
PUBLIC SECTOR COOPERATION AGREEMENT (PSCA) – THE VEHICLE FOR CLOSER PARTNERSHIP WORKING ON MAINTENANCE AND SIMILAR ACTIVITIES

Summary

The Public Sector Cooperation Agreement (PSCA) provides arrangements for the Environment Agency (EA) and an Internal Drainage Board (IDB), Lead Local Flood Authority (LLFA), District Council (DC) or other Risk Management Authority (RMA) to deliver flood risk maintenance works and similar activities by a partnership approach. This is a major step forward in securing efficient work practices at a local level. The agreement places both parties on a sound legal basis to deliver work as agreed – either party may undertake work for the other. PSCAs ensure consistency of approach to partnership working across the country and should be considered the first approach before bespoke agreements for individual works are pursued.

The first PSCA was signed in October 2013. By February 2016, EA have 45 PSCAs in place comprising 42 with IDBs, 1 with a County Council, 1 with a District Council and 1 with a Navigation Authority. 25 others are currently in development and EA intend to agree additional PSCAs where there are potential benefits.

The Benefits of PSCAs

Based on section 13(4) of the Floods and Water Management Act, a PSCA can cover any maintenance or similar activity such as inspections, obstruction removal, weed control, grass cutting, tree work, vermin control, dredging, pump operation etc. It also provides for mutual RMA support in managing flood incidents. In some cases it can be used for capital asset improvement or replacement works.

Benefits to a PSCA include:

- Securing efficient local working arrangements which will achieve value for money in delivering operational maintenance activities.
- Taking advantage of local skills and experience including local knowledge of geography, associated river/ drainage systems and operational practices, to benefit local communities.
- Sound legal basis for either party to undertake work for the other party , as agreed
- Having flexible partnership working arrangements. Agreements typically cover a period of up to 5 years, with annual reviews to discuss/agree the specific extent of activities to be carried out under the PSCA.
- Standardised documents which are simple to apply to local needs.

PSCA Documents

A guidance document and national template agreement were initially developed in 2013 by the Environment Agency, Association of Drainage Authorities (ADA) and pilot IDBs – Black Sluice, Trent Valley, Lindsey Marsh, Upper Witham, Witham 1st and 3rd. Taking account of subsequent user feedback , these documents have been revised and improved as follows.

[PSCA AGREEMENT TEMPLATE – updated March 2016](#)

[PSCA USER GUIDE – updated March 2016](#)



Changes in the updated documents include:-

- Documents now provide for EA/Local Authority RMA agreements as well as EA/IDB agreements
- Now cover coastal/ tidal as well as inland works with greater clarity
- Revised clauses in agreement template regarding insurance and indemnity
- Schedule 3 added, to help clarify roles and responsibilities for specific items of work / activity undertaken under the PSCA
- User Guide extended to cover both setting up a PSCA and good practice in its use.

All new PSCAs will use the new national template format. Existing PSCAs will be varied to the new template format this summer to ensure national consistency, but can continue to be used until the variation occurs.

The documents are available on the EA Easinet pages and on the ADA website. The documents can also be obtained directly from Ian Russell, who will set up all EA new agreements and oversee the variations to existing PSCAs.

Use of the PSCA

The wide range of works completed to date under PSCAs has included weed control, grass cutting, dredging, tree/bushing works, vermin control, obstruction removal, bank repairs and incident response during December 2013, January 2014 and December 2015 events.

The total value of work in 2013/14 was approximately £65k when there were few PSCAs in place. For 2014/15 the total value was over £600k. Further works are ongoing this financial year and the total value is expected to rise significantly in future years as more PSCAs are developed and opportunities for efficiency gains fully explored. The majority of work to date has been funded by EA and undertaken by IDBs on EA main rivers. EA has undertaken some works for IDBs and there is scope to do more of this work, either for IDBs or other RMAs.

The aim is for EA to put in place PSCAs with all IDBs and Local Authority RMAs where there are potential benefits and efficiency savings.

Environment Agency operations teams will annually share future maintenance plans with relevant IDBs and other partners who are encouraged to share their plans also. Building positive working relationships and having open discussion on future work provide the key to identifying PSCA opportunities for successful partnership working. In some cases, considering joint funding, where funding by one party alone is an issue, may unlock the route to additional work.

The long term potential benefits of PSCAs are considerable and will increase with time. The PSCA objective is to achieve savings and additional works which contribute to EA's overall 15% efficiency target. Equally, there is scope for efficiency gains by other partner RMAs. The overall benefit is that PSCA working can result in efficiency gains being recycled into additional works for either RMA party and the communities we serve.

