

THE HIGHLAND COUNCIL

CAITHNESS & SUTHERLAND AREA COMMITTEE

11th FEBRUARY 2014

Agenda Item	7.
Report No	CS/5/14

PEATLANDS PARTNERSHIP “FLOW TO THE FUTURE” PROJECT UPDATE

Report by Director of Planning and Development

SUMMARY

This paper provides an update on the Flow to the Future project bid, and presents a draft agreement between the Royal Society for the Protection of Birds, Scottish Natural Heritage, The Highland Council and North Highland College UHI which sets out the arrangements where the lead partner (RSPB), with the support of the other partners, will deliver the project.

1. Background & Introduction

- 1.1 Members received a presentation on the “Flow to the Future” Project from Caroline Eccles of the RSPB at their August 2013 meeting. The Project aims to restore over seven square miles of blanket bog in Caithness and Sutherland, and Caroline was working up a second stage bid to the Heritage Lottery Fund for a large proportion of the £9.1M required to deliver the five year project.
- 1.2 The main elements of the project include restoration work, research and monitoring, and engaging with people and encouraging them to visit the peatlands. Members heard about proposals to build a new field centre and laboratory at the RSPB Nature Reserve at Forsinard to accommodate the needs of researchers and volunteers working on the peatlands; the upgrading of facilities for visitors at the Forsinard site, including the proposed erection of a viewing tower; and the development of a range of activities and initiatives for both on-site and remote audiences and schools.

2. Flow to the Future Funding Bid: Progress Update

- 2.1 The second stage funding bid has been submitted to the Heritage Lottery Fund, and we hope to hear the outcome of the bid in May 2014.
- 2.2 A Partnership Agreement has been drafted between the main project partners (RSPB, Scottish Natural Heritage, North Highland College and The Highland Council), and is appended at **Appendix 1**.

3. Fit with the Programme for the Highland Council 2012-17 and the Single Outcome Agreement

3.1 These actions support actions 7, 8, 11, 13 and 18 under the “Working Together to Empower Our Communities” heading in the Administration Programme 2012-17.

3.2 This Project will help the Council deliver SOA National Outcome 12 “We value and enjoy our built and natural environment and protect it and enhance it for future generations”, as well as a number of other national outcomes. The local outcome is “Our natural heritage is protected and enhanced enabling it to deliver economic, health and learning benefits”.

4. Equality, Legal, Risk & Carbon Clever Implications

4.1 The Project’s funding bid takes account of Equality, Legal and Risk impacts.

4.2 If the bid is successful, the Project will restore large areas of peatland in Caithness & Sutherland, and monitor the impact of restoration techniques, thus contributing to the capture of carbon, and therefore helping to mitigate climate change implications.

5. Resource Implications

5.1 The funding bid includes a contribution of £2,000 from the Council’s Biodiversity budget for the five year project duration. Delivering the project will also necessitate contributions in terms of staff time from the Countryside Rangers, Access Officer, Biodiversity Officer and Roads staff. This can be planned within Services during the life of the project.

5.2 Staff in Planning will have responsibilities associated with roadside interpretation and car parking facilities. These can be accommodated within the Service programme during the life of the project. Any additional resource implications will be brought to a future meeting for consideration and approval.

6. Recommendation

6.1 Members are invited to:
(a) note progress made by the Peatlands Partnership with the funding bid for the Flow to the Future Project, and
(b) recommend approval in principle of the formal Partnership Agreement.

Designation: Director of Planning and Development
Date: January 2014
Author: Janet Bromham, Biodiversity Officer
Ref: JB (Ext 2274) Background Papers:

Appendix 1: Partnership Agreement (Draft)

AGREEMENT

between

THE ROYAL SOCIETY FOR THE PROTECTION OF BIRDS, incorporated by Royal Charter and registered under the Charities Acts with Charity Number 207076 in England and Wales and Charity Number SC037654 in Scotland and having their Scottish Headquarters at 2 Lochside View, Edinburgh Park, Edinburgh EH12 9DH and their Principal Office at The Lodge, Sandy, Bedfordshire SG19 2DL (“RSPB”)

and

SCOTTISH NATURAL HERITAGE established under the Natural Heritage (Scotland) Act 1991 and having their Headquarters at Great Glen House, Leachkin Road, Inverness IV3 8NW (“SNH”)

and

THE HIGHLAND COUNCIL, Council Buildings, Glenurquhart Road, Inverness IV3 5NX (“THC”)

and

NORTH HIGHLAND COLLEGE, having their Principal Offices at UHI Millennium Institute, Castle Street, Thurso, Caithness, KW14 7JD (“NHC”)

WHEREAS:-

- A** RSPB, SNH, THC and NHC entered into a Project Agreement dated 1st, 7th and 18th February 2013 for the purpose of setting out the arrangements between them in developing the work of The Peatlands Partnership HLF project “Flow to the Future” which will part-implement “The Peatlands of Caithness & Sutherland Management Strategy 2005 - 2015”;
- B** RSPB acting as lead Party on behalf of itself, SNH, THC and NHC has applied for and secured a Heritage Grant from The Heritage Lottery Fund for the Project (Grant Ref No HG-11-06002); and
- C** RSPB, SNH, THC and NHC have agreed to participate in, and contribute towards delivering the Project on behalf of the Peatlands Partnership in accordance with the terms and conditions set out herein.

