

DATED

2015

(1) ENVIRONMENT AGENCY

(2) LANCASHIRE COUNCIL

**Collaborative Agreement relating to Croston Flood Risk Management Scheme,
Lancashire**

PROJECT REF NO: IMNW000166

THIS AGREEMENT is made on the _____ day of _____ 2015

BETWEEN:

(1) ENVIRONMENT AGENCY whose principal office is at Horizon House, Deanery Road, Bristol, BS1 5AH (“Agency”)

AND

(2) LANCASHIRE COUNTY COUNCIL of County Hall Preston PR1 8XJ (“Council”)

(together “the Parties”)

WHEREAS:

- A. The Parties wish to undertake the Project for the purposes and to achieve the objectives set out in the Specification.
- B. The Agency has procured a contractor to undertake the Project and has secured financial contributions from the Council and other partners to help deliver the Project. Contributions from other partners are addressed in separate legal agreements with those partners.
- C. The aim of this Collaborative Agreement is to:
 - (a) agree the financial and non-financial contributions of each Party;
 - (b) foster mutual trust and co-operation between the Parties;
 - (c) define the roles and responsibilities of the Parties;
 - (d) agree the review processes to ensure the Project objectives are being met; and
 - (e) agree the process by which any dispute will be settled.

NOW THE PARTIES AGREE AS FOLLOWS:

1. THE AGREEMENT & DEFINITIONS

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

“Agreement”	means this collaborative agreement as further defined in Clause 1.4
"CEDR"	means the Centre for Effective Dispute Resolution of The International Dispute Resolution Centre, 70 Fleet Street, London EC4Y 1EU
“Commencement Date”	means the date at the head of this Agreement
“Completion Date”	means 1 September 2016 or such later date as may be agreed in writing between the Parties, being the date upon which the rights and obligations of the Parties in relation to delivering the Project under this Agreement shall be met
“Confidential Information”	has the meaning set out in Clause 8
“Contractor”	means the main contractor for the Project to be employed by the Agency
“Contributions”	means the Parties’ respective contributions to the Project
“Engineering Contract”	means the engineering contract for the construction of the Project in such form as the Agency shall consider appropriate
“Financial Contribution”	means the financial contributions to be made by the Parties as set out in Appendix B
“Force Majeure Event”	means an event beyond the reasonable control of a Party that renders the performance of the Agreement impossible whether temporarily or otherwise which for the avoidance of doubt may include prohibitive government regulation, flood, lightening or other extreme weather conditions, fire, explosion, malicious damage, industrial actions or lockouts, terrorism, war, civil commotion, military operations, riot, national emergency, the act or omission of any third party

not being its agent or sub-contractor, any change in the law or in the interpretation of the law by the courts

“Intellectual Property Rights” (“IPR”) means without limitation all intellectual property rights including patents, business service and trade marks and names, designs, registered designs and design rights whether or not registered or capable of registration and the right to apply for and any applications for any of the foregoing, copyrights, database rights, domain names, together with the rights in inventions, methods, processes, drawings, documents, methodologies, utility models, semiconductor chip topography, software, databases, know-how, trade or business secrets and other industrial property, and in each case whether protectable or not and, if protectable, whether an application has been made for protection or not, and all similar industrial, commercial, monopoly or other similar right or asset capable of protection whether present or future, vested or contingent, and wherever protected

"Mediator" means a neutral third party appointed pursuant to Clause 14.5 to assist in the resolution of disputes

"Parties" means the parties to this agreement

“Partnership Funding Principles” means the principles set out in the DEFRA and Environment Agency “Principles for Implementing Flood & Coastal Resilience partnership funding”, 2012; paragraph 4.16 of which is attached at Appendix C

“Project” means the project to deliver the Scheme as described in the Specification

“Project Board” means the project board responsible for overseeing the management and supervision of the Project, in accordance with paragraph 6 of Appendix 1

“Project Manager”	means the person who shall be responsible for the day to day management and supervision of the Project as set out in Clause 5.1
“Project Objectives”	means the strategic objectives set out in section 3 of Appendix A
“Project Period”	means the duration of the Project as set out in Clause 2.1
“Project Team”	means the officers from the partner organisations responsible for providing input throughout the course of the Project
"Property"	means property including but not limited to IPR used in connection with this Agreement
“Scheme”	means the flood risk management scheme described in the Specification
“Specification”	means the specification for the Project set out in Appendix A
“Staff”	means employees, contractors, consultants, students and agents of a Party who are engaged or provided by the Party for the carrying out of its obligations in connection with this Agreement, and each of them
"VAT"	means Value Added Tax

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 that statute, statutory provision or statutory instrument as from time to time amended, extended, consolidated or re-enacted and all statutory instruments or orders made under or pursuant to it;

- (b) words importing a gender include all genders, words importing the singular include the plural and vice versa;
- (c) the words "including" or "includes" or any similar phrases shall be construed without limitation to the generality of the preceding words;
- (d) reference to any person includes a legal entity; and
- (e) 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 and reference to any 'Clause', 'Schedule' or 'Appendix' shall be references to clauses, schedules or appendices of this Agreement unless expressly stated to the contrary.

AGREEMENT

1.4 This Agreement contains the whole agreement between the Parties in respect of its subject matter and supersedes all previous communications, representations and arrangements, whether written or oral. This Agreement consists of the following documents:

- (a) these terms and conditions;
- (b) Appendix A;
- (c) Appendix B;
- (d) Appendix C ;
- (e) any other documentation annexed hereto ; and
- (f) any variations made by the Parties in accordance with Clause 22.

