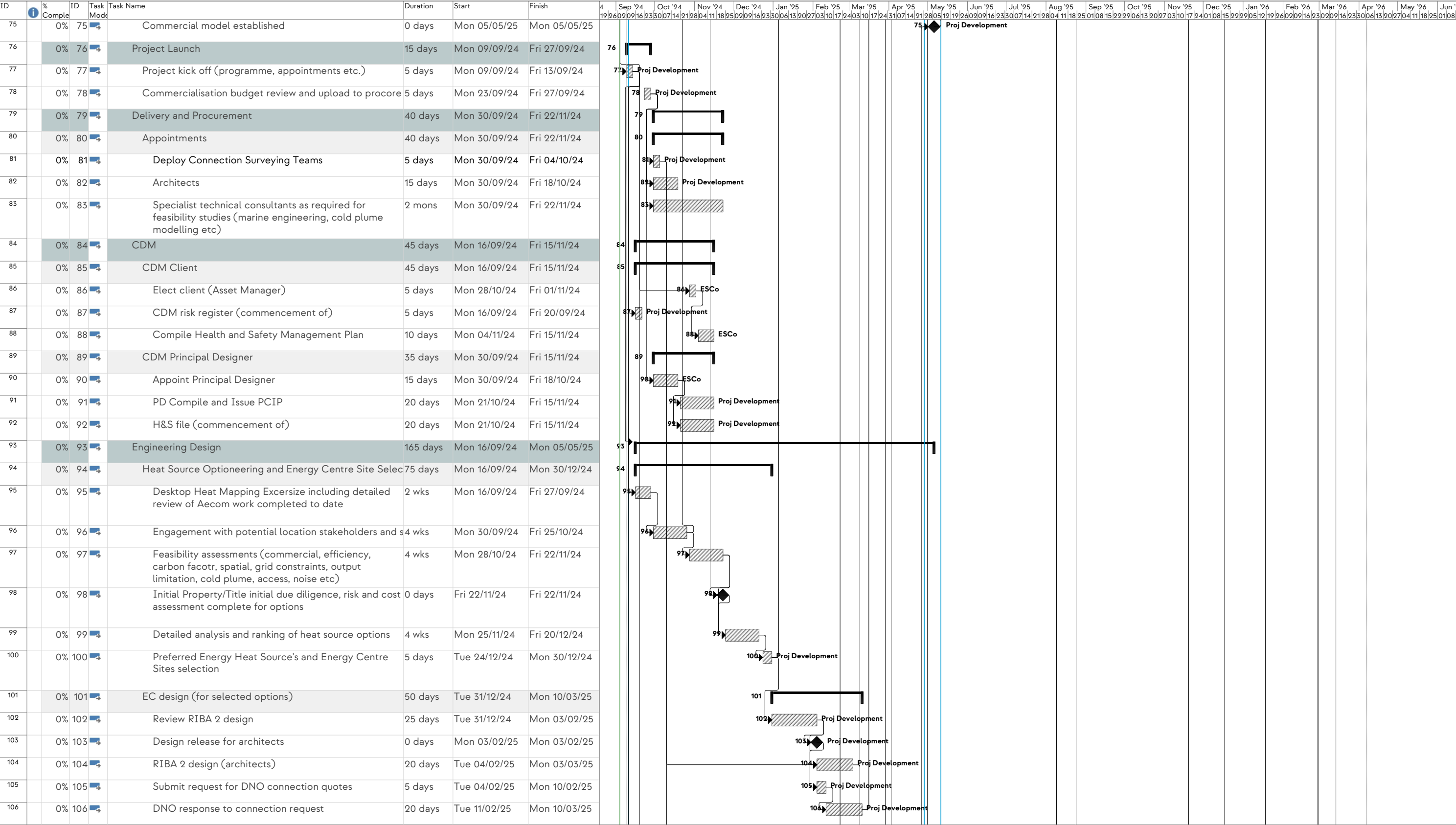
Manual Progress



SWAN Development Period

By : Will Cooter  
Date: 07/06/2024

Together to Zero



Project: SWAN  
Date: Wed 04/09/24

Task

Split

Milestone

Summary

Project Summary

Inactive Task

Inactive Milestone

Inactive Summary

Manual Task

Duration-only

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Manual Summary

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Finish-only

External Tasks

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Progress

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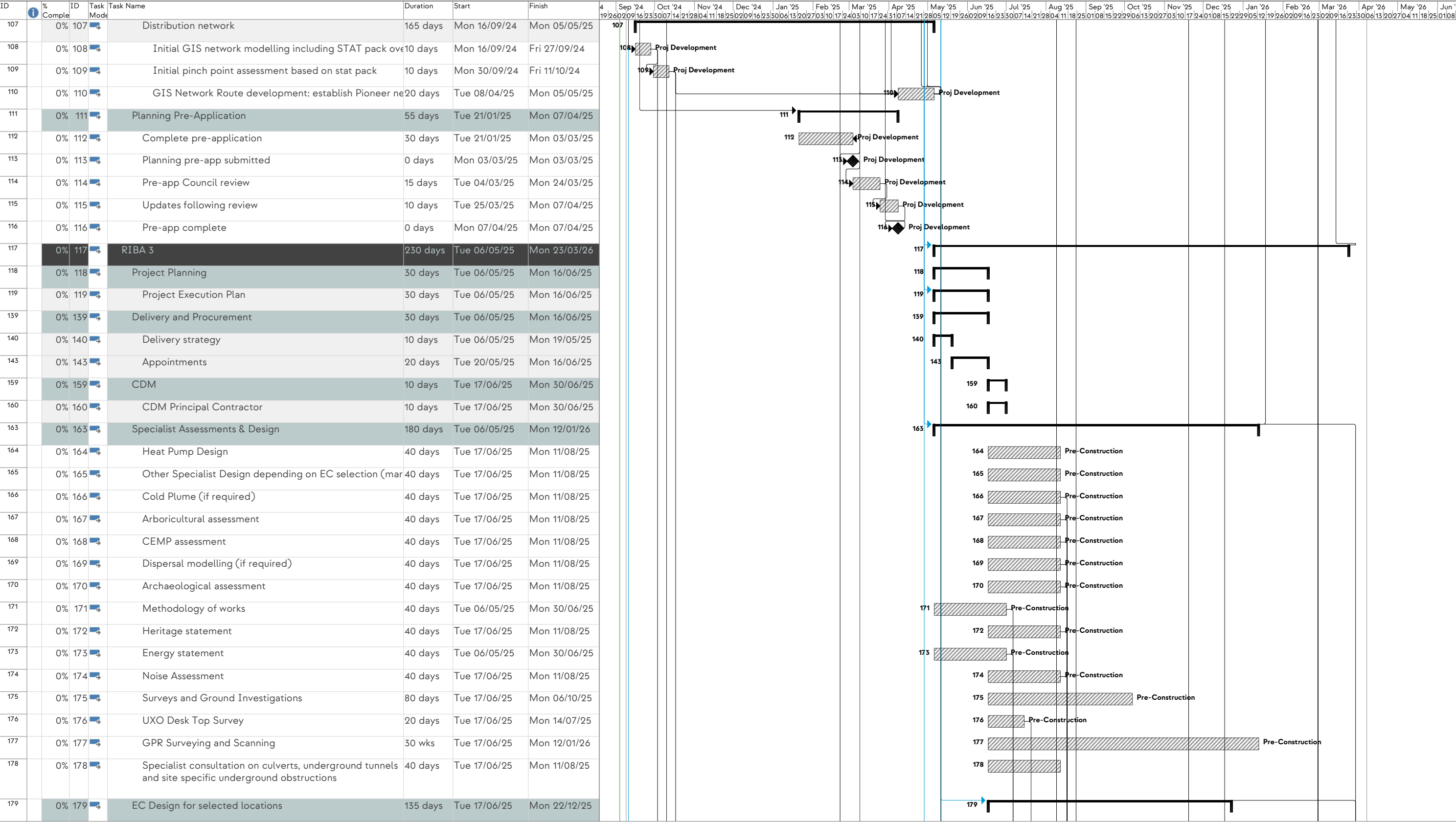
Page 3



