



DATED

2019

- (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: [] 2019

Completion Date: [] 20[]

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THIS AGREEMENT is made the day of **2019**

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 secure the delivery of the Services pursuant to 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 the Services 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 the 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.

In the case of ambiguity or conflict between any of the foregoing, these terms and conditions (including any formally agreed variation thereof) will take precedence.

2. DURATION

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

3. THE PARTIES' OBLIGATIONS

3.1 From the Commencement Date each Party will authorise the other to carry out the Services on its behalf. The Party ("the Delivery Party") acting under the authority of the other ("the Authorising Party") will be required to deliver the Services 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 will be agreed in outline on an annual basis, and confirmed in detail from time to time in advance of the Services 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 Services from time to time, they will use a form substantially the same as the form attached at Schedule 3 which shall set out:
 - (i) the extent to which Clause 3.1 is to apply for those Services
 - (ii) how they intend to allocate liability for Statutory Compensation between them in circumstances where the costs of Services are shared between them in accordance with Clause 10.4 of this Agreement; 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, relevant services, 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 the Services. Confirmation of the specific Services to be included 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 and in particular the requirements set out in the Specification, in a timely manner.
- 3.5 The Parties shall each:
 - (a) make any Contributions promptly (with any Financial Contributions being paid on or before the due date where such a date has been specified)
 - (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 or address them promptly; and
- 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 the delivery of any agreed Services in the Programme, or of any situation or event that may affect the ability of a Party to make its Contributions or any of them. The provision of information under this Clause shall not in itself release or excuse that Party from any of its obligations under this Agreement.
- 3.7 The Delivery Party shall provide the other Party with progress reports on the activities on any Services undertaken during the previous calendar month, which reports shall be provided to the other Party within five business days of the end of the month and which shall include:
 - (a) details of progress, risks and issues encountered with the Services;

- (b) details of any proposed changes to the manner in which the Services 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 Services, details of the time spent on those Services; and
- (d) insofar as the expenditure referred to in 3.7(c) relates to specific Services 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 Services

4. DELIVERY PARTY

- 4.1 Before any Services are carried out under this Agreement the Parties shall agree which Party shall be the Delivery Party for each of the Services.
- 4.2 The Delivery Party in each case shall:
 - (a) be responsible for the delivery of the Services;
 - (b) manage the delivery of the Services as set out in any detailed specification for them;
 - (c) provide adequate management and support staffing to administer the Services 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 Services.
- 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 Services 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.
- 4.5 The following provisions apply where the Programme includes a construction project as identified in the CDM Regulations
 - (a) The Delivery Party shall be treated for the purposes of the CDM Regulations as the only client in relation to the Programme

- (b) The Delivery Party shall perform its client duties in accordance with the CDM Regulations and in doing so shall ensure that it has available to it all the resources and expertise necessary to perform its client duties and shall have regard to the Health and Safety Executive's guidance document L153 'Managing Health and Safety In Construction (including any amendment or replacement from time to time)
- (c) In this clause 4.5, the expressions 'client' and 'client duties' shall have the same meanings as in the CDM Regulations

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 Services in accordance with this Agreement;
- (b) act as the first point of contact for the Delivery Party for all purposes in connection with the Services;
- (c) provide effective liaison between the Delivery Party and the Authorising Party;
- (d) use reasonable endeavours to ensure that the Services 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 Services 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 Services), 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 Services for which a Financial Contribution is sought have been agreed by the Parties; and
 - (c) the Party performing the Services has submitted correct and valid VAT invoices to the other Party along with such information as the other Party may reasonably require to verify entitlement to payment in respect of the part or parts of the Services completed.
- 6.3 Each Party's Financial Contributions shall be 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 Services 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 Services, the Delivery Party shall:
- (a) put in place appropriate financial management and auditing procedures for those Services, 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 a final account for the immediately preceding 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 other Party with access to any relevant financial records or other information as are required, in order for that other 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 such access.

- 6.8 Each Party when acting as Delivery Party shall ensure that any third party contractor which it engages has appropriate financial and auditing procedures in place to manage its commitments to the services which it is providing pursuant to the Services and the 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 any statement in correspondence, publicity or publications on behalf of the other Parties in connection with the Programme or this Agreement without first obtaining the other Party's consent to the content and wording of such statement.
- 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 are not in a position to 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 under 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).
- 8.4 In the event that the Programme requires data to be processed within the meaning of the Data Protection Legislation the provisions of the Data Protection Schedule and the definitions therein shall apply. With respect to compliance with the Data Protection Legislation only and in the event of a conflict between the terms in the body of this Agreement and the Data Protection Schedule, the terms of the Data Protection Schedule shall take precedence

