

MEMORANDUM OF UNDERSTANDING**Dated: 22nd May 2014****Between:**

- (1) West Sussex County Council of County Hall, West Street, Chichester, West Sussex, PO19 1RQ (the "**Authority**"); and
- (2) The Secretary of State for Environment, Food and Rural Affairs of 17 Smith Square, Nobel House, Defra, SW1P 3JR ("**Defra**")

(each a "**Party**" and together the "**Parties**").

Background

- A Following the severe flooding in the winter of 2013/2014 Defra has established a scheme to provide flood affected homes and business premises in England with up to £5,000 to establish flood resilience measures which will reduce the risk of future flooding and/or minimise the effects of future flooding (the "**Scheme**").
- B The Scheme will be administered and delivered by the Authority in its area of responsibility using a grant paid by Defra under section 31 of the Local Government Act 2003.
- C This memorandum of understanding ("**MoU**") establishes the responsibilities of the Parties and the principles according to which the Authority will administer the Scheme.
- D The MoU is not intended to be legally binding on the Parties but the Parties sign the MoU intending to honour their obligations set out in it.

The Parties agree as follows:**Interpretation**

"**Claim**" means a claim submitted to the Authority for a Grant to cover the cost of Eligible Expenditure on a Property.

"**Eligible Expenditure**" means expenditure on any of the items set out in Schedule 2 as amended by the Parties from time to time.

"**Flooding**" has the meaning set out in Schedule 5.

"**Grant**" means a sum up to a maximum of £5,000 (five thousand pounds) which may be claimed for Eligible Expenditure on a Property.

"**Property**" means premises which satisfy the criteria set out in Schedule 1.

"**Scheme Duration**" means the period from 1 April 2014 until 31 March 2015.

The Authority's Obligations

- 1 The Authority will administer and deliver the Scheme on behalf of Defra by:

- 1.1 verifying, processing and, if appropriate, paying Claims for:
 - a) reimbursement of Eligible Expenditure; or
 - b) payment in advance of Eligible Expenditure
- 1.2 providing services, goods and/or works for flood resilience measures up to the value of a Grant for each Property paid for directly by the Authority ("**Authority Costs**") if the Authority decides that doing so offers better value for money than providing Grants for those Properties.
- 2 The Authority will provide a schedule on the last working day of each quarter of the Authority Costs and Grants paid and will invoice Defra within 20 working days of:
 - 2.1 30 June 2014 for the sum of Authority Costs and Grants paid in the period from 1 April to 30 June 2014;
 - 2.2 30 September 2014 for the sum of Authority Costs and Grants paid in the period from 1 July to 30 September 2014;
 - 2.3 31 December 2014 for the sum of Authority Costs and Grants paid in the period from 1 October to 31 December 2014; and
 - 2.4 31 March 2015 for the sum of Authority Costs and Grants paid in the period from 1 January to 31 March 2015.
 - 2.5 Invoices and supporting information should be sent to floodresiliencegrant@defra.gsi.gov.uk
- 3 With each invoice submitted in accordance with clause 2 the Authority will:
 - 3.1 include a statement signed by the Authority's chief finance officer which states that to the best of his knowledge, having made reasonable enquires of the Authority's staff which a diligent and competent chief finance officer would make, he is satisfied that the Authority has used reasonable endeavours to ensure that all Claims have been verified, processed and paid in accordance with the Memorandum of Understanding with Defra and that all Authority Costs have been incurred properly on Eligible Expenditure; and
 - 3.2 give Defra a report which contains:
 - a) the number of Properties covered by the invoice;
 - b) a brief summary of the measures paid for by Grants and Authority Costs; and
 - c) a reference number for each Claim covered by the invoice which will allow either Party to track Claims without reference to either the name or the address of the claimant ("**Reference Number**").
- 4 The Authority will apply the criteria set out in Schedules 1 and 2 in good faith and will consult Defra if it intends to apply the criteria in a materially different way.

- 5 Within 30 working days of the end of the Scheme Duration the Authority's chief executive or chief finance officer will submit a report to Defra setting out whether he has received an audit opinion from the Authority's chief internal auditor that he can give reasonable assurance that the invoices submitted by the Authority for Claims and Authority Costs fairly represent expenditure under the Scheme made in accordance with the terms of the MoU.
- 6 The Authority will promptly inform Defra of any significant financial control issues raised by its internal auditors.
- 7 The Authority will maintain a sound system of internal financial controls.
- 8 If the Authority has any grounds for suspecting financial irregularity in connection with the Scheme it will immediately notify Defra, explain what steps are being taken to investigate the suspicion and keep Defra informed of the progress of the investigation.
- 9 The Authority will account for the Grants and Authority Costs as capital expenditure.

Defra

- 10 Defra acknowledges that the Authority may apply the criteria set out in Schedules 1 and 2 flexibly to take into account local needs.
- 11 Defra may at any time require an external validation to be carried out by an appropriately qualified independent accountant or auditor of any matter in connection with the Scheme.