In the case of ambiguity or conflict between any of the documents set out above, the documents will take precedence in the order listed above.

RELATIONSHIP BETWEEN THE PARTIES

1.5 Nothing in this Agreement shall prejudice, conflict with or affect the exercise of the 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 any Party may have.

1.6 Nothing in this Agreement shall operate as a statutory licence, waiver, consent or approval from any Party.

- 1.7 The Parties shall be independent contractors for all purposes connected with this Agreement.
- 1.8 Nothing in this Agreement shall create a partnership or joint venture between the Parties, constitute one Party as the agent of any other nor deem the Staff of one Party to be those of another. No Party shall have any authority to enter into any contract, warranty or representation on behalf of another nor shall any Party incur liabilities that bind or have the effect of binding another Party and in the absence of express agreement to the contrary no Party shall be bound by the acts or conduct of another.
- 1.9 No Party or its Staff shall represent themselves as having the authority to interpret the policies and procedures of any other Party.
- 1.10 The Parties shall seek to agree all decisions for the benefit of the Project and not for individual Party gain.

2. DURATION

- 2.1 This Agreement shall commence on the Commencement Date and shall continue until the Completion Date unless terminated earlier in accordance with this Agreement.

3. THE PARTIES' OBLIGATIONS

- 3.1 The Parties agree:
- (a) the programmes for the administration, scope and delivery of the Project as set out in the Specification; and
 - (b) the Parties respective Contributions and their responsibilities in relation to the Project as set out in the Specification and otherwise in this Agreement.
- 3.2 The Parties shall each:
- (a) provide their Contributions and fulfil their responsibilities and obligations as set out in the Specification and otherwise in this Agreement;
 - (b) co-operate and use all reasonable endeavours to ensure the success of the Project;
 - (c) act in good faith and in the spirit of co-operation in carrying out the Project; and
 - (d) promptly raise and use reasonable endeavours to resolve any issues, difficulties, problems or opportunities that arise.

- 3.3 In carrying out their obligations under this Agreement the Parties shall each:
- (a) use all reasonable care, attention and diligence; and
 - (b) perform their obligations in accordance with this Agreement and in a timely manner.
- 3.4 The Parties shall inform the Project Board promptly of any event that is likely to prejudice or delay the performance or completion of the Project, or of any situation or event that may hinder or prevent that Party from providing 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, except and only insofar as Clause 19 (Force Majeure) may apply.
- 3.5 No Party shall do anything that may damage or prejudice the reputation of another Party or their business or other interests.

4. THE AGENCY'S OBLIGATIONS

- 4.1 The Agency shall:
- (a) deliver the Project as set out in the Specification or as subsequently varied in writing by the Parties;
 - (b) provide adequate management and support staffing to administer the Project effectively;
 - (c) be responsible for financial management and administrative aspects of the Project;
 - (d) exercise all reasonable, care, attention and diligence in carrying out the Project and complying with its obligations under this Agreement;
 - (e) only employ in the execution and superintendence of the Project and this Agreement, persons who are suitable, and appropriately skilled and experienced in the type of work which they are to perform, and with proper guidance and supervision as required to ensure the work is carried out with due care, skill and diligence;
 - (f) procure that its Staff involved in the Project and each of them:
 - (i) is sufficiently qualified, trained, skilled and experienced in the type of work which they are to perform;
 - (ii) exercises all due skill, care, attention and diligence in their work;
 - (iii) carries out each the Project in accordance with the timescales in the Specification or otherwise or, where none have been agreed, within a reasonable time; and

(iv) promptly inform the other Parties of any difficulties, problems or opportunities that arise in their work on the Project.

5. WORKING ARRANGEMENTS

5.1 Project Manager

The Agency shall appoint its Project Manager (and Representative) who shall:

- (a) manage the day to day operation of the Project in accordance with this Agreement;
- (b) act as the first point of contact at the Agency for all purposes in connection with the Project;
- (c) provide effective liaison between the Agency and the other Parties in respect of the Project; and
- (d) ensure that the Project is carried out and operated in a manner consistent with its objectives as described in the Specification.
- (e) act as liaison between the Project Board and wider Project Team

5.2 The Project Manager shall be the person identified as such the Specification.

Project Board

5.3 The Agency will set up a Project Board to oversee the management and delivery of the Project. The purposes of the Project Board are set out in paragraph 8.4 of the Specification.

5.4 Final decisions on any change recommended by the Project Board to this Agreement must be approved in writing by the Parties in accordance with Clause 22.

6. PAYMENT & FINANCIAL CONTRIBUTIONS

6.1 In consideration of the Contributions made by the Agency and its performance of its obligations in this Agreement, the Council agrees to make the Financial Contribution as set out in Appendix B.

6.2 The Financial Contribution is exclusive of all VAT and all other taxes and duties, which for the avoidance of doubt is not payable in the case of the Financial Contribution.

6.3 The Agency shall be responsible for holding the Financial Contribution and for the financial management of the Project. It shall put in place appropriate financial

management and auditing procedures for the Project, in order to control expenditure and ensure that costs are properly incurred and can be clearly identified.