SWAN Development Period

By : Will Cooter  
Date: 07/06/2024

Together to Zero



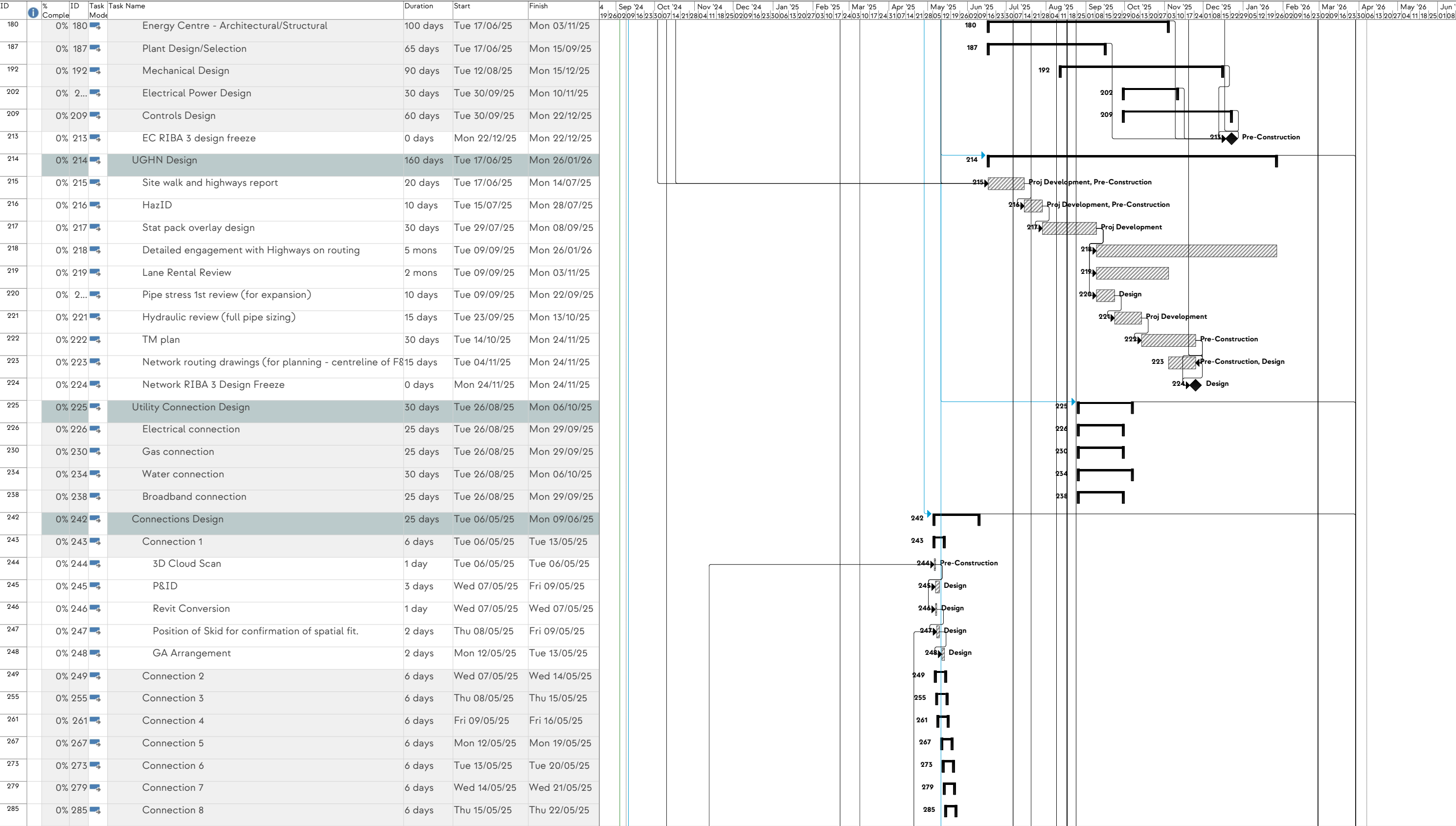




SWAN Development Period

By : Will Cooter  
Date: 07/06/2024

Together to Zero



Project: SWAN  
Date: Wed 04/09/24

Task

Split