Scheme Duration

- 12 All Claims must be submitted to the Authority during the Scheme Duration and all Authority Costs must be incurred during the Scheme Duration. Defra will not reimburse the Authority for any Grants paid by the Authority or Authority Costs incurred after the end of the Scheme Duration.

Claims Process

- 13 The Authority will manage the Scheme by following a process similar to the process set out in Schedule 4.

Reimbursement of the Authority

- 14 If the Authority has submitted its invoices in accordance with clauses 2 and 3, Defra shall pay the Authority's invoices within 30 days of receipt.

Charges and liabilities

- 15 Except as otherwise provided in the MoU, the Parties must each bear their own costs and expenses incurred in complying with their obligations under the MoU.

- 16 Both Parties remain liable for any losses or liabilities incurred due to their own or their employees' actions and neither Party intends that the other Party shall be liable for any loss it suffers as a result of the MoU.

Disclosure of information and data protection

- 17 Each Party will:
- 17.1 provide to the other Party any information connected with the Scheme ("**Information**") in its possession that may be reasonably requested by the other Party, subject to necessary confidentiality constraints, safeguards and statutory rules on disclosure; and
- 17.2 consult the other Party before disclosing Information relevant to the other Party to any third party, including under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
- 17.3 The obligations in this clause 17 are subject to any government requirements as to transparency which may apply to either or both Parties from time to time.
- 17.4 The Authority acknowledges that it is the data controller (as defined in section 1(1) of the Data Protection Act 1998) in respect of personal data which it collects as part of the Claims process.

Audit

- 18 The Authority will:
- 18.1 maintain reliable, accessible and up to date accounting records (including the information set out in Schedule 3) with an adequate audit trail for all Claims and Authority Costs for at least six years after the Scheme Duration; and
- 18.2 allow Defra and anyone acting on its behalf or on behalf of Government, free access at all times to all information connected to the Scheme.

Breach of the MoU

- 19 If:
- 19.1 the Authority does not comply with the MoU;
- 19.2 any overpayment is made by Defra;
- 19.3 any amount is paid in error by Defra; or
- 19.4 any of the events set out in clause 20 occurs

Defra may reduce, suspend or withhold payments to the Authority or require the repayment of the whole or any part of monies paid, as may be determined by Defra and notified in writing to the Authority. Such sum as has been notified will immediately become repayable to Defra which may set off the sum against any future amount due to the Authority from central government.

- 20 The events referred to in clause 19.4 are:
- 20.1 the Authority purports to transfer or assign any rights, interests or obligations arising under the MoU without informing Defra;
 - 20.2 any information provided in or with any invoice for monies payable under the MoU or in any subsequent supporting correspondence is found to be significantly incorrect or incomplete in Defra's opinion;
 - 20.3 it appears to Defra that other circumstances have arisen or events have occurred that are likely to significantly affect the Authority's ability to manage the Scheme; and
 - 20.4 the Authority's chief internal auditor is unable to provide the assurance set out in clause 5.

Schedule 1

Eligible Property

- 1 Subject to paragraphs 2 and 3 the Scheme covers the following properties:
 - 1.1 residential properties (including static caravans if they are a claimant's primary residence (defined as the location registered on electoral role)) if habitable internal areas of the premises have been damaged by Flooding; or
 - 1.2 businesses (including social enterprises and charities) if internal areas which are critical to the day to day operations (i.e. not storage sheds or warehouses) have been damaged by Floodingbetween 1 December 2013 and 31 March 2014.
- 2 Claimants must not:
 - 2.1 have received other sources of public or insurance funding to establish the same resilience measures claimed (for example, the Property Level Protection scheme); or
 - 2.2 have benefitted from a wider community flood defence scheme which is likely to be completed prior to 30 November 2014.
- 3 Business applicants must comply with state aid requirement (a per annexe C of the Flood Support Schemes guidance at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284174/Flood-Support-Schemes-guidance.pdf)