- 6.4. The mechanism for payment of the Financial Contribution is set out in Appendix B,
- 6.5 The Financial Contribution shall only be expended or committed by the Agency towards the Project and in accordance with this Agreement unless otherwise agreed in writing by the Parties. In the event of the Financial Contribution being expended in breach of this Clause the Agency shall be liable to repay it or part of it to the other Parties.
- 6.6 The Agency shall, whenever reasonably required by the Council or by the National Audit Office, provide to such persons as the Council may reasonably nominate access to the Agency's Staff, premises, records and such other items or persons as may be reasonably required in order for the Council to fulfil their audit obligations in respect of this Agreement. In the event that any additional costs are reasonably and necessarily incurred by the Agency as a result of the requirements of this Clause then those costs shall be met by the Council.
- 6.7 If the Council fails to make its Financial Contribution in accordance with Appendix B, the Agency may charge interest on any amount outstanding, at a rate 2% above the Bank of England Base Rate from time to time in force during the period when the amount remains outstanding, and recover from the Council any such amount outstanding and such interest so charged.
- 6.8 In the event of Project overspend the additional Project costs shall be shared across all funding sources in accordance with paragraph 4.16 the Partnership Funding Principles. For the avoidance of doubt, the Council's contribution set out at Appendix B cannot be exceeded.
- 6.9 In the event of a Project underspend the Agency shall repay a proportion of the Financial Contribution to the Council in accordance with paragraph 4.16 of the Partnership Funding Principles.

7. PUBLICATION & PUBLICITY

- 7.1 The Parties shall comply with the requirements of paragraph 7 of Appendix A.

8. CONFIDENTIALITY

- 8.1 The Parties acknowledge that they are each bound by freedom of information legislation and that they are each subject to statutory obligations for disclosure and publication of certain information, and as such are unable to give any undertaking not to release information about the Project or this Agreement that conflicts with such laws.
- 8.2 Subject to Clause 8.1, Confidential Information shall include all data and information whether or not owned or held by a Party that:
- (a) is identified by a Party as being confidential;
 - (b) ought reasonably to be regarded as confidential (however it is conveyed or on whatever media it is stored).
- 8.3 Confidential Information includes, but is not limited to:
- (a) information relating to the contracting and commercial or business activities, personnel, customers and suppliers of a Party or any third party;
 - (b) methods of information, techniques, know-how acquisition, software design, financial information and statistical methods;
 - (c) all Intellectual Property Rights, know-how, and information relating to the ownership, protection and exploitation of any Intellectual Property Rights developed in connection with the Project or this Agreement; and
 - (d) all personal data within the meaning of the Data Protection Act 1998.
- 8.4 Information shall not be or shall cease to be Confidential Information where or at the point when it is:
- (a) generally available to the public other than as a result of disclosure by a Party in breach of this Agreement;
 - (b) already known to the receiving Party free of obligations of confidentiality (as evidenced by written records) at the time of its disclosure;
 - (c) provided to the receiving Party by a third party having a right to disclose the information free of any restriction as to the use or disclosure, whether under this Agreement or otherwise;
 - (e) independently developed by the receiving Party (as evidenced by written records) other than pursuant to this Agreement;
 - (f) required by operation of law or governance obligations to be disclosed (which shall include but is not limited to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004) or the order of any authority competent to make such an order provided that where practicable and where required for compliance with the relevant law, statute, regulation or order the

Party intending to disclose the information gives to the Party who originally provided the information reasonable advance notice of the intended disclosure and a reasonable opportunity to make representations regarding such disclosure; or

- (g) subject to an express written waiver by the disclosing Party and the disclosing Party has the necessary authority to give such a waiver.

8.5 Each Party shall not, and shall procure that its Staff shall not:

- (a) use or disclose the Confidential Information except for the purposes of this Agreement;
- (b) use or disclose the Confidential Information so as to procure any commercial advantage over the disclosing Party;
- (c) disclose the Confidential Information to its Staff except to the extent necessary to perform that Party's obligations in connection with this Agreement and provided that its Staff to whom Confidential Information is disclosed are subject to substantially the same obligations of confidentiality as are contained in this Agreement; and
- (d) otherwise use or disclose to any third party any Confidential Information unless such use or disclosure is permitted by the disclosing Party.

8.6 The receiving Party shall inform the disclosing Party immediately if it comes to its notice that any Confidential Information has been or potentially may be improperly disclosed or misused.

8.7 Without affecting any other rights or remedies that the disclosing Party may have, the receiving Party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of its obligations of confidentiality in connection with this Agreement and the disclosing Party shall be entitled to seek the remedies of injunction, specific performance and/or other equitable relief for any actual or threatened breach of this Agreement whether by the receiving Party or its Staff.

8.8 The obligations of confidentiality shall survive for 6 (six) years from the Completion Date, except where the Confidential Information is IPR in which case the obligations shall survive indefinitely.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Parties do not anticipate that any IPR issues will arise as part of the Project but agree that if any such issues do arise, they will be referred by the Parties to the Project Board for resolution and shall be dealt with as variations to this Agreement.
- 9.2 No Party shall itself or by a third party use or reproduce or otherwise deal with the logos distinctive marks or trade marks of another Party or cause or permit the same without the consent in writing of the Party to whom the logos, distinctive marks or trade marks belong.

10. LIABILITY

- 10.1.1 Subject always to the provisions of Clause 10.3, each Party shall indemnify the other Parties against all claims, demands, actions, costs, expenses, losses and damage made or notified to the indemnified Party and arising from or incurred by reason of the indemnifying Party under this Agreement.
- 10.1.2 Subject always to the terms of Clause 10.3, each Party shall indemnify the other against all claims, demands, actions, costs, expenses, losses and damage arising from or incurred by reason of any infringement by it or its Staff of the Data Protection Act 1998 and any other data protection legislation in connection with this Agreement.
- 10.2 No Party seeks to exclude or limit its liability for death or personal injury caused by its negligence, or fraudulent misrepresentation made by it or on its behalf, or such other matters where exclusion of liability is constrained or prohibited by operation of law.
- 10.3 Except as otherwise expressed in this Agreement, 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, special or consequential loss or damage arising out of or in connection with this Agreement, whether for breach of contract, negligence or otherwise.

