

DATED

2016

- (1) ENVIRONMENT AGENCY
- (2) [RELEVANT IDB / LOCAL AUTHORITY RMA]

COOPERATION AGREEMENT IN RELATION TO THE FLOOD [& COASTAL] RISK
MANAGEMENT FUNCTIONS OF THE PARTIES MADE PURSUANT TO SECTION 13
OF THE FLOOD AND WATER MANAGEMENT ACT 2010

Commencement Date: [] 2016

Completion Date: [] 20[]

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THIS AGREEMENT is made the day of 2016

BETWEEN:

- (1) **Environment Agency ("the Agency")**, whose principal office is at Horizon House, Deanery Road, Bristol BS1 5AH and whose contact address for the purposes of this Agreement is [**Area Office Address**]
- (2) [**the relevant IDB or Local Authority**] [("**the Board**") / ("**the Authority**")] whose principal office and contact address for the purposes of this Agreement is at [**Address**]

WHEREAS:

- A. Section 13(4) of the Flood and Water Management Act 2010 (the Act) provides that a risk management authority may arrange for a flood risk management function to be exercised on its behalf by another risk management authority. [**NOTE Include next sentence if coastal works are anticipated and the RMA is listed in s.13(8)**] Section 13(8) of the Act also provides that the Environment Agency may arrange for certain risk management authorities to carry out coastal risk management functions on its behalf]. The Parties are both risk management authorities for purposes of the Act and wish to cooperate to achieve common purposes relating to the carrying out of flood [**and coastal**] risk management maintenance and similar works and activities. The Parties have agreed to enter into this cooperation agreement to jointly carry out and manage a Programme of maintenance and similar related works and activities as set out in the Specification.
- B. The overall objective of the Agreement is to provide the Parties with a framework for delivery of their common needs, enabling the Parties:
 - To secure benefits of public sector bodies working together in cooperation based on the provisions in section 13 of the Act and specifically enabling the Parties to carry out Works and Activities on behalf of each other under s.13(4) of the Act [**NOTE Include where relevant**] [**and section 13(8) of the Act**].
 - To secure efficient local working arrangements which will achieve value for money in delivering operational flood risk management activities [**NOTE Include where relevant**] [**and coastal risk management activities**].
 - To take advantage of local skills and experience including local knowledge of geography, associated river/ drainage systems and operational practices, to benefit local communities.
 - To secure flexible partnership working arrangements to supplement existing resources of the Parties on a defined outline programme of flood [**and coastal**] risk management activities.

NOW THE PARTIES AGREE AS FOLLOWS:

1. AGREEMENT:

This Agreement comprises:

- (a) these terms and conditions;
- (b) the Schedules; and
- (c) any variations or additions to the above agreed by the Parties in accordance with Clause 16.

Except to the extent of any variations agreed between the Parties in accordance with Clause 16, in the case of ambiguity or conflict between any of the foregoing, these terms and conditions will take precedence.

2. DURATION

This Agreement shall commence on the Commencement Date and continue until the Completion Date or such further period of time as may be agreed in writing between the Parties, unless earlier terminated in accordance with this Agreement. This period shall constitute the Programme Period.

3. THE PARTIES' OBLIGATIONS

3.1 As from the Commencement Date the Parties will each authorise the other to carry out on their behalf the Specific Works and Activities. The Party ("the Delivery Party") acting under the authority of the other ("the Authorising Party") will be required to deliver the Works and Activities in accordance with any requirement of law or enactment that applies to the Authorising Party.

3.2 The Parties have agreed:

- (a) an outline programme for the scope and delivery of the Programme as set out in the Specification;
- (b) that the Parties respective Contributions to the Programme will be agreed in outline on an annual basis, and confirmed in detail from time to time in advance of Specific Works and Activities being carried out using a form substantially the same as the form attached at Schedule 3, and will be managed as set out in this Agreement;
- (c) that in agreeing Specific Works and Activities from time to time, they will set out using a form substantially the same as the form attached at Schedule 3:
 - (i) the extent to which Clause 3.1 is to apply for those Specific Works and Activities;
 - (ii) how they intend to allocate liability for Statutory Compensation between them in circumstances where the costs of Specific Works and Activities are shared between them (Clause 10.4); and
 - (iii) any specific arrangements for use of powers of entry (Clause 17.3 and 17.4)
 - (iv) all other details defining the works, activities, roles, responsibilities and as indicated on the form .

3.3 The Parties shall aim to agree an outline Annual Programme by 31st March in each year, including the scope and delivery of Works and Activities. Confirmation of Specific Works and Activities within the Programme, and including the details specified in clause 3.2 above and any variations in accordance with Clause 16, shall be agreed in writing prior to any expenditure or liability being incurred in relation to that Annual Programme.