If you would like to discuss setting up a PSCA or require further information, please contact Ian Russell at Environment Agency, Waterside House, Waterside North, Lincoln, LN2 5HA, or at ian.russell@environment-agency.gov.uk

Ian Russell
Environment Agency / ADA Partnerships Manager
March 2016



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[]

INDEX

CLAUSE

ITEM

1.	AGREEMENT
2.	DURATION
3.	THE PARTIES' OBLIGATIONS
4.	DELIVERY PARTY
5.	WORKING ARRANGEMENTS
6.	PAYMENT AND FINANCIAL CONTRIBUTIONS
7.	PUBLICATION AND PUBLICITY
8.	CONFIDENTIALITY
9.	INTELLECTUAL PROPERTY RIGHTS
10.	LIABILITY
11.	PROPERTY, MAINTENANCE AND INSURANCE
12.	DEFAULT
13.	TERMINATION
14.	DISPUTE RESOLUTION
15.	NOTICES
16.	VARIATIONS
17.	STATUTORY OBLIGATIONS AND PERMISSIONS
18.	HEALTH AND SAFETY
19.	ASSIGNMENT & SUB-CONTRACTING
20.	FORCE MAJEURE
21.	WAIVER
22.	SEVERABILITY
23.	THIRD PARTIES
24.	GOVERNING LAW AND JURISDICTION
25.	SURVIVAL
26.	ENTIRE AGREEMENT
27.	COUNTERPARTS
SCHEDULE 1	DEFINITIONS AND INTERPRETATION
SCHEDULE 2	SPECIFICATION
SCHEDULE 3	FORM FOR WORKS AND ACTIVITIES

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

PSCA USER GUIDE

User Guide to the Standard Form Public Sector Cooperation Agreement (PSCA) between the Environment Agency and a Risk Management Authority to undertake flood or coastal risk management work

This guide describes how to set up and use the standard form Public Sector Cooperation Agreement between the Environment Agency and other risk management authorities for carrying out flood risk management maintenance works and similar activities (and in some cases coastal risk management maintenance works as well).

The standard form of Public Sector Cooperation Agreement (PSCA) enables the Environment Agency to work with an Internal Drainage Board (IDB) or other risk management authority so that they can undertake works and other activities on behalf of each other. The Environment Agency and Association of Drainage Authorities (ADA) have agreed the template agreement document and guidance note but these arrangements can similarly be used with other risk management authorities, subject to that authority being willing to accept these terms.

PSCAs should always be considered as first approach before bespoke agreements for individual works are pursued.

If you are considering setting up a PSCA, please contact the Partnerships Manager, Ian Russell, in the first instance @ ian.russell@environment-agency.gov.uk.

This guide is in 2 parts:-

PART A - Guidance on setting up a Public Sector Cooperation Agreement

This gives the background, legal basis and objectives for PSCA partnership working and explains the mandatory conditions that must be met for a PSCA to be established. It also describes the checks and the level of evidence that the Environment Agency will require before setting up an agreement. The prospective partner risk management authority may also ask for checks and evidence from the Environment Agency. The PSCA is a framework agreement for cooperation so that works and activities can be carried out in future, under the overall framework. Specific authority then needs to be given for specific works and activities to be carried out (see Part B). Part A also gives advice on some common questions on setting up a PSCA.

PART B - Guidance on using a Public Sector Cooperation Agreement

Once a PSCA is entered into, the Parties will normally agree an annual outline programme of work to deliver under the PSCA. Part B explains how to do this, and what you need to do to agree and record the details of the specific works and activities that are delivered under the agreement. It includes a flowchart to help determine whether a particular item of work or activity is suited to being carried out under a PSCA and also gives advice on some common questions

PART A - Guidance on setting up a Public Sector Cooperation Agreement

Operating authorities are encouraged to improve working arrangements to achieve optimal use of available resources and improved management of flood risk and coastal erosion. Section 13 of the Flood and Water Management Act 2010 (FWMA) places duties on risk management authorities to cooperate and share information. Under section 13(4) of that Act, “a risk management authority may arrange for a flood risk management function to be exercised on its behalf by another public sector risk management authority”. A risk management authority (Section 6(13)) is:

- a) The Environment Agency,
- b) A lead local flood authority,
- c) A district council for an area for which there is no unitary authority,
- d) An internal drainage board,
- e) A water company,
- f) A highway authority.

For coastal areas, under section 13(8) FWMA “The Environment Agency...may arrange for a coastal erosion risk management function to be exercised on its behalf by--

- a) a coast protection authority,
- b) a lead local flood authority, or
- c) an internal drainage board.”

Arrangements under s.13(4) and s.13(8) FWMA can be made using an agreement of “cooperation between public bodies”, subject to satisfying the objectives and conditions in the list below to ensure that procurement laws are complied with and there is no distortion of the commercial market place. Early consultation with the local procurement and legal teams is essential to securing a successful agreement.

We have designed these agreements so that maintenance works and similar activities can be carried out by one risk management authority on behalf of another. We anticipate that these arrangements will be used to authorise the Environment Agency to carry out work on an ordinary watercourse or for an IDB or a local authority to carry out work on a main river or to address sea flooding or coastal erosion. The type of work expected to be carried out under these agreements includes the following:

- 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
- 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

- Obstruction removal / debris clearance

Incident by carrying out any of the activities above

Objectives of PSCAs

- To secure benefits of public sector bodies working together in cooperation based on the provisions in section 13(4) and 13(8) of the Flood and Water Management Act 2010 (FWMA)
- To secure efficient local working arrangements which will achieve value for money in delivering operational maintenance or similar 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 on an outline programme of maintenance and similar activities. It is suggested that agreements may cover a period of up to 5 years with annual reviews to refine the specific extent of activities to be carried out

These agreements have been developed by the Environment Agency in partnership with ADA for use with IDBs initially, but we expect that the arrangements will also be used with other public sector risk management authorities. We do not at this stage plan to roll out the use of these agreements with water companies, which are privatised, due to procurement laws. But if you are considering an arrangement with a water company, speak to your legal team who can advise.