NOW THEREFORE RSPB, SNH, THC and NHC HEREBY AGREE as follows:-

1. DEFINITIONS

1.1 In this Agreement (including without limitation the Schedule) the following terms shall have the following meanings ascribed to them:-

“**Agreement Period**” has the meaning ascribed to it in Clause 2;

“**Applicable Laws**” means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body;

“**Application**” means the grant application (reference HG-11-06002) to HLF in respect of the Project submitted by the Lead Party on [] and approved by HLF on [];

“**Auditor**” has the meaning ascribed to it in Clause 14.1;

“**Background Intellectual Property**” means the Intellectual Property Rights existing before the date of this Agreement or Intellectual Property Rights, other than Foreground Intellectual Property Rights, used in or disclosed in connection with the performance of the Project;

“**Chair**” means John Henderson or his successors in office as Chairman of The Peatlands Partnership, being a body comprising organisations who carry out and fund the objectives set out in the Management Strategy document “The Peatlands of Caithness and Sutherland Management Strategy 2005-2015” and any successor document;

“**Commencement Date**” means the “Permission to start date” as agreed by HLF with the Lead Party.

“Confidential Information” means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, customers and suppliers of a Party, including without limitation Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential, including all personal data and sensitive personal data within the meaning of the Data Protection Act 1998;

“Delivery Phase” means the phase of the Project commencing on the Commencement Date until the Project Completion Date;

“Force Majeure” means any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to a Party;

“Foreground Intellectual Property” means all Intellectual Property Rights created or obtained or developed by a Party in the course of undertaking the Project and for the purposes of the Project and the Intellectual Property Rights therein;

“Grant” means the grant monies (or part thereof) provided by HLF to the Lead Party for the Project;

“Grant Agreement” means the offer letter issued by HLF in response to the successful Application, the HLF standard terms of grant and all documents referred to therein;

“HLF” means the Heritage Lottery Fund;

“Intellectual Property” means (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, trademarks, rights in internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and other rights in Confidential Information; (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and (c) all other rights having equivalent or similar effect in any country or jurisdiction;

“Lead Party” means RSPB;

“Maintenance Phase” means the period up to and including the Project Completion Date until the tenth anniversary of the Project Completion Date;

“Match Funding” means the cash financial and in kind contributions to be made by the Parties hereunder;

“Notice of Dispute” has the meaning ascribed to it in Clause 16.1;

“Parties” means together RSPB, SNH, THC and NHC;

“Party” means each and any of RSPB, SNH, THC and NHC;

“Party Contribution” means the proportion of the Match Funding provided, to be provided, or to be agreed to be provided by each Party

“Project” means the Flow to the Future Project as more particularly described in the Application, the Grant Agreement and in Clause 4;

“Project Activities” means the specific tasks and activities to be carried out by a Party to support delivery of the Project, as specified in the Application, or as may be subsequently modified by the Parties with the agreement of HLF;

“Project Completion Date” means the date specified in the Grant Agreement on which the final Project deliverable will be delivered;

“Project Manager ” means such person as the Lead Party appoints from time to time to co-ordinate delivery of the Project;

“Project Funds” means the Grant and the Match Funding;

“Round 2 Funding” means a grant awarded by HLF for the Delivery Phase of the Project;

“Schedule” means the Schedule 1 or 2 annexed and executed as relative hereto;

“Steering Group” has the meaning ascribed to it in Clause 5.1;

“Steering Group Member” has the meaning ascribed to it in Clause 5.1;

“Third Party Claim” has the meaning ascribed to it in Clause 23.1;

“Working Days” means any days from Monday to Friday inclusive which are not Christmas Day, New Years Day, Good Friday or a statutory bank holiday in Scotland; and

“Working Groups” has the meaning ascribed to it in Clause 6.1.

1.2 In this Agreement:-

1.2.1 references to Clauses are to clauses of this Agreement (save where there is an express statement to the contrary);

1.2.2 clause and sub clause headings are indicative only and do not form part of this Agreement and shall not be taken into account in its construction or interpretation;

1.2.3 words importing the singular shall include the plural and words importing the masculine gender shall include the feminine gender and vice versa; and

1.2.4 any reference to a statute or subordinate legislation shall include any modification, extension or re-enactment thereof for the time being in force and shall also include all instruments, orders and regulations for the time being made, issued or given thereunder or deriving validity therefrom.

2. DURATION

2.1 This Agreement shall commence on the Commencement Date and, subject to Clause 12 shall continue in full force and effect until such date as specified in the Grant Agreement (“**Agreement Period**”).

3. PURPOSE OF AGREEMENT

3.1 The purpose of this Agreement is to set out the arrangements whereby the Lead Party, with support from the other Parties, will deliver the Project.

4. THE PROJECT

4.1 The Parties agree that the aims of the Project are as follows and that they will work together in good faith and in a spirit of co-operation to deliver those aims:-

4.1.1 increase opportunities for people to enjoy and enhance their understanding of the historical and cultural value of the peatlands relative to the Project and the special wildlife therein;

4.1.2 promote the part played by the peatlands relative to the Project in the carbon story;

4.1.3 increase the attractiveness of the area subject to the Project for visitors;

4.1.4 carry out maintenance, restoration and enhancement of the peatlands relative to the Project, which will deliver significant carbon benefits;

4.1.5 increase economic activity in the area subject to the Project with opportunities for local people to engage in the development work being undertaken, provide goods and services for visitors as well as enjoying the enhanced access and interpretation facilities; and

4.1.6 raise awareness of the possible World Heritage Site (WHS) and if appropriate engage with communities to garner support for the WHS qualification process.

4.2 The Project shall be implemented in accordance with:-

4.2.1 the Application;

4.2.2 the terms and conditions of the Grant Agreement (as may be varied with the agreement of the Parties and HLF); and

4.2.3 the terms and conditions of this Agreement (as varied in terms of clause 26.1).

