

The Conservation Management System Consortium Ltd (CMSC)

Memorandum and Constitution (Amended – September 2011)

THIS MEMORANDUM OF AGREEMENT is made between the following named ORGANISATIONS or their SUCCESSOR BODIES:-

- 1) THE COUNTRYSIDE COUNCIL FOR WALES**
- 2) EXMOOR NATIONAL PARK AUTHORITY**
- 3) NATIONAL TRUST**
- 4) ROYAL SOCIETY FOR THE PROTECTION OF BIRDS**
- 5) WELSH WILDLIFE TRUSTS (Brecknock and Radnor)**
- 6) WILDFOWL & WETLANDS TRUST**
- 7) NATURAL ENGLAND**
- 8) STAATSBOSBEHEER**
- 9) NATUURMONUMENTEN**
- 10) DE 12 LANDSCHAPPEN**

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INTRODUCTION:

- (A) The CMSC is a consortium of organisations established to maintain and manage the Conservation Management System (“CMS”) software product range and management planning system. It is a continuation of the CMS Partnership that was established in 1993 for the same purposes. The consortium became a Company Limited by Guarantee on the 3rd of August 2011. (Each member of the consortium is also a member of the company).
- (B) The CMSC has a Commercial Agreement for exeGesIS to provide services to the CMSC and to licence exeGesIS to exploit the CMS Software and Planning Manuals.
- (C) This Memorandum sets out the objectives and nature and manner of operation of the CMSC.
- (D) The terms of the Commercial Agreement with exeGesIS for the management of the CMS shall have precedence over the terms of this Memorandum of Agreement between Member Organisations of the CMS Consortium in so far as there is any conflict between them.

THE MEMBER ORGANISATIONS agree as follows:

1. INTERPRETATION AND DEFINITIONS

- 1.1. In this Memorandum, unless the context requires otherwise the following words and expressions will have the following meanings:-

WORD/EXPRESSION	MEANING
“Agreed Proportion”	The proportion of the total votes exercisable by all Member Organisations in any decisions of the CMSC Member representatives to which a Member Organisation is entitled as determined in accordance with SCHEDULE 3
“CMS”	The Conservation Management System software product range and management planning systems or other systems where the CMSC hold some degree of Intellectual Property Rights
“CMS Planning Manuals”	The Conservation Management System planning manuals developed by or on behalf of the CMSC or the Member Organisations.
“Commercial Agreement”	The proposed agreement between the CMSC and exeGesIS or any other agreement entered into by the CMSC for the provision of management services to the CMSC or the development or licensing of the Software or the Manuals

“Confidential Information”	All information or data (whether oral, visual, recorded in writing, in any other medium or by any other method) disclosed to or obtained by one Member Organisation from another or from a third party, including any information relating to a Member Organisation’s operations, processes, plans, intentions, know-how, design rights, trade secrets, supporters or affairs
“Co-opted Individuals”	Individuals co-opted onto the Board who do not have voting rights
“exeGesIS”	exeGesIS SPATIAL DATA MANAGEMENT LIMITED (No. 03743089) whose registered office is at Great House Barn, New Street, Talgarth, Brecon, Powys LD3 0AH
“Existing Member Organisation”	A Member Organisation at the date of entry into of this Memorandum
“Financial Year”	A financial year of the CMSC is the period April 1st to March 31st
“Intellectual Property Rights”	All intellectual property rights of any description including but not limited to patents, copyrights, design rights (registered or unregistered), trade marks, know how and database rights
“Last Member Organisations”	The last Member Organisations of the CMSC immediately before it is dissolved in accordance with clause 17
“Liability”	Any liability, claim, judgement, action, debt or right of action, of whatever kind, and all costs, including legal fees, damages, losses and expenses (including, but not limited to, any legal costs or expenses and VAT paid by the relevant party on the advice of its legal advisers to compromise or settle any claim)
“CMS Consortium Board”	A Board responsible for managing CMSC, comprising elected Representatives and Co-opted Individuals.
“Marks”	The words “CMS” and “Conservation Management System” and the CMS logo as shown in SCHEDULE 5 or any revised CMS logo adopted by the CMSC from time to time or any of them
“Member Organisations”	All organisations who are members of the CMSC from time to time
“Modifications”	Any correction, addition, amendment, enhancement, update or other change to the Software or CMS Planning Manuals

“New Member Organisation”	A Member Organisation other than an Existing Member Organisation
“Property”	Any property of the CMSC including the Intellectual Property Rights in the Software, CMS Planning Manuals, Marks and any other CMSC materials and any cash
“Reserve”	A budget owned by the CMSC to be used for the management and development of the CMS Planning Manuals and Software or other tasks as may be agreed between the CMSC and exeGesIS or as otherwise specified in the Commercial Agreement
“Software”	The Conservation Management System software in which the CMSC hold IPR
“Source Code”	The source code for the Software as it exists at the date of this Memorandum or any new source code received during the term of this Memorandum
“Support”	Support and maintenance of the Software
“Users”	Users of the Software and the CMS Planning Manuals
“Website”	The website of the CMSC as situated at www.cmsconsortium.org (or such other address as the CMSC shall determine)

1.2. In this Memorandum unless the context requires otherwise:-

- 1.2.1. Use of the singular includes the plural and vice versa and use of any gender includes all genders;
- 1.2.2. Any reference to "persons" includes a body corporate, natural person, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality);
- 1.2.3. Any reference to a statute, statutory provision or subordinate legislation ("legislation") shall (except where the context otherwise requires) be construed as referring to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation and to any subordinate legislation made from time to time under that provision;
- 1.2.4. The clause headings are included for convenience only and shall not affect the construction of this Memorandum;

- 1.2.5. Unless otherwise stated a reference to a clause or a schedule is a reference to a clause in or a schedule to this Memorandum;
 - 1.2.6. Reference to writing includes fax, email and other similar means of communication;
 - 1.2.7. Any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the meaning of the words preceding those terms.
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2. **NATURE OF THE CONSERVATION MANAGEMENT SYSTEM CONSORTIUM (CMSC)**
 - 2.1 The CMS Consortium is a group of organisations that combines resources to further our common aim of **raising standards and promoting best practice in nature conservation and countryside management**. We begin by meeting the needs of our own organisations, but place equal emphasis on helping other organisations and individuals involved in conservation. We believe that good planning is the key to good management. To further our aims, we have produced, and will continue to develop and maintain, computer software tools and management planning guidelines. We place considerable emphasis on the provision of training, including the organisation of formal training courses, seminars and workshops.
 - 2.2 The address of the CMSC is; Great House Barn, New Street, Talgarth, Brecon, Powys LD3 0AH
 - 2.3 The basic principles and prime functions of the CMSC shall be as set out in SCHEDULE 1.
 3. **ADMINISTRATION**
 - 3.1 The CMSC shall be able to enter into contractual arrangements with other parties for the purposes of ensuring the proper management and development of the Software and CMS Planning Manuals.
 - 3.2 Under the Commercial Agreement with exeGesIS, administrative support for the CMSC will be provided by exeGesIS and exeGesIS shall, subject to the terms of the exeGesIS Agreement, manage all licensing, Support and Modifications of the Software and CMS Planning Manuals.
 - 3.3 In the event of termination of the Commercial Agreement with exeGesIS, alternative arrangements for administration of the CMSC and the licensing and Support of the Software and CMS Planning Manuals shall be determined by the Members representatives. If the Members representatives can't agree new arrangements they can be decided by an independent third party .

4. **BENEFITS TO MEMBER ORGANISATIONS**

4.1 The Member Organisations will enjoy the benefits set out below:

- 4.1.1 To influence the future development and management of the CMS software
- 4.1.2 Ability to vote for membership of the CMSC Board.
- 4.1.3 User group network
- 4.1.4 Data exchange
- 4.1.5 Discounted Licence and Support fees
- 4.1.6 Web site access

5. **MEMBER ORGANISATIONS' OBLIGATIONS**

5.1 Each Member Organisation shall:-

- 5.1.1 Comply with this Agreement and any Commercial Agreement;
- 5.1.2 Not carry out or commission any Modifications other than in accordance with the Commercial Agreement or as otherwise agreed by the Members;
- 5.1.3 Notify the CMSC before commissioning any Modifications and consult with the CMS Members representatives with regard to the specification of the Modifications;
- 5.1.4 Cooperate with the other Member Organisations in furthering the aims of the CMSC;
- 5.1.5 Participate in User Groups in accordance with SCHEDULE 4.

6. **MEMBERSHIP FEES AND PAYMENTS**

- 6.1 Each Member Organisation shall pay an annual Membership Fee calculated in accordance with SCHEDULE 2.
- 6.2 The Membership Fee rates shall be reviewed annually and revised as from the start of the Financial Year as determined by the Board and approved by the Members representatives at the AGM or in the absence of agreement of the Member Organisations by a minimum of the increase in RPI during the period of 12 months ending on the date 2 months before the start of the relevant Financial Year.
- 6.3 The Membership Fee shall be payable annually by the end of the first quarter. Payments will be made directly into the CMSC bank account.

- 6.4 The licence and Support fees payable by Member Organisations in connection with the Software shall be as set out in the Commercial Agreement.

7. THE MEMBERS REPRESENTATIVES

- 7.1 Each Member Organisation shall appoint one named Representative to represent the Member in decisions of the CMSC. Member Organisations may replace their Representative at their discretion by notice to the General Secretary.

8. MEMBERS REPRESENTATIVES - MEETINGS AND VOTING

- 8.1 The Members representatives will meet at least once per year at the AGM. Additional General Meetings may be held at any time when called by a $\frac{2}{3}$ majority vote. The Decisions of the CMSC shall be made by the Members representatives at these meetings.

- 8.2 The Meetings will be chaired by the independent non-voting chairperson of the Board.

- 8.3 The business to be transacted at an AGM shall include

- 8.3.1 the consideration of the accounts of the Company and the reports of the Board and the auditors in respect of the accounting reference period ending in the year immediately preceding the AGM;
- 8.3.2 the election or re-election of directors as provided for in these articles; and,
- 8.3.3 such other business as may have been specified in the notice calling the meeting.

- 8.4 A General Meeting may be called by the Board or by two thirds of the Members representatives at any time provided at least 30 days' notice is given. If at any time there are not sufficient Board members to form a quorum, any three Board members may convene a General Meeting in the same manner as nearly as possible as that in which meetings may be convened by the Board.

- 8.5 Each Representative shall receive at least 30 days notice of any proposed meeting. The notice of the meeting shall contain details of any significant matter upon which it is proposed that a decision be taken at the meeting.

- 8.6 If the Representative is unable to attend he shall be entitled to send a proxy in his place.

- 8.7 In the event that the Members representatives are unable to reach agreement on an issue, decisions of the Members representatives will be made as follows:-

- 8.7.1 Each Representative (or their proxy) shall be entitled to cast such number of votes on behalf of their Member Organisation as determined by the Agreed Proportion.

- 8.7.2 Decisions will need a $\frac{2}{3}$ majority vote of those Representatives voting to be carried, excepting decisions concerning the dissolution of the CMSC, which will be by unanimous decision of all Member Organisations voting.

9. **THE CMSC BOARD**

- 9.1 CMSC shall be managed by an elected Board of directors consisting of not less than three and not more than fifteen Member's representatives, and two independent non-members. The Board may co-opt additional individuals, maximum of 10, to ensure that the full range of appropriate skills are represented.
- 9.2 The Members of the board in accordance with the CMSC voting regulations elect an independent Executive Director, the duties and functions of whom will be decided by the Board, who will also fulfil the role of chair of the Board. The Executive Director is non-voting except when a casting vote is required. The Executive Director may represent the views of the Company but may not make decisions on behalf of the Board. The Executive Director will hold that position for an initial period of five years. He or she will be eligible to serve for further periods of five years subject to confirmation of the post when their current term ends unless a shorter term has been agreed with the Members. The Members, by formal majority vote, have the power at any time to call a new election for this position. The Executive Director will not directly represent any of the Member organisations. For the avoidance of doubt this officer shall be a director of the Company by virtue only of holding such office.
- 9.3 The Members of the Board in accordance with the CMSC voting regulations elect an independent General Secretary, the duties and functions of whom will be decided by the Board. The General Secretary has full voting rights at all Board meetings. The General Secretary may represent the views of the Company but may not make decisions on behalf of the Board. The General Secretary will hold that position for an initial period of five years. He or she will be eligible to serve for further periods of five years subject to confirmation of the post when their current term ends unless a shorter term has been agreed with the Members. The Members, by formal majority vote, have the power at any time to call a new election for this position. The General Secretary will not directly represent any of the Member organisations. For the avoidance of doubt this officer shall be a director of the Company by virtue only of holding such office.
- 9.4 The Members of the Board in accordance with the CMSC voting regulations elect at each election, a Treasurer, the duties and functions of the Treasurer will be decided by the Board. The Treasurer will be a Member's representative, and has full voting rights at all Board meetings. The Treasurer will hold that position until the Board meeting immediately following the next election, unless a shorter term has been agreed with the other directors. The Members, by formal majority vote, have the power at any time to call a new election for this position.

- 9.5 Directors will be elected by the Members representatives for three years. They will be able to serve for three consecutive years before they must retire for one calendar year before being eligible for re-election. If a vacancy arises because a Director, elected by the Members representatives, has resigned, the Board may co-opt a replacement Member's representative who will have voting rights.
- 9.6 The Board will have powers to co-opt additional individuals to the Board. These co-opted members will be non-voting and will be brought onto the Board for the purposes of broadening the Board's experience.
- 9.7 The Chairperson and General Secretary and the elected Representatives will form the Board who will report to the Members representatives.
- 9.8 The Chairperson and General Secretary will be responsible for the day to day running of the CMSC.
- 9.9 The Board will be responsible for running the CMSC. In particular, they will:-
- 9.9.1 Draw up and review the Commercial Agreement;
 - 9.9.2 Manage, liaise with and provide approvals to the Commercial Organisation in relation to the Commercial Agreement;
 - 9.9.3 Promote the use of the Software and management planning systems as widely as possible,
 - 9.9.4 Receive and act upon feedback from all Users;
 - 9.9.5 Use CMSC's resources to further the use and development of the CMS;
 - 9.9.6 Provide a "think tank" for future developments and applications of the CMS. To help achieve this aim the Board has the power to consult Member Organisations, Users and Others with an interest in conservation management.
 - 9.9.7 Organise an AGM each year.
- 9.10 The Board will hold a minimum of four formal meetings a year, but will be expected to maintain more regular contact by other means.
10. **ACCOUNTS AND FINANCIAL ARRANGEMENTS**
- 10.1 The CMSC will maintain its own bank accounts and the Board will be responsible for overseeing the CMSC's bank accounts.
- 10.2 The CMSC will be non-profit making.

- 10.3 In the event of the CMSC returning a surplus of income over expenditure in any one Financial Year, the surplus will be banked and put towards the costs of the CMSC for the following year.
- 10.4 The Reserve shall be used to fund such Modifications as the Members representatives shall determine, in consultation with exeGesIS.
- 10.5 The Commercial Organisation (exeGesIS) will be required to provide simple cash based annual accounts for the CMSC.
- 10.6 The Treasurer will be required to produce accounts for the CMSC at the end of each Financial Year. These will be presented to the Members representatives at the AGM.
- 10.7 The accounts will be available for inspection by any of the Member Organisation's own auditors, who will also retain the right to audit systems and procedures regarding internal and financial controls.
- 10.8 A Member Organisation may at any time at its cost request a detailed audit on behalf of its organisation Provided that such an audit may not be requested more than once in any period of 2 years.

11. REMUNERATION OF DIRECTORS

- 11.1 Directors will **not** normally be refunded expenses, but, the Board may consider individual applications, for reasonable expenses properly incurred by them in connection with the discharge of their duties to the Company, subject to submission of valid proof that such expenses have been incurred.
- 11.2 The Executive Director, General Secretary are independent Directors (They do not represent a Member organisation). They will under normal circumstances be refunded expenses, including travel, subsistence and any other reasonable costs incurred directly in connection with their duties as officers of the board.
- 11.3 Directors including the Executive Director, General Secretary shall not be entitled to any other remuneration or fee in connection with their duties as directors.

12. PROPERTY AND INTELLECTUAL PROPERTY RIGHTS

- 12.1 The property and funds of CMSC must be used only for promoting the objects of the CMSC and do not belong to the Members of the CMSC and no part thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise to the members of the CMSC.
- 12.2 All Intellectual Property Rights owned by the CMSC in the Software, the CMS Planning Manuals, the Marks, the Website or any other materials created by or for the CMSC (whether

created before or after the date of this Memorandum and including in any Modifications funded by the CMSC or by any Member Organisation, whether from the Reserve or otherwise) shall be owned by the CMSC and shall automatically vest in the CMSC as and when created or assigned to the CMSC in accordance with the Commercial Agreement.

- 12.3 Subject in the case of the Last Member Organisations to clause 17.2.4, the Member Organisations shall only use the Software [and CMS Planning Manuals] in accordance with the terms of any licence they may have from time to time either from the Commercial Organisation or from the CMSC and no Member Organisation shall use or licence the use of the Software [or the CMS Planning Manuals] other than in accordance with such licence.

13. SOURCE CODE

- 13.1 The Chairperson shall hold the Source Code and shall only release it to the Member Organisations as permitted in the Commercial Agreement (if any) or upon the CMSC being dissolved in accordance with clause 17 to the Last Member Organisations.

14. NEW MEMBER ORGANISATIONS

- 14.1 Requests for membership will require the unanimous approval of the Board and ratification by the Members representatives.
- 14.2 The costs and conditions of joining the CMSC will be set by the Board at the time of any request to join, in accordance with the Commercial Agreement.
- 14.3 Any organisation wishing to become a Member Organisation of the CMSC must submit their application in writing to the Chairperson of the CMSC. This application must include:-
- 14.3.1 Details of the kind of organisation applying for membership;
 - 14.3.2 Details of the number of copies of the Software they wish to use immediately (and therefore wish to purchase immediately, unless they already have this number);
 - 14.3.3 An estimate of their likely future requirements for the Software, with an idea of how soon they would wish to take up additional copies.
- 14.4 The Board will consider the appropriateness to the CMSC of the potential new member, taking into account the estimates of present and future requirements for copies of the Software, and will then submit a recommendation to the Members representatives as to whether or not the application should be accepted, and if so on what terms.
- 14.5 All New Member Organisations will be required to sign an addendum to this Memorandum to add the New Member Organisation as a party to this Memorandum.

15. LIABILITY AND CLAIMS

- 15.1 The liability of each member is limited to £1, being the amount that each member undertakes to contribute to the assets of the company in the event of its being wound up while they are a member or within one year after they cease to be a member.
- (a) payment of the company's debts and liabilities contracted before he ceases to be a member,
 - (b) payment of the costs, charges and expenses of winding up, and
 - (c) adjustment of the rights of the contributories among themselves.
- 15.2 If any Member Organisation becomes aware of any infringement or threatened infringement of the Property or of any third party allegation that the Property infringes the Intellectual Property Rights of any person, the Member Organisation shall immediately notify the Board giving full particulars of such matter and the Member Organisation shall make no comment or admission to any third party in respect of such matter.
- 15.3 The Members representatives shall determine what action (including litigation, arbitration or compromise), if any, to take in respect of any infringement or alleged infringement of the Property or passing off or any other claim or counterclaim brought or threatened in respect of the use of the Property. If Member Organisations can't agree those that want to take action can do so at own expense The Member Organisations shall each give full co-operation to the CMSC in any action, claim or proceedings brought or threatened in respect of the Property.
- 15.4 In the event of any claim bought by or against the CMSC the Member Organisations shall jointly instruct solicitors to handle the claim. If there is any dispute between the Member Organisations as to the conduct of the claim the matter shall be referred to the solicitors and the Member Organisations shall follow their advice.

16. TERM AND REVIEW

- 16.1 This Memorandum shall commence on the date signed by the last of the Existing Member Organisations to sign it and will remain in force until the CMSC is dissolved in accordance with clause 17.
- 16.2 This Memorandum will be reviewed and if necessary amended at three-yearly intervals.

17. **DISSOLUTION**

17.1 The CMSC shall be dissolved only as follows:-

- 17.1.1 By the unanimous agreement of all the Member Organisations;
- 17.1.2 Automatically in the event that only one Member Organisation of the CMSC remains;
- 17.1.3 Automatically in the event that no meeting of the Members representatives has taken place for 2 years.

17.2 In the event of the CMSC being dissolved:-

- 17.2.1 Every Member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound up while it is a Member or within one year after it ceases to be a Member, for payment of the debts and liabilities of the Company contracted before it ceased to be a Member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding £1 (one pound).
- 17.2.2 Its assets (other than the Intellectual Property Rights) shall be offered for sale to the Last Member Organisations, and in case of competition the assets shall be sold to the highest bidder. Should no Member Organisation or Member Organisations wish to buy, the CMSC's assets will be sold to third parties.
- 17.2.3 The proceeds of sale of the assets plus the balance of the bank accounts (other than the Reserve Account where such account is to be used as set out in the Commercial Agreement) shall after the clearing of any outstanding debts of the CMSC be disbursed to the Last Member Organisations in accordance with the Agreed Proportions.
- 17.2.4 The Intellectual Property Rights shall remain jointly owned by the Last Member Organisations, each of which Last Member Organisation shall be free to use, licence and develop such Intellectual Property Rights in any manner whatsoever as they wish without requiring the consent of any other Last Member Organisations.

18. **TERMINATION OF MEMBERSHIP**

- 18.1 Member Organisations shall give the Secretary one year's written notice of their intention to leave the CMSC. Membership can only be terminated at the end of a Financial Year.
- 18.2 The Members representatives may terminate the Membership of any Member immediately on written notice to the Member Organisation if:-

- 18.2.1 The Member's continued membership is likely to be harmful to the Company or does not comply with any Code of Conduct adopted by the Board in respect of the Company from time to time, but only after notifying the Member in writing and allowing the Member to make representations at the next Board meeting, of which the Member shall receive at least 21 days' notice, or to circulate written representations to the Board prior to that Board meeting, the decision of which shall be final.
- 18.2.2 An order is made declaring the Member Organisation insolvent, or granting a moratorium over repayment of the Member Organisation's debts or the Member Organisation makes a composition or arrangement with its creditors or has a proposal by way of a voluntary agreement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986, or has an application made under the Insolvency Act 1986 for the appointment of an administrator, or has a winding-up order made or (except for the purpose of amalgamation or reconstruction) becomes subject to a resolution for winding-up or has a liquidator, receiver or manager appointed, or has an administrative receiver appointed or has possession taken over all or a material part of its undertaking.
- 18.2.3 They have not paid the appropriate fees as set by Board from time to time to the Company within six months of the due date.
- 18.3 Any Member Organisation ceasing to be a Member Organisation shall automatically cease to be a party to this Memorandum. Termination of the Memorandum or of the membership of any Member Organisation shall be without prejudice to any rights or remedies of any Member Organisation under this Memorandum and shall not affect any accrued rights or liabilities of any Member.
- 18.4 Provisions of this Memorandum from which it is contemplated by their nature or context that they are to survive termination or expiry of this Memorandum, shall remain in full force and effect notwithstanding such termination or expiry and shall continue to apply to any Member Organisation ceasing to be a Member Organisation, including clauses 1, 12, 15, 17, 18, 19, 20, 21, 23, 24.

19. CONFIDENTIALITY AND DATA PROTECTION

- 19.1 In this clause the "Receiving Party" means the Member Organisation receiving information and the "Disclosing Party" means the Member Organisation disclosing information. Each Member Organisation undertakes that they shall keep secret and treat as confidential, the Confidential Information and shall keep all such Confidential Information secure and protected against theft, damage, loss or unauthorised access and shall not disclose any such Confidential Information to any third party except where permitted in this Memorandum or by the

Disclosing Party or required by law or by the rules of a regulatory authority of competent jurisdiction.

19.2 The Member Organisations may divulge Confidential Information to those employees, agents, sub-contractors or professional advisers who have a reasonable need to know that information in connection with the acts contemplated by this Memorandum.

19.3 The obligations of this clause shall survive the variation, renewal, termination or expiry of this Memorandum but shall not apply to any information which is:-

19.3.1 In or comes into the public domain, or is already known to the Receiving Party, its employees, agents or sub-contractors, other than by breach of this Memorandum or any other duty of confidence;

19.3.2 Can be shown to have been lawfully created by the Receiving Party independently of any disclosure from the Disclosing Party;

19.3.3 Obtained from a third party without breach of this clause or any other duty of confidence; or

19.3.4 Trivial or obvious.

20. **DISPUTE RESOLUTION**

20.1 The Member Organisations shall use their best efforts to negotiate in good faith and settle amicably any dispute that may arise out of or relate to this Memorandum (or its construction, validity or termination) ("Dispute"). If a Dispute cannot be settled through negotiations by appropriate Representatives of each of the Member Organisations, any Member Organisation may give to the others a notice in writing ("Dispute Notice"). Within 14 days of the Dispute Notice being given the members representatives shall meet to attempt to resolve the Dispute.

20.2 In the event that the Dispute remains unresolved within 30 days of the Dispute Notice, the Member Organisations shall seek to resolve the Dispute amicably by using an alternative dispute resolution ("ADR") procedure agreed between them or in the absence of agreement, recommended on the application of any Member Organisation by the Centre for Effective Dispute Resolution.

21. **NOTICES**

21.1 Any notice given under this Memorandum must be in writing and sent or delivered by hand, first class post, facsimile or, where the Member Organisations expressly agree, e-mail to the other Member Organisations at the address set out in this Memorandum or such other address or fax number as may be notified in writing from time to time by the relevant Member

Organisation to the other Member Organisations. Any such change to the place of service shall take effect five Working Days after notice of the change is received or (if later) on the date (if any) specified in the notice as the date on which the change is to take place.

21.2 Notices shall be deemed to have been given as follows:-

21.2.1 If delivered by hand - when deposited at the appropriate address;

21.2.2 If sent by first class post - two days from the date of posting if posted to an address within the country of posting and seven days of posting if posted to an address outside the country of posting;

21.2.3 If sent by facsimile - on transmission to the correct number during Working Hours (or where sent outside of Working Hours at 10.00 am on the next Working Day) provided that such notice is confirmed within 48 hours as in clause 21.2.1 or 21.2.2; and

21.2.4 If sent by e-mail - on the day on which the communication is first stored in the other Member Organisation's electronic mail-box during Working Hours (or where first stored outside of Working Hours at 10.00 am on the next Working Day) provided that such notice is confirmed within 48 hours as in clause 21.2.1 or 21.2.2.

22. **STATUS OF PARTIES**

22.1 This Memorandum relates only to the joint venture it refers to and it does not constitute any Member Organisation the agent of any other Member Organisation, and it does not constitute a partnership between the Member Organisations.

23. **GENERAL**

23.1 This Memorandum contains or expressly refers to the entire understanding between the Member Organisations with respect to its subject matter and supersedes all previous agreements and understandings between the Member Organisations. The Member Organisations acknowledge and agree that none of them has made nor relied on any representations or warranties except such as are specifically set out in this Memorandum.

23.2 No amendment of the terms of the Memorandum shall be valid or binding unless made by prior written agreement between the Member Organisations signed by their duly authorised Representatives.

23.3 Except insofar as this Memorandum expressly provides that a third party may in his own right enforce a term of this Memorandum, a person who is not a party to this Memorandum has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term

of this Memorandum but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

- 23.4 No failure or delay on the part of any of the Member Organisations to exercise any of their rights under this Memorandum shall operate as a waiver of that right, nor shall any single or partial exercise of any such right preclude any other or further exercise of it. Any waiver by any of the Member Organisations of any breach by the others of any of their obligations under this Memorandum shall not affect the rights of that Member Organisation in the event of any further or additional breach or breaches. No waiver shall be binding unless made in writing by the Member Organisation against which it is asserted.
- 23.5 If any provisions of this Memorandum are held by any court or other competent authority to be void or unenforceable in whole or in part, this Memorandum shall continue to be valid as to its other provisions and the remainder of the affected provision.

24. **LAW AND JURISDICTION**

- 24.1 This Memorandum shall be governed by and construed in accordance with the laws of the United Kingdom and the Member Organisations irrevocably agree to submit to the exclusive jurisdiction of the courts of the United Kingdom in respect of any dispute or matter arising out of or connected with this Memorandum.

SCHEDULES

SCHEDULE 1

Basic Principles and Prime Functions

The CMS software is an objective based planning and recording system.

CMS - Basic Principles

- The system needs to be primarily desktop based to allow functionally rich user interfaces and also to enable use in places where good internet connections do not exist.
- The system must be as simple and intuitive as possible. This to be achieved through excluding any non-essential functionality from the core system and through the provision of 'views' onto the data that are defined by the role of the user (hence field staff will see different forms from a regional site manager).
- The system will be modular, comprising a core system plus optional modules for enhanced functionality.
- CMS will be a scalable system, with the ability to sensibly handle increasing large data volumes and numbers of users.
- The core system will meet the common needs of existing users.
- The core system will provide a simple mapping functionality using open source GIS tools.
- Spatial objects will be held in the database.
- CMS can be used via the internet using thin client solutions.
- Open Standards will be used where available and developed if necessary in some areas.
- A help facility will be include in order to reduce dependency on formal training and external support.
- The system will be designed to enable easy translation to other languages.
- The system will include the functionality to promote information sharing within and between organisations
- Some non-essential elements may have a web interface, for instance for sharing projects between organisations.
- It will be provided with a realistic upgrade path from consecutive version of the system.

The Prime Functions of CMS are:

- To facilitate a features approach or focus for management planning
- To facilitate continuous cyclical, iterative and developmental management planning process (adaptive or adaptable)
- To providing a planning system for the management of nature conservation features, and also accommodate all other areas of planning, including: Stakeholder interests, cultural aspects (including historical, archaeological, religious and spiritual interests), visitor management / tourism, education and interpretation, and social and economic aspects.
- To provide a descriptive section which contains, or provides reference to, the information that will be needed to help decide what is important and to undertake the planning process.
- To enable the identification of factors as an integrated component of the planning process. *(A factor is anything that has the potential to influence or change a feature, or to affect the way in which a feature is managed. These influences may exist, or have existed, at any time in the past, present or future. Factors can be natural or related to human activity in origin, and they can be internal (on-site) or external (off-site).)*
- To ensure that monitoring is recognised as an integral and essential component of the CMS planning process. *(Monitoring: Surveillance undertaken to ensure that formulated standards are being maintained)*
- To ensure that objectives lie at the very heart of a CMS management plan. They are the outcomes of management and the single most important component of the plan. An objective is the description of something that we want to achieve.
- To provide a recording system for all relevant data collected as part of a planned management process.
- To enable the production of costed action plans. An action plan will comprise management and monitoring/recording projects. Each project in will identify the resource requirements including the individuals or organisations who will be responsible for implementing the projects. The projects may be prioritised. The facility to include a full description or instruction of the work required to complete the project will be included.
- To generate a wide variety of reports, for example, five year, annual, financial, and work programmes for a specified category of staff. It will also include a facility for generating ad-hoc and bespoke reports.
- To facilitate management review. This will be continual within a time scale that is appropriate to the features. (Fragile and vulnerable habitats or populations will require more frequent attention than robust and secure features.)

- To include a facility for dealing with site ownership.
- To enable the exchange of site management information within and between sites and organisations. Library projects may be shared across organisations. There will be an option to upload a Library Project to the CMS website which will host a searchable database of shared Library Projects. There will be an option to download and incorporate any Library Project into the users' local system. This will have the added benefit of opening Library Projects out to non-CMS users.

SCHEDULE 2

Membership Fees

Unless specifically agreed by the Board, each Member Organisation shall pay an Annual Fee calculated on the basis of the number of copies of the Software or agreed "Licence Equivalents" for which the Member Organisation has a licence at the due date for payment of the Membership Fee. A "Licence Equivalent" allows the Board to fix the level of membership for Member Organisations who join under agreed exceptional terms.

The fee covers two elements:

- a membership element which contributes to the costs of administration and development;
- a technical support element that meets the cost of on-line support.

These elements will be reviewed annually.

SCHEDULE 3

Agreed Proportions

Each Member Organisation shall be entitled to one vote for each copy of the Software in respect of which the Member Organisation has a licence *or agreed “Licence Equivalents”*, subject to no one Member Organisation having more than $\frac{1}{3}$ of the total votes of the CMSC.

SCHEDULE 4

Workshops for users, actual and potential.

Local and national CMS workshops will be established to exchange experiences and ideas.

Attendance

- 1 Workshops will be open to all Users of CMS, both Member Organisations and non-members.
- 2 Representatives of the Commercial Partner / Board / CMSC will attend the workshops as appropriate.

SCHEDULE 5

CMS Logo