Conditions for a cooperation arrangement to be established

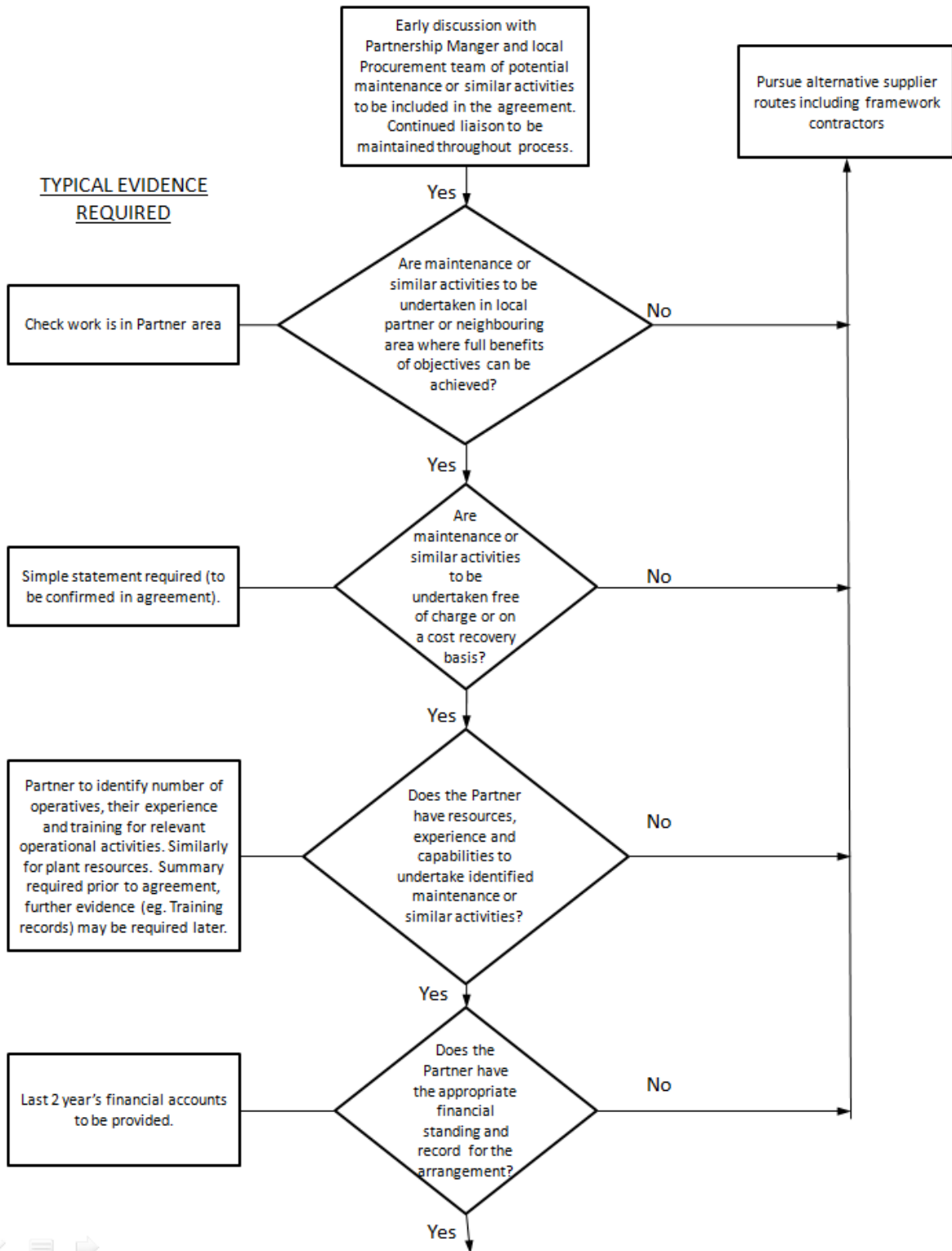
- The Environment Agency and the risk management authority, as public bodies and partners in the proposed arrangement, should have common aims and secure the shared performance of common tasks; they will be joint participants in the arrangement.
- The arrangement is a framework of genuine cooperation involving mutual rights and obligations, and the partners will be able to demonstrate mutual benefits.
- Because the arrangement is for the carrying out of common tasks, the kinds of tasks not normally undertaken by one partner could not be carried out by them under this arrangement on behalf of the other partner.
- The maintenance works or similar activities under the arrangement shall be carried out either free of charge or at cost (and not for profit). Any reimbursement will be of actual costs corresponding to the carrying out of the activity. Costing models will be fully transparent.
- Maintenance works or similar activities should usually be carried out in-house using the partner's own equipment and staff resources. If a third party is engaged to carry out works or services, the delegate authority (the Delivery Party) must procure works or services using transparent procurement