4.3 In performing its obligations under this Agreement, each Party shall comply with all Applicable Laws.

5. STEERING GROUP

5.1.1 The Parties have established a Steering Group (“**Steering Group**”) which comprises up to three representatives from each Party and the Project Manager (each a “**Steering Group Member**”). While a Steering Group Member remains appointed by the relevant Party, that Steering Group Member is authorised to bind the Party who appointed such Steering Group Member in

respect of matters within the parameters of the Project at each meeting of the Steering Group. For the avoidance of doubt it is understood that Steering Group Members may require to refer certain decisions, particularly those having resource implications for their organisation, back for approval in terms of relevant decision-making procedures. In the event of such a likelihood arising a Steering Group Member will notify the Chair as soon as practicable.

5.1.2 The Steering Group shall at all times act within the terms of reference set in Schedule 1.

5.1.3 Notwithstanding Clause 5.1.2. and any other provision of this Agreement, the scope of this Agreement and the authority conferred on the Steering Group by this Agreement shall not extend to any decision to acquire or dispose of (by way of sale, transfer, gift, assignation, lease or other type of occupancy) or to grant any charge over any land by any of the Parties.

5.2 Meetings of the Steering Group will be held quarterly throughout the Agreement Period or more frequently as agreed by the Steering Group Members (acting reasonably) in accordance with the following:-

5.2.1 **Quorum**

No business shall be transacted at any meeting of the Steering Group unless a quorum is present. A quorum of the Steering Group will be agreed by the Steering Group. If a quorum is not present within half an hour from the time appointed for the meeting of the Steering Group, or if during the meeting of the Steering Group a quorum ceases to be present, the meeting of the Steering Group shall stand adjourned to the same day seven days later (or as otherwise agreed), or in the event of that day falling on a Scottish public holiday the next Working Day, at the same time and place. If at an adjourned meeting a quorum is not present within half an hour from the time appointed for the adjourned meeting the Steering Group Members present shall constitute a quorum. Notice of a meeting of the Steering Group adjourned for absence of a quorum shall be given by the Chair to all Steering Group Members.

5.2.2 **Method of attendance**

Attendance at meetings of the Steering Group may be in person or by telephone or similar form of communications equipment if all persons participating in the meeting are able to hear and speak to each other throughout the meeting. A Steering Group Member participating in this way is deemed to be present in person at the meeting and is counted in a quorum and entitled to vote. All business transacted in this way is deemed to be validly and effectively transacted at meetings of the Steering Group. The meetings of the Steering Group are deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the Chair of the meeting is located for the meeting.

5.2.3 **Substitute**

On occasions that a Steering Group Member is unable to attend a Steering Group meeting they may be temporarily replaced by a substitute who is

acceptable to the other Steering Group Members (acting reasonably) and who will be fully empowered to act for the absent Steering Group Member. For the avoidance of doubt, at no time may any of the Parties appoint more than one substitute to the Steering Group.

5.2.4 Failure to Attend Meetings

Where a Party is not represented at three consecutive meetings, the Chair of the Steering Group will write to the main contact of the Party to notify them of the continued absence. If the Party is not represented at a subsequent meeting without good reason, then the main contact of the Party will be invited to nominate replacement Steering Group Members.

5.2.5 Disclosure of a Personal Interest

A Steering Group Member who has direct or indirect personal interests in any matter brought up for consideration at a meeting shall disclose the nature of their interest to the Chair and shall not participate in the discussion or the decision-making process if the other Steering Group Members determine it to be a conflict of interest.

5.2.6 Appointing of Advisors/Observers

The Steering Group may invite advisors to meetings to provide expert or professional advice on any matter which may arise. Where the Steering Group considers it appropriate, the Steering Group may permit representatives of other organisations to attend meetings of the Steering Group as advisors or observers.

5.2.7 Agenda

The Chair shall, not less than 5 Working Days prior to a meeting of the Steering Group, produce and deliver to the Steering Group Members an agenda containing the date, time and place of such meeting, an agenda specifying in reasonable detail the matters to be discussed at the meeting together with draft minutes of the previous meeting(s) and any relevant papers for discussion at the meeting. Papers produced less than 5 Working Days prior to a meeting can only be discussed with the agreement of all Steering Group Members. Steering Group Members may request the Chair to include items for discussion in such agenda, but the content of the agenda shall ultimately be in the Chair's sole discretion, subject to a vote otherwise under clause 5.3.8.

5.2.8 Decision Making

Decisions taken by the Steering Group will normally be taken on the basis of consensus. However, in the event of the Parties being unable to agree and a vote being necessary each Steering Group Member will have one vote, decided on a show of hands (or if attendance is by telephone or similar form of communications equipment in accordance with Clause 5.3.2, by oral confirmation of that Steering Group Member's vote) and approved if supported by the affirmative vote of the majority of the Steering Group Members.

For the avoidance of doubt, all actions and decisions made will be subject to the overriding need to manage the Project in accordance with the requirements of HLF. Any decision inconsistent with such obligations, as determined by RSPB, acting reasonably and in consultation with HLF as appropriate, will be invalid and will not be binding upon or enforceable against the Partners.

5.2.9 Minutes

The Project Manager will take minutes of the Steering Group meeting, and, as soon as reasonably practicable after such meeting, send the draft version of the minutes to the Chair, for approval. The Project Manager shall make such changes as the Chair, acting reasonably, requires to the draft version of the minutes and thereafter provide the Chair with an engrossed version of the minutes. The Project Manager will then be obliged to circulate copies of such engrossed minutes to the other Steering Group Members within 10 working days of the meeting.

6. WORKING GROUP

6.1 The Steering Group shall be entitled to appoint a Working Group or groups consisting of representatives from one or more of the Parties (or such other organisations or individuals involved in The Peatlands Partnership or otherwise, as the Steering Group may agree) to provide focus and direction on planning and delivering different elements of the Project ("**Working Group**").

6.2 A Working Group shall act within the terms of reference and level of decision making set out by the Steering Group when appointing any such Working Group.