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Parties will not use or reproduce the other Party'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 Services 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 Services 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 Services as appropriate, and in connection with any future maintenance or repairs or the Services 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 any information obtained as a result of such activities shall from the time of creation be regarded as the property of the Party on whose behalf it is created or collected. The Party which owns the rights to such information hereby grants a royalty-free licence to the Party carrying out the monitoring and survey work for it to use such information for the purpose of furthering the Programme or Services as appropriate, but such licences will not entitle such Party to use such information for commercial exploitation nor give any 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 shall indemnify the Authorising Party and their Staff against any claim for Statutory Compensation and any 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 the costs of any Services which the Delivery Party will carry out are to be borne by the Delivery Party and subject to Clause 10.5 and 10.6, the Delivery 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 and arising from or incurred by reason of the Delivery Party or its Staff in carrying out work under this Agreement.
- 10.3 Not including any liability under Clause 10.1 and subject to Clauses 10.5 and 10.6, where the costs of any Services to be carried out by the Delivery Party are to be borne by the Authorising Party shall indemnify the Delivery Party and their Staff against all claims for Statutory Compensation arising from or incurred by reason of the carrying out of the Services under this Agreement
- 10.4 Not including any liability under Clause 10.1 and subject to Clauses 10.5 and 10.6, where the costs of any Services to be shared between the Parties, then the Parties shall share between them in proportion to the amount of their Financial

Contributions any amount arising from any claim for Statutory Compensation arising from or incurred by reason of the Delivery Party carrying out the Services

- 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 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 Delivery Party is indemnifying the Authorising 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 Authorising Party to the extent that any claim relates to any loss or injury results from the Authorising Party's negligence or wilful misconduct.
- 10.8 If any third party makes a claim, or notifies an intention to make a claim, against a Party which claim may reasonably be considered likely to give rise to a liability under this indemnity the Party receiving the claim shall:
- (a) as soon as reasonably practicable, give written notice of the claim to the other 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 other Party (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Party which is in receipt of the claim may settle the claim (after giving prior written notice of the terms of settlement) to the extent legally possible to the other Party, but in the absence of the other Party's consent) if the Party reasonably believes that failure to settle the claim would be prejudicial to it in any material respect;
 - (c) give the other 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 Party which has received the claim, so as to enable that other Party 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 other Party providing security to the Party which has received the claim to the Injured Party's reasonable satisfaction, 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 Party which has received the claim from electing to give to the other Party the sole authority to avoid, dispute, compromise or defend the claim if the law otherwise allows.
- 10.10 Nothing in this clause 10 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 Services 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 for death or personal injury which shall be unlimited.

11. PROPERTY, MAINTENANCE AND INSURANCE

- 11.1 Each Party which is to be a Delivery Party under this Agreement (other than the Agency, which in this regard shall be subject to the provisions of Clause 11.2) 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 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 which are subject to Clause 11.1 shall maintain such insurances in force throughout the Programme Period and 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 in relation to the subject matter of this Agreement 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 addresses 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

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 Programme, or the Services 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 applicable 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 Services. The Parties will set out arrangements for authority for individual officers for use of such powers of entry in the form completed for those Services 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/Local Authority/Navigation 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 ;
“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 Services on its behalf, in any specific case
“Authority Personnel”	Means all directors, officers, employees, agents, consultants and contractors of the Authority/Board and/or any contractor engaged in the performance of obligations under this Agreement or in relation to the Programme
“CDM Regulations”	means the Construction (Design and Management) Regulations 2015
“Commencement Date”	means [2019];
“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;
“Data Protection Legislation”	means (i) the General Data Protection Regulation (Regulation (EU) 2016/679 (“GDPR”), the Law Enforcement Directive (Directive (EU) 2016/680) (“LED”) and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 1998 (“DPA 1998”) AND/OR THE Data Protection Act 2018 (“DPA 2018”) to the extent that it relates to processing of personal data and privacy (iii) all applicable Law about the processing of personal data and privacy

“Data Protection Schedule”	means Schedule 4 attached to this Agreement describing how the Parties will comply with the Data Protection Legislation
“Delivery Party”	means the party as identified under Clause 4.1
"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 the Services
“Law”	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Authority is bound to comply
“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”	means a party to this Agreement and the term “Parties” shall mean both or all 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
“Project Manager”	means the person appointed by the Delivery Party to manage Specific Works and Activities;
“Schedules”	means Schedules 1, 2, 3 and 4 attached to these terms and conditions:
“Services”	means a set of identified works, activities and services that the Parties agree to deliver within an Annual Programme and means any flood [or coastal] risk management activity carried out under the Programme as described in a form substantially similar to that in Schedule 3
“Specification”	means the specification describing the Programme set out in Schedule 2;

"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;
"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 Services included in this Agreement are described by the following:-

- a) Overall Scope Services, as identified at commencement of Agreement or as varied in accordance with Clause 16
- b) Annual Programme comprising outline Services, to be reviewed annually or as otherwise agreed
- c) Services 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 SERVICES

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

Suitable works for a PSCA

- 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)
- Support in managing a Flood Incident
- Recovery works following an incident

Suitable services for a PSCA

Asset condition inspection, to include:-

- Asset inspection
- Bridge inspection
- CCTV survey

Pre-works activities, to include:-

- Topographical survey
- Ecological survey
- Issuing of notices of entry served by Authorising Party

- Pre-works engagement
- Design

1.2 ANNUAL PROGRAMME OF SERVICES

The Services within 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 Services to be added where known).

1.3 SERVICES

Services 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 Services
- who will be responsible for the costs of those Services,
- 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. To include confirmation of environmental screening and implementation of all post screening requirements.
- and any further detail the Parties deem necessary in the form of a detailed specification.

(Requisitions for individual or collective Services 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 Services**

The following schedule must be

- a) agreed and signed by both parties before work commences;
- b) referred to throughout the services; 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 EA/IDB/LA/NA (insert name)	
and EA/IDB/LA/NA (insert name)	
CPA Number (EA agreements only)	
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	

<p>Description of Specific Work / Activity (State type of work and reference to any relevant documents including environmental standards, specifications and drawings)</p>	
<p>Starting date and timescale for works or stages of works as appropriate</p>	
<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 Services?</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 services. 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>
<p>Are there any limits, constraints or guidance that the Delivery Party must be aware of or follow when using this power?</p>	<p><i>E.g. legal environmental duties EA 1995 s6/7, NERC s40, WCA 1991, WFD/Hab Regs/Eel Regs, LDA 91 s60.</i></p>
<p>POWER OF ENTRY / OTHER ANCILLARY POWERS</p> <p>Which power of entry is being used? (please state power in legislation relied upon)</p>	
<p>Is authority for personal warrants required to be given by the Authorising Party?</p>	
<p>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)</p>	
<p>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?</p>	

<p>Are there any other ancillary powers to take into account?</p>	
<p>H&S Is the work classed as construction under CDM Regs 2015?</p>	
<p>If the CDM Regs apply specify which party (ies) have the duty holder roles as the :</p> <p>a) Client b) Designer(s)</p>	<p>a) . b) .</p>
<p>What hazard or other H&S information is available and who is providing this?</p>	
<p>Will Risk Assessments & Method Statements (RAMS) be prepared to reflect the extent & specification of the works? If the works are classed as construction under CDM Regs 2015 will a Construction Phase Plan (CPP) be produced?</p>	
<p>ENVIRONMENTAL Has environmental screening been under taken? What environmental constraints or opportunities have been identified? Is there guidance that should be followed and who is providing this information? (Attach any relevant documents including screening records)</p>	
<p>Are particular assessments required in order to comply with the Authorising Parties environmental and conservation duties or requirements?</p>	<p><i>e.g. Flood & Coastal Risk Management – conserving, enhancing and restoring biodiversity 634_08</i></p>
<p>CONSENTS What consents and permits and permissions are required for works?</p>	

Who is securing consents?	
FINANCIAL Which party or parties are funding this work?	
What rates are being used for this work?	
What is estimated cost?	
<p>Reports on progress and invoices for interim payments will be made monthly, with final costs and invoices submitted promptly 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>	
Will AIMS Planning be used to raise the contract & record the costs?	
<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>	
PRE WORKS SIGNATURES	
Environment Agency	

Name Position Signature Date	
IDB/LA/NA Name Position Signature Date	
POST WORKS	
POST WORKS	
What was final cost?	
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/LA/NA Name Position Signature Date	

SCHEDULE 4 – DATA PROTECTION SCHEDULE

The **Agency** and the Authority have entered into an Agreement in respect of [...] whereby personal data will be processed by the Authority on behalf of the Agency and accordingly a data processor agreement is required.

Definitions:

In addition to the definitions contained in Schedule 1 of this Agreement, the following further definitions apply to this Schedule 4

Annex 1 Annex 1 to this Schedule 4

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer: takes the meaning given in the GDPR.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Processor in relation to the Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

Processor Personnel: Means all directors, officers, employees, agents, consultants and **[INSERT]**s of the Processor and/or of any Sub-Contractor or Sub-Processor engaged in the performance of the Processor's obligations under this Contract.

Protective Measures: appropriate technical and organisational measures which may include but not limited to: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

Sub-processor: any third Party appointed to process Personal Data on behalf of the Processor related to the Contract.

Total Claim Losses: means the total claim losses for any claim comprising both Parties' reasonable costs of paying for lawyers and other experts to defend the claim; any Losses, damages or other monetary compensation or fines awarded as a result of the claim; and any third party legal costs that either party is required to pay as a result of the claim.

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Agency is the [Processor/Controller] and the Authority is the [Processor/Controller] unless otherwise specified in Annex 1. The only processing that the Processor is authorised to do is listed in Annex 1 by the Controller and may not be determined by the Processor.
- 1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
 - (a) process that Personal Data only in accordance with Annex 1, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;

- (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that :
- (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Annex 1);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the UK or EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

- (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
 - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
- 1.5 Subject to clause 1.6, the Processor shall notify the Controller immediately if it:
 - (a) receives a Data Subject Request (or purported Data Subject Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 1.6 The Processor's obligation to notify under clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
 - (a) the Controller with full details and copies of the complaint, communication or request;

- (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 1.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Schedule such that they apply to the Sub-processor; and

- (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 1.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 1.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 1.15 Where the Parties include two or more Joint Controllers as identified in Annex 1 in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Annex 2 in replacement of Clauses 1.1-1.14 for the Personal Data under Joint Control.
- 1.16 The Processor shall comply with any further written instructions with respect to processing by the Controller. Any such further instructions shall be incorporated into this Contract once agreed in writing.
- 1.17 If financial penalties are imposed by the Information Commissioner's Office ("**ICO**") on either the Controller or the Processor for a Data Loss Event ("**Financial Penalties**") then the following will occur:
- (a) If the Controller is responsible for the relevant breach, in that it is caused as a result of the actions or inaction of the Controller, its employees, agents, contractors or systems and procedures controlled by the Controller, then the Controller will be responsible for the payment of such Financial Penalties. In this case, the Controller will conduct an internal audit and engage at its reasonable cost when necessary, an independent forensic investigator or a PCI forensic investigator as the case may be, to conduct an audit of any such data incident. The Processor will provide to the Controller and its forensic investigators and

- (b) auditors, on request and at the Processor's reasonable cost, full cooperation and access to conduct a thorough audit of such data incident.
 - (c) If the Processor is responsible for the relevant breach, in that it is not a breach that the Controller is responsible for, then the Processor will be responsible for the payment of these Financial Penalties. The Controller will provide to the Processor and its forensic investigators and auditors, on request and at the Processor's sole cost, full cooperation and access to conduct a thorough audit of such data incident.
 - (d) If responsibility is unclear, then the Controller and the Processor will work together to investigate the relevant data incident and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the data breach can be apportioned.
- 1.18 If either the Processor or the Controller is the defendant in a legal claim brought by a third party in respect of a Data Loss Event, then unless the parties otherwise agree, the party that is determined by the final decision of a court of competent jurisdiction ("**Court**") or the ICO to be responsible for the breach shall be liable for the Total Claim Losses arising from such breach. Where both Parties are liable the liability will apportioned between the Parties in accordance with the decision of the Court or the ICO, as the case may be in respect of any losses, cost claims or expenses incurred by either Party as a result of a Data Loss Event:
- (a) if the Controller is responsible for the relevant breach, then the Controller will be responsible for the Total Claim Losses.
 - (b) if the Processor is responsible for the relevant breach, then the Processor will be responsible for the Total Claim Losses: and
 - (c) if responsibility is unclear, then the Controller and the Processor will be responsible for the Total Claim Losses equally.

Annex 1 - Schedule of Processing, Personal Data and Data Subjects Processing, Personal Data and Data Subjects

This Annex shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are:

[INSERT CONTACT DETAILS]

2. The contact details of the Processor's Data Protection Officer are: **[Insert Contact details]**

3. The Processor shall comply with any further written instructions with respect to processing by the Controller.

4. Any such further instructions shall be incorporated into this Annex 1.

Description	Details
Identity of the Controller and Processor	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Agency is the Controller and the Contractor is the Processor in accordance with Clause 1.1.</p> <p>[Guidance: You may need to vary this section where (in the rare case) the Agency and Contractor have a different relationship. For example where the Parties are Joint Controller of some Personal Data:</p> <p><i>“Notwithstanding Clause 1.1 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of:</i></p> <p>[Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]</p> <p><i>In respect of Personal Data under Joint Control, Clause 1.1-1.15 will not apply and the Parties agree to put in place a Joint Controller Agreement as outlined in Annex 2 instead.”</i></p>
Subject matter of the processing	<p><i>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</i></p> <p><i>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]</i></p>
Duration of the processing	<p><i>[Clearly set out the duration of the processing including dates]</i></p>

<p>Nature and purposes of the processing</p>	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
<p>Type of Personal Data being Processed</p>	<p><i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i></p>
<p>Categories of Data Subject</p>	<p><i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i></p>
<p>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p><i>[Describe how long the data will be retained for, how it be returned or destroyed]</i></p>