11. INSURANCE, RECORDS AND PROPERTY

- 11.1.1 The Parties shall each insure and maintain such insurances with a reputable insurer based in the UK as are necessary to cover their respective liabilities in respect of personal injury or death arising out of this Agreement.

- 11.1.2 The Parties shall insure with a reputable insurer based in the UK against any expense, liability, loss, claim or proceedings whatsoever in respect of any damage to any real or personal property to an amount of £5 million (five million pounds) for any one occurrence or series of occurrences arising out of any one event and due in whole or in part to the acts, errors or omissions of any person for whom that Party is responsible.
- 11.2 The Parties shall maintain such insurances for a period of 7 (seven) years after the end of the latest Project Period.
- 11.3 The requirements of Clause 11.1 may be waived for a Party where that Party can establish that it has in place self-insurance or other arrangements to provide cover for its liabilities and the nature of such arrangements are reasonably acceptable to the other Parties.
- 11.4 Each Party shall maintain all records and associated documentation required for the proper implementation and operation of the Project and used in connection with the Project and this Agreement for a period of 7 (seven) years following the Completion Date. This shall include full and accurate accounts and records together with supporting documentation of:
- (a) all expenses and expenditure incurred by it in connection with the Project and this Agreement; and
 - (b) all Contributions actually made by it.
- 11.5 Each Party shall on request provide the other Parties (including their auditors, agents and advisers) with such access to those records as may reasonably be required.

12. DEFAULT

- 12.1 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.
- 12.2 It shall be a material breach of contract if a Party:
- (a) fails to fully perform and comply with its obligations under this Agreement; or
 - (b) fails to use reasonable skill, care, diligence and timeliness in performing and complying with its obligations under this Agreement;

- (c) fails to provide any Contribution or Deliverable at the times specified or agreed for delivery;
- (d) misuses another Party's Contribution;
- (e) breaches any third party's Intellectual Property Rights;
- (f) deals with any Party's Intellectual Property Rights in a manner that is inconsistent with the provisions in this Agreement;
- (g) is prevented from carrying out its obligations under this Agreement due to any infringement or alleged infringement by it of any Intellectual Property Rights;
- (h) knowingly or persistently breaches any of the requirements of Clause 16.1 (statutory obligations); or
- (i) commits a series of defaults under Clause 12.1 of this Agreement which when taken together constitute a material breach.

12.3 The short temporary non-availability of Staff for reasons outside a Party's reasonable control or the occurrence of a Force Majeure Event shall not constitute events that give rise to a material breach of contract.

12.4 Where, in the reasonable opinion of a Party, another Party is in material breach of contract, the non-defaulting Party shall where reasonably practical first consult the Project Board regarding the appropriate course of action, and thereafter shall be entitled to serve a written notice upon the defaulting Party notifying that defaulting Party:

- (a) of the material breach of contract;
- (b) whether the breach is capable of remedy or not and, if capable of remedy, requiring the defaulting Party to remedy the default; and
- (c) provided that the breach is not due to the fault of the Party serving the notice, that the non-defaulting Party may terminate this Agreement either totally or with regards to one or other of the Project (in which case this Agreement shall continue in full force and effect with regards to the other Project) if the defaulting Party does not take reasonable steps to remedy the specified breach within such reasonable period as the non-breaching Party may specify provided that the period is not less than 30 (thirty) calendar days.

12.5 If any other Party does not complete its obligations under this Agreement with regards to the Project on time then the Agency shall be entitled to arrange completion of the Project at its own expense, such costs to be reimbursed by the other Party following a demand for the same from the Agency.

13. TERMINATION

13.1 The Parties may terminate this Agreement by mutual consent at any time during the Project Period and on such terms as the Parties may agree.

13.2 Each of the Parties shall have the right to terminate its participation in this Agreement with immediate effect or if it so elects upon notice in the event that it considers in its sole discretion that to continue all or part of this Agreement does or will conflict with its functions, powers, duties aims or objective or is otherwise inconsistent with its obligations as a public body.

13.3 A Party shall be entitled to terminate this Agreement with immediate effect, without prejudice to any other rights and remedies under this Agreement, where another Party:

- (a) has served upon it a notice pursuant to Clause 12.4 specifying an irremediable breach; except where the breach is due to the default of the Party serving the notice;
- (b) has served upon it a notice pursuant to Clause 12.4 specifying a remediable breach and the defaulting Party has failed to remedy that breach or failed to take steps to remedy that breach which are reasonably satisfactory to the terminating Party within the time stated in the notice, except where the breach is due to the default of the Party serving the notice; and
- (c) assigns or transfers any part of its benefits under this Agreement to a third party, save for the purposes of reorganisation or transfer to a successor body, without the prior written consent of all Parties.

13.4 Upon termination of this Agreement (or upon termination of a Party's participation in it) then:-

- (a) the Council shall pay over to the Agency such portions of the Financial Contribution that is unpaid at the date of termination (whether or not the date for final payment has been reached) as may be necessary to cover the Agency's proportion of the reasonable costs and commitments reasonably and necessarily incurred in connection with the Project and not paid at that date;
- (b) the Agency shall account to the Council in respect of any part of the Financial Contribution it holds provided that such part is not required to discharge reasonable costs and commitments necessarily incurred in connection with the Project but not paid at that date; and
- (d) the Council shall repay any amount it is due to pay pursuant to Clause 6.4.