6.3 A Working Group will report back to the Steering Group at such intervals as the Steering Group may direct, acting reasonably.

7. OBLIGATIONS OF THE PARTIES

Each Party, in addition to the other obligations it is subject to hereunder (or in respect of obligations due to the Lead Party, each Party other than the Lead Party) shall throughout the Agreement Period:-

7. 1.1 participate in Steering Group meetings and Working Group meetings as necessary to achieve the delivery of the Project;

7.1.2 take all reasonable steps to ensure public safety at any sites within its ownership or control at which the Project Activities are being undertaken (which may without limitation take the form of suitable signage and temporary barriers where necessary to minimise risks of injury);

7.1.2 do everything reasonably required of it by the Lead Party to ensure that the Lead Party is able to comply with the terms and conditions of the Grant Agreement;

7.2 Provision of Information

Subject to Clause 15, make available promptly to the Lead Party and the other Parties as appropriate any information necessary for the performance of the Project;

7.3 Insurances

7.3.1 maintain for the Agreement Period insurance with an established insurance company of repute to cover the Party's potential liability under this Agreement and in relation to the Project including without limitation:-

(a) public and third party liability insurance for not less than FIVE MILLION POUNDS (£5,000,000) STERLING in respect of each and every occurrence;

(b) employers liability insurance of not less than FIVE MILLION POUNDS (£5,000,000) STERLING in respect of each and every occurrence;

and upon the request of the Lead Party provide satisfactory evidence to the Lead Party that such insurances have been taken out and are being maintained;

7.3.2 not do or permit anything to be done which may render any of the Parties' policies of insurance void or voidable;

7.3.3 The provisions of Clause 7A.3 will not apply to SNH and THC who self-insure in respect of their activities.

7.4 Procurement

7.4.1 use procurement procedures regarding the procurement of goods, works and services that comply with the higher of the standard set by (i) HLF; or (ii) the Party's own procedures;

7.4.2 maintain accurate records of procurement procedures followed and provide details of such records on request to the Lead Party;

7.5 Communications and Publicity

7.5.1 ensure that all press releases or other public statements about the Project will only be issued in accordance with procedures and protocols to be drafted by the Steering Group.

7.5.2 acknowledge the grant support provided by HLF explicitly in all communications relating to the Project as well as during any events in connection with the Project in line with HLF guidance;

7.5.3 display the HLF, and Party logos and/or such branding as may be developed by the steering group on all written, audio-visual and electronic communication and publicity materials relating to the Project;

- 7.5.4 display all other Project branding adopted by the Steering Group on all written, audio-visual and electronic communication and publicity materials relating to the Project;
- 7.5.5 produce and provide to the Lead Party for use by the Lead Party and HLF a free photographic record of the Project;
- 7.5.6 not make any communication relating to the Project or issue press releases which have not been approved by HLF and the Lead Party in advance;

7.6 **Project Activities**

Where Project Activities are being undertaken on land owned and managed by the Lead Party such Project Activities will be entirely the responsibility of the Lead Party, as provided for under clauses 7A.6.1 and 7A.6.2 below.

Each Party will be responsible for securing all necessary consents in order to implement the project activities not located on Lead Party Land and to ensure compliance with HLF grant agreement, including post completion maintenance clauses.

In relation to all such project activities the Parties will:

- 7.6.1 construct, maintain, repair, renew and implement all works to no less than the standard detailed in the Grant Agreement any works forming part of the Project located on land in the ownership of or control of that Party.
- 7.6.3 in the event of any defect in any works forming part of the Project caused other than as a result of any act or default on the part of the Parties or their agents, employees or others for whom the Parties are responsible then the works required to rectify such defect shall be carried out by the Party who originally carried out the said works and that in accordance with the Grant Agreement and any other requirements of HLF, but that subject to the relevant Party being able (and using all reasonable endeavours) to obtain all permits, licences and consents required to carry out such works.

7.7 **Additional Responsibilities**

The partners will work together to agree a maintenance regime once the list of sites have been finalised.

It is understood that The Project will not affect the Highland Council's statutory roles as local authority, planning authority and access authority.

OBLIGATIONS OF THE LEAD PARTY

The Lead Party shall throughout the Agreement Period:-

- 7.1 **Delivery**

- 7.1.1 have sole overall responsibility for the Project as set out in the Application and Grant Agreement (but not so as to incur any costs over and above the Project Funds);
- 7.1.2 following consultation with the Steering Group appoint appropriate project staff throughout the Delivery Phase to ensure successful delivery of the Project;
- 7.1.3 consult beforehand and agree the terms and detailed arrangements (project planning responsibilities, approval of specifications, management of contracts, post completion maintenance etc) for delivery with other relevant Parties who have a specific interest in parts of the Project activities.
- 7.1.4 carry out the Project Activities assigned to it in the Application and Grant Agreement in accordance with the timescales specified in the Application, Grant Agreement and this Agreement.
- 7.1.5 provide the resources, equipment and facilities as may be reasonably required to perform and deliver the Project Activities assigned to it in the Application;
- 7.1.6 perform and deliver the Project Activities assigned to it in the Application in accordance with all Applicable Laws and with all reasonable skill, care, speed and diligence;
- 7.1.7 use all reasonable endeavours to obtain and maintain any permit, licences or consents required to perform the Project Activities assigned to it in the Application;
- 7.1.8 secure all necessary rights and consents in respect of Project Activities outwith the Lead Party's land to enable the construction, maintenance, repair and ongoing security of all relevant works, in the event of other parties failing to obtain the aforementioned rights and consents.
- 7.1.9 ensure all its employees, contractors, and volunteers undertaking Project Activities assigned to it in the Application are suitably inducted and trained and where necessary certificated in the proficient use of any machinery, equipment and chemicals required for such Project Activities and are risk assessed and managed;
- 7.1.10 ensure all its employees, contractors and volunteers wear adequate and appropriate personal safety equipment and clothing and comply with all the Lead Party's health and safety requirements and codes of practice while undertaking Project Activities assigned to it in the Application;
- 7.1.11 ensure its employees, contractors and volunteers leave any site within its control at which Project Activities assigned to it in the Application are being undertaken in a safe and tidy state and do not leave obstacles or debris on paths or anywhere they are liable to cause injury to a third party;
- 7.1.12 not make any changes to the Project Activities without the consent of the Steering Group and HLF, whose consent will be sought by the Lead Party only at the Lead Party's discretion;

7.1.13 through the Steering Group keep the Parties fully informed in relation to all issues arising vis-a-vis the Project insofar as such issues have a bearing on such Parties interests in the Project

7.2 **Services**

7.2.1 communicate and correspond with HLF and provide relevant feedback, through the Steering Group as appropriate;

7.2.2 store until the fifteenth anniversary of the Commencement Date all records pertaining to the Project;

7.3 **Financial Management**

7.3.1 be directly responsible for the overall financial management of the Project including the setting of budgets and financial monitoring and control, as per the terms of the Grant Agreement.

7.3.2 keep proper accounts and records for the Project, all in accordance with HLF requirements and as set out in the Grant Agreement.;

7.3.3 provide quarterly financial monitoring and budgetary control reports to the Steering Group which compare an agreed analysis of actual costs, income and funding to date with budgets to date on a cumulative basis with forecast outturn calculations.

7.3.4 Provide annual but cumulative project accounts which record all actual transactions up to the Lead Party's financial year-ends. This to include an Income and Expenditure Statement and Balance Sheet for subsequent distribution to the Steering Group and other parties.

7.3.5 The Lead Party shall provide evidence to HLF to support all costs incurred and shall ensure that only relevant costs are claimed. In the event of a claim error, the Lead Party shall adjust financial records accordingly and advise the Steering Group at the next available meeting. For further Financial Management information refer to section 10 Funding of Project Costs.

7.3.6 Provide regular financial reports to the Steering Group on the Project, as reasonably required by the Steering Group (in terms of content and frequency), all in accordance with clause 8.4.2 below;

7.4 **Financial Records**

7.4.1 The Lead Party will maintain complete, accurate and auditable records that capture all Project transactions and which satisfy HLF and Steering Group requirements.

7.4.2 Reporting and Monitoring of Project Activities

7.4.3 monitor Project Activities through the receipt of Party progress updates at such intervals as is required by HLF;

7.4.4 report to HLF on the progress of the Project and the monitoring of its success and on any other issues identified at quarterly intervals, including proposed significant changes from budgets and work programmes;

7.4.5 prepare work plans and reports in conjunction with the Parties, as and when required by HLF;

7.4.6 prepare and submit to HLF a Project completion report compiled with information supplied by the Parties; and

8. LIABILITY

8.1 Nothing in this Agreement shall operate to exclude or limit a Party's liability for death or personal injury caused by its negligence or fraud or fraudulent misrepresentation.

8.2 No Party shall be liable to the other Parties for any: (i) loss of profit, anticipated profits, revenues, goodwill or business opportunity or (ii) indirect or consequential loss or damage.

9. FUNDING OF PROJECT COST

9.1 The Parties will make the following cash contributions

SNH £250,000

RSPB £1,851,390 (tbc)

Highland Council £10,000

Project costs and income is as per the Stage 2 Application. A summary is included as Schedule 2

9.2 The amount of funding contribution stated in the Clause 10, and as specified in Schedule 2, is the maximum amount each Party is committed to provide to the Project. The Lead Party is solely responsible for the financial management of both the project costs and project income.

9.3 The Lead Party shall ensure in consultation with the Steering Group that the actual net costs of the Project, after deduction of Project income, are fully financed by all Project funds at Project Completion Date.

9.4 In accordance with the Application, the Lead Party will implement the agreed HLF cost headings. It is anticipated however that actual costs incurred for each cost heading may differ from the original budget analysis. In accordance with the Application's conditions HLF will allow the Lead Party the flexibility to apply Budget virement (transfers from one budget to another) within agreed HLF limits. All proposed virement will be agreed by the Steering Group in advance before any request is made to HLF. and will be restricted to cash costs because transfers between cash and non-cash in-kind budgets will not be permitted under HLF conditions.

9.5 The Lead Party is responsible for the monitoring and control of the Project income including timber sales. Any shortfall will be discussed with the Steering Group and HLF and an appropriate course of action agreed.

9.6 In the event that parts of the Project fail in some way and HLF requires repayment of all or some of the Grant from the Lead Party, the terms and conditions of the Grant Agreement will apply and all the party will subject to the provisions of Clause 24 contribute in proportion as per the funding table in schedule 2..

10. PAYMENT OF GRANT

10.1 On receipt of a valid invoice and satisfactory supporting evidence, the Lead Party shall (subject to Clause 12) pay all relevant invoices within **30 days** of receipt of such invoice.

10.2 In respect of all paid invoices and in accordance with the Application, the Lead Party shall submit copy receipted invoices to HLF to support claims for payment of Grant. In respect of claims which are not supported by receipted invoices the Lead Party shall submit suitable explanatory information in consultation with HLF to support claims for payment of grant.

11. TERMINATION

11.1 The Lead Party may, without prejudice to any rights or remedies which may have accrued to any of the Parties against the other parties in respect of any antecedent breach of the obligations contained in this Agreement, terminate this Agreement with immediate effect by written notice to the Parties in the event that the Grant is withdrawn by HLF.

11.2 The Lead Party may, without prejudice to any rights or remedies which may have accrued to any of the Parties against the other parties in respect of any antecedent breach of the obligations contained in this Agreement, terminate a Party's participation in the Project with immediate effect by written notice to the Party if one or more of the following events occur:-

11.2.1 the Party commits a material breach of this Agreement which is incapable of remedy or is capable of remedy but has not been remedied within thirty (30) days (or such longer period as the Lead Party may, acting reasonably, determine) of receipt of a written notice specifying both the material breach and the Lead Party's intention to terminate the Party's participation in the Project if the material breach is not remedied;

11.2.2 the Party fails to pay its Party Contribution to the Lead Party timeously

11.2.3 12.2.3.the Party commits a material breach of the terms of the Grant Agreement,

12.3. In the event that a Party's participation in the Project is terminated under Clause 12.2. the Steering Group will review the viability of the continuation of the Project and if the Steering Group conclude that the Project is no longer viable the Lead Party may terminate this Agreement without prejudice to any rights or remedies which may have accrued to the Parties against the others in respect of any antecedent breach of the obligations contained in this Agreement.

12. AUDIT REQUIREMENTS

12.1 Each Party at no cost to the Lead Party shall co-operate with the Lead Party, the Lead Party's internal audit personnel, external audit personnel from other organisations (including without limitation HLF) ("**Auditor**") and comply promptly with all reasonable requests for information and access to premises, documents and staff, and give all other reasonable assistance (including the provision of copies of documents or copying facilities) to the Auditor in reviewing Project progress and

compliance with this Agreement and/or in inspecting or auditing records relating to the Grant.

12.2 The Lead Party may at any time during the Agreement Period and for a period of fifteen (15) years after the first to occur of (i) the Project Completion Date and (ii) the date of termination or expiry of the Agreement Period carry out an inspection and/or audit in relation to the Project. The provisions of Clause 13.1 shall apply to such inspection and/or audit.

13. INTELLECTUAL PROPERTY

13.1 All Background Intellectual Property Rights belonging to a Party and used in connection with the Project shall remain vested in that Party. No Party will make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of any Background Intellectual Property belonging to the other Parties except under the terms of this Agreement. Each Party acknowledges and confirms that nothing in this Agreement shall give it any right, title or interest in or to the Background Intellectual Property of the others save as granted by this Agreement.

13.2 Each Party shall grant to the other Parties a perpetual, royalty free, non-transferable, non-exclusive licence to use such of its Background Intellectual Property solely in connection with the Project and to the extent necessary to carry out its obligations under this Agreement,

13.3 All rights to Foreground Intellectual Property created by a Party shall vest jointly in the creating Party and (where the Lead Party is not the creating party) the Lead Party.

13.4 The owners of the Foreground Intellectual Property Rights shall grant to the other Parties a royalty free, non-transferable, non-exclusive licence to use the Foreground Intellectual Property solely in connection with the Project and to the extent necessary to carry out its obligations under this Agreement,

14. CONFIDENTIALITY, DATA AND FREEDOM OF INFORMATION

14.1 Subject to appropriate compliance with all relevant legislation Confidential Information given by one Party to another, or otherwise obtained or developed by one Party relating to another, shall be kept confidential by the receiving Party throughout the Agreement Period and for the [] years following termination or expiry of the Agreement Period and, subject to Clause 15.4.1, shall not be used or disclosed other than for the purposes of the proper performance of this Agreement or with the prior written consent of the disclosing Party.

14.2 The obligations of confidentiality in Clause 15.1 shall not extend to any matter which the receiving Party can show:-

14.2.1 is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement; or

14.2.2 was independently disclosed to it by a third party entitled to disclose the same; or

14.2.3 is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction; or

14.2.4 the disclosure is required pursuant to the terms of the Grant Agreement.

14.3 All Parties acknowledge that they are data controllers for any personal data they may hold in relation to this Agreement and that they shall each respectively be responsible for complying fully with all obligations under the Data Protection Act 1998 in respect of all such personal data, and that each Party shall be responsible for using reasonable endeavours to obtain sufficient authority to share said data with the other Parties. Personal data generated by individual Parties as part of Project Activities will, subject to obtaining such authority, be shared in accordance with a data protection statement covering all Parties agreed by the Steering Group.

14.4 In the event that any of the Parties receives a request for information under the Freedom of Information (Scotland) Act 2002 and/or the Environmental Information (Scotland) Regulations 2004, and that Party is subject to such legislation, the other Parties shall provide such assistance to the Party who has received the request as the said other Parties consider appropriate (acting reasonably, having regard to whether the Party in question is subject to such legislation) to enable the recipient to properly respond. For the avoidance of doubt, the other Parties are not required to disclose any information that the relevant Party considers to be confidential or otherwise inappropriate to disclose.

14.5 If a requester for information is dissatisfied with a refusal to provide information held by one of the Parties and seeks a review of that decision by the Party they put the initial request for information to, that review shall be taken having regard to, but not being bound by, the terms of 15.4.

15. DISPUTE RESOLUTION

15.1 The Parties will work together and individually in a spirit of trust, fairness and mutual co-operation for the benefit of the Project, all within the scope of this Agreement. However, should any dispute or difference arise from the interpretation of this Agreement or the implementation of the Project the Parties will endeavour to resolve it through discussion and co-operation as far as possible, utilising the Steering Group as appropriate. Any matters that cannot be so resolved will be referred on to senior managers of the respective parties in the first instance.

15.2 If any dispute arises between the Parties in connection with this Agreement cannot be resolved in terms of Clause 16.1 a Party may serve notice upon the other Parties setting out brief details of the dispute that has arisen ("**Notice of Dispute**") and the Parties shall use reasonable endeavours to resolve the dispute by good faith negotiations.

15.3 If the Parties are unable to resolve the dispute within 30 days of it arising through good faith negotiations, or if any of the Parties will not participate in such negotiations, then unless this Agreement provides otherwise the dispute shall be referred at the request of any of the Parties for decision to an arbitrator in accordance with the Arbitration (Scotland) Act 2010 under declaration that (i) the juridical seat of the arbitration is Scotland and (ii) rule 41 of the Scottish Arbitration Rules contained in Schedule 1 of the Arbitration (Scotland) Act 2010 shall not apply.

16. GRANT AGREEMENT

16.1 The Parties hereby agree and declare that the terms and conditions of the Grant Agreement are incorporated in this Agreement and shall take precedence over

the terms of this Agreement. The Parties undertake to comply with the terms of the Grant Agreement insofar as applicable to them, and shall endeavour to support the Lead Partner in meeting the obligations upon them

16.2 In the event of a conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Grant Agreement, the terms and conditions of the Grant Agreement shall prevail.

17. ALIENATION

17.1 No Party shall without the prior written consent of all other Parties assign, transfer or otherwise deal with any of its rights or obligations under this Agreement.

17.2 A Party may, following agreement of the Steering Group such consent not to be unreasonably withheld sub-contract the performance of agreed obligations under this Agreement provided that:-

17.2.1 any sub-contract is awarded in compliance with Clause 7.6; and

17.2.2 the sub-contracting Party remains liable for all acts and omission of its sub-contractor as if it were its own.

18. EMPLOYMENT ARRANGEMENTS

18.1 The Lead Party will be responsible for employing and managing the Project Manager and other staff required to deliver the Project, all as provided for in the Application and Grant Agreement. Line management and all necessary office support, transport and field equipment provision will be the responsibility of the Lead Party.

18.2 The Parties shall maintain an anti-bribery policy to prevent any staff of the Parties engaged in providing services in respect of the Project from committing any breach of the Bribery Act 2010 and shall enforce it where appropriate.

19. WAIVER

19.1 No failure or delay by a Party to exercise any right or remedy arising under, or in connection with, this Agreement will act as a waiver, or otherwise prejudice or restrict the rights of that Party, in relation to that right or remedy or any other contemporaneous or future action.

20. RELATIONSHIP OF THE PARTIES

20.1 Nothing in this Agreement is intended to or will create a partnership, joint venture or legal relationship of any kind between the Parties that would impose liability upon one Party for the act or failure to act of the other Parties except as provided for in this Agreement, or to authorise any Party to act as agent for the others, nor shall anything in this Agreement be construed as providing for the share of profits or losses arising out of the efforts of the Parties.

20.2 Without prejudice to Clause 21.1, nothing in this Agreement confers any authority on any Party, its representatives or employees or the Steering Group or any Working Group entering into any contract of any kind whatsoever on behalf of any other Party without and only to the extent of that Party's prior written approval. In the event that any Party exceeds its authority, that Party will (without prejudice to Clause 23.1)

free, relieve and indemnify the other Parties against any losses, costs, claims, expenses demands and liabilities (including without limitation legal costs and expenses on a full indemnity basis) arising as a result of any such unauthorised contract provided always that:-

- (a) the relevant Party shall not be liable in respect of such losses, costs, claims, expenses demands and liabilities to the extent attributable to any act or default on the part of the other Party or its agents, employees or others for whom the other Party is responsible;
- (b) the other Party shall as soon as practicable give notice in writing to the relevant Party of any such losses, costs, claims, expenses demands and liabilities; and
- (c) the other Party shall use reasonable endeavours to mitigate its loss.

21. THIRD PARTY CLAIMS

21.1 Without prejudice to Clause 23.1, in the event of any claim in respect of any debt, liability, breach of contract, act or omission relating to the Project or this Agreement being made by any party other than the Parties (“**Third Party Claim**”) against all or any of the Parties or any of their employees or officers, the Party whose act or omission caused the Third Party Claim (by virtue of that Party incurring a debt, liability and/or that Party’s negligence, breach of contract, act or omission or otherwise), will free, relieve and indemnify each and every other Party and their employees and officers to the extent that the said Party’s act or omission caused the Third Party Claim against any liability, costs, claims and expenses arising out of such Third Party Claim.

21.2 Any Third Party Claim not attributable to the act or omission of one or more Parties in accordance with Clause 22.1 shall, to the fullest extent possible, be met out of the Project Funds and each Party shall, insofar as the Grant Agreement permits, be entitled to be indemnified out of the Project Funds in respect of any such Third Party Claim to the fullest extent possible.

21.3 Subject to Clause 9 and Clause 22.1, the Parties’ total liability arising under or in connection with this Agreement, whether in delict (including without limitation negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise shall be limited to a sum equal to the proportion of the Party Contribution of the relevant Party.

22. INDEMNITY

22.1 The Parties shall indemnify and keep indemnified each other against any and all losses, costs, claims, expenses, demands and liabilities (including without limitation legal costs and expenses on a full indemnity basis) which the Parties may suffer or incur as a result of any failure by any Party to comply with the terms and conditions of the Grant Agreement and/or this Agreement provided always that:-

- (a) the other Parties shall not be liable in respect of such damages, costs, claims, liabilities and expenses to the extent attributable to any act or default on the

part of any of the other Parties of their agents, employees or others for whom the other Parties are responsible;

- (b) the other Parties shall as soon as practicable give notice in writing to the Lead Party of any such costs, claims, liabilities or expenses; and
- (c) the other Parties shall use reasonable endeavours to mitigate their loss.

23. SEVERANCE

23.1 If any of this Agreement is or becomes illegal, invalid or unenforceable in any respect, that shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement.

23.2 If any illegal, invalid or unenforceable provision would be legal, valid or enforceable if some part of it were deleted, such provision shall apply with the minimum modification(s) necessary to make it legal, valid or enforceable.

24. VARIATION

24.1 Any variation of this Agreement shall only be valid if it is in writing and validly signed by or on behalf of each of the Parties to this Agreement.

25. VALUE ADDED TAX

25.1 In every case where in this Agreement an amount of money is to be paid such amount shall be regarded as being exclusive of all Value Added Tax which may from time to time be legally payable thereon unless otherwise stated. If Value Added Tax is payable the Lead Party shall pay Value Added Tax at the rate for the time being in force as shall be legally payable in exchange for a valid Value Added Tax invoice.

26. ENTIRE AGREEMENT

26.1 This Agreement together with the Application and Grant Agreement sets out the entire agreement and understanding between the Parties in respect of its subject matter and supersedes any previous agreement, warranty, statement, representation, understanding, or undertaking (in each case whether written or oral) given or made before the date of this Agreement by, or on behalf of, the Parties and relating to its subject matter.

26.2 Each Party confirms that it has not relied upon, and shall have no remedy in respect of, any agreement, warranty, statement, representation, understanding or undertaking made by any other Party (whether or not a party to this Agreement) unless that agreement, warranty, statement, representation, understanding or undertaking is expressly set out in this Agreement.

26.3 Nothing in this Agreement shall restrict or exclude any liability for (or remedy in respect of) fraud or fraudulent misrepresentation.

27. NOTICES

27.1 Any formal notice, intimation, request or consent under this Agreement shall be in writing and shall be sufficiently served if sent by recorded delivery service or delivered personally, such notices to be sent or delivered in the case of RSPB to

RSPB's Scottish Headquarters or such other address as RSPB may notify in writing to the other Parties, in the case of SNH to SNH's [] Office or such other address as SNH may notify in writing to the other Parties, , in the case of THC to Council Offices, Glenurquhart Road, Inverness IV3 5NX FAO Nicole Wallace, Environment Manager or such other address as THC may notify in writing to the other Parties, , and in the case of NHC to [] or such other address as NHC may notify in writing to the other Parties. Any notice sent by first class recorded delivery shall be deemed to have been duly served at the expiry of forty-eight hours after the time of posting or the date of receipt, if earlier. In proving service it shall be sufficient to prove that the envelope containing the notice was duly addressed to RSPB, SNH, THC or NHC as the case may be in accordance with this Clause and posted to the place to which it was so addressed.

28. LAW OF CONTRACT

28.1 This Agreement shall be governed by and construed in accordance with the Law of Scotland.

29. JURISDICTION

29.1 Subject to Clause 16 the Courts of Scotland shall have exclusive jurisdiction to determine any matter connected with, arising out of or in any way related to this Agreement.

30. COSTS

30.1 Each party shall meet their own legal and other agents' fees and expenses in relation to the negotiation and completion of this Agreement under declaration that the Lead Party shall be responsible for the costs of registering this Agreement in the Books of Council and Session without undue delay following its execution by the Parties and thereafter (at the Lead Party's expense) shall provide the other Parties with one extract each thereof

IN WITNESS WHEREOF

On behalf of RSPB

Signed..... Print Name.....

at.....

Date..... before the following witness:

Witness

Name

Address
.....

On behalf of the SNH

Signed..... Print Name.....

at.....

Date..... before the following witness:

Witness

Name

Address

.....

On behalf of THC

Signed..... Print Name.....

at.....

Date.....

On behalf of NHC

Signed..... Print Name.....

at.....

Date..... before the following witness:

Witness

Name

Address

.....

DRAFT

SCHEDULE 1

THIS SCHEDULE IS REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN THE ROYAL SOCIETY FOR THE PROTECTION OF BIRDS, SCOTTISH NATURAL HERITAGE, THE HIGHLAND COUNCIL AND NORTH HIGHLAND COLLEGE

Steering Group: Terms of Reference

Purpose

The purpose of the Steering Group is to (i) oversee delivery of and correct governance of the Project, (ii) ensure that the Grant is managed and dispensed appropriately; and (iii) liaise with The Peatlands Partnership and other parties as appropriate on the Project (iv Support RSPB as the Lead Party)

Responsibilities

- In furtherance of its purpose the Steering Group will:
- work to ensure that the Project is delivered in terms of the Application;
- oversee the project budget and cash-flow projections;
- take decisions on the scope and scale of the Project, ensuring activities included in the Application contribute to delivery of the Project;
- respond to requests to comment on draft project and communications plans;
- act as advocates for the Project, championing it both internally and externally, and acknowledging in communications, HLF, all Parties and their logos;
- provide context and intelligence around the Project and other works and development relative to the Project;
- provide overall direction and support to the work of the Project Manager and, where necessary, provide specific direction/ instruction to help ensure that key tasks are prioritised and delivered
- ensure delivery of the Project is consistent with the Actions in the Application
- review progress of actions and subsequent outputs in the Application, ensuring they are met on time and within budget;
- establish and agree a risk assessment process and ensure it is applied to management of the Project
- review risk assessment at half-yearly intervals (or more frequently if required)
- appropriate press and communications procedures and protocols for the Project;
- seek commitment to the Project from the Parties in terms of both staff time and match funding;
- guide the work and decisions of Project staff members; and
- plan for the sustainability and legacy of the Project.

SCHEDULE 2

THIS SCHEDULE IS REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN THE ROYAL SOCIETY FOR THE PROTECTION OF BIRDS, SCOTTISH NATURAL HERITAGE, THE HIGHLAND COUNCIL[] AND NORTH HIGHLAND COLLEGE

AGREEMENT

between

THE ROYAL SOCIETY FOR THE PROTECTION OF BIRDS

and

SCOTTISH NATURAL HERITAGE

and

THE HIGHLAND COUNCIL

and

NORTH HIGHLAND COLLEGE

2013

Subjects: Flow to the Future