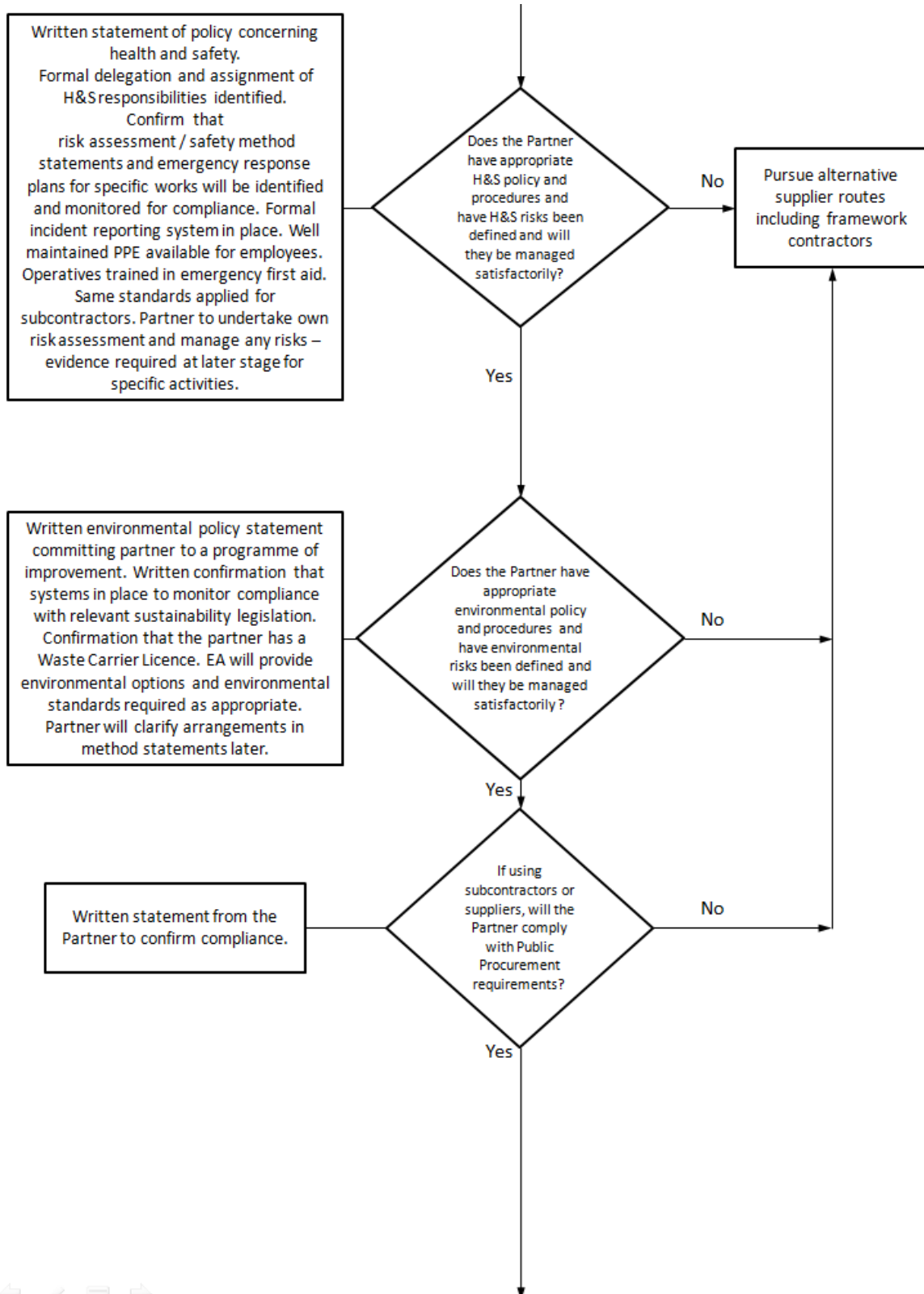
procedures in accordance with the Public Contracts Regulations and EC Treaty.

