

DATED

LICENCE

FOR THE TRANSLOCATION OF REPTILES

to a Reptile Habitat at Eldridge SANG

between

WOKINGHAM BOROUGH COUNCIL

and

[LICENSEE]

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This licence is dated [DATE]

Parties

- (1) **WOKINGHAM BOROUGH COUNCIL** of Council Offices, Shute End, Wokingham, Berkshire, RG40 1WH (**Licensor**)
- (2) **[LICENSEE]** incorporated and registered in England and Wales with company number [] whose registered office is at [] (**Licensee**)

Background

- (A) The Licensor is the local planning authority and the freehold owner of Eldridge SANG.
- (B) [The Licensee is the freehold owner of the Site.]
- (C) The Licensor granted planning permission for the Development of the Site subject to the terms of the s106 Agreement.
- (D) Further to the Licensee's application to vary the s106 Agreement to clarify its reptile translocation responsibility, the Deed of Variation of the s106 Agreement was completed.
- (E) Further to the Deed of Variation and subject to clause 2 (Conditions Precedent) the parties have agreed that this licence shall be granted to the Licensee to carry out the translocation of reptiles from the Site to the Reptile Habitat on the Eldridge SANG on the terms of this Licence.

Agreed terms

1. Interpretation

The following definitions and rules of interpretation apply in this licence.

1.1 Definitions:

s106 Agreement: the s106 Agreement dated 9 May 2025 made between (1) Wokingham Borough Council and (2) Hicks Developments Limited

Competent Authority: any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers

Completion Notice: means notice served by the Licensor on the Licensee (or by the Licensee on the Licensor as the case may be) confirming the completion of the Eldridge SANG Enhancement Works

Conditions Precedent: the conditions precedent as set out in clause 2.2 of this licence

Deed of Variation: the Deed of Variation dated [INSERT DATE OF DOV] made between (1) Wokingham Borough Council and (2) Hicks Developments Limited

Designated Hours: 2 days per week between the hours of 8:00-18:00 Monday-Friday, excluding national bank holidays as the Licensor shall acting reasonably determine on 1 weeks' notice to the Licensee

Development: the proposed erection of up to 75 dwellings as more particularly set out in the Planning Application

Eldridge SANG: the land at Ashridge Country Park, Bingham Drive and Eldridge Avenue, Bell Foundry Lane, Wokingham, RG40 5QF as more particularly shown edged red and cross hatched blue at the location of the stream on the southern boundary on the Plan

Eldridge SANG Enhancement Works: works to provide suitable reptile refugia in the Reptile Habitat at the Eldridge SANG so that it is ready for the Reptile Translocation

Index: the national all-in tender price index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or such other reference base used to compile the national all-in tender price index as shall be published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or its successor in function

Index-Linked: means that the sum of money payable to the Licensor under this licence shall be varied by movements in the Index between the date of the s106 Agreement and the date of actual payment in accordance with the following formula:

Amount Payable = Relevant Amount x (A divided by B)

Where the Relevant Amount = the payment to be Index Linked

A = the figure for the Index which applied when the Index was last published prior to the date the Relevant Amount is actually paid under this licence

B = the figure for the Index which applied when the Index was last published prior to the date of this s106 Agreement

It should be noted that the index presents forecast figures which are published quarterly. These forecast figures are updated and finalised periodically. If the indexation figure has not been finalised at such time as A is calculated then the forecast figure will be used for the purposes of the calculation

Insolvency Event: any one or more of the following:

- a) the making of an administration order in relation to the Licensee;
- b) the filing at court of any notice of appointment of an administrator in relation to the Licensee;
- c) the appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Licensee;
- d) the commencement of a voluntary winding-up in respect of the Licensee, except a voluntary winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies;
- e) the making of a winding-up order in respect of the Licensee unless in relation to a solvent company restructuring or reorganisation;
- f) the striking-off of the Licensee from the Register of Companies;
- g) the Licensee otherwise ceasing to exist (or, if a natural person, dying);
- h) the making of a bankruptcy order against the Licensee;
- i) the making of a moratorium under Part A1 of the Insolvency Act 1986 in relation to the Licensee;
- j) any analogous proceedings or events that may be taken pursuant to the legislation of another jurisdiction in relation to a licensee incorporated or domiciled in such relevant jurisdiction