Milestone

Summary

Project Summary

Inactive Task

Duration-only

Manual Summary Rollup

Manual Summary

External Milestone

Deadline

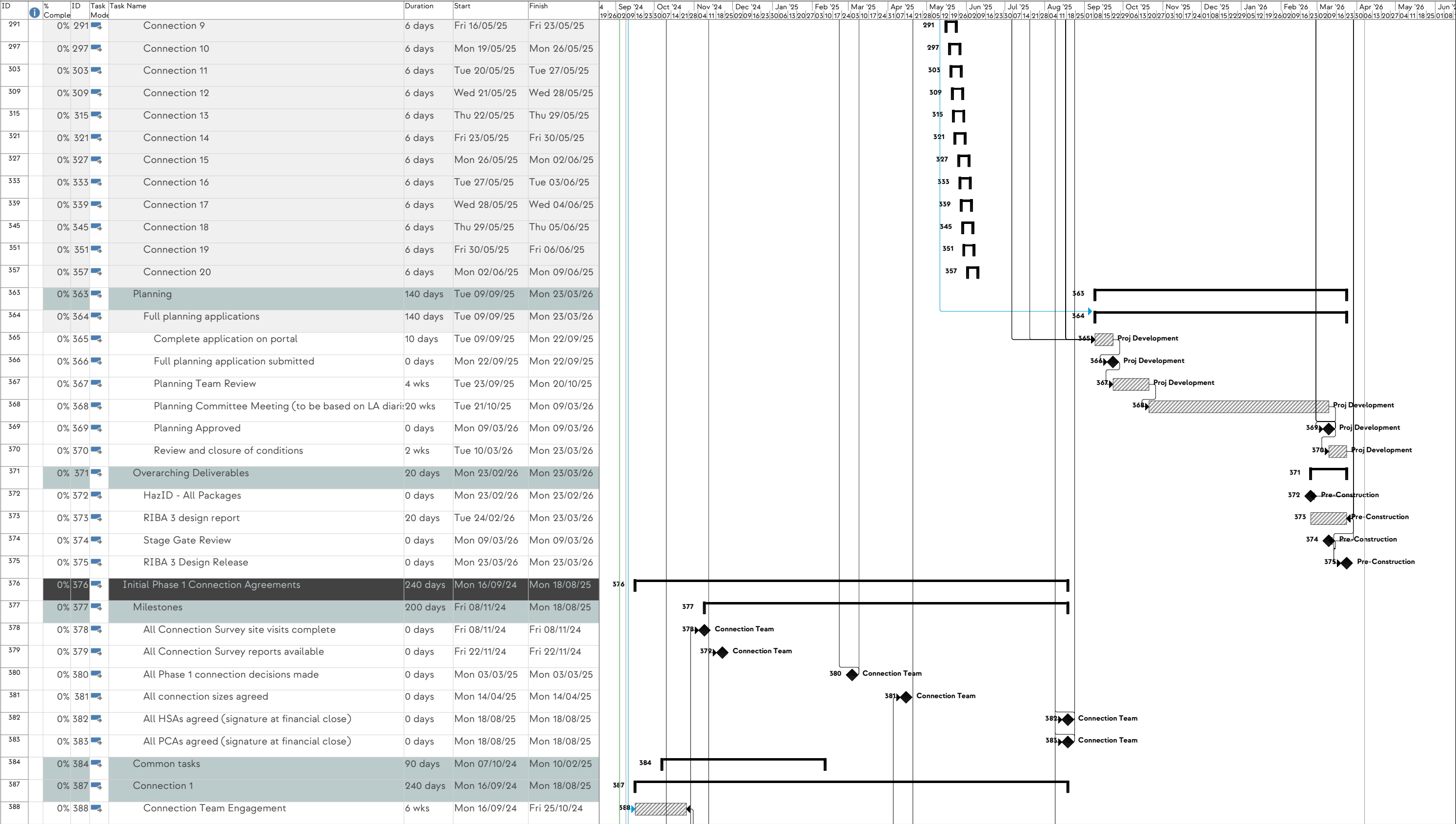
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SWAN Development Period

By : Will Cooter  
Date: 07/06/2024

Together to Zero

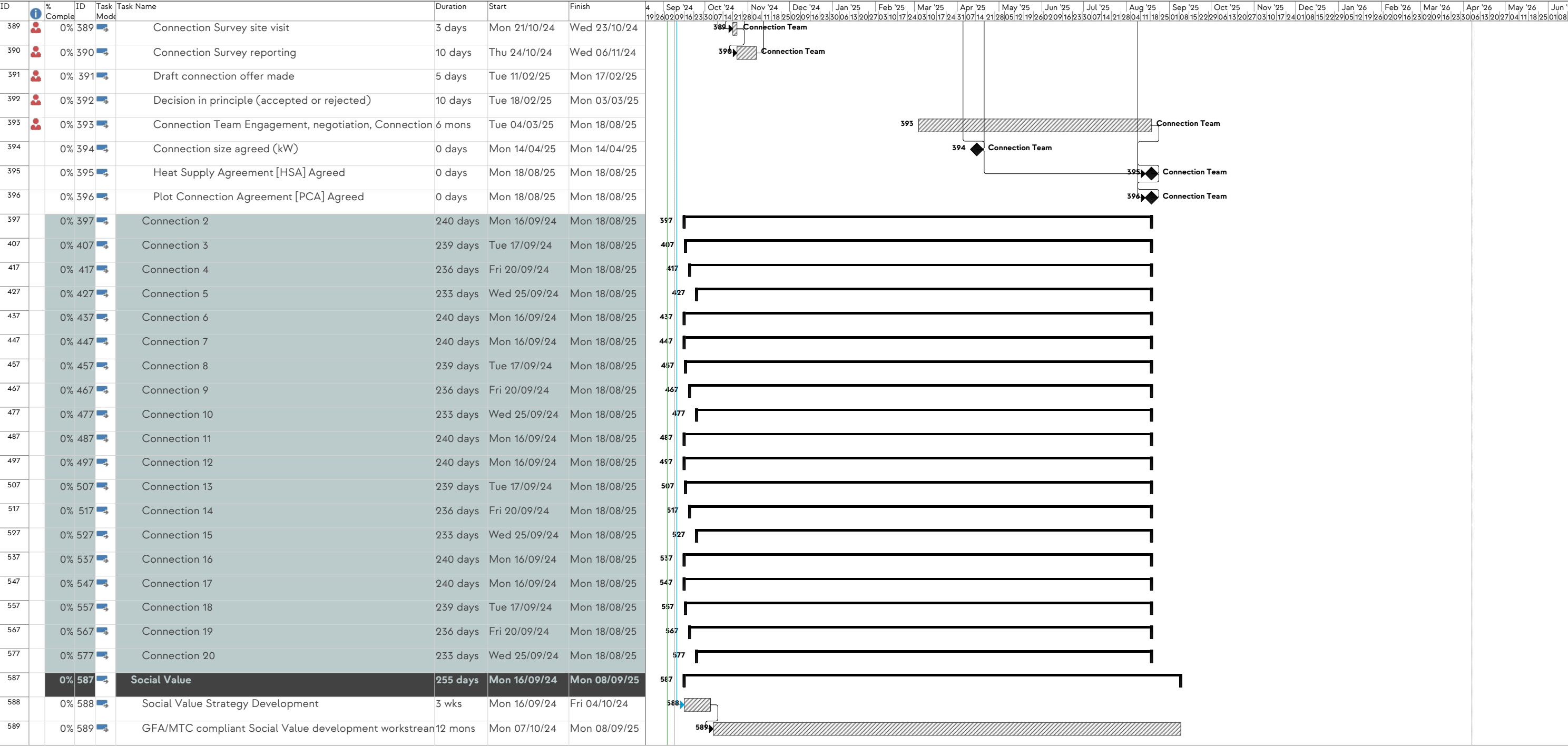




SWAN Development Period

By : Will Cooter  
Date: 07/06/2024

Together to Zero



## Schedule 6 – Development Fee

### 1 DEFINED TERMS

In this Schedule 6, the following expressions shall have the following meanings:

<b>Cumulative Development Fee Limit</b>	means, for a Payment Year, the amount shown in paragraph 3 of this Schedule.
<b>Development Fee Payment Year Cap</b>	means, for a Payment Year, the amount specified in the Development Partner's response to the ITT Tender Pack.
<b>Development Fee Claim</b>	means, for a month in a Payment Year, a claim for the Development Fee Payment for that month.
<b>Development Fee Payment</b>	means, for a month in a Payment Year: <ol style="list-style-type: none"> <li>(a) other than the final month, an amount not exceeding 50% of the Qualifying Development Costs; and</li> <li>(b) which is the final month, an amount not exceeding the Qualifying Development Costs.</li> </ol>
<b>Development Fee Payment Report</b>	means a report to be provided on the terms of this Development Agreement in the form and substance substantially similar to the template report to be agreed between the Parties in accordance with paragraph 4 of this Schedule or as may be amended by DESNZ from time to time.
<b>Duplicate Funding</b>	means funding provided by a Third Party to the Development Partner and/or the Project Company, which is for the same service or product for which a Development Fee Claim or Development Fee Payment has been made.
<b>Qualifying Development Costs</b>	means, for a month in a Payment Year, Development Costs which are not the subject of any other Development Fee Claim or claim for Duplicate Funding.
<b>GHNH Commercialisation Funding Period</b>	means the period from 1 April 2025 until the full amount of the Grant available to fund commercialisation activities has been claimed under the GHNH Grant Funding Agreement.
<b>Grant</b>	means the sum or sums which may be claimed in accordance with the GHNH Grant Funding Agreement.
<b>Payment Year</b>	means: <ol style="list-style-type: none"> <li>(a) Year 1 (1 April 2024 – 31 March 2025); or</li> <li>(b) Year 2 (1 April 2025 – 31 March 2026).</li> </ol>
<b>Third Party</b>	means any person or organisation other than the Development Partner, the Project Company or DESNZ (in its capacity as a party to this Development Agreement, and for the purposes of this definition,



DESNZ in its capacity as a party to the GHNF Grant Funding Agreement shall be deemed to be a Third Party).

**Unspent Monies** means any monies paid to the Project Company in advance of its Development Costs, which remain unspent and uncommitted at the end of the Financial Year, the Funding Period or because of termination or breach of this Development Agreement.

## **2 PAYMENT OF THE DEVELOPMENT FEE**

2.1 Subject to the remainder of this paragraph 2, DESNZ shall pay the Project Company an amount not exceeding:

- (a) the Development Fee (in aggregate);
- (b) in relation to each Payment Year, the lesser of:
  - (i) the Cumulative Development Fee Limit; and
  - (ii) the Development Fee Payment Year Cap.

2.2 DESNZ shall pay the Development Fee in pound sterling (GBP) and into a bank located in the UK.

2.3 The Project Company shall make:

- (a) Development Fee Claims only in a Payment Year; and
- (b) in any Payment Year, no more than one Development Fee Claim per month.

2.4 The Project Company will only claim Development Fee Payments in respect of Qualifying Development Costs incurred by the Project Company to deliver the Development Services, and against evidence of full defrayal submitted as part of the Development Fee Payment Report on a monthly basis. The Project Company will be paid the funds they expense to DESNZ as part of their monthly reporting and as approved by DESNZ for payment.

2.5 The Project Company will provide DESNZ with evidence of the payments, which are classified as Qualifying Development Costs which may include (but will not be limited to) receipts and invoices or any other documentary evidence reasonably specified by DESNZ.

2.6 The Development Fee represents the maximum sum DESNZ will pay to the Project Company under this Development Agreement. The Development Fee will not be increased in the event of any overspend by the Project Company in its delivery of the Development Services.

2.7 The Development Partner and the Project Company agree that:

- (a) it will not apply for, or obtain Duplicate Funding in respect of any part of the Development Services which have been paid for in full using Development Fee Payments;
- (b) DESNZ may refer the Development Partner or the Project Company to the police should it dishonestly and intentionally obtain Duplicate Funding for the Development Services;
- (c) DESNZ will not make any Development Fee Payment unless or until, DESNZ is satisfied that:
  - (i) the Development Fee Payment will be used for Qualifying Development Costs only; and
  - (ii) if applicable, any Unspent Monies have been repaid to DESNZ.

2.8 Unless otherwise stated in this Development Agreement, Development Fee Payments will be made within ten (10) Business Days of DESNZ approving the Project Company's Development Fee Claim.

2.9 DESNZ will have no liability to the Project Company for any Losses caused by a delay in the payment of a Development Fee Claim howsoever arising.

2.10 DESNZ reserves the right not to pay any Development Fee Claims, which are incomplete, incorrect or submitted without the full supporting documentation.

2.11 The Project Company shall promptly notify and repay immediately to DESNZ any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where the Project Company is paid in error before it has complied with its obligations under this Development Agreement. Any sum, which falls due under this paragraph 2.11, shall fall due immediately. If the Project Company fails to repay the due sum immediately or within any other timeframe specified by DESNZ the sum will be recoverable summarily as a civil debt.

2.12 The Project Company shall not make any Development Fee Claim in the GHNF Commercialisation Funding Period.

### 3 PAYMENT SCHEDULE

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Redacted under FOIA Section 43 Commercially Sensitive

**4      TEMPLATE DEVELOPMENT FEE PAYMENT REPORT**

The Parties will agree the template Development Fee Payment Report within thirty (30) calendar days of the execution date of this Development Agreement.

## Schedule 7– Design and Quality Management Protocol

### 1 DEFINITIONS AND INTERPRETATIONS

1.1 In this Schedule 7 (*Design and Quality Management Protocol*), capitalised terms shall have the following meanings (unless otherwise defined):

- |                           |  |
|---------------------------|--|
| <b>“Adverse Matter”</b>   | means the Final Design, if implemented would: <ul style="list-style-type: none"> <li>(a) be in breach of any Law including but not limited to the CDM Regulations;</li> <li>(b) be materially inconsistent with:             <ul style="list-style-type: none"> <li>(i) Good Industry Practice; and</li> <li>(ii) CIBSE CP1;</li> </ul> </li> <li>(c) prevent the Project Company from being able to comply with any of its obligations under the Project Documents; or</li> <li>(d) cause a material and adverse impact to the operation of the SWAN Network.</li> </ul>  |
| <b>“CIBSE CP1”</b>        | means CP1 Heat Networks Code of Practice for the UK (2020) published by CIBSE (as updated revised or replaced from time to time).  |
| <b>“Design Documents”</b> | means all plans, drawings, specifications, reports and other technical documentation containing the Final Design of any element of the Project Company Works.  |
| <b>“Final Design”</b>     | means: <ul style="list-style-type: none"> <li>(a) in relation to the Pioneer Network, the level of design work required to allow the Project Company to procure a fixed price lump sum contract from an EPC contractor with a risk profile that is acceptable to the Project Company being RIBA Stage 3, any additional design work carried out through completion of the Risk Mitigation Activities; and</li> <li>(b) in relation to the subsequent phases of the SWAN Network means RIBA Stage 2, to the extent reasonably necessary to satisfy the Mandatory Requirement at paragraph 1.3 of Schedule 3 (<i>Mandatory Requirements</i>).</li> </ul> |