- 13.5 Termination of this Agreement (or the participation in it of a Party) shall not prejudice any rights of any Party which have arisen on or before the date of termination.
- 13.6 Without prejudice to the generality of this Agreement, where the terms of Clause 19 apply, the occurrence of a Force Majeure Event, whilst not a material breach of contract, may give rise to termination of this Agreement or a Party's participation in it where the circumstances envisaged by Clauses 19.3 or 19.4 apply.
- 13.7 Without prejudice to the generality of Clause 13.4 any outstanding reasonable costs and commitments reasonably and necessarily incurred in connection with the Project and not paid at the date of termination will be allocated between the Parties in proportion to their Contributions to the Project,

14. DISPUTE RESOLUTION

- 14.1 During the Project Period the Parties shall attempt to resolve all disputes and differences between themselves and if they are unable to do so such matters, shall first be referred to the Project Board.
- 14.2 If the Project Board is unable to resolve the dispute or difference to the satisfaction of the Parties in dispute within two weeks, the Parties in dispute shall attempt to resolve the issue by negotiation between their respective senior managers for resolution.
- 14.3 If any dispute arises after the Project Period, the Parties shall attempt to resolve it via such persons as the Parties may reasonably designate for resolving disputes in such circumstances. If such persons are unable to resolve the dispute within a reasonable period, the matter shall be referred to their respective senior managers for resolution.
- 14.4 If the matter referred to the Parties' senior managers pursuant to Clause 14.2 or 14.3 cannot be resolved, the Parties shall consider referring the matter to mediation in accordance with Clause 14.5. If the Parties acting in good faith do not consider that mediation is an appropriate method of dispute resolution they shall consider such other methods of alternative dispute resolution as they reasonably consider appropriate in the circumstances and shall seek to resolve the matter using such methods as they may agree.
- 14.5 In the event that the Parties in dispute decide that mediation is an appropriate method of dispute resolution, they will use the following procedure:

- (a) The Mediator shall be chosen by agreement between the Parties, provided that any Party may within 14 calendar days from the date of the proposal to appoint a mediator, or within 14 calendar days of notice to any Party that the chosen mediator is unable or unwilling to act, apply to CEDR to appoint a mediator;
- (b) The Parties to the dispute shall within 14 calendar days of the appointment of the Mediator agree a timetable for the mediation. If appropriate, the relevant Parties may at any stage seek guidance from CEDR on a suitable procedure;
- (c) Unless otherwise agreed, all negotiations and proceedings in the mediation connected with the dispute shall be conducted in strict confidence and shall be without prejudice to the rights of the Parties in any future proceedings;
- (d) Where the Parties agree that mediation is appropriate, the dispute resolution procedure in this Clause 14 shall be binding on the Parties but the Parties shall not be bound by the outcome of the mediation unless and until the Parties agree to be so bound and set out the agreed resolution in a written agreement;
- (e) Failing agreement, any Party may invite the Mediator to provide a non-binding but informative opinion in writing. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the dispute without the prior written consent of the relevant Parties. The Party requesting the opinion shall bear the costs incurred in obtaining that opinion unless the Parties agree otherwise;
- (f) For a period of 60 calendar days from the date of the appointment of the Mediator, or such other period as the Parties may agree, none of the Parties may commence any proceedings in relation to the matters referred to the Mediator save that the Parties shall be free to apply to the courts for interlocutory relief at any time.

14.6 For the avoidance of doubt, recourse to the means of alternative dispute resolution provided for in this Clause 14 shall not preclude the exercise of the rights under Clauses 12 (Default) and 13 (Termination) including the service of notices and termination provisions.

15. NOTICES

15.1 All notices given under this Agreement shall be in writing and will be sent to the address of the Party being served as set out in the Specification or any other address a Party may from time to time designate by notice given in accordance with this Clause 15.

15.2 Notices may be delivered personally, by first class pre-paid letter.

- 15.3 Any notice served in accordance with Clauses 15.1 and 15.2 above will be deemed to have been served:
- (a) at the time of delivery when served in person; or
 - (b) 2 working days from the date of posting when served by first class post.
- 15.4 In proving service it shall be sufficient to show that:
- (a) when delivery is in person the notice was delivered to the appropriate address; or
 - (b) when service is by post the notice was submitted to an appropriate carrier for delivery, was properly addressed and all postage was fully paid.

16. STATUTORY OBLIGATIONS & PERMISSIONS

- 16.1 The Parties shall each at their own expense comply, and procure that their Staff comply, with all laws and regulations applicable to the Project and their involvement in the Project including all health and safety legislation, the Data Protection Act 1998, the Freedom of Information Act 2000, the Bribery Act 2010 and the Equality Act 2010.
- 16.2 The Agency shall be responsible for securing and maintaining such permissions, licences, consents or approvals as it needs in connection with the Project.

17. ENVIRONMENT & SUSTAINABILITY

- 17.1 The Parties shall ensure that sustainable development, which includes environmental, social and economic factors, is taken into account during all stages of the Project and this Agreement and in any relevant contracts entered into with third parties.
- 17.2 Unless there is a specific requirement otherwise all reports in connection with this Agreement will be made in electronic format. Where paper copies of reports or other hard copy communications are required and where there are written announcements or publications required they will be printed on minimum 80% post- consumer waste recycled paper and where possible will be printed double-sided.