- 3.4 The Parties agree that they shall each perform their part of the Programme and their obligations in accordance with this Agreement, in a timely manner.
- 3.5 The Parties shall each:
- (a) make any Contributions promptly
 - (b) co-operate and use all reasonable endeavours to ensure the success of the Programme;
 - (c) be under a duty to act in good faith and in the spirit of co-operation in carrying out the Programme;
 - (d) ensure that all communications are constructive, comprehensive, timely and open;
 - (e) provide information promptly to one another relating to their involvement in the Programme;
 - (f) promptly raise any issues or any difficulties, problems or opportunities that arise and use reasonable endeavours to resolve them promptly; and
 - (g) aim to reach agreement in discussions for the good of the Programme rather than for individual Party gain.
- 3.6 Each Party shall inform the other promptly of any event that is liable to prejudice or delay the performance or completion of any Annual Programme as agreed or any agreed Specific Works or Activities in the Programme, or of any situation or event that makes it difficult for one Party to provide its Contributions or any of them. The provision of information under this Clause shall not release or excuse that Party from any of its obligations under this Agreement without the written consent of the other Party.
- 3.7 The Delivery Party shall deliver progress reports on the activities on any Works and Activities undertaken during the previous calendar month, which shall include:
- (a) progress, risks and issues encountered with the Works and Activities;
 - (b) any proposed changes to the manner in which the Works and Activities are carried out that affect the matters agreed between the Parties in relation to them;
 - (c) where the Parties have agreed that the Delivery Party will be reimbursed by the Authorising Party for all or part of its costs in delivering those Specific Works and Activities, the time spent on those Works and Activities; and
 - (d) insofar as the expenditure relates to Specific Works and Activities for which the Parties have agreed that the Delivery Party will be reimbursed by the Authorising Party, an account of the financial spend (including but not limited to invoices; allocation of spend within the Parties such as staff and expenses; and external spend, including plant, equipment and subcontractors) during the previous calendar month as compared against initial budget allocation for each Specific Works and Activities.

4. DELIVERY PARTY

4.1 The Parties shall agree which Party shall be the Delivery Party for each of the Specific Works and Activities.

4.2 The Delivery Party in each case shall:

- (a) be responsible for the delivery of the Specific Works and Activities;
- (b) manage the delivery of the Specific Works and Activities as set out in any detailed specification for them;
- (c) provide adequate management and support staffing to administer the Works and Activities effectively;
- (d) appoint the Project Manager in accordance with Clause 5.2; and
- (e) be responsible for all financial management and administrative aspects of the Specific Works and Activities.

4.3 The Delivery Party in each case shall be the contracting party in respect of any contracts entered into with third parties (including but not limited to contractors and consultants) employed for the purpose of delivering the Specific Works and Activities and shall be responsible for all liabilities in respect of such contracts.

4.4 Any contracts let by the Delivery Party shall comply with the provisions of the Public Contracts Regulations 2015 (as amended) and the Public Contracts Directive 2014/24/EU.

5. WORKING ARRANGEMENTS

5.1 Each Party shall appoint a representative for the purposes of this Agreement who shall:

- (a) be responsible for the delivery of that Party's obligations under this Agreement;
- (b) use their reasonable endeavours to ensure that Programme is carried out and operated in a manner consistent with its objectives as described in the Specification; and
- (c) provide effective liaison between the Party and the other Party.

5.2 The Delivery Party in each case shall appoint a Project Manager who shall:

- (a) manage the day to day operational delivery of the Specific Works and Activities in accordance with this Agreement;
- (b) act as the first point of contact for the Delivery Party for all purposes in connection with the Specific Works and Activities;
- (c) provide effective liaison between the Delivery Party and the Authorising Party;
- (d) use reasonable endeavours to ensure that the Specific Works and Activities are carried out and operated in a manner consistent with its objectives as described in the detailed specification and the form completed (as in Schedule 3) for them; and
- (e) report on progress on the Specific Works and Activities to the Authorising Party.