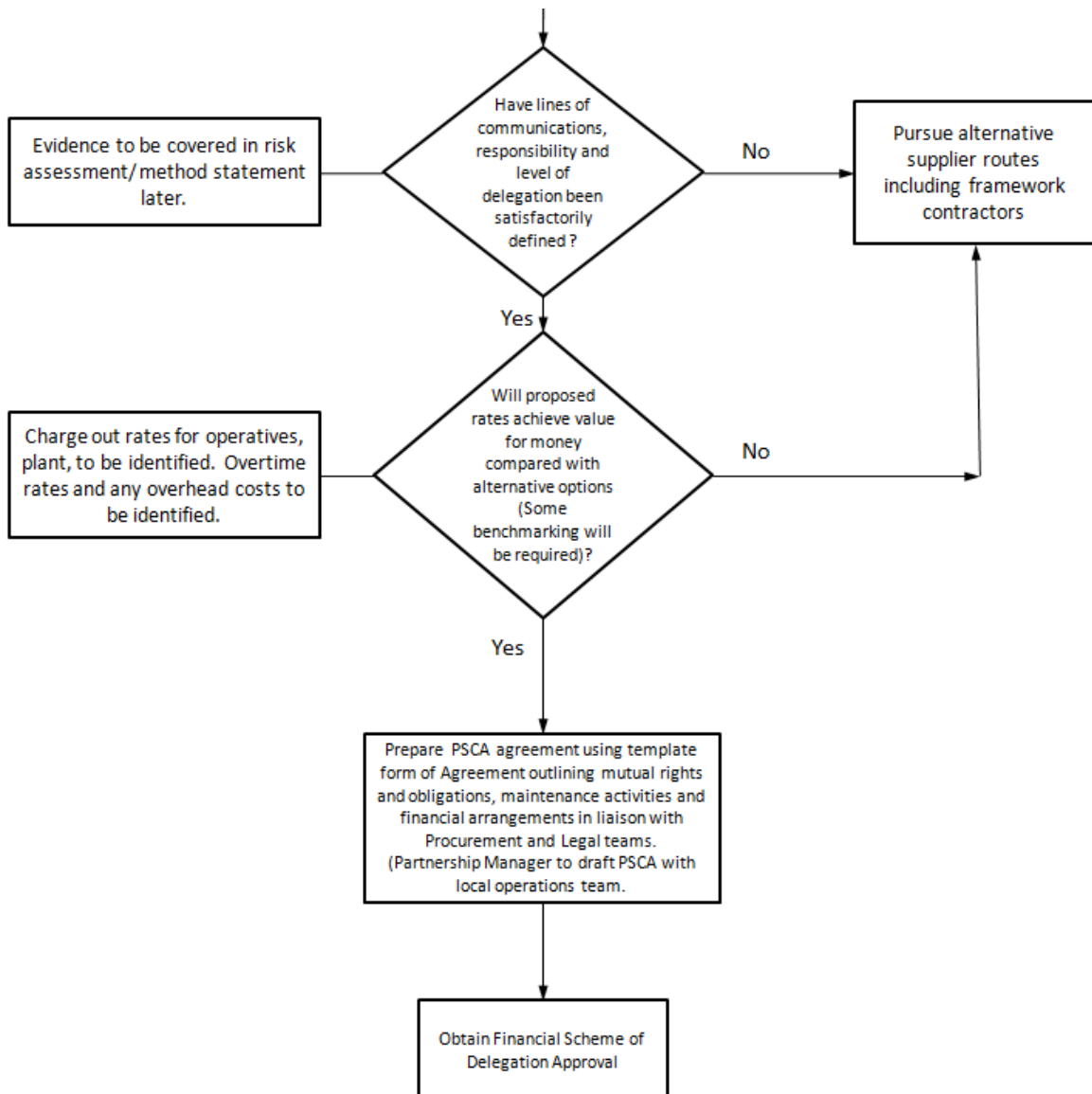
- Because the work is to be carried out by one partner on behalf of another, a risk management authority carrying out work for the Environment Agency will need to meet the Environment Agency's own environmental standards set in legislation.
- The appropriate checks in Flowchart 1 are carried out before an agreement is entered into, so that the partners are confident they can work together and that risks are appropriately managed. Some of these are checks that Environment Agency requires to be carried out on its partners procedures, policies, finances and insurances: we recognise that partner risk management authorities may also ask for checks on the Environment Agency, where the Environment Agency is planning to do work on behalf of a another risk management authority.
- The partners will enter into a public sector cooperation agreement to govern their arrangement.

Public Sector Cooperation Agreement – Flowchart 1

Checks for successful working arrangement before signing PSCA







Common questions on setting up a Public Sector Cooperation Agreement

What is a public sector cooperation agreement?

A public sector cooperation agreement (PSCA) is a standard form of cooperation agreement for carrying out flood or coastal risk management maintenance works and similar activities on a “not for profit basis”. PSCAs help us and other risk management authorities fulfil our cooperation obligations under s13 FWMA. The Environment Agency and other risk management authorities can put agreements in place to enable them to carry out work on each other’s behalf where it is more efficient to work in this way. The Environment Agency and ADA have agreed a template legal agreement and this guidance note to help establish these agreements, but they can be used with other public sector risk management authorities where appropriate.

When can I use a standard form PSCA?

Under the standard form of PSCA, the Environment Agency and another risk management authority can authorise each other to carry out maintenance or similar flood risk management activities on assets and watercourses locally (and in some cases coastal erosion works as well). This means, for example, that the Environment Agency can be authorised to carry out work on an ordinary watercourse, or an IDB or local authority can carry out work on a main river or to address sea flooding or coastal erosion. The types of maintenance or similar activity envisaged are set out in Part A of this guide, based on the Environment Agency management system document “Delivering consistent standards for sustainable asset management” (management system document 301_09_SD051).

The expectation is that the Delivery Party will carry out activities which are within its normal range of activities on the watercourses and assets it is responsible for, but carry them out on other watercourses or assets on behalf of another authority. This form of agreement may not be suitable where you want to ask another authority to carry out major works, works that permanently deprive a person from using any part of their land, or work outside the Delivery Party’s normal expertise and experience, as these would usually be of too great a risk to satisfy the standard checks that we undertake when using a standard PSCA. If you want to enter into an arrangement which includes one or more of these issues, you will need to consult the Partnerships Manager, your local legal team and procurement team for advice on how to proceed.

Guidance on whether a particular work item or activity can appropriately be undertaken using PSCA is shown in flowchart 2.

The PSCA is a standard form of agreement and should not be amended by users, other than adding in particular details in the specification relevant for the local programme of works and activities which it relates to. The Partnerships Manager will draft the PSCA to ensure national consistency of approach and to maintain coordination of PSCAs in use. If you want to make a similar arrangement for works outside of the normal range of activities for a PSCA, or if a risk management authority wants to amend *any* of the terms and conditions, specific legal advice should be taken and a bespoke arrangement *may* be needed.

Can I use it for construction or capital works?

The standard form PSCA is designed for maintenance or similar works. Small asset improvement or replacement works funded through capital may be suitable under the PSCA if they satisfy the requirements of flowchart 2. If there is any doubt, you should first consult the Partnerships Manager and the local legal team. It may be appropriate for major construction works but only if the RMA has the relevant experience, capability and resources to do so and can satisfy requirements of flowchart 2. You should first discuss this type of work with the Partnerships Manager and local procurement team before pursuing this type of works.

If you want to make a similar arrangement to do works outside of the normal range of activities for a PSCA (such as major construction or improvement works, or works outside of the normal experience of the delivery body, or works which interfere significantly with a person's land) specific legal advice should be taken and a bespoke arrangement *may* be needed. Your legal team, together with procurement and the Partnerships Manager will advise on your specific circumstances including consideration of compensation, powers of entry, insurances, health and safety, and payment. Your legal team may be satisfied that the PSCA is appropriate *or* they may recommend a bespoke agreement to deal with any particular risks or concerns. This will need to be negotiated between the parties to ensure everyone is comfortable with the arrangement and approvals have been obtained.

If a PSCA is suitable additional checks may be needed in addition to those in flowchart 2.

Is this a contract for works or services?

No. The PSCA arrangement is not intended to be a contract for works or services in the sense of a commercial contract. Where one party carries out work on behalf of the other using a PSCA under s.13(4) or 13(8) FWMA, it is acting under the powers and duties of the other. It is a partial delegation of powers from one body to the other. Although the Delivery Party may be paid for the direct costs of the work, the Delivery Party must not make a profit and is not a contractor for services or works.

The PSCA enables the public sector partners to carry out activities under a cooperation agreement that is in the mutual interest of the parties. As such, the risk sharing arrangements are different. The agreement has to be of mutual benefit for the parties to achieve efficiencies. We need to be able to demonstrate that using this arrangement gives us better value for money than our other options. Neither party can make a profit from the arrangement.

Can I set up a PSCA with a local authority?

PSCAs can be used between the Environment Agency and any of the public sector risk management authorities (a full list of all risk management authorities is listed in Part A of this Guide). The standard form we use with IDBs has been agreed with ADA, but is designed to be used with other public sector risk management authorities, provided that they are willing to accept the terms of the standard agreement and the proposed arrangement otherwise fits within this Guide.

If you are considering agreements with any risk management authorities, please contact the Partnerships Manager and your legal and procurement teams early so that they can advise and guide you.

Can I set up a PSCA with a Navigation Authority?

Navigation Authorities are not defined as a risk management authority in the FWMA. A navigation authority may perform a flood risk function on behalf of a risk management authority but there is no reciprocal arrangement. This means a navigation authority may, undertake works and activities for the Environment Agency (provided that such arrangements otherwise fit within this Guide), but the Environment Agency has no authority to undertake works for the navigation authority. If you are considering agreements with a navigation authority, you will need to take specific legal and procurement advice on whether the arrangement is genuinely mutually beneficial (and therefore in compliance with procurement laws). Please contact the Partnerships Manager and your legal and procurement teams early so that they can advise and guide you.

How do I set up a PSCA?

You will need to begin by having exploratory discussions with the prospective partner risk management authorities to understand whether there is a mutual interest in carrying out maintenance on behalf of each other. You should not make any binding commitments at this stage. **If you are considering setting up a PSCA, please contact the Partnerships Manager in the first instance.** He will normally attend joint meeting of the parties to explain PSCA and draft the PSCA with you. Procurement and legal services teams should also be contacted early on in your discussions.

You must follow the process set out in Part A of this Guide, to establish whether it is appropriate to set up an agreement. This requires checking whether the works are suitable, and whether the parties' experience, capacity, capability, policies and processes are all suitable and sufficient. Procurement can help you with this.

The terms of the agreement itself provide an over-arching framework, typically covering a 5 year period, within which specific programmes of work and activities can be delivered. Unless and until the agreement is entered into and the programme of works is identified and agreed, no specific works or activities should be carried out.

What approvals do I need to enter into a PSCA?

The PSCA agreement will need to be signed by a person who is authorised to sign the agreement on behalf of their respective organisation for the anticipated aggregated value of work over the period of the PSCA. All necessary internal approvals should be in place before the agreement is signed. **Please see your organisation's internal schemes of delegation or standing orders for further guidance.**

The evidence which has been gathered to support the need for the agreement should be kept on the file, together with the evidence of internal authorisations and a copy of the completed (and signed) agreement.

PART B – Guidance on using a Public Sector Cooperation Agreement

What happens after the agreement is in place?

Once the agreement is in place, the parties will normally agree an annual outline programme of work to be delivered under the agreement. Sometimes this will not be necessary as only ad hoc work is planned to be delivered under the agreement. It is recommended that annual planning is carried out to ensure that plans and expectations are clear and resources can be planned for accordingly.

The agreement is a framework for cooperation, so it does not oblige the partners to do any particular works and activities, unless and until specific tasks are agreed.

Is PSCA appropriate for the specific work or activity being considered?

The flowchart 2 below should be used to check whether specific work you have in mind is suitable to be delivered under the PSCA. If the flowchart indicates that the PSCA is not a suitable vehicle for the work you have in mind, speak to the Partnerships Manager and your procurement and legal advisers.

Confirming arrangements for Specific Works and Activities (Schedule 3)

The parties will agree the details of specific works and activities that they intend to deliver in writing using the form at Schedule 3 of the PSCA standard agreement. This should all be agreed before any work is commenced. The form is fairly self explanatory and refers where necessary to clauses in the agreement. Some points merit further guidance:

Description of Work or Activity

This should focus the works required to be done and the outcome to be achieved and not the method to achieve it unless it will affect the outcome and is necessary for legal compliance. Timescales or other constraints should be identified.

Identify the powers being used to deliver the works and activities

The form requires you to set out clearly what powers are being exercised by the Delivery Party on behalf of the Authorising Party. These will usually be works powers primarily, but there may be more than one power (eg works powers and a power to take surveys). Please consider carefully what powers are being exercised under which legislation, for example the Water Resources Act 1991, Land Drainage Act 1991 or Coast Protection Act 1949. This will depend whether the works are in connection with flooding from a main river, ordinary watercourse, surface water or groundwater flooding, sea flooding or coastal erosion works. Check with legal if you're not sure – you'll need to explain what the work or activity is proposed and what risk it is designed to address and legal will help you identify the power you need to be use.

The most common powers to do works, are the following (but check with legal which one applies for your specific works or activities):

- Flood risk management works on or in connection with a main river or sea flooding: Section 165 Water Resources Act 1991 together with section 37 of the Environment Act 1995
- Flood risk management works on or in connection with an ordinary watercourse: these may be under Section 11, 14 or 14A Land Drainage Act 1991 depending on the nature of the works. Please check.
- Flood risk management works in connection with surface water or ground water flooding: Section 14A Land Drainage Act 1991
- Coastal works to sea and tidal defences: section 165(2) Water Resources act 1991 together with section 27 of the Environment Act 1995
- Coast protection works: section 4 Coast Protection Act 1949

Identify any limits, constraints or guidance the delivery part must follow or be aware of

Sometimes the Delivery Party will be authorised to act with only limited authority, and will need to revert to the Authorising Party if it wants to go further than the limited authority it is given. Set out any restrictions which limit the Delivery Party's authority in this section.

The Delivery Party will be authorised to act on behalf of the Authorising Party, and in doing so must meet the environmental and conservation duties and environmental standards of the Authorising Party. For example, if the Environment Agency would have been required to do a habitats regulations assessment or water framework directive assessment for the work, an IDB acting on its behalf will also have to do that assessment and complete the work to the same environmental standard. The Authorising Party is the expert on what these standards are and must make sufficient information available to the Delivery Party so that they know what is required of them.

Powers of entry and other ancillary powers

Given the range of work that can be delivered under these agreements, its especially important that officers understand what power of entry they are using, and where necessary that they are properly authorised by the Authorising Party to exercise powers of entry as provided for in the legislation and required by the Statutory Code of Practice on Powers of Entry. Identify in the table the specific power of entry that is being used, seeking guidance from legal services to help you identify the legal power of entry you need to use. The appropriate power of entry will depend on what works power you are using. The most usual ones are the following (but check with legal which one applies for your specific works or activities):

- Entry in connection with works under s.165 Water Resources Act 1991 where the works are for maintenance of existing works or watercourses: the power of entry is included within the power to do works, see section 165(6) Water Resources Act 1991

- Entry in connection with all other works under s.165 Water Resources Act 1991 : power of entry under section 172 and schedule 20 Water Resources Act 1991
- Entry in connection with works under s.11, 14 or 14A of the Land Drainage Act 1991: Power of entry under section 64 Land Drainage Act 1991
- Entry in connection with works under section 4 Coast Protection Act 1949: power of entry under section 25 Coast Protection Act 1949

Training, authorisation and guidance for individual officers of the Delivery party must be given to those officers before any powers of entry are exercised. The Statutory Code of Practice requires records to be maintained. A temporary authorisation will need to be issued to any officers of the Delivery Party who need to exercise powers of entry. Seek guidance from your internal advisers on the requirements for your respective organisation.

Where Notices of entry onto land are required, these should always be signed and served by the Authorising Party. The Parties will need to work closely to ensure that they are properly discharging their legal duties in terms of notices and powers of entry and complying with the Statutory Code of Practice on Powers of Entry.

Health, Safety & Wellbeing including CDM Regulations

The PSCA arrangement is not intended to be a contract for works or services in the sense of a commercial contract. Where one party carries out work on behalf of the other using a PSCA under s.13(4) or 13(8) FWMA, it is acting under the powers and duties of the other. It is a partial delegation of powers from one body to the other. Depending on the details for the specific works and activities, the Authorising Party may be more prescriptive or less prescriptive when it asks the Delivery Party to do works on its behalf. The parties will therefore need to consider who is the client and who is / are the Designer(s) under the Construction Design and Management (CDM) Regulations 2015 for the specific works and activities in any case, and set out the agreed arrangements in the Schedule 3 specification for specific works and activities. Guidance to identify these duty holders roles under the CDM Regulations 2015 can be found on the HSE website: [Summary of Roles under CDM Regulations](#)

The Client as defined in the regulations is the organisation that the construction work is carried out for. There may be more than one Client under the definition in the regulations, and if there is more than one, the parties can agree who will adopt this legal role. It's the Clients responsibility to appoint other Duty holders for the work.

The Designer(s) will be the organisation(s) that prepare or modify designs for a building product or system relating to construction work. There may be more than one Designer who contributes to the design of the works, and each must fulfil their duties under the regulations as a Designer.

In the context of a PSCA:

- a) Generally, **where works are carried out under a PSCA on the Authorising Party's owned asset** or land, the Authorising Party will be the Client. The Delivery Party will be a Designer. The Authorising Party may also be a Designer if they have been quite prescriptive, so as to have contributed to the

preparation or modification of designs for a building, product or system relating to construction work. If the Authorising Party has detailed the method of work, they will take on Designer duties under the CDM Regulations.

b) Where works are being carried out on a watercourse or on third party land or assets:

- i) **If the Delivery Party is paying for the works** then the Delivery Party will usually be the Client, because they will have the primary interest in wanting the works to be done and will have a wider discretion in how the works are carried out. Usually in this case, the Authorising Party will not be the Client (or the Designer).
- ii) **If the Authorising Party is paying for the works**, then the Authorising Party will usually be the Client because they will have the primary interest in wanting the works to be done. The Delivery Party will be a Designer. The Authorising Party may also be a Designer if they have been quite prescriptive, so as to have contributed to the preparation or modification of designs for a building, product or system relating to construction work. If the Authorising Party has detailed the method of work, they will take on Designer duties under the CDM Regulations.
- iii) **If the Parties are jointly paying for the works**, it is likely that both will fall within the definition of the Clients as they will usually both have an interest in the works. In this case they should specify in Schedule 3 who will take the role of Client – this will usually be the Delivery Party. The Delivery Party will be a Designer. The Authorising Party may also be a Designer if they have been quite prescriptive, so as to have contributed to the preparation or modification of designs for a building, product or system relating to construction work. If the Authorising Party has detailed the method of work, they will take on Designer duties under the CDM Regulations

The Delivery Party will be the Principal Contractor under CDM

Known hazard information can be provided without affecting the above roles.

Environmental Matters

Environmental standards, outcomes, constraints and / or opportunities should be clarified before work proceeds. This includes timing of the works. Refer also to page 12 regarding environmental duties and standards.

Compensation

You need to specify which party is responsible for planned compensation to landowners and third parties, if any arises. Specify which of clauses 10.1, 10.2 or 10.3 applies to these specific works and activities. If clause 10.3 applies you need to set out the proportions in which compensation will be shared between the parties. Take advice from legal (and estates if appropriate), if you are not sure how to deal with compensation under the agreement.

Financial Arrangements

The PSCA allows work to be undertaken irrespective of funding source, provided that the party who is paying is identified before works proceed (e.g. Authorising Party, Delivery Party) and the Parties are sure that sufficient funding is available. In the case of joint funding, the split of funding needs to be agreed to meet the financial outturn cost of the work. If third party funding is being contributed, either the Authorising Party or the Delivery Party needs to be responsible for securing those funds and then contributing them under this PSCA arrangement. The third party funder is not a party to the PSCA agreement.

Rates should be reviewed annually or at other times as agreed.

Rates for the work and the estimated cost must be agreed by the parties before work proceeds. On completion of the work, payment is based on the actual outturn cost using agreed rates, not the estimate.

Post Works Review

It is good practice to maintain liaison during the works. On completion, value for money and any lessons learned should be discussed and identified to benefit potential future use of the PSCA for this work /activity. This review should be kept as simple as possible according to type of works and risks involved.

Where can I get more information?

Please contact the Partnerships Manager in the first instance for information on establishing and using PSCAs.

You should also contact your local legal services and procurement teams regarding specific agreements which are outside of the usual scope of PSCA agreements.

For further details contact ian.russell@environment-agency.gov.uk

Ian Russell

Environment Agency/ADA Partnership Manager

March 2016.

Public Sector Cooperation Agreement - Flowchart 2- Is PSCA appropriate for specific work or activity being considered?