18. ASSIGNMENT & SUB-CONTRACTING

- 18.1 No Party shall be entitled to sub-contract, 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 solvent reorganisation or transfer to a successor body or by operation of law) without the prior written consent of the other Party. As the nature of the relationship between the Parties is to be a close collaborative relationship, it shall be reasonable in any one case to refuse to consent to assignment or transfer.

- 18.2 No assignment, transfer or sub-contracting by a Party shall relieve it of any of its obligations or duties under this Agreement and that Party shall remain fully liable as though the matter assigned, transferred or sub-contracted matters were carried out by itself.
- 18.3 The terms of any sub-contract entered into by a Party in connection with this Agreement shall be consistent with and shall ensure compliance with this Agreement, including all auditing and financial requirements.
- 18.4 Any Party sub-contracting work under this Agreement shall ensure that it and any third party contractor to whom that work is sub-contracted has appropriate financial and auditing procedures in place to manage its commitments to the Project and that Party shall ensure that both it and its sub-contractor have complied with all relevant tax requirements relevant to the Agreement and their involvement with it.
- 18.5 The Agency will be the contracting party in respect of any contracts entered into with third parties, including any persons employed for the purpose of delivering the Project (and who are not otherwise existing members of the Agency's Staff, or where otherwise expressly agreed) and the Agency shall be responsible for all concomitant liabilities to such persons in respect of, amongst other things, health and safety, training, pay and conditions, pension and redundancy, except where such liabilities arise due to the cause of another Party.

19. FORCE MAJEURE

- 19.1 If the performance by any Party of any of its obligations under this Agreement is prevented or delayed by a Force Majeure Event then that Party shall be excused from performance of that obligation for the duration of the Force Majeure Event.
- 19.2 If a Party becomes aware of a Force Majeure Event that is or is likely to give rise to a failure or delay on its part, then that Party shall notify the Project Board members as soon as reasonably practicable giving a description of the Force Majeure Event and, where possible, an estimate of its likely duration.
- 19.3 If the Force Majeure Event in question continues or is likely to continue for a continuous period in excess of 30 calendar days the Parties shall enter into discussions with regard

to alternative arrangements in respect of this Agreement which may include but are not limited to termination of it pursuant to Clause 13.

- 19.4 Where a Force Majeure Event has extended or is reasonably anticipated to extend for a period of more than 50 calendar days or for periods in aggregate of more than 50 calendar days in any 12 month period then this Agreement or the continued participation in it of the Party subject to the Force Majeure Event may be terminated by any other Party with immediate effect.

20. THIRD PARTIES

- 20.1 Save where this Agreement expressly provides to the contrary, for the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions. This does not affect any right or remedy of any such party which exists or is available apart from that Act.

21. CONFLICT

- 21.1 The Parties shall not (whether directly or indirectly) and shall not allow, permit or instruct their Staff to undertake work which would cause a conflict with the work that Party is undertaking under this Agreement where such conflict would have a direct and adverse impact on the Party's ability to comply with its obligations under this Agreement or would otherwise impede or interfere with the Party's proper performance of this Agreement.
- 21.2 A Party shall forthwith notify the Project Board members of actual or potential conflict of which it becomes aware.

22. VARIATIONS

- 22.1 No change or variation to this Agreement will be effective unless and until it is agreed in writing, signed by the Parties and annexed to this Agreement.

23. WAIVER

- 23.1 No failure or delay or grant of indulgence by a Party to exercise or enforce any right, power or remedy available to it, will operate or be construed as a waiver of such right, power or remedy under this Agreement or otherwise, nor will any partial exercise preclude any further exercise of the same or of some other right, power or remedy.

24. SEVERABILITY

- 24.1 If any court or other competent authority finds that any part or provision of this Agreement is void, unlawful or unenforceable then that part or provision will be deemed to have been severed from this Agreement and shall have no force and effect. The remaining provisions of this Agreement will continue to be valid and enforceable to the fullest extent permitted by law, and the Parties shall negotiate in good faith to agree the terms of a mutually acceptable and satisfactory alternative part or provision in that, as amended, it is valid and lawful and enforceable.

25. COUNTERPARTS

- 25.1 This Agreement may be executed in any number of counterparts or duplicates each of which shall be an original but such counterparts or duplicates shall together constitute one and the same agreement.

26. GOVERNING LAW & JURISDICTION

- 26.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and subject to the agreed provisions in respect of alternative dispute resolution the Parties agree to submit to the exclusive jurisdiction of the courts of England and Wales regarding any claim or matter arising under this Agreement.

27. SURVIVAL

- 27.1 The provisions of Clauses 1 (Definitions), 6.4, (Payment & Financial Contributions), 7 (Publication & Publicity), 8 (Confidentiality), 9 (Intellectual Property Rights), 10 (Liability), 11 (Property, Insurance & Records), 13.5, 13.6, 13.7 and 13.9 (Termination), 14 (Dispute Resolution), 18 Assignment & Contracting), 20 (Third Parties), 23 (Waiver), 24 (Severability), 25 (Counterparts), 26 (Governing Law & Jurisdiction), and 27 (Survival) shall survive termination of this Agreement.