Licence Period: the period from and including the date the Conditions Precedent are all satisfied or, if not all satisfied, waived in accordance with clause 2 until the date on which this licence is determined in accordance with clause 6

Long Stop Date: the date which shall be calculated in accordance with clause 3.1 or any alternative long stop date that may be agreed in writing by the parties

Necessary Consents: all planning permissions and all other consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any Competent Authority for the Reptile Translocation

Permitted Accessway: limited to access from Bingham Drive and Eldridge Avenue on foot only, utilising those paths clearly denoted in the attached Plan (unless the Licensor in its absolute discretion determines alternative access is required to carry out the Reptile Translocation provided the alternative gives the Licensee reasonable access to be able to carry out the Reptile Translocation) and access along Bingham Drive and Eldridge Avenue with or without vehicles from the adopted highway

Plan: the plan attached to this licence marked "Plan"

Planning Application: the outline planning application made under Council reference 232704 for the Development

Reptile Habitat: such parts of the Eldridge SANG as shall be identified on the Reptile Translocation Strategy

Reptile Translocation: the translocation of the reptiles from the Site to the Reptile Habitat in accordance with the Reptile Translocation Strategy

Reptile Translocation Contribution: the sum of Five Hundred and Ninety-Seven Thousand Two Hundred and Twenty Pounds (£597,220) Index Linked (based on a cost of Two Hundred and Forty Eight Thousand Eight Hundred and Forty-Two Pounds (£248,842) per hectare pro rata) to be spent by the Licensor on allocating 2.4ha of suitable Reptile Habitat on the Eldridge SANG for the Reptile Translocation, the Eldridge SANG Enhancement Works and the ongoing maintenance of the Eldridge SANG Enhancement Works

Reptile Translocation Strategy: the strategy for the translocation of reptiles from the Site to the Reptile Habitat

Site: the site known as land on the West Side of Park Lane, Charvil registered at HM Land Registry with title number BK242352 and shown for identification purposes only edged red on the plan to the s106 Agreement titled "LOCATION PLAN" DWG. 103.A

Translocation Notice: notice served by the Licensee on the Licensor specifying the date or dates on which the Licensee intends to carry out the Reptile Translocation such date or dates shall be at least 28 Working Days from and including the date of service of the Translocation Notice but not longer than 90 Working Days from and including the date of service of the Translocation Notice

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this licence.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedule forms part of this licence and shall have effect as if set out in full in the body of this licence. Any reference to this licence includes the Schedule.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.7 Unless expressly provided otherwise in this licence, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 Unless expressly provided otherwise in this licence, a reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.9 A reference to **writing** or **written** excludes fax and e-mail.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.
- 1.11 References to clauses and Schedules are to the clauses and Schedules of this licence and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.12 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.13 A **Working Day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

2. Conditions Precedent

- 2.1 The licence set out in clause 4 shall not come into effect until the:
- a) satisfaction of all of the Conditions Precedent which shall be confirmed in writing by the Licensor
 - b) save for any of the Conditions Precedent which are waived in writing by the Licensor.
- 2.2 The Conditions Precedent are all of the following:
- (a) the Licensee's submission of the Reptile Translocation Strategy to the Licensor for approval;
 - (b) the receipt by the Licensee of the Licensor's written approval (such approval not to be unreasonably withheld or delayed and deemed approved if not responded to within 8 weeks of submission) of the Reptile Translocation Strategy;
 - (c) the Licensee's payment of the Reptile Translocation Contribution;

- (d) the receipt of payment of the Reptile Translocation Contribution which being acknowledged in writing by the Licensor (such acknowledgement not to be unreasonably withheld or delayed and deemed acknowledged if not provided within 4 weeks of payment);
- (e) on or after satisfaction of the conditions precedent set out in clause 2.2(a), 2.2(b) and 2.2(c) above (but not before) the Licensee's service of the Translocation Notice on the Licensor; and
- (f) the Licensor's written acknowledgement of receipt of the Translocation Notice (such acknowledgement not to be unreasonably withheld or delayed and deemed acknowledged if not provided within 4 weeks of service).

Commented [TH1]: CRS: Deemed provisions included as failure to acknowledge could cause delays.

Commented [BB2R1]: I accept the "deemed provisions" but acknowledgement within 1 week is unreasonable. 4 is acceptable.

Commented [TH3]: CRS: As above.

Commented [BB4R3]: See comment above

- 2.3 Until such time as the Licensee satisfies the Conditions Precedent (or until they are waived in writing by the Licensor), then (subject to clause 3.3(b)) there shall be no licence and any occupation of the Reptile Habitat or use of Eldridge SANG by the Licensee shall be deemed to be trespass.

3. Covenants by the Licensor

- 3.1 The Licensor covenants to carry out and complete the Eldridge SANG Enhancement Works and serve the Completion Notice on the Licensee within 28 Working Days of the date that the last of the Conditions Precedent in clause 2.2 above are either satisfied or waived.

- 3.2 Should the Licensor fail to complete the Eldridge SANG Enhancement Works on or before the Long Stop Date then the Licensee, may complete the Eldridge SANG Enhancement Works and (if it so elects to complete those works) it shall complete those works in strict accordance with the approved Reptile Translocation Strategy and before carrying out the Reptile Translocation. The Licensee will, on completion of the Eldridge SANG Enhancement Works in accordance with this clause 3.2, serve a Completion Notice on the Licensor.

Commented [RG5]: This wording is simply to confirm that it may or may not elect to do the works - it is accepted that if it does so elect it will carry them out in accordance with the Strategy

- 3.3 In the case of clause 3.2 being evoked then the following shall apply:

- (a) the Conditions Precedent shall still apply and shall not be deemed to have been waived; and
- (b) the licence granted under clause 4 shall be deemed to have come into effect so as to enable the Licensee to undertake the Eldridge SANG Enhancement Works but only so far as is strictly necessary for the Licensee to carry out the Eldridge SANG Enhancement Works (and thereafter the Reptile Translocation under clause 4) and in all other respects the terms of this licence and the requirement to fulfil the Conditions Precedent shall continue in full force and effect.

4. Licence

- 4.1 Subject to clause 5 and clause 6, the Licensor permits the Licensee, its employees, agents, consultants, contractors and all others authorised by the Licensee to access the Eldridge SANG and to occupy the Reptile Habitat for the Reptile Translocation for the Licence Period during the Designated Hours in common with the Licensor and all others authorised by the Licensor (so far as is not inconsistent with the rights given to the Licensee to use the Reptile Habitat for the Reptile Translocation) together with the rights set out in Schedule 1.
- 4.2 The Licensee acknowledges that:
- (a) the Licensee shall occupy the Reptile Habitat as a licensee and that no relationship of landlord and tenant is created between the Licensor and the Licensee by this licence;
 - (b) the Licensor retains control, possession and management of the Reptile Habitat and the Licensee has no right to exclude the Licensor from the Reptile Habitat; and
 - (c) the licence to occupy granted by this agreement is personal to the Licensee and is not assignable and the rights granted in clause 4 may only be exercised by the Licensee its employees and those authorised by the Licensee.

5. Licensee's obligations

- 5.1 The Licensee agrees and undertakes:
- (a) to complete the Reptile Translocation with reasonable care and skill and in accordance with the standards and requirements of the Reptile Translocation Strategy;
 - (b) to access the Reptile Habitat via the Permitted Accessway;
 - (c) not to use the Reptile Habitat other than for the Reptile Translocation;
 - (d) to keep Eldridge SANG and the Reptile Habitat clear of rubbish;
 - (e) not to display any advertisement, signboards, flag, banner, placard, poster, signs or notices at the Reptile Habitat;
 - (f) not to make any changes to or undertake any works to the Reptile Habitat without obtaining the prior written consent of the Licensor (such consent not to be unreasonably withheld or delayed);
 - (g) not to cause, suffer or permit to be done on the Reptile Habitat or Eldridge SANG anything which is illegal or which may be or become a nuisance

(whether actionable or not), annoyance, inconvenience or disturbance to the Licensor or any owner or occupier of neighbouring land;

Commented [BB6]: The deletions here are re-instated.
Deletion not agreed.

(h) not to cause, suffer or permit to be done any damage, loss or injury to:

(i) the Reptile Habitat or Eldridge SANG;

(ii) the neighbouring land of the Licensor;

Commented [BB7]: Deletion not agreed.

(iii) any property of the owners or occupiers of neighbouring land

Commented [BB8]: Deletion not agreed.

and to promptly make good any damage caused at the sole cost of Licensee and to the reasonable satisfaction of the Licensor;

(i) not to unnecessarily obstruct any of the entrances to the Eldridge SANG, make them dirty or untidy or leave any rubbish on them;

(j) not to do anything that will or might constitute a breach of any Necessary Consents affecting the Reptile Habitat or Eldridge SANG or which will or might vitiate in whole or in part any insurance effected by the Licensor in respect of the Eldridge SANG from time to time;

(k) to observe any reasonable rules and regulations the Licensor makes and notifies to the Licensee from time to time governing the Licensee's use of the Reptile Habitat or Eldridge SANG provided they do not prevent the carrying out of the Reptile Translocation in accordance with this licence;

(l) to leave the Reptile Habitat in a clean and tidy condition and to remove the Licensee's equipment from the Reptile Habitat at the end of the Licence Period;

(m) to maintain throughout the Licence Period a fully comprehensive public liability insurance in a sum not less than five million pounds £5,000,000 for each and every claim against liability to third parties for loss, injury or damage arising from the Licensee's use and access thereto of the Reptile Habitat and Eldridge SANG;

(n) subject to clause 10.3 and 10.4, to indemnify the Licensor and keep the Licensor indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from

the Licensee's rights and obligations under this licence.

5.2 Following the completion of the Reptile Translocation:

(a) the Licensee shall serve notice in writing on the Licensor together with their ecologist's final report ("**Translocation Completion Notice**");

(b) within 30 days of the date of the Translocation Completion Notice the Licensor shall either:

- (i) send a final certificate to the Licensee confirming that the Reptile Translocation has been carried out to the Licensor's reasonable satisfaction ("**Final Certificate**"); or
- (ii) send written notice to the Licensee of any reasonably necessary remedial works which for the avoidance of doubt shall only relate to the Reptile Translocation and not the Eldridge SANG Enhancement Works ("**Remedial Notice**") and in which case:
 - (A) the Licensee shall complete such remedial works as set out in the Remedial Notice to the reasonable satisfaction of the Licensor with all due haste and serve written notice and an updated ecologist's report to the Licensor inviting them to inspect such remedial works and issue a further Translocation Completion Notice ("**Further Translocation Completion Notice**"); and
 - (B) the Licensor shall send either a Final Certificate to the Licensor or another Remedial Notice and if the latter, the procedure set out in clause 5.2(b)(ii) shall be completed until the Licensor sends a Final Certificate to the Licensee

PROVIDED THAT the Final Certificate shall be deemed as given if the Translocation Completion Notice or the Further Translocation Completion Notice (if relevant) has not been responded to within 8 weeks of being served.

Commented [BB9]: 3 weeks is to short. Will accept 8.

- (c) For the avoidance of doubt, should the Licensee fail to comply with the terms of this clause 5.2 and the Licensor incurs any costs or expenses in carrying out the remedial works then the Licensor shall be entitled to recover the reasonable costs and expenses incurred in carrying out the remedial works from the Licensee.

6. Termination

6.1 This licence shall end on the earliest of:

- (a) on the date of the Final Certificate sent by the Licensor to the Licensee in accordance with clause 5.2(b);
- (b) 30 days after the date of receipt by the Licensor of the Translocation Completion Notice sent by the Licensee to the Licensor in accordance with clause 5.2(a) if the Licensor does not send a Final Certificate or Remedial Notice to the Licensee in accordance with clause 5.2(b);
- (c) 30 days after the date of the Further Translocation Completion Notice if the Licensor does not send a Final Certificate or another Remedial Notice to the Licensee in accordance with clause 5.2(b)(ii)(B);

(d) the expiry of any notice period in any notice given by the Licensor to the Licensee at any time on breach of any of the Licensee's obligations contained in clause 5 and for the avoidance of doubt, such notice shall provide the Licensee with a time period to remedy such breach complained of;

(e) immediately on the occurrence of an Insolvency **Event**.

Commented [RG10]: [See earlier comment - why should it end just because of an insolvency event](#)

Commented [BB11R10]: See my previous comment.

Commented [BB12R10]: Robin. I believe we have reached a compromise on this point now.

6.2 Termination of this licence shall not affect the rights of either party in connection with any breach of any obligation under this licence which existed at or before the date of termination.

7. Notices

7.1 Any notice given to a party under or in connection with this licence shall be in writing and shall be given by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

7.2 If a notice complies with the criteria in clause 7.1, it shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address; or
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting.

7.3 This clause 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.

7.4 A notice given under this licence is not valid if sent by e-mail or fax.

8. Costs

Each party is responsible for its own legal costs in connection with this licence.

9. No warranties for use or condition

9.1 The Licensee acknowledges that it does not rely on and shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that may have been made by or on behalf of the Licensor before the date of this licence.

9.2 Nothing in this clause shall limit or exclude any liability for fraud.

10. Limitation of Licensor's liability

10.1 Subject to clause 10.2, the Licensor is not liable for:

- (a) the death of, or injury to the Licensee, its employees, customers or invitees to the Reptile Habitat; or
- (b) damage to any property of the Licensee or that of the Licensee's employees, customers or other invitees to the Reptile Habitat; or
- (c) any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by Licensee or the Licensee's employees, customers or other invitees to the Reptile Habitat in the exercise or purported exercise of the rights granted by clause 4.

10.2 Nothing in clause 10.1 shall limit or exclude the Licensor's liability for:

- (a) death or personal injury or damage to property caused by negligence on the part of the Licensor or its employees or agents; or
- (b) any matter in respect of which it would be unlawful for the Licensor to exclude or restrict liability.

10.3 The Licensor shall act reasonably so as to mitigate any losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising under clause 5.1(n) and will notify the Licensee of any such matter and comply with the licensee's reasonable requirements promptly communicated to the Licensor as to the conduct of any such losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability arising under clause 5.1(n).

10.4 The indemnity under clause 5.1(n) shall cease to apply at the expiry of 6 years from the end of the Licence Period.

11. Third party rights

This licence does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this licence.

12. Governing law

This licence and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

Commented [TH13]: CRS: It is reasonable for any claims etc to be mitigated by the Licensor and for the indemnity to cease at the end of the Licence Period.

Commented [BB14R13]: Not agreed. a) WBC will have conduct of the claim and b) the indemnity cannot end at the end of the licence period because most claims do not arise until some time after the event. WBC would accept a limitation of 6 years. Please take instructions.

Commented [TH15R13]: WBC will have conduct of the claim but the licensee is paying for the outcome. So it is reasonable that WBC mitigate the outcome to the licensee as it can reasonable do, and also act in accordance with the licensee's reasonable requests. A limitation of 6 years is agreed.

Commented [BB16R13]: Titilope. I will agree conduct subject to "prompt communication" as per my amendment. The 6 year limitation is agreed. Provided the amendments to 10.3 are agreed by you I believe we are agreed on the indemnity.

13. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this licence or its subject matter or formation.

This licence has been entered into on the date stated at the beginning of it.

Schedule 1 Rights granted to Licensee

1. The right for the Licensee, its employees, agents, consultants, contractors and all others authorised by the Licensee to use the Permitted Accessway during the Designated Hours for the purpose of access to and egress on foot only across Eldridge SANG to and from the Reptile Habitat.

Signed by a duly authorised signatory for and on behalf of Wokingham Borough Council:

SIGNED.....
NAME.....

TITLE.....
DATE.....

Signed by a duly authorised signatory for and on behalf of [LICENSEE]:

SIGNED.....
NAME.....

TITLE.....
DATE.....