6. PAYMENT AND FINANCIAL CONTRIBUTIONS

- 6.1 The Parties shall agree in writing by 31st March in each Year the rates for the following Year's Annual Programme to be used for the purposes of calculating Financial Contributions. Where Financial Contributions apply (as agreed between the Parties in respect of the Specific Works and Activities), they shall be recoverable on a reimbursement basis, based on records of actual time and costs incurred by reference to the agreed rates. Rates will include rates for any Staff, operatives and plant and equipment cost. In respect of the remainder of the financial year for the year in which this Agreement commences, the Parties shall agree the rates for that year prior to the commencement of this Agreement.
- 6.2 The Parties shall not be liable to make any Financial Contributions to the Programme unless and until:
- (a) the Parties have agreed in writing the Annual Programme (including rates referred to in clause 6.1) for the Year to which the sum relates (subject to any variations in accordance with clause 3.3);
 - (b) the Specific Works and Activities for which a Financial Contribution is sought have been agreed by the Parties; and
 - (c) the Parties have submitted correct and valid VAT invoices to the other Party along with such information as they may reasonably require to verify entitlement to payment in respect of the part or parts of the Works and Activities completed.
- 6.3 Each Party's Financial Contributions are exclusive of all Value Added Tax and all other taxes and duties, which if payable shall be payable by that Party from time to time levied upon its Financial Contributions at the then applicable rate.
- 6.4 Part of the Parties' respective Contributions towards the Programme during the Programme Period will be such Non-Financial Contributions as are agreed from time to time between them.
- 6.5 Financial Contributions and other resources allocated to the Programme by the Parties shall only be expended or committed in accordance with this Agreement unless otherwise agreed in writing by the Parties.
- 6.6 The Delivery Party shall be responsible for the financial management of any Specific Works and Activities it has agreed to carry out. Where the Parties have agreed that the Delivery Party will be reimbursed by the Authorising Party for all or part of its costs in delivering those Specific Works and Activities, the Delivery Party shall:
- (a) put in place appropriate financial management and auditing procedures for those Specific Works and Activities, in order to control expenditure and ensure that costs are properly incurred and can be clearly identified ;
 - (b) produce and deliver to the Authorising party a monthly progress report of financial activity as set out in Clause 3.7(d) ; and
 - (c) produce and deliver to the other Party by no later than 30th April in the Year immediately following the Year to which it relates a final account for that Year's Annual Programme setting out financial activity (this shall include as a minimum details of the same categories of financial activity as set out in Clause 3.7(d)).

6.7 Each Party shall, whenever reasonably required by the other Party provide that Party with access to any relevant financial records or other information as are required, in order for that Party to fulfil its audit requirements in respect of this Agreement. In the event that any additional costs are reasonably incurred by a Party as a result of the requirements of this Clause 6.7 then these shall be met separately by the Party requesting the records.

6.8 Each Party when acting as Delivery Party shall ensure that any third party contractor it engages has appropriate financial and auditing procedures in place to manage its commitments to the Works and Activities and Programme and shall ensure that it has complied with all relevant tax requirements in relation to its contribution.

7. PUBLICATION AND PUBLICITY

7.1 The Parties will not make statements in correspondence, publicity or publications on behalf of the other Parties in connection with the Programme or this Agreement without obtaining the other Party's consent to the content and wording.

7.2 Each Party shall, in all documents submitted or published in connection with the Programme, include an acknowledgement of the other Party's Contributions to the Programme.

7.3 Nothing in this Agreement in any way limits the Parties' respective rights to prepare independent reports on the Programme for internal or statutory use or use in compliance with its legal obligations.

8. CONFIDENTIALITY

8.1 The Parties acknowledge that they are each bound by the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and as such cannot undertake not to release information about the Programme or concerning this Agreement that conflicts with such laws.

8.2 Subject to Clause 8.1, the Parties will maintain as confidential all confidential information provided to it and will only disclose it to any third party where it is required to be disclosed by operation of law, statute or regulation or the order of any competent authority. This Clause will not apply where information has been obtained separately without confidentiality obligations, is already otherwise available, or was already developed by the receiving Party or known to the receiving Party without confidentiality obligations.

8.3 Each Party shall comply with the provisions of the Data Protection Act 1998 ("the DPA") as regards the collection and processing and security of any Personal Data (as defined in the DPA).

9. INTELLECTUAL PROPERTY RIGHTS

9.1 The Parties will not use or reproduce one another's logos or trade or business marks for any purpose without the other Party's prior consent in writing. Such consent will be operative as a non-transferable, non-exclusive, royalty free, terminable licence to the other Party, for the limited purposes of the Specific Works and Activities only.

9.2 All drawings, data, information, documents, models, designs and the copyright or similar protection in them and in any prototype which arise out of the Programme and any Works and Activities will belong to the originating Party. The originating Party grants a royalty-free licence to the other Party for it to use such material in furthering the Programme or Works and Activities as appropriate, and in connection with any future maintenance or repairs or the Works and Activities as appropriate, but such licences will not include commercial exploitation nor the right to sub-licence, and will not be transferable. The

originating Party will not be liable for the consequences of any use of such material by the other Party or a third party.

- 9.3 In circumstances where one Party carries out monitoring and surveying activities on behalf of the other, any documents, data and information and property rights in them shall from the time of creation be the property of the Party on whose behalf it is created or collected. The Party owning the rights grants a royalty-free licence to the Party carrying out the monitoring and survey work for it to use such material in furthering the Programme or Works and Activities as appropriate, but such licences will not include commercial exploitation nor the right to sub-licence, and will not be transferable. The originating Party will not be liable for the consequences of any use of such material by the other Party or a third party.

10. LIABILITY

- 10.1 Subject to Clause 10.5 and 10.6, the Delivery Party (“the Indemnifying Party”) shall indemnify the Authorising Party (“the Injured Party”), and their Staff against any Statutory Compensation and related claims, demands, actions, costs, expenses, losses and damage made or notified to the Authorising Party which flows from the negligence of the Delivery Party or anyone else for whom the Delivery Party is responsible.

- 10.2 Where:

- (a) the costs of any Specific Works and Activities which the Delivery Party will carry out are to be borne by the Delivery Party; and
- (b) subject to Clause 10.5 and 10.6;

the Delivery Party (“the Indemnifying Party”) shall indemnify the Authorising Party, and their Staff against all Statutory Compensation and other claims, demands, actions, costs, expenses, losses and damage made or notified to the Authorising Party (“the Injured Party”) and arising from or incurred by reason of the Delivery Party or its Staff in carrying out work under this Agreement.

- 10.3 Where:

- (a) the costs of any Specific Works and Activities which the Delivery Party will carry out are to be borne by the Authorising Party;
- (b) excluding any liability that falls within clause 10.1; and
- (c) subject to clause 10.5 and 10.6;

the Authorising Party (“the Indemnifying Party”) shall indemnify the Delivery Party (“the Injured Party”), and their Staff against all Statutory Compensation claims which it is liable to meet arising from or incurred by reason of the carrying out the Specific Work and Activities under this Agreement.

- 10.4 Where the costs of any Specific Works and Activities which the Delivery Party will carry out are to be shared between the Parties then :

- (a) excluding any liability that falls within clause 10.1; and
- (a) subject to clause 10.5 and 10.6;

the Parties shall share between them, in proportion to the amount of their financial contributions, the Statutory Compensation claims which the Parties are liable to meet arising from or incurred by reason of the Delivery Party carrying out those Specific Work and Activities.

- 10.5 A Party shall not seek to exclude or limit its liability for death or personal injury caused by its negligence or for fraudulent misrepresentation and in each case whether the same is by itself, its Staff or any other person for whom it is responsible.

- 10.6 Except as otherwise set out in this Agreement, and except where the following losses form part of a Statutory Compensation claim in relation to which either the Indemnified Party is indemnifying the Injured Party or it is shared between the Parties under clause 10.4, no Party shall be liable to another for:
- (a) loss of actual or anticipated profits or any economic loss, loss of revenue or loss of contract, whether direct or indirect; or
 - (b) indirect or consequential loss or damage;
- arising in connection with or out of its obligations under or arising out of this Agreement.
- 10.7 The indemnities given in clauses 10.1, 10.2 and 10.3 shall not cover the Injured Party to the extent that a claim under it results from the Injured Party's negligence or wilful misconduct.
- 10.8 If any third party makes a claim, or notifies an intention to make a claim, against the Injured Party which may reasonably be considered likely to give rise to a liability under this indemnity ("**Claim**"), the Injured Party shall:
- (a) as soon as reasonably practicable, give written notice of the Claim to the Indemnifying Party, specifying the nature of the Claim in reasonable detail;
 - (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Indemnifying Party (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Injured Party may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Indemnifying Party, but without obtaining their consent) if the Injured Party reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;
 - (c) give the Indemnifying Party and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Injured Party, so as to enable them to examine them and to take copies (at the Indemnifying Party's expense) for the purpose of assessing the Claim; and
 - (d) subject to the Indemnifying Party providing security to the Injured Party to the Injured Party's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Indemnifying Party may reasonably request to avoid, dispute, compromise or defend the Claim.
- 10.9 Nothing in clause 10.8 prevents the Injured Party from electing to give to Indemnifying Party the sole authority to avoid, dispute, compromise or defend the Claim if the law otherwise allows.
- 10.10 Nothing in this clause shall restrict or limit the Injured Party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under clauses 10.1, 10.2 and 10.3.

10.11 Subject to Clause 10.5, where the costs of any Specific Works and Activities which the Delivery Party will carry out have been agreed to be borne by the Authorising Party, the liability of the Delivery Party under clause 10.1 shall be limited to the amounts specified in 11.1, excepting any liability under clause 10.5 which shall be unlimited.

11. PROPERTY, MAINTENANCE AND INSURANCE

11.1 The [Board / Authority] shall maintain the following insurances with a reputable insurer which is based in the UK:

Public liability	£ 5 million (pounds sterling) per incident
Products liability	£ 5 million (pounds sterling) per incident and in aggregate per year
Employers liability	£10 million (pounds sterling) per incident and in aggregate per year
Professional indemnity	£2 million (pounds sterling) per incident and in aggregate per year

11.2 The Environment Agency meets its obligation to insure against losses mentioned in Clause 11.1 being self-insured in respect of liabilities arising under this Agreement.

11.3 The Parties shall maintain such insurances for a period of 6 (six) years after the end of the Programme Period.

11.4 The Parties shall maintain all records and documentation required for the implementation and operation of the Programme for a period of 6 (six) years following the completion of the Programme Period (however effected), including full and accurate accounts and records, together with supporting documentation, of:

- (a) all expenses and expenditure which were incurred in the Programme;
- (b) all Contributions (Financial and Non-Financial) actually made.

Each Party shall on request provide the other Party with such access to those records as may reasonably be required.

11.5 All property (which shall include intellectual property) issued by a Party to another Party in connection with the Programme shall remain the property of the first Party and shall only be used in the execution of the Programme. The receiving Party shall keep all such property in safe custody and good condition, set aside and shall return it to the first Party in good condition upon termination of this Agreement.

12. DEFAULT

A Party shall be in default if it:

- (a) fails to perform its obligations hereunder with reasonable skill, care, diligence and timeliness; or
- (b) is otherwise in breach of any provision of this Agreement.

13. TERMINATION

13.1 The Parties may terminate this Agreement by mutual consent:

- (a) at any time during the Programme Period;
- (b) during a Force Majeure Event that extends or is reasonably anticipated to extend for a period of more than 3 months

13.2 Any party shall on notice in writing to the other Party be entitled to terminate its participation in this Agreement in the event that it in its sole discretion (acting reasonably) is of the opinion that:

- (a) the other Party is in default and either the default is incapable of remedy or the other Party has failed to remedy such default within a reasonable period (as set out in a written notice to remedy such default) where that reasonable period shall be no less than one month, or;
- (b) to continue all or part of this Agreement does or will conflict with that Party's functions, powers, duties aims or objective or is otherwise inconsistent with its obligations as a public body (or may give such an appearance to third parties).

14. DISPUTE RESOLUTION

14.1 If any dispute or difference arises during the Programme Period, the Parties shall attempt to resolve it between their respective representatives.

14.2 If the Parties representatives are unable to resolve the dispute or difference within a reasonable period, the matter shall be referred to the Parties respective senior executives for resolution.

14.3 If pursuant to Clauses 14.2 the respective senior executives are unable to resolve the matter, the Parties shall consider referring the matter to mediation or any other method of Alternative Dispute Resolution that is appropriate in the circumstances and to which the Parties agree.

15. NOTICES

15.1 Any notice given under this Agreement shall be in writing and signed by or on behalf of the Party giving it. The address and fax numbers of the Parties for the purposes of this Clause may be updated in writing by the Parties from time to time.

15.2 Notice may be served

- (a) personally, in which case it shall be served at the time of delivery;
- (b) by pre-paid recorded delivery, in which case it shall be served two working days from the date of posting; or
- (c) by fax, provided evidence can be produced of a fax transmission report, in which case it shall be served on transmission where transmission takes place during normal working hours (9.00 to 5.00pm on Monday to Friday excluding public holidays in England) or, if transmission commences outside those working hours, then on the next day's working hours.

16. VARIATIONS

Any change or variation to this Agreement shall be effective only if in writing, signed by all Parties and annexed to this Agreement. Any change or variation to the Annual Programme, Works and Activities shall be effective only if in writing agreed by all parties.

17. STATUTORY OBLIGATIONS AND PERMISSIONS

17.1 The Parties shall each at their own expense comply, and procure that their Staff comply, with all applicable laws and regulations pertinent to their implementation of the Programme including without limitation all legislation in respect of health and safety, data protection, equality, prevention of corruption and freedom of information.

- 17.2 Each Party shall not unreasonably refuse to provide those permissions, licences, consents or approvals which are needed for the Programme and which are granted or issued by it.
- 17.3 This agreement is intended to enable the Parties to work cooperatively in delivering maintenance and similar work. The Delivery Party shall be responsible for operating within statutory constraints that apply to access and entry as provided in Clause 3.1. The Authorising Party will, as appropriate, authorise officers of the Delivery Party to exercise the powers of entry contained in the Water Resources Act 1991 or the Land Drainage Act 1991 and in accordance with the statutory Home Office Code of Practice on Powers of Entry 2015, as may be appropriate to the case for the purposes of carrying out the Specific Works and Activities. The Parties will set out arrangements for authority for individual officers for use of such powers of entry in the form completed for those Specific Works and Activities in a form substantially similar to that in Schedule 3. Where notices of entry are required, these will be served by the Authorising Party.
- 17.4 The Delivery Party shall ensure that in exercising the Authorising Party's powers of entry that its officers and contractors comply with the authority and any written guidance given to it by the Authorising Party and with any reasonable requirement of the Authorising Party relating to the power of entry.
- 18. HEALTH AND SAFETY**
- 18.1 The Parties agree that whilst working on the Programme on the premises of or under the direction of the other Party, their Staff shall be subject to the health and safety and security requirements of the other Party. The Parties will draw these requirements to the attention of the Staff who are working on the Programme. While working remotely, the Staff shall be subject to their own employer's health and safety policies on remote and home working.
- 19. ASSIGNMENT & SUB-CONTRACTING**
- 19.1 No Party shall be entitled to assign or otherwise transfer the whole or any part of its obligations under this Agreement (except in the case of assignment or transfer where for the purposes of reorganisation or transfer to a successor body or by operation of law) without the prior written consent of the other Party.
- 19.2 Any assignment, transfer or sub-contract entered into shall not relieve the Parties of any of their obligations or duties hereunder.
- 20. FORCE MAJEURE**
- 20.1 If a Party is affected by a Force Majeure Event then that Party shall be excused from performance of that obligation for the duration of the Force Majeure Event.
- 20.2 If a Party becomes aware of a Force Majeure Event they shall notify the other Party as quickly as possible giving, where possible, an estimate of its likely duration.
- 20.3 If the Force Majeure Event prevails for a continuous period in excess of three months the Parties shall enter into a bona fide discussion with a view to agreeing fair and reasonable alternative arrangements or agreeing to terminate the Agreement in accordance with Clause 13.
- 21. WAIVER**
- Failure by a Party to exercise or enforce any rights available to it, or any forbearance, delay or grant of indulgence, will not be construed as a waiver of its rights under this Agreement or otherwise.

22. SEVERABILITY

If any court, tribunal or other competent body having jurisdiction finds that any part of this Agreement is invalid, unlawful or unenforceable, then that part will be severed from the remainder of the Agreement, which will continue to be valid and enforceable to the fullest extent permitted by law, and the Parties shall negotiate in good faith to amend such part in such a way that, as amended, it is valid and lawful and enforceable.

23. THIRD PARTIES

23.1 Except as specified in this Agreement, nothing in this Agreement is intended to give any person other than the Parties any rights under the Contracts (Rights of Third Parties) Act 1999.

23.2 The terms of any sub-contract or arrangement by any Party with a sub-contractor or other third party shall be consistent with and shall ensure compliance with this Agreement, including all auditing and financial requirements.

24. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of England, and the Parties agree to submit to the exclusive jurisdiction of the courts of England regarding any claim or matter arising under this Agreement.

25. SURVIVAL

The provisions of Clauses 6 (Payment and Financial Contributions), 7 (Publicity and Publication), 8 (Confidentiality), 9 (Intellectual Property Rights), 10 (Liability), 11 (Property, Maintenance and Insurance), 14 (Dispute Resolution) and 21 (Waiver), 22 (Severability), 23 (Third Parties), 24 (Governing Law and Jurisdiction), and 25 (Survival) shall survive expiry or termination of this Agreement.

26. ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties in respect of the subject matter and supersedes all previous agreements, communications, representations and arrangements, whether written or oral.

27. COUNTERPARTS

This Agreement may be executed in any number of counterpart originals when executed shall be an original, and all the counterparts together shall constitute one and the same instrument.

AS WITNESS the hands of authorised signatories for the Parties hereby agree.

signed on behalf of:

Environment Agency

Signature:

Name:

Position:

signed on behalf of:

[relevant IDB or Local Authority]

Signature:

Name:

Position

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

“Agreement”	means this cooperation agreement between the Parties as set out herein and further detailed in Clause 1.4;
“Annual Programme”	means the outline annual programme of Works and Activities for each Year as agreed in accordance with Clause 3.3;
“Authorising Party”	means the risk management authority who is party to this Agreement who is authorising the Delivery Party to carry out Specific Works and Activities on its behalf, in any specific case
“Commencement Date”	means [2016];
“Completion Date”	means [201[];
“Confidential Information”	means data and information, including business, technical and other commercial information which may or may not have commercial value and which is by its nature confidential or is disclosed in conditions of confidence or which is identified by the disclosing Party as being confidential;
“Contributions”	means the Parties’ respective contributions to the Programme including the Financial Contributions and the Non-Financial Contributions;
“Delivery Party”	means the party carrying out or delivering the Specific Works and Activities as set out in Clause 4;
“Force Majeure Event”	means any event beyond the reasonable control of a Party (although not including any event arising from the act or omission of its sub-contractor or agent) that prevents or delays performance of its obligations under this Agreement;
“Financial Contributions”	means the financial contributions to be made by the Parties, where agreed in respect of Specific Works and Activities;
“Non-Financial Contributions”	means the Parties’ contributions in kind including (but not limited to) staff time, resources, facilities, equipment and rights in intellectual property, which are contributed to the Programme without charge;
“Party”/“Parties”	means a party to this Agreement and both of them;

- "Programme" means the Programme of Works and Activities as described in the Specification, and including each Annual Programme under this Agreement;
- "Programme Period" has the meaning set out in Clause 2.1;
- "Project Manager" means the person appointed by the Delivery Party to manage Specific Works and Activities;
- "Schedules" means Schedule 1 and Schedule 2 attached to these terms and conditions;
- "Specification" means the specification describing the Programme set out in Schedule 2;
- "Specific Works and Activities" means a set of identified Works and Activities that the Parties agree to deliver within an Annual Programme and as described in a form substantially similar to that in Schedule 3;
- "Staff" means the staff, employees, contractors, consultants, and agents of a Party engaged in carrying out that Party's obligations under this Agreement, and each of them;
- "Statutory Compensation" means any statutory compensation under section 173 and Schedule 20 or Section 177 and Schedule 21 of the Water Resources Act 1991 or under Section 14(5) and 64(4) of the Land Drainage Act 1991
- "Works and Activities" means any flood [or coastal] risk management activity carried out under the Programme;
- "Year" means any annual period from 1 April to the following 31 March falling during the Programme Period.
- 1.2 In this Agreement, unless otherwise expressly provided or unless the context otherwise requires:
- (a) reference to any statute, statutory provision or statutory instrument includes a reference to all rules and regulations made under it or them as from time to time amended, consolidated or re-enacted;
 - (b) words importing a gender include all genders, words importing the singular include the plural and vice versa;
 - (c) reference to any person includes a legal entity; and
 - (d) all undefined words and expressions are to be given their normal English meaning.
- 1.3 The headings in this Agreement are for ease of reference only and shall not affect its construction.
- 1.4 Nothing in this Agreement shall prejudice, conflict with or affect the exercise by the Parties of their statutory functions, powers, rights, duties, responsibilities or obligations arising or imposed under the Environment Act 1995 or any other legislative provision enactment, bye-law or regulation whatsoever, nor shall it fetter the exercise of any discretion or exercise of any policies.

- 1.5 Nothing in this Agreement shall operate as a statutory licence, waiver, consent or approval from the Parties
- 1.6 The Parties shall be independent parties for all purposes connected with this Agreement.
- 1.7 Nothing in this Agreement shall create a partnership or joint venture between the Parties, nor shall this Agreement constitute one Party as the agent of another, nor shall the employees, contractors or consultants of one Party be regarded as those of another. No Party shall have any authority to enter into any contract, warranty or representation on behalf of another or incur liabilities that bind or have the effect of binding another Party. No Party shall be bound by the acts or conduct of another.
- 1.8 No Party or its Staff shall represent themselves as having the authority to interpret the policies and procedures of any other Party.

SCHEDULE 2 - SPECIFICATION

The specification of Works and Activities included in this Agreement are described by the following :-

- a) Overall Scope of Works and Activities, as identified at commencement of Agreement or as varied in accordance with Clause 16
- b) Annual Programme comprising outline Works and Activities, to be reviewed annually or as otherwise agreed
- c) Specific Works and Activities agreed and confirmed in writing by the Parties prior to any expenditure or liability being incurred in accordance with Clauses 3.3 and 16

1.1 SCOPE OF WORKS AND ACTIVITIES

The Agreement includes but is not limited to the following types of Works and Activities (~~delete or add according to local requirement~~)

- Asset condition inspection
- Operational inspection
- System monitoring
- System operation
- Maintaining structures
- Grass cutting (Hand or mechanical)
- Tree Works
- Defence Repair
- Work on flood storage reservoir
- Obstruction removal / debris clearance
- Environmental management
- De silting and dredging
- Pumping operations
- Bank re-profiling / reinstatement
- Asset improvement works
- Transportation of plant
- Weed control (mechanical and chemical), pest/ vermin control.
- Support in managing a Flood Incident by carrying out any of the activities above

1.2 ANNUAL PROGRAMME OF WORKS AND ACTIVITIES

The Works and Activities of the outline Programme and each Annual Programme will be agreed by the Parties. These will set out the best information the Parties have at the time as to work undertaken in forthcoming year, to be agreed in outline form. This will also include annual rates as referred to in Clause 6.1 and, as far as it is known, work to be carried out by the Parties without charge in the coming year.

(Outline first year Annual Programme describing anticipated Works and Activities to be added where known).

1.3 SPECIFIC WORKS AND ACTIVITIES

Specific Works and Activities will be agreed and confirmed in writing by the parties before these proceed in a form substantially similar to that in Schedule 3 to the Agreement. This will include setting out

- who will deliver the Specific Works and Activities,
- who will be responsible for the costs of those Specific Works and Activities,
- confirming who will be responsible for Statutory Compensation in accordance with the Agreement

- the extent of authorised activity (for example use of powers of entry and setting out whether individual officers will be warranted and any guidance on use of powers and compliance with the Home Office Code of Practice on Powers of Entry 2015),
- whether any consents are required,
- any working practices or protocols to be adopted for the purposes of managing environmental or health and safety risks,
- and any further detail the Parties deem necessary in the form of a detailed specification.

(Requisitions for individual or collective Works and Activities are to be raised separately, not included in the Agreement but with reference to the Agreement)

SCHEDULE 3

PUBLIC SECTOR COOPERATION AGREEMENT (PSCA) FORM of Schedule for Specific Work or Activity

The following schedule must be

- a) agreed and signed by both parties before work commences;
- b) referred to throughout the works and activities; and
- c) checked and signed off by both parties on completion of works

The final cost of the works and activities and the efficiencies gained, need to be reported. Any issues and learning encountered may also be noted in order to inform future working between the parties.

Title of Specific Work or Activity	
PSCA between the Environment Agency (insert name of EA Area)	
and insert name of IDB / Local Authority RMA	
PSCA Ref. Number	
Authorising Party for these Works / Activities & Contact name	
Delivery Party for these Works / Activities (this is the Party who will undertake work / activity and manage H&S and Environmental matters) & Contact name	
Watercourse or defence or asset name	
Identify whether works are on Main River or Ordinary Watercourse or other local source or tidal /sea defence	
Location of Specific Work / Activity	
Description of Specific Work / Activity (State type of work and reference to any relevant documents)	

/drawings)	
Starting date and timescale for works or stages of works as appropriate	
<p>MAIN POWER AUTHORISED TO EXERCISE</p> <p>Which power(s) is the Authorising Party authorising the Delivery Party to use to carry out the Specific Works and Activities?</p>	<p><i>Set out the flood or coastal risk management function(s) which the Delivery party will be relying on in carrying out the specific works and activities. This should be the specific sections from legislation setting out the works powers or other relevant power. Consider if there will be more than one. Check whether the powers are Flood Risk Management powers (whether river or sea flooding etc) delegated under 13(4) or Coastal Protection powers that can be delegated section 13(8).</i></p>
Are there any limits, constraints or guidance that the Delivery Party must be aware of or follow when using this power?	
<p>POWER OF ENTRY / OTHER ANCILLARY POWERS</p> <p>Which power of entry is being used? (please state power in legislation relied upon)</p>	
Is authority for personal warrants required to be given by the authorising party?	
What additional guidance must be followed related to access, entry and record keeping, and compliance with the Code of Practice Generally? (reference to relevant documents, please attach copy)	
Are notices of entry required to be served? These should always be served by the Authorising Party. What are the arrangements to liaise over this?	
Are there any other ancillary powers to take into account?	

<p>H&S</p> <p>Is the Work classed as construction under CDM Regs?</p>	
<p>If the CDM Regs apply specify which party (ies) have the dutyholder roles as the :</p> <p>a) Client</p> <p>b) Designer(s)</p>	<p>a) .</p> <p>b) .</p>
<p>What hazard or other H&S information is available and who is providing this?</p>	
<p>ENVIRONMENTAL</p> <p>What environmental constraints or opportunities apply, is there guidance that should be followed and who is providing this information?</p> <p>(reference to relevant documents, please attach copy)</p>	
<p>Are particular assessments required in order to comply with the Authorising Body's environmental and conservation duties?</p>	
<p>CONSENTS</p> <p>What consents and permits and permissions are required for works?</p>	
<p>Who is securing consents?</p>	
<p>FINANCIAL</p> <p>Which party or parties are funding this work?</p>	
<p>What rates are being used for this work?</p>	
<p>What is estimated cost?</p>	
<p>Reports on progress and invoices for interim payments will be made monthly, with final costs and invoices submitted promptly</p>	

<p>at the conclusion of the work or activity.</p> <p>Does the Authorising party want updated estimates of costs from the Delivery Party as works progress? If so please indicate the frequency of providing estimates.</p>	
<p>COMPENSATION & LIABILITY</p> <p>Set out which party is responsible for planned compensation to landowners or third parties? Check clauses 10.1, 10.2 and 10.3 of the Agreement for your answer. If clause 10.3 applies you need to set out the proportions in which compensation will be shared between the Parties for these Specific Works and Activities, if any arises.</p>	
<p>OTHER INFORMATION</p> <p>Any other information relevant to these works / activity?</p>	
<p>PRE WORKS SIGNATURES</p>	
<p>Environment Agency</p> <p>Name Position Signature Date</p>	
<p>IDB / Local Authority RMA</p> <p>Name Position Signature Date</p>	
<p>POST WORKS</p>	
<p>What was final cost?</p>	

Did works achieve expected outcome?	
Were there any variations to expected works? If so, describe them	
Did Works achieve value for money and what was estimated efficiency value (%) or other benefit	
Any lessons learned for future use on this type of works	
POST WORKS SIGNATURES	
Environment Agency Name Position Signature Date	
IDB / Local Authority RMA Name Position Signature Date	

FINAL MARCH 2016