APPENDIX A PROJECT SPECIFICATION

1. Project summary

- 1.1 Croston is located on the River Yarrow, 3km upstream of where the River Lostock and River Douglas meet, near to the tidal limit for high spring tides. The village has flooded on several occasions and our flood warning service covers 687 properties.
- 1.2 The village suffers from multiple sources of flooding. River defences are estimated to provide a maximum standard of flood protection for 1 in 20 years flood (5 per cent chance in any one year), and the surface water/foul system starts to flood at a 1 in 5 year flood (20 per cent chance of flooding in anyone year).
- 1.3 During flooding greater than the 1 in 5 year flood, river water begins to back up through the surface water system and surface water drainage is severely impeded. River overtopping starts immediately upstream of the village and at the downstream end. The combination of flooding means that the main highway into the village, and up to 438 properties, flood during the 1:100 year flood (1 percent chance in any one year).
- 1.4 Working collaboratively with Lancashire County Council, Chorley Borough Council and United Utilities, The Environment Agency has developed The Croston Flood Risk Management Scheme ("Scheme") to reduce the flood risk from rivers and surface water.
- 1.5 The Scheme comprises construction of a flood storage reservoir upstream of Eccleston Bridge on the River Yarrow. Operation of the Scheme would reduce river flood risk from 1 in 20 years (5 percent in any one year) to 1 in 100 years (1 percent chance in any one year). It would also allow un-impeded flow of the surface water system into river network reducing flood risk for up to 438 properties.

2. Project partners

2.1 The project partners comprise:

- The Environment Agency
- Chorley Council
- Lancashire County Council
- United Utilities

3. Overall strategic objective

The key objectives of the Project are as follows;

- To deliver flood risk management measures, reducing the risk to people and property in Croston from all sources of flooding;
- To ensure that the preferred option is a sustainable solution;
- To ensure that the preferred option is designed to be safe for the public during construction and operation;
- To design works to minimise adverse impacts on the environment during construction and operation;
- To conserve and where practical enhance the visual/townscape/landscape /recreational quality within Croston an Eccleston;
- To encourage a natural management of the river and its floodplain contributing to geomorphological improvements to help deliver Water Framework Directive targets to maintain good ecological status;
- To conserve the historic setting of Croston and Eccleston, avoiding significant adverse impact on designated features of cultural heritage importance; and
- To contribute positively to Local, Regional and National BAP targets and avoid, where possible, adverse impact on species or habitat of National and International importance.

4. Programme of work and parties' responsibilities

4.1 Parties' responsibilities

4.1.1 The Agency's Project Manager/Representative will administer all contracts for the delivery of the Project which the Agency lets and will carry out day to day project management of the Project throughout its lifespan. He/she will also liaise, as appropriate, with the wider Agency and other statutory bodies to ensure the required permissions and consents are in place to deliver the Project.

4.1.2 The Council Representative will liaise with the Agency's Project Manager/Representative and, as appropriate, with Council members and other officers to enable the successful delivery of the Project. The Council Representative will be a part of the Project Team to provide input throughout the development of the Project.

4.1.3 All parties Representatives' will operate in a mutually cooperative manner to ensure successful delivery and completion of the Project.

4.2 Programme of work

4.2.1 The programme of work will be the accepted "Programme" as forming part of the Engineering Contract for the Project and such works as required by the Agency and/or the Council to enable the delivery of this Programme. The milestones in the Programme are:-

- Planning Approval January 2015
- Target setting and contract award: February 2015
- Construction Start: March 2015
- Construction Completion: August 2016

4.3 Scope of Works

4.3.1 The scope of works will be as set out in the Engineering Contract for the Project and such works as required by the Agency and/or the Council to enable the delivery of the Project.

5. Administrative details

5.1 Timescales

Project Start date	1 January 2015
Project End date	1 September 2016
Project Duration	20 months

5.2 Partners' contact details

Environment Agency Project Manager

Neil Forsythe
Environment Agency
Richard Fairclough House
Knutsford Road

Warrington
WA4 1HT
01925 542 987
neil.forsythe@environment-agency.gov.uk

Council Representative: Ian Welsby
Lancashire County Council
PO Box 78
County Hall
Preston
PR1 8XJ
01772 531448
ian.welsby@lancashire.gov.uk

5.3 Partners' addresses for service of notices

Environment Agency Jas Bahi
Environment Agency,
Rivers House
21 Park Square South
Leeds
LS1 2QG

Council Contact for Notices Ian Welsby
Lancashire County Council
PO Box 78
County Hall
Preston
PR1 8XJ

6. Project Board

- 6.1 A joint Project Board comprising officers from the Environment Agency, Chorley Council, Lancashire County Council and United Utilities will be made up to provide the executive overview and guidance of the Project. The wider Project Team may, in addition to Agency and Council representatives, be extended to include representatives from the Environment Agency's consultants and/or contractor. The Project Board members include:

Name	Party	Position	Role
Keith Ashcroft	Agency	Area Manager	Project Sponsor

Jonathan Croft	Agency	Area Flood Risk Manager	Senior Business User
Jonathan Farrar	Agency	Project Team Manager	Project Executive
Neil Forsythe	Agency	Project Advisor	Project Manager
Daniel Herbert	LCC	Network Manager	Board Member

6.2 The Project Board will take overall responsibility for the successful delivery of the Project and will ensure that all the Project Objectives are achieved to the mutual satisfaction of the Environment Agency and the other contributing parties.

6.3 The Project Board will be chaired by the Environment Agency's Project Executive and as with all Agency projects, shall be managed under PRINCE2 principles.

6.4 The Project Board will be run under a "manage by exception" principle and will meet as required at key points during the Project where its decision making is required. The Environment Agency's Project Manager will facilitate the Project Board and be the central point of contact. All members of the Project Board will be expected to meet their respective costs of their attendance at meetings rather than from the Financial Contributions and may be requested to host some meetings.

6.5 In line with the Agency and the other Parties' environmental targets teleconferencing and web conferencing will be considered as a possible option for meetings.