<b>“Project Company Works”</b>	means the construction, installation, and commissioning of the SWAN Network in accordance with the Project Documents.
<b>“RIBA Stage”</b>	has the meaning given to it under the RIBA Plan of Work 2020.
<b>“Risk Mitigation Activities”</b>	<p>means completion of the following for the Pioneer Network:</p> <ul style="list-style-type: none"> <li>(a) completion of trial holes at key locations;</li> <li>(b) procurement of full stat plan showing all existing known services;</li> <li>(c) UXO survey;</li> <li>(d) soil investigation sampling &amp; survey with findings;</li> <li>(e) production of archaeological survey with findings;</li> <li>(f) developed discussions with local highways authority to understand any restrictions on access dates / area as well as understanding car park suspension provisions;</li> <li>(g) provisional agreement on satellite compound areas;</li> <li>(h) confirmation of restrictions that may be imposed by TFL i.e. bus routes, etc; and</li> <li>(i) arboriculture survey.</li> </ul>
<b>“Technical Information Pack”</b>	means copies of the updated Design Documents for any element of the Project Company Works along with reasonable supporting narrative explaining the updates.

## 2 DESIGN REPRESENTATIVES

- 2.1 Each of DESNZ and the Project Company shall appoint (in relation to the design of the SWAN Network), a representative (the “**Design Representatives**”), and shall notify the other of the identity of such persons.
- 2.2 Each Party shall ensure that its appointed Design Representative:
- (a) works in collaboration with the other Party’s appointed Design Representative to ensure the development of the Final Design in accordance with the programme; and

- (b) is properly experienced and able to commit sufficient time and resource to its role.

2.3 The Design Representatives shall:

- (a) agree a schedule of regular meetings; and
- (b) regularly report on progress to the Steering Group.

**3 AGREEMENT OF FINAL DESIGN**

3.1 The Project Company shall ensure that, prior to presenting the Final Design to DESNZ within the Approvals Gateway Briefing Materials, DESNZ is provided with a Technical Information Pack in respect of the Final Design.

3.2 DESNZ shall, as soon as reasonably practicable and in any event within twenty (20) Business Days of actual receipt (or such other period as may be agreed between the Parties) of any Technical Information Pack referred to in paragraph 3.1, return one copy of the Technical Information Pack, marking each constituent part of the Technical Information Pack as endorsed either:

- (a) “No Comment”, in which case, paragraph 3.4 shall apply; or
- (b) subject to paragraph 3.9, “Subject to comment”, in which case paragraph 3.5 shall apply.

3.3 In each case where DESNZ returns all or part of a Technical Information Pack endorsed “Subject to comment” it shall also provide the Project Company with detailed reasons for such endorsement.

3.4 With respect to any part(s) of the Final Design, contained within any Technical Information Pack which are endorsed “Subject to comment” the Project Company shall pay reasonable regard to DESNZ’s comments and makes any amendments deemed by the Project Company as necessary to address any Adverse Matter. The Project Company shall also re-submit the relevant part(s) Technical Information Pack to DESNZ amended by the Project Company in accordance with comments made by DESNZ.

3.5 If the Project Company does not agree with any comments made by DESNZ pursuant to paragraph 3.4 inclusive, the Project Company shall, within ten (10) Business Days of receipt of DESNZ’s comments, notify DESNZ of the same setting out its reasons.

3.6 If the Project Company has provided DESNZ with a notice under paragraph 3.5, DESNZ shall, in writing within ten (10) Business Days of receipt of the Project Company’s notice:

- (a) withdraw its comments or change its endorsement; or

- (b) advise the Project Company that it does not intend to withdraw its comments, in which case the Project Company must pay reasonable regard to DESNZ's comments and incorporate any amendments as the Project Company deems as necessary to address the potential Adverse Matter.
- 3.7 If DESNZ fails to return a Technical Information Pack duly endorsed within twenty (20) Business Days in accordance with paragraph 3.2 or ten (10) Business Days in accordance with paragraph 3.6 then DESNZ shall be deemed to have returned such Technical Information Pack to the Project Company as marked "No Comment".
- 3.8 DESNZ may only raise comments in relation to the submission of any part(s) of a Technical Information Pack by the Project Company on the grounds that the Final Design is likely in the reasonable opinion of DESNZ to result in an Adverse Matter.
- 3.9 Notwithstanding any comments made by DESNZ in relation to the Final Design in accordance with this Schedule 7 (*Design and Quality Management Protocol*):
  - (a) the Project Company shall remain fully liable for the design of the Project Company Works in accordance with the terms of the Project Documents; and
  - (b) DESNZ shall at all times have the discretion to approve or reject the Project at the Approvals Gateway, in accordance with Clause 14 (*Approvals Gateway Process*).

**Schedule 8 - Required Insurances**

The Development Partner shall procure and maintain:

- 1 Employers' liability insurance with a limit of indemnity of not less than £10,000,000 (ten million pounds) in relation to any one claim, the number of claims being unlimited.
- 2 Public liability insurance with a limit of indemnity of not less than £5,000,000 (five million pounds) in relation to any one claim, the number of claims being unlimited.
- 3 Professional indemnity insurance with a limit of indemnity of not less than 150% of the Development Fee.



### Schedule 9 – Commercially Sensitive Information

- 1 In this Schedule the parties have sought to identify the Development Partner's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 2 Where possible, the parties have sought to identify when any relevant information will cease to fall into the category of information to which this Schedule applies in the table below.
- 3 Without prejudice to the Development Partner's obligation to disclose information in accordance with FOIA or Clause 27, DESNZ will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following information:

No.	Date	Item(s)
1.	9 July 2024	"SWAN tariffs section of Technical Response Question 6 of the Development Partner's Proposals
2.	9 July 2024	Technical Response Question 7 of the Development Partner's Proposals
3.	9 July 2024	Technical Response Question 8 of the Development Partner's Proposals
4.	9 July 2024	Commercial and Legal Response of the Development Partner's Proposals
5.	9 July 2024	Appendix 1.1 of the Development Partner's Proposals
6.	9 July 2024	Appendix 1.2 of the Development Partner's Proposals
7.	9 July 2024	Appendix 2.1 of the Development Partner's Proposals
8.	9 July 2024	Appendix 2.3 of the Development Partner's Proposals
9.	9 July 2024	Appendix 4 of the Development Partner's Proposals
10.	9 July 2024	Appendix 5 of the Development Partner's Proposals
11.	9 July 2024	Appendix 6 of the Development Partner's Proposals
12.	9 July 2024	Appendix 7 of the Development Partner's Proposals
13.	9 July 2024	Appendix 8 of the Development Partner's Proposals

## Schedule 10 – Sustainability and Social Value

### 1 DEFINED TERMS

1.1 In this Schedule 10, the following expressions shall have the following meanings:

- |  |   |
|--|---|
| <b>“DESNZ and DSIT Environmental Policy”</b> | means the Environmental Policy by DESNZ and the Department for Science, Innovation and Technology, annexed hereto as Schedule 11 ( <i>DESNZ and DSIT Environmental Policy</i> ), as amended from time to time.  |
| <b>“Environmental Policy”</b>                | means any policy to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of DESNZ, which for the avoidance of doubt includes the DESNZ and DSIT Environmental Policy. |
| <b>“Site”</b>                                | any premises (including the Development Partner's premises or third party premises) from, to or at which: (a) the Development Services are (or are to be) provided; or (b) the Development Partner manages, organises or otherwise directs the provision of the Development Services.   |
| <b>“Waste Hierarchy”</b>                     | means prioritisation of waste management in the following order of preference as set out in the Waste (England and Wales) Regulation 2011: <ul style="list-style-type: none"> <li>(a) prevention;</li> <li>(b) preparing for re-use;</li> <li>(c) recycling;</li> <li>(d) other recovery; and</li> <li>(e) disposal.</li> </ul>   |

### 2 EQUALITY, DIVERSITY AND HUMAN RIGHTS

- 2.1 The Development Partner must follow all applicable equality Law when they perform their obligations under this Development Agreement, including:
- (a) protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
  - (b) any other requirements and instructions which DESNZ reasonably imposes related to equality Law.

- 2.2 The Development Partner must use all reasonable endeavours, and inform DESNZ of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on this Development Agreement.

### **3 PUBLIC SECTOR EQUALITY DUTY**

- 3.1 In addition to legal obligations, where the Development Partner is providing Development Services to which the Public Sector Equality duty applies, the Supplier shall support DESNZ in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under this Development Agreement in a way that seeks to:

- (a) eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010; and
- (b) advance:
  - (i) equality of opportunity; and
  - (ii) good relations,  
  
between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

### **4 EMPLOYMENT LAW**

The Development Partner must perform its obligations meeting the requirements of all applicable Law regarding employment.

### **5 MODERN SLAVERY**

- 5.1 The Development Partner:
- (a) shall not use, nor allow its Sub-Contractors to use, forced, bonded or involuntary prison labour;
  - (b) shall not require any Development Partner's Personnel to lodge deposits or identity papers with the employer and shall be free to leave their employer after reasonable notice;
  - (c) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;

- 
- (d) warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
  - (e) shall make reasonable enquires to ensure that its officers, employees and Sub-Contractors have not been convicted of slavery or human trafficking offences anywhere around the world;
  - (f) shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Sub-Contractors anti-slavery and human trafficking provisions;
  - (g) shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under this Development Agreement;
  - (h) shall prepare and deliver to DESNZ, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with this Paragraph 5;
  - (i) shall not use, nor allow its employees or Sub-Contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Sub-Contractors;
  - (j) shall not use or allow child or slave labour to be used by its Sub-Contractors;
  - (k) shall report the discovery or suspicion of any slavery, trafficking, forced labour, child labour, involuntary prison labour or labour rights abuses by it or its Sub-Contractors to DESNZ and Modern Slavery Helpline and relevant national or local law enforcement agencies;
  - (l) if the Development Partner is in default under this paragraph 5.1, DESNZ may by notice:
    - (i) require the Development Partner to remove from performance of this Development Agreement any Sub-Contractor, Development Partner's Personnel or other persons associated with it whose acts or omissions have caused the default; or
    - (ii) immediately terminate this Development Agreement and the consequences of termination set out in Clause 18 (*Consequences of Termination*) shall apply; and

- 
- (m) shall, if the Development Partner or DESNZ identifies any occurrence of modern slavery connected to this Development Agreement, comply with any request of DESNZ to follow the Rectification Plan Process to submit a remedial action plan which follows the form set out in Annex D of the Tackling Modern Slavery in Government Supply Chains guidance to PPN 02/23 (Tackling Modern Slavery in Government Supply Chains).
- 5.2 If the Development Partner notifies DESNZ pursuant to paragraph 5.1(l), it shall respond promptly to DESNZ's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with this Development Agreement.
- 5.3 If the Development Partner is in default under paragraph 5.1, DESNZ may by notice:
- (a) require the Development Partner to remove from performance of this Development Agreement any Sub-Contractor, Development Partner's Personnel or other persons associated with it whose acts or omissions have caused the default; or
  - (b) immediately terminate this Development Agreement and the consequences of termination set out in Clause 18 (*Consequences of Termination*) shall apply.