Schedule 2
Eligible Expenditure

Property level-measures	Description of Measure/Type of Flood Risk
Professional Survey of Premises to Identify Flood Risks up to £500 of costs	Professional survey undertaken to identify property flood risk, and identify appropriate resilience and/ or resistance measures.
Flood Risk Report	Professional flood risk report can be commissioned after resilience and/ or resistance measures fitted to inform any future works, and/ or to submit to insurance companies to demonstrate action taken/ level of future risk.
Local Authority permissions	For example, building regulations consents and consents related to conservation areas and listed buildings.
Airbrick Cover	Watertight cover for airbricks.
Self-closing airbrick	Replacement airbrick that automatically closes to prevent flooding.
Sewerage Bung	Inflatable device to insert in U bend of toilet to prevent sewage backflow.
Toilet Pan Seal	Seal to prevent sewage backflow.
Non-return valves 12mm overflow pipe	Valve prevents backflow via overflow pipe.
Non-return valves 110mm soil waste pipe	Prevents backflow via soil waste pipe.
Non-return valves 40mm utility waste pipe	Valve prevents backflow via waste pipe.
Silicone gel around openings for cables etc.	Prevents flooding via openings for cables to access properties.
Water resistant repair mortar	Water resistant mortar used to repair walls and improve future resistance.
Re-pointing external walls with water resistant mortar	Improve water resistance through using water resistant mortar to re-point walls.
Waterproof external walls	Membrane fitted to make external walls water resistant?
Replace sand-cement screeds on solid concrete slabs (with dense screed)	Dense water resistant screed to replace sand-cement screed.
Replace mineral insulation within walls with closed cell insulation	Replacement of wall insulation with water resistant insulation.
Replace gypsum plaster with water resistant material, such as lime	Replace existing plaster to water resistant material in property.
Sump Pump	A pump used to remove water that has accumulated in a water collecting sump basin.
Demountable Door Guards	Guard fitted to doors to resist flooding.
Automatic Door Guards	Door guards that automatically close to prevent flooding.
Permanent flood doors	Permanent door (rather than demountable) which is flood resistant.
Demountable Window Guards	Guard fitted to window to resist flooding.
Sceptic tank resistance or resilience measures	Sceptic tank resistance or resilience measures such as isolation valves, venting above flood level etc.
Replace ovens with raised, built-under type	Raising oven off floor above flood level.
Replace chipboard kitchen/bathroom units with plastic units	Fit plastic kitchen and/ or bathroom units to minimise water damage.
Move electrics well above likely flood level	Re-wiring of electrics (such as socket points) above flood

	level.
Mount boilers on wall	Raise boiler above flood level.
Move service meters above likely flood level	Raise service meters above flood level.
Replace chipboard flooring with treated timber floorboards	Replace floor (including joists) to make water resistant.
Replace floor including joists with treated timber to make it water resilient	Replace floor including joists with treated timber to make it water resilient.
Install chemical damp-proof course below joist level	Install damp proof course to resist groundwater flooding.
Replace timber floor with solid concrete	Replace wooden flooring with concrete.
Garage/Driveway Barrier	Driveway gate or garage barrier to resist flooding.

Collaborative Applications

The Authority may accept Claims from owners of Properties who wish to collaborate and establish community level measures, for example, where a street of properties would like to work together to establish a more appropriate solution for all provided the total Claim submitted does not exceed the Grant for each Property.

Schedule 3

Information to be Maintained by the Authority

- 1 The Authority will maintain a record of:
 - 1.1 all Claims received; and, for those approved:
 - a) the value of the Grant; and
 - b) the resilience and/or resistance measures approved
 - 1.2 rejected Claims and the reason for rejection; and
 - 1.3 the Reference Number for each Claim.

Schedule 4

The Claims Process

Stage 1 – Application	
Purpose	The application form should gather information required to appraise the Claim.
Stage 2 – Appraisal	
Purpose	Claims should be reviewed to ensure: <ul style="list-style-type: none"> • The claimant is claiming for a Property • Proposed resilience measures generally appropriate for nature of flooding experienced. • The Claim represents value for money. • The claimant has not received other public or insurance funds for the same measures (no double funding). • The claimant, if a business, complies with state aid requirements.
Stage 3 – Approval or Rejection	
Purpose	The Authority will establish a means of evaluating Claims in line with its existing scheme of delegation (level of officer or panel with authority to make financial commitments of £5,000).
Stage 4 – Contract	
Purpose	The agreement with the claimant should set out the: <ul style="list-style-type: none"> • basis for paying the Grant • timetable to implement the measures approved • reporting requirements of outputs/outcomes • evidence to be provided with Claims • inspection requirements (access to premises if required) • how the Grant will be recovered if misused

Guidance on Flood Resilience and Resistance Measures

If possible the Authority should provide local advice in its application guidance to inform potential claimants of the most appropriate measures for the type of flooding they have experienced.

The Authority may require that claimants submit one or more quotations with Claims or may employ a qualified person to check that the costs quoted in the Claim are valid and/or in line with expectations for the works or equipment proposed.

Schedule 5**Definition of Flood**

Section 1 of the Flood & Water Management Act 2010

1(1) "Flood" includes any case where land not normally covered by water becomes covered by water.

(2) It does not matter for the purpose of subsection (1) whether a flood is caused by:

- (a) heavy rainfall;
- (b) a river overflowing or its banks being breached;
- (c) a dam overflowing or being breached;
- (d) tidal waters;
- (e) groundwater; or
- (e) anything else (including any combination of factors).

(3) But "flood" does not include:

- (a) a flood from any part of a sewerage system, unless wholly or partly caused by an increase in the volume of rainwater (including snow and other precipitation) entering or otherwise affecting the system; or
- (b) a flood caused by a burst water main (within the meaning given by section 219 of the Water Industry Act 1991).

Signed for and behalf of Defra:

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Name:

Title:

Date:

Signed for and behalf of West Sussex County Council

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Name:

Title:

Date: