

SAVING DEVON’S TREESCAPES PROJECT PARTNERSHIP
MEMORANDUM OF AGREEMENT (MOA)

This Memorandum of Agreement is made on 1st July 2019

Between

- (1) Lead Organisation and accountable body (Devon Wildlife Trust, Cricklepit Mill, Commercial Road, Exeter, Devon EX2 4AB)
- (2) Partners –

Partner	Contact
Beaford Arts	Mark Wallace
Blackdown Hills AONB	Tim Youngs
Clinton Devon Estates	John Wilding
Devon Ash Dieback Resilience Forum	Peter Chamberlain
Devon Biodiversity Records Centre	Ian Egerton
Devon County Council	Peter Chamberlain
East Devon AONB	Pete Youngman
East Devon District Council	Simon Bates
Exeter City Council	David Bartram
Forestry Commission	Kate Tobin
FWAG South West	Gary Rumbold
Landscape and Ecological Resilience Group	Rob Wolton
South Devon AONB	Roger English
Torbay Council	Neil Coish
Woodland Trust	Graham Burton

1. BACKGROUND

(A) This Memorandum of Agreement has been set up between the above organisations to enable the effective delivery of the Saving Devon’s Treescapes Project (SDT). The SDT Project is led by Devon Wildlife Trust on behalf of the Devon Ash Dieback Resilience Forum.

(B) This Memorandum of Agreement sets out the principles which shall govern the relationship between (the lead organisation, the accountable body and other partners).

2. DURATION OF AGREEMENT

This Memorandum shall be effective from the date of its execution and shall continue until 30th September 2025 (or a later date as unanimously agreed by the partnership).

3. DEFINITIONS AND INTERPRETATIONS

In this Memorandum, unless the context otherwise requires, a reference to:

“**Lead organisation**” The body that will have responsibility for the day to day delivery of the Project;

“Accountable body” The organisation that has financial control of the Project and provides any services financial or other in fulfilling any obligations with administering Project funds;

“Confidential Information” means any information which has been designated as confidential by any Partner in writing or that ought to be considered as confidential (however it is conveyed or on whatever medial it is stored) including information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, intellectual property rights, know-how, personnel, customers and suppliers by any Partner and all personal data and sensitive data within the meaning of the Data Protection Act 1998 and the General Data Protection Regulations 2018 (GDPR);

“Memorandum” means this document;

A **“Partner”** means any partner to this Memorandum individually and **“Partners”** refers to all or a number of partners to this Memorandum collectively. A Partner shall include all permitted assigns of the Partner in question’;

“Steering Group” the group of Partners who will oversee the delivery of the Project by the Lead Organisation;

“Project” means the Project which this Memorandum is intended to deliver. The Project details, obligations of the Partners are more specifically detailed in the Activity Plan (including the work plan and budget) and forms an integral part of this Memorandum and shall be interpreted accordingly; and

“Activity Plan” the National Lottery Heritage Fund Application documents that outline the detail of how the Project will be delivered as agreed by the Partners;

4. PURPOSE OF THE PARTNERSHIP

The Partners shall work together in delivering and resourcing the SDT Project and in particular shall perform their respective obligations to the timetable set in the Project Activity Plan.

5. PARTNERSHIP ROLES AND RESPONSIBILITIES

The Lead organisation (as the accountable body) has overall control of the Project and agrees that in providing any services or in fulfilling any obligation or dealing with and administering funds under this Memorandum it will ensure, where applicable, it is fully compliant with public sector procurement regulations and incorporate best practice principles.

The roles and responsibilities of the partners, for the period 1st Jan 2020 to 30th June 2025 (representing the earliest NLHF project start date and may be subject to change), are set out in this agreement illustrating how they align with the Project objectives. All Partners will work collaboratively and demonstrate the necessary activities to deliver the Project.

Details of roles and responsibilities can be found at Appendix 1

6. PROGRESS / MONITORING AND EVALUATION REPORTING

The Lead Organisation will be responsible for ensuring the delivery, monitoring and reporting progress on the objectives and work towards continuous improvement in the quality and accuracy of the deliverables. Specific outputs for the Project, and formats and timescales for their delivery are set out in the SDT Activity Plan.

7. FINANCE AND RESOURCE

Devon Wildlife Trust as the accountable body will be responsible for payments of all goods and services to be commissioned in relation to the delivery and monitoring of the Project.

Payments, where applicable, will be made to partners for goods and services in relation to the SDT Project by the Lead Organisation/Accountable Body every quarter by BACS transfer.

Financial resources required for the Project delivery are indicated in the SDT Activity Plan and Budget and show:

- Partner contributions (financial, and in-kind)
- How it is cost-effective and efficient
- Cash and costed in-kind contributions

If any of the individuals named as a resource being provided by a Partner is unavailable for whatsoever reason, where possible that Partner shall offer an alternative member of staff with equivalent skill sets to the reasonable satisfactions of the other Partner(s).

8. ASSURANCE

The Partners shall promptly execute and deliver all tasks and do all such things as which may from time to time be reasonably required for the purpose of giving full effect to the provisions of this Memorandum.

9. VARIATION AND WAIVER

No variation of this Memorandum shall be valid unless it is agreed in writing and signed by or on behalf of each of the Partners.

Partners cannot assign, sub-contract or in any other way dispose of their duties under the Memorandum or any part of it to any person, firm or company without the prior written consent of all partners.

10. NOTICES

Any notice or other communication required to be given under this Memorandum, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each Partner required to receive the notice or communication as set out below:

Lead Organisation: Devon Wildlife Trust
Cricklepit Mill
Commercial Road
Exeter
Devon
EX2 4AB

Any notice or other communication shall be deemed to have been duly received on the day if it is delivered personally, when sent by post on the second working day following the day of posting and on the date and time of the couriers signed receipt. A notice or other communication required to be given under this Memorandum shall not be validly given if sent by email.

11 CONFIDENTIALITY

All Partners shall keep secret and confidential all **Confidential Information** disclosed to it (including its employees, agents or advisors) by or on behalf of the other in relation to the agreement or the business of the other Partner(s) which is of a confidential nature. Partners shall not use such confidential information for any purpose other than the purpose of this Memorandum and shall not disclose any confidential Information except as may be required by law.

“**Confidential Information**” means any information which has been designated as confidential by any Partner in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, intellectual property rights, know-how, personnel, customers and suppliers by any Partner and all personal data and sensitive data within the meaning of the General Data Protection Regulations 2018;

12 DATA PROTECTION

In reference to the General Data Protection Regulations 2018 (GDPR) no “personal data” will be shared between the Lead Organisation and the Partner or Partners under this memorandum. If “personal data” is required to be shared to allow the Project to fulfil its obligations, a separate “data processing” agreement will be created.

The Lead Organisation and all partners shall comply with all relevant provisions of the GDPR, with the Privacy and Electronic Communications Regulations (PECR) and other relevant data regulations and do nothing which causes, or may cause, the Trust to be in breach of its obligations under the GDPR or PECR.

13 INTELLECTUAL PROPERTY RIGHTS

All intellectual property rights in any information or material introduced by one Partner to the other Partner pursuant to this Memorandum shall remain the property of the Partner that owned such intellectual property rights prior to such introduction. All results generated as part of this Project will be jointly owned by the all signatories to this agreement.

14 INFORMATION

The Partners acknowledge that public bodies are subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) and the Partners shall assist and cooperate with those bodies pursuant to this memorandum.

Partners shall provide all necessary assistance as reasonably requested to enable partner public bodies to respond to a request for information within the time for compliance and permit partner public bodies to inspect such records as requested from time to time.

15 STEERING GROUP

SDT Project Steering Group meetings will be held on a regular basis and will conduct its business following the SDT Steering Group Terms of Reference (to be agreed prior to the commencement of the project), each Partner will be notified in writing in advance of each Project Steering Group meeting.

16 DISPUTE RESOLUTION

Any disagreements will normally be resolved amicably at working level within 14 days.

In the event of failure to reach consensus between the Partners, the Lead Organisation and/or the Accountable Body then such failure shall be handled in the following manner:

- (a) the dispute shall in the first instance be referred to the Lead Organisation's senior officer for resolution, a meeting to be arranged as soon as practicable after the failure to reach consensus arises, but in any event within 14 days;
- (b) if the dispute cannot be resolved in accordance with the above within 14 days after such referral the Partners, Lead Organisation and/or Accountable Body shall settle the dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Partners, the mediator will be nominated by the Centre for Effective Dispute Resolution (CEDR), details can be found at:

<http://www.cedr.com/library/ProjectMediationGuide.pdf>.

17 LIMITATIONS OF LIABILITY

The Partner's total liability arising under, or in connection with this Memorandum, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited to the financial (cash and in kind) contributions as laid out in the SDT Activity Plan.

A Partner will not be liable to other partners for:

- any indirect, special or consequential loss or damage; or
- any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect)

18 TERMINATION

The Lead Organisation may terminate the Memorandum by notice in writing with immediate effect with no liability to the Partner (s) where:

- i. A Partner undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988 which impacts adversely and materially on the Memorandum or the Project; or
- ii. the Lead Organisation becomes insolvent, bankrupt, enters into liquidation, enters into a voluntary arrangement, appoints a receiver or such similar event in any jurisdiction save for the purposes of a solvent reconstruction or amalgamation; or
- iii. The Lead Organisation/Accountable Body is guilty of any fraud or dishonesty or acts in any manner which in the opinion of the Partner(s) is likely to bring the Partners into disrepute or is materially adverse to the interests of the Partner(s); or
- iv. The Partner suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Partner ceases to trade

Without prejudice to any other rights or remedies which Partners may have, a Partner may terminate this Memorandum by giving three months written notice to the other Partner(s).

On termination of the Memorandum in accordance with section 17, each Partner shall return the pre-existing information or materials to the Partner that provided the information.

19 CONTRACTS (RIGHTS OF THIRD PARTNERS) ACT 1999

The Partners do not intend that any term of the Memorandum shall be enforceable by virtue of the Contracts (Right of Third Partners) Act 1999 by any person that is not a party to it.

20 GOVERNING LAW

This memorandum and all disputes or claims arising out of or in connection with the activities of the Partners in delivering the SDT Project shall be governed by and construed in accordance with the law of England.

Each Partner hereby confirms its agreement to the terms contained in this Memorandum.

Signed on behalf of
Lead Organisation:

Signed on behalf of
Partner

Print name: HARRY BARTON

Print Name: _____

Job Title: CHIEF EXECUTIVE DEVON
WILDLIFE TRUST

Job Title: _____

Date: _____

Date: _____

Appendix 1

Partners' Roles and responsibilities:

The Saving Devon's Treescapes Project is led by Devon Wildlife Trust on behalf of the Devon Ash Dieback Resilience Forum.

The Lead Organisation is Devon Wildlife Trust and has overall control of the Project and is responsible for:

- the administration and financial management of the Project;
- maintaining detailed Project income and expenditure accounts and related documentation such as invoices;
- providing the personnel, accommodation, equipment and services needed for the SDT Project. These include line management of staff; training and equipment required by staff to carry out their duties including employer health and safety obligations; paying staff salaries, on costs, expenses, sick pay, pension, maternity, redundancy or other payments the staff may be entitled to;
- Have a proposed continuation strategy enabling cost-effective, sustainable outcomes

The Lead Organisation should also demonstrate their responsibilities for:

- Policies and Procedures:
 - Health and Safety
 - Equal Opportunities
 - Safeguarding and protection of children and vulnerable adults
- Risks and Dependencies
 - Identify the person and organisation who is responsible for managing the risk.
 - Produce a risk register and risk management plan identifying key risks which could affect delivery under this agreement, which is maintained and updated quarterly

In Devon Wildlife Trust's role as the accountable body the Trust has responsibility for:

- the financial management of the Project
- maintaining detailed Project income and expenditure accounts and all related documentation.

Other Partners include:

Partner	Role(s) in delivery of Saving Devon's Treescapes
Beaford Arts	Steering Group member, specialist advice, development and administration of the Ash Archive, and in-kind support
Blackdown Hills AONB East Devon AONB South Devon AONB	Steering Group members specialist advice and financial support (cash and/or in kind)
Clinton Devon Estates	Steering Group member, advice and support in land management operations and making connections with landowning communities in Devon.

Devon Biodiversity Records Centre	Steering Group member, specialist advice, technical and financial support (in-kind)
Devon County Council	Steering Group member, specialist advice, technical and financial support (cash and in kind)
East Devon District Council	Steering Group member, specialist advice, technical and financial support (cash and in kind)
Exeter City Council	Steering Group member, specialist advice, technical and financial support (cash and in kind)
Forestry Commission	Steering Group member. Officer support in kind to be FC Lead for SDT and coordinating FC input through discussion with Land Management, Land Use, and Funding Teams and to act as advocate for SDT within FC and Defra Agencies. Additional financial support through RDPE NELMS work .
FWAG SW	Steering Group member. Financial support (cash and in-kind) through officer time to support strategic targeting of advisory effort
Torbay Council	Steering Group member, specialist advice, technical and financial support (cash and in kind)
Woodland Trust	Steering Group member, specialist advice, technical and financial support (cash and in kind), core supplier of tree stock.

Record Keeping: Devon Wildlife Trust is responsible for storage and maintaining records relating the SDT Project and adherence to all NLHF audit rules including:

- Ensure appropriate records are kept and maintained
- Records are available for audit purposes if necessary
- Records are kept for at least 7 years after the end date