## **6 ENVIRONMENTAL AND SECURITY REQUIREMENTS**

- 6.1 The Development Partner must perform its obligations meeting in all material respects the requirements of all applicable Laws regarding the environment.
- 6.2 When working on Site, the Development Partner must perform its obligations under DESNZ's current Environmental Policy, which DESNZ shall provide.
- 6.3 The Development Partner must ensure that the Development Partner's Personnel are aware of DESNZ's Environmental Policy.
- 6.4 In performing its obligations under this Contract, the Development Partner shall, where applicable to this Development Agreement, to the reasonable satisfaction of DESNZ:
- (a) prioritise waste management in accordance with the Waste Hierarchy as set out in Law;
  - (b) be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Development Agreement is taken by a licensed waste carrier to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the Law; and

- (c) ensure that it and any third parties used to undertake recycling, disposal or other recovery as a consequence of this Development Agreement do so in a legally compliant way, and can demonstrate that reasonable checks are undertaken to ensure this on a regular basis and provide relevant data and evidence of recycling, recovery and disposal.
- 6.5 In circumstances that a permit, licence or exemption to carry or send waste generated under this Development Agreement is revoked, the Development Partner shall cease to carry or send waste or allow waste to be carried by any Sub-Contractor until authorisation is obtained from the Environment Agency.
- 6.6 The Development Partner shall comply with the DESNZ and DSIT Environmental Policy, annexed hereto as Schedule 11 (*DESNZ and DSIT Environmental Policy*), as amended from time to time.
- 6.7 The Development Partner shall comply with the “Government Security Policy Framework: Protecting Government Assets” applicable to Development Services, as amended from time to time, which can be found online at:
- <https://www.gov.uk/government/publications/security-policy-framework>
- 6.8 The Development Partner shall comply with the “Government Buying Standards” applicable to Development Services, as amended from time to time, which can be found online at:
- <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>.

## **7 SUPPLIER CODE OF CONDUCT**

- 7.1 In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government which can be found online at:
- [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1163536/Supplier\\_Code\\_of\\_Conduct\\_v3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1163536/Supplier_Code_of_Conduct_v3.pdf)
- 7.2 DESNZ expects to meet, and expects its suppliers, the Development Partner and Sub-Contractors to meet, the standards set out in the abovementioned Supplier Code of Conduct, as amended from time to time.

## **8 REPORTING**

The Development Partner shall comply with reasonable requests by DESNZ for information evidencing compliance with any of the requirements in this Schedule 10 within

fourteen (14) days of such request, provided that such requests are limited to two (2) per requirement per Contract Year.

## Schedule 11 – DESNZ and DSIT Environmental Policy



Department for  
Energy Security  
& Net Zero



Department for  
Science, Innovation  
& Technology

### DESNZ & DSIT: Environmental Policy

DESNZ and DSIT are UK government departments respectively leading on energy security & net zero and science, innovation & technology. We are committed to protecting the environment and preventing pollution. We undertake all our activities in a responsible manner, using best practice, to reduce the environmental impacts of our operations and to enhance and improve environmental performance and the Environmental Management System. DESNZ and DSIT are committed to fulfilling all environmental compliance obligations as a minimum and will strive to continually improve the environmental performance of our buildings, operations and supply chains.

DESNZ & DSIT will:

- Proactively reduce our carbon footprint by implementing energy saving practices and technologies, to be more energy efficient;
- Mitigate the impacts of business travel through relevant policies and procedures;
- Preserve and enhance biodiversity on our sites where we have opportunities and scope to do so;
- Proactively use innovation and technology to ensure efficient use of water;
- Embed the Waste Hierarchy into all waste procedures while also managing waste according to our duty of care;
- Understand and assess climate change adaptation risks for our key sites, to ensure business continuity and resilience;
- Consider sustainability in all procurement decisions, focusing on decarbonisation, sustainable resource use and climate change adaptation;
- Minimise the consumption of natural resources and reducing environmental impacts through our supply chains;
- Manage fuels and hazardous substances appropriately to minimise environmental risks;
- Regularly review performance of environmental objectives and targets;
- Regularly report on progress to the senior responsible officer;
- Communicate this policy to our staff, to everyone working for or on behalf of DESNZ and DSIT and interested parties to ensure they understand the environmental impacts of their job and how to minimise these.

DESNZ and DSIT shall monitor and review effectiveness of this policy through ISO 14001:2015 Environmental Management System and in conjunction with the ISO 50001:2018 Energy Management System.

Endorsed and signed by:





Michael Pittams  
Deputy Director  
Estates and Sustainability, June 2023

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REVIEWER:	Richard McAlorum	APPROVER:	Michael Pittams	ISSUE DATE:	Jun-23

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