6.6 Role of the Project Board

6.6.6 The roles of the Project Board will include but shall not be limited to:

- Monitoring the overall progress of the Project set out in this collaborative agreement and the works information package;
- Taking a strategic overview of the Project to ensure successful and timely implementation;
- Considering and agreeing decisions required above the delegated authority of the Parties Representatives and/or Project Team
- Providing a first point of arbitration for any disagreements between the Parties Representatives and/or Project Team; and
- Acting as representatives and contacts for their wider organisations.
- Beyond day to day operations the Project Board will be the key point of contact for parties external to the Parties Representatives and Project Team, and Project Board

members will be expected to maintain contact with other interested parties to the Project.

- 6.6.7 Although it is intended that the Project Board will only meet when key decisions are required it is expected that all members will make reasonable endeavours to be available as and when advice and guidance may be required by the Project Team.
- 6.6.8 Decisions of the Project Board shall be made by unanimous vote. The Parties shall seek to agree all decisions for the benefit of the Project and not for individual Party gain.
- 6.6.9 If a member of the Project Board is unable to attend they may nominate a substitute. Nominating a substitute to attend is the responsibility of the individual Project Board member to ensure their representative has suitable delegated authority to contribute to decisions to be taken by the Project Board.
- 6.6.10 Project Board meetings will also be attended by members of the Project Team as deemed necessary on a meeting by meeting basis.
- 6.6.11 In addition to its permanent members, the Project Board shall be entitled to invite any contractors or advisors or stakeholders to attend at its meetings but such persons shall not be entitled to vote on decisions of the Project Board.

7. Communication, publicity and delivery of outputs

- 7.1 All written communications and outputs are to be submitted in draft form to the Project Board for review and comment, prior to approval. E-mail communications are acceptable but the delivering partner is responsible for ensuring that the receiving partner does receive these in a timely manner, noting that the external gateways used for e-mails are not 100% reliable.
- 7.2 Except for progress reports, final versions of outputs are to be submitted in hard copy and disc version.
- 7.3 A Project communications plan will be produced and updated by the Agency with input from the Council and future stakeholder workshops will be run jointly.

7.4 The Parties will seek opportunities to publicise the partnership approach to the project and the importance of the Project in managing future flood risk to the town.

8. Environmental considerations

8.1 The Parties will adopt a sound proactive environmental approach during the project, designed to minimise harm to the environment.

Considerations shall include:

- **paper use:** all documents and reports prepared in the project shall be produced wherever possible on recycled paper containing at least 80% post consumer waste and printed double sided;
- **travel:** use of public transport, reduce face to face meetings by using email and videoconferencing. Meetings to be held in locations to minimise travel and close to public transport links;
- **efficient energy and water use;**
- **disposal of waste:** Parties are responsible for the disposal of their own waste and should recycle where possible to minimise residual waste.

APPENDIX B BUDGETARY PROFILE

1. Scheme cost breakdown

A breakdown of project costs are outlined in Table 1 below:

CROSTON SCHEME ESTIMATED COSTS	
Item	Estimated cost (£k)
Construction	
Site Clearance	10
Remove field drain	5
Drainage ditch	5
Spillway	125
Grasscrete	160
Sheet piling cut-off	200
Pyramat to dry side and crest	135
Topsoil strip/reinstate	45
Excavate borrow pit and fill to embankment	450
Excavate river bed and deposit in borrow pit	15
Seeding	50
Junction safety improvements	15
Maintain existing road	15
New access road	80
Drainage ditch and protect cable	10
Fencing and gates	10
Footpath diversions	5
Cable trench for BT & power supply	10
Control building and telemetry	30
Discharge control structure	750
Site access and haul roads	65
Temporary bridge	10
Site temporary fencing	10
Preliminaries	300
Fee	201
Sub Total	2711
Other Items	
Downstream telemetry	50
Power supply and telecoms	150
Environmental mitigation	450
Landscaping	146
Archaeological mitigation	50
Compensation	1200
Sub Total	2046
Fees	
Design fee	200
EA Salaries	200
CMDc	25
ECC PM/supervision	90
Cost Consultant	20
Sub Total	535
Risk	
50%ile	670
TOTAL	5962

Table 1: Croston Flood Risk Management Scheme outline costs

2. Budget

Partner		2014/15	2015/16	Total
Chorley Council	Cash contribution	£0	£1,100,000	£1,100,000
**Lancashire County Council	Cash contribution	£0	£181,000	£181,000
Environment Agency	Cash contribution	£1,500,000	£3,100,000	£4,600,000
Total		£1,500,000	£4,381,000	£5,881,000

Table 2: Breakdown of partner contributions

** Financial Contributions from other organisations are dealt with in a separate legal agreement with that organisation.

2. Payment schedule

Partner	Amount	Date / Milestone
Lancashire County Council	£181,000	By 1 st June 2015
Total	£181,000	

3. Payment procedures

Payments are to be addressed to:

Environment Agency
Payments Department
PO Box 263
Aqua House
Peterborough
Cambridgeshire
PE2 8YD

APPENDIX C

PARTNERSHIP FUNDING PRINCIPLES

Paragraph 4.16:

The maximum contribution agreed with other partners should make an appropriate allowance for potential overspend. If this contingency arrangement is in place, any cost overruns can still be shared across all funding sources, including FDGiA, in proportion to the size of their contribution, but the FDGiA payment cap cannot be exceeded. If not needed, unspent sums will be returned to contributors in proportion to their contributions.

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

SIGNED for and on behalf of the
ENVIRONMENT AGENCY

Name:

Position:

SIGNED for and on behalf of
LANCASHIRE COUNTY COUNCIL

Name:

Position: