HEADS OF TERMS
RELATING TO A PROPOSED GRANT AGREEMENT
BETWEEN
THE SECRETARY OF STATE FOR ENVIRONMENT,
FOOD AND RURAL AFFAIRS
AND
CANAL & RIVER TRUST

Subject to Contract

1 Parties
Canal & River Trust (company number 07807276) ("CRT").
The Secretary of State for Environment, Food and Rural Affairs ("DEFRA").

2 Introduction
2.1 DEFRA intends, subject to parliamentary approval, to transfer the functions and property of the waterways in England and Wales from the British Waterways Board to CRT (the "Transfer"), a new charitable company which has been established for this purpose.

2.2 DEFRA and CRT intend to enter into arrangements pursuant to which, among other matters, DEFRA will provide financial support for the charitable activities of CRT.

2.3 The heads of terms ("HoT") outline the key documents, their intended terms and the proposed timetable. In particular, the HoT set out the principal terms and conditions on and subject to which DEFRA is willing to enter into a grant agreement with CRT, subject to the agreement and signing by the parties of a detailed legally binding grant agreement (the "Grant Agreement").

2.4 The HoT are not exhaustive and are not intended to be legally binding between DEFRA and CRT except where specifically stated.

3 Proposed Timetable and Documentation
3.1 Agree in principle a draft of the terms of a special trust (the "Waterways Infrastructure Trust"): by 28 February 2012.

3.2 CRT to complete its pre-application dialogue with the Charity Commission and finalise its application to be registered as a charity: by 16 March 2012.

3.3 Final Grant Agreement based on the HoT: on or before the date on which the Transfer takes place.

3.4 Agree a statement of Agreed Purposes for which CRT is granted all of the property which is to transfer to CRT under the Public Bodies Act, which will not be held within the Waterways Infrastructure Trust. These purposes will act as the frame of reference for a Statement of Investment Principles, which CRT will prepare (in consultation with the Protector) as its medium term investment strategy from time to time. CRT’s investment management in accordance with those principles will be monitored by an independent Protector whose identity will be agreed by the Parties by 31 May 2012.

3.5 Agree in principle with the trustees of British Waterways Pension Fund (the "BWPF") a draft of the terms of a guarantee (the "Guarantee") to be given by DEFRA: by 31 May 2012. The Guarantee will be a guarantee to pay any shortfall, up to a maximum of £125m after all of CRT’s commercial assets have been
extinguished (for avoidance of doubt, this includes all the assets included in and outside of CRT’s Pension Funding Partnership), in past service benefits accrued up to the date upon which the Transfer takes effect (“the Transfer Date”) calculated on a “self-sufficiency basis”. The Guarantee will apply in the event of CRT becoming insolvent and no longer being able to meet its obligations to BWPF, and BWPF having exhausted all of its rights to the remaining assets of CRT. Any payment under the Guarantee will be into the section of the BWPF that is used to provide benefits only to members in respect of their past service in the BWPF up to the Transfer Date. The calculation of past service benefits will include all deferred and pensioner members as at the Transfer Date and service for active members up to the Transfer Date, without any allowance for salary increases or any new benefit accrual after that date, but with an allowance for deferred revaluations that would have applied up to the calculation date or date of retirement or death, if earlier.

3.6 Agree in principle a draft of the memorandum of understanding between DEFRA and CRT (the “MOU”): by 31 March 2012.

3.7 CRT to amend its Articles of Association in order to change its membership in time for the first general meeting of the new membership, to take place prior to the Transfer. The parties acknowledge that DEFRA and the British Waterways Board are currently the sole members of CRT and will have to authorise any change to the membership. The changes will also entrench certain provisions in the Articles to protect the Secretary of State’s legitimate interests in the event of certain significant breaches of relevant obligations by CRT, or of its insolvency.

4 Grant - Purpose and Term

4.1.1 The grant funding provided by DEFRA to CRT is to be applied for the objects of CRT and subject to the terms of the Grant Agreement. For the avoidance of doubt, the grant may only be applied towards the costs and expenses (including attributable overheads) of custodianship, maintenance and operation of the heritage network. Examples of such purposes and activities are set out in Annex 4

4.1.2 Term of grant: from the date upon which the Transfer takes place, until 31 March 2027.

5 Amounts of Grant

5.1 Part A Core Grant

5.1.1 £39m in 2012/13 (flat sum, not inflated), less any grant in aid given by DEFRA to the British Waterways Board in respect of that financial year (in the event that the Transfer takes place after the beginning of the 2012/13 financial year, the £39m will need to be shared proportionately between the two organisations).

5.1.2 £39m per annum – 2013/14 and 2014/15 (flat sum, not inflated), of which £3m will be subject to the same conditions precedent to grant, available remedies and other conditions as Part B Conditional Grant.

5.1.3 £39m per annum - 2015/16 and thereafter until 2026/27 inclusive:

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1 DEFRA shall make a one-off payment on or before the end of the 2011/12 financial year to the British Waterways Board, to enable it to repay its National Loan Fund debts to HM Treasury, which the parties understand to be approximately £6.2m, including penalties for early repayment. This one-off payment by DEFRA will be referred to in the Recitals of the Grant Agreement, but will not be an operative provision of the document. Defra will also make a separate one-off payment of £25m to the British Waterways Board in the financial year 2011/12.
(a) to be adjusted annually in accordance with the indexation methodology set out in Annex 1 from 2015/2016, using 2014/15 as the base year in the first instance; and

(b) if applicable in accordance with paragraph 5.2.2(b)(ii), up to £4m of which is subject to the same conditions precedent to grant, available remedies and other conditions as Part B Conditional Grant.

5.2 Part B Conditional Grant (flat sum, not inflated)
5.2.1 £10m per annum from 2015/16 until 2021/2022 inclusive, depending on achievement of the required standards set out in paragraph 7.3.1.
5.2.2 From 2022/23 until 2026/27 inclusive, depending on achievement of the required standards set out in paragraph 7.3.1, £10m per annum, less the difference between:

(a) the amount of the Part A Core Grant in the year 2021/22; and

(b) the amount of the Part A Core Grant in the year in question.

(i) If, for any of the years 2022/23 until 2026/27 inclusive, this calculation results in a negative figure, the amount of Part B Conditional Grant for that year is zero.

(ii) If, for any of the years 2022/23 until 2026/27 inclusive, this calculation results in a figure of less than £4m, an amount of Part A Core Grant for the relevant financial year(s) shall be subject to the same conditions precedent to grant, available remedies and other conditions as Part B Conditional Grant such that the total amount of Grant subject to those conditions is equal to £4m.

6 Schedule of Payment of Grant
6.1 Part A Core Grant: the first payment (which will be reduced proportionately to take into account the amount of grant paid to the British Waterways Board prior to the Transfer) shall be made on the day of the Transfer. Thereafter payments will be made in in equal quarterly instalments on Defra’s first pay run of April, July, October and January of each year, save in relation to:

(a) £3m in years 2013/14 and 2014/15; and

(b) any amount paid in the financial years 2022/23 to 2026/27 inclusive which, in accordance with paragraph 5.2.2(b)(ii), is to be subject to the same conditions as Part B Conditional Grant,

which shall be paid as if it were Part B Conditional Grant.

6.2 Part B Conditional Grant: Part B Conditional Grant is conditional upon the required standards set out in paragraph 7.3.1 and elaborated upon in Annex 2. Part B Conditional Grant is to be paid only in accordance with the procedure described in Annex 2, based on the previous financial year’s performance.

7 Conditions Precedent to Grant
7.1 Standard conditions precedent for a grant agreement of this nature, in form and substance satisfactory to DEFRA and CRT, in addition to the specific terms set out below.
7.2 **Part A Core Grant**
7.2.1 No specific conditions precedent, save with respect to:

(a) £3m per annum in 2013/14 and 2014/15; and

(b) in any year from 2022/23 to 2026/27 inclusive, any amount of the Part A Core Grant which, in accordance with paragraph 5.2, is to be subject to the same conditions precedent to grant, available remedies and other conditions as Part B Conditional Grant,

which will be subject to the same conditions precedent to grant as Part B Conditional Grant.

7.3 **Part B Conditional Grant**
7.3.1 CRT to provide evidence in form and substance satisfactory to DEFRA (on or before 1 July in each year) that the following three required standards (as further detailed in Annex 2) have been met:

(a) safe waterways: no breach of applicable Warning Threshold and percentage of assets in each applicable Class to be reported;

(b) towpath condition: no breach of applicable Warning Threshold; and

(c) flood management: no breach of applicable Warning Threshold.

7.3.2 The parties will follow the procedure set out in Annex 2 in the event that CRT fails to meet the conditions precedent to Part B Conditional Grant.

8 **Other Contractual Obligations of CRT**
8.1 The following publication requirements (predominantly for purposes of public and stakeholder accountability) will be contractual obligations of CRT but shall not be conditions precedent to grant.

Criteria to be agreed between the parties and precise requirements to be included within the Grant Agreement, but by way of illustration, CRT will:

8.1.1 publish the Network Stewardship Score (**NSS**);

8.1.2 publish data relating to safety as follows:

(a) the number of reported incidents involving customers relating to infrastructure failure;

(b) the number of reported incidents involving employees related to infrastructure failure; and

(c) the data underpinning the required standard at paragraph 7.3.1(a) above;

8.1.3 publish data relating to towpaths as follows:

(a) the number of towpath visitors (based on annual survey data);

(b) the number and duration of unplanned closures; and

(c) the data underpinning the required standard at paragraph 7.3.1(b) above

8.1.4 publish data relating to flood management as follows:

(a) the data underpinning the required standard at paragraph 7.3.1(c) above;

8.1.5 publish data on Sites of Special Scientific Interest (**SSSIs**) as follows:
(a) based on published data, the percentage area of SSSIs under CRT management in good or recovering condition;

8.1.6 publish data on heritage as follows:
(a) a percentage of heritage assets assessed on completion of work as good or adequate, with double weighting given to good assessments;

8.1.7 publish data on volunteer participation as follows:
(a) the number of volunteer days contributed to CRT;

8.1.8 publish data on housing forecast figures; and

8.1.9 maintain an information regime that reflects the provisions of the Environmental Information Regulations pending further judicial clarity on the applicability of the Regulations to statutory undertakers.\(^2\)

8.2 CRT will publish the data set out in paragraph 8.1 on or before 1 July in each year.

8.3 In the event that CRT fails to publish the data required by paragraph 8.1 by 1 September in each year, the Chair of Trustees will be required to write to the Secretary of State, with a copy to the members of CRT:

8.3.1 explaining the reason for non-compliance; and

8.3.2 setting out the action proposed to remedy the non-compliance.

8.4 In the event that the Chair of Trustees either:
(a) fails to write to the Secretary of State by 1 September of the relevant year; or
(b) if the data required by paragraph 8.1 is not published within 6 months of 1 July in the relevant year.

DEFRA will be entitled to exercise any of the remedies set out at paragraph 12.2 without first having to follow the procedure in Annex 3.

9 **Monitoring, reporting and reviews**

9.1 The parties will conduct reviews of CRT’s performance in relation to the terms of the Grant Agreement, including at regular meetings usually to be attended by:

(a) for CRT: at least the Chair of Trustees, the Chief Executive and the Finance Director; and

(b) for DEFRA: the Senior Responsible Owner and the Deputy Senior Responsible Owner and other DEFRA officials and advisors as DEFRA sees fit.

9.2 Such conduct reviews will take place at four-monthly intervals.

9.3 In addition to the above, a detailed review will take place in 2021/22 to consider, among other things, CRT’s performance in relation to the Grant Agreement and whether, and, if so, the extent to which, there is a case for DEFRA to continue to fund the public benefits resulting from CRT’s stewardship of the waterways beyond the end of the term of the Grant Agreement.

9.4 Reporting requirements of CRT in addition to its statutory reporting requirements (predominantly to enable DEFRA to ensure CRT’s continued compliance with the terms of the Waterways Infrastructure Trust and the Grant Agreement):

(a) Publication requirements (as detailed further in paragraph 8).

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\(^2\) CRT will also have legal obligations under the Freedom of Information Act, subject to the approval by Parliament of the amending legislation.
(b) Provide information for the three review meetings provided for by paragraph 9.2 as follows:

- for the review meeting in the final quarter of each financial year (usually around one month before the year-end), a draft business plan for the next financial year, including information on risk management;

- for the review meeting following the first quarter after the financial year-end, the draft audited accounts showing the results from the previous financial year (including CRT’s achievements against the requirements under the Grant Agreement including the requirements of Part B Conditional Grant, as set out in these HoT and as will be detailed in the Grant Agreement and MOU). CRT will endeavour to make a draft available as soon as possible after the financial year-end; and

- for the review in the third quarter of the financial year (usually around eight months after the start of the financial year) and for both other reviews, latest available figures showing actual and forecast results for the current financial year.

c) The information included in the reports required by paragraph 9.4(b) above will cover, as a minimum:

- accounts showing surpluses and deficits in all income and expenditure in relevant SORP format;
- accounts showing all expenditure on purposes and activities listed in paragraph 4.1.1;
- a description and quantification of efficiencies realised in pursuit of the purposes and activities listed in paragraph 4.1.1;
- balance sheet showing total assets and outline details of any transactions over £20m;
- where applicable, latest actual and forecast position on the information within paragraph 8;
- updates on achievement of the required standards;
- updates on principal CRT risks;
- any changes to membership of the Board of Trustees or any changes or planned changes to the governance structure of CRT; and
- any current or anticipated issues of significant importance of which DEFRA might reasonably wish to be advised (such as, by way of example only, issues that might be raised in Parliament or with Ministers or which might attracted national media attention).

9.5 The parties will appoint a protector (the “Protector”) to monitor CRT’s management of the property and other assets which are transferred to it by virtue of the Public Bodies Act other than that which is subject to the Infrastructure Trust. Provisions relating to the Protector shall be set out in the Grant Agreement, which will include provisions enabling the Protector to have access to all relevant information from CRT.

The Protector will report annually to the Secretary of State with respect to CRT’s performance in managing those assets by reference to the medium term investment strategy contained in a Statement of Investment Principles (“SIP”) which must be aligned to the Agreed Purposes for which the property is transferred. CRT must prepare the SIP in consultation with the Protector.

10 Audit Requirements

10.1 External audit requirements

DEFRA’s Internal Audit Service shall have a right of access to the audited accounts and any reports produced about CRT (and its subsidiaries) by its
external auditor insofar as they relate to activities funded under the Grant Agreement.

10.2 Internal audit requirements
CRT will do the following:
10.2.1 appoint a Head of Internal Audit;
10.2.2 establish an audit committee comprising of persons who are not employees of CRT as a committee of the Board of Trustees; and
10.2.3 maintain accounts sufficient to demonstrate that the grant is applied solely towards the purposes and activities listed in paragraph 4.1.1.

10.3 Control of Public Funds
10.3.1 CRT will be required to put in place appropriate management and control systems to demonstrate proper stewardship of public funds, compliance with all applicable law and that it is able to manage and account for public funds properly and effectively. The management and control systems shall require the Board of Trustees and Chief Executive to take effective responsibility for the proper use of public funds in accordance with the objects of CRT. Accounting for all funds must be in accordance with the relevant SORP.

10.3.2 CRT will ensure the following:
(a) the maintenance of adequate internal expenditure controls in relation to the grant;
(b) propriety and regularity in the handling of the grant;
(c) observance of conditions attaching to the grant;
(d) the maintenance of adequate systems of financial control to prevent theft or fraud in relation to the grant; and
(e) ensuring that the grant is used only for the purposes and activities listed in paragraph 4.1.1.

11 Risk transfer
The Transfer includes a transfer of all risks associated with the waterways. CRT will have no expectation of financial support from DEFRA over and above that outlined in the HoT and as shall be set out in the Grant Agreement.

12 Events of Default and Remedies available to DEFRA
12.1 Standard events of default for a grant agreement of this nature, including but not limited to the events of default set out below:
12.1.1 material breach or default of the Grant Agreement (whether due to persistent or serious breach or default);
12.1.2 material breach (whether due to persistent or serious breach) of legal or statutory obligations, including but not limited to charity and company law, audit and financial requirements or Charity Commission requirements. The question as to whether a breach is material will be construed consistently with what the parties agree in the MOU;
12.1.3 breach of the terms of the Waterways Infrastructure Trust; or
12.1.4 any other events of default agreed between the parties (which will include a significant failure to comply with the Agreed Purposes for the investment assets (referred to in paragraph 9.5) based upon evidence of such non-compliance from the Protector.
12.2 Should an event of default occur, the following remedies will be available to DEFRA:

(a) any or all of the usual contractual remedies including, but not limited to, the delay, withholding, reduction or repayment of either Part A Core Grant or Part B Conditional Grant, in whole or part; and/or

(b) termination of the Grant Agreement.

12.3 DEFRA will not exercise the remedies set out in paragraph 12.2 until it has exercised the procedure set out in Annex 3 except where, in DEFRA’s opinion, the event of default is so serious, or of a nature, that the breach would be incapable of remedy.

12.4 For the avoidance of doubt, DEFRA shall have discretion as to which, if any, of the remedies in paragraph 12.2 it shall use. However, DEFRA shall exercise its discretion with the intention that, except in the event of the most serious breaches, any remedy will allow CRT the opportunity to rectify any breaches, and to continue, as far as possible, as a viable entity.

13 Claw back

13.1 DEFRA will have the right to claw back the whole or any part of any grant given under the Grant Agreement in the event, and to the extent, that:

13.1.1 it becomes apparent that the grant exceeds the cost of maintenance of the waterways and other purposes and activities listed in paragraph 4.1.1;

13.1.2 any part of the grant is found to be unlawful State Aid; or

13.1.3 any part of the grant is spent outside of purposes and activities listed in paragraph 4.1.1.

14 Remedies to CRT – breach of payment obligations

14.1 In the event that DEFRA does not make a payment required under the terms of the Grant Agreement, CRT may write to DEFRA seeking reasons for the withholding of such payment. DEFRA must reply within two weeks.

14.2 In the event that:

(a) DEFRA does not supply such reasons; or

(b) once DEFRA has supplied its reasons, such reasons are not in accordance with the Grant Agreement.

CRT may take steps to recover the outstanding payment as a debt and CRT’s obligations under the Grant Agreement shall be deemed to be suspended until DEFRA’s breach is rectified.

15 MOU

15.1 In addition to the Grant Agreement, the parties intend to enter into the MOU. This will include (and such matters may also be reflected in the Grant Agreement):

(a) the terms of the relationship between DEFRA and CRT in relation to DEFRA’s support of the statutory activities that CRT will undertake;
(b) their communications and dialogue recognising, among other things, that both parties will act on a “no surprises” basis and in particular:

(i) DEFRA will engage with CRT on relevant matters of policy development as early as practicable; and

(ii) CRT will engage with DEFRA on matters in which DEFRA has a legitimate interest as early as practicable and, in particular, will
share a draft of its annual report with DEFRA (for information only) ahead of publication;

(c) how the parties will co-operate to consider the prospective transfer of the Environment Agency’s inland navigation functions to CRT;
(d) a shared understanding of CRT’s priorities for maintaining the navigability of its waterways;
(e) CRT’s strategies to facilitate localism via its Waterways Partnerships;
(f) CRT’s strategies to facilitate access to the waterways (including its towpaths and different uses of the towpaths, including by cyclists); and
(g) details regarding how CRT will be involved in the laying of the British Waterways Board’s accounts for 2011/12 before Parliament.

16 Costs
16.1 This paragraph 16 is legally binding.
16.2 Each party is responsible for its own costs in connection with the proposed Transfer, whether or not it proceeds (including without limitation the preparation and negotiation of the HoT, the Grant Agreement and all other documents contemplated).

17 Governing Law and Jurisdiction
17.1 This paragraph 17 is legally binding.
17.2 The HoT, and the negotiations between the parties in connection with the proposed Grant Agreement and all disputes or claims arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) will be governed by English law.
17.3 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the HoT or its subject matter or formation (including non-contractual disputes or claims).
17.4 The HoT are for the benefit of the parties to it and is not intended to benefit, or be enforceable by, anyone else.
DRAFT for signature 1 March 2012


Signed by [NAME] for and on behalf of
The Secretary of State for Environment, Food and Rural Affairs

We confirm our agreement to the above.


Signed by [NAME] for and on behalf of
Canal & River Trust
ANNEX 1

Indexation of Part A Core Grant

1. In accordance with the provisions of this Annex, from 2015/16, the Core Grant of £39m will be indexed ex ante in three-year cycles according to annual projections of the GDP deflator for the following three financial years.\(^3\)

2. For each of the years 2015/16 to 2017/18 inclusive (years four to six of the Grant Agreement), the £39m Part A Core Grant will be adjusted, relative to the preceding financial year, at the rate for the financial year in question set out in the most recently published GDP deflator projections available at 31 March 2015.

3. For each of the years 2018/19 to 2020/21 inclusive (years seven to nine of the Grant Agreement), the Part A Core Grant will be further adjusted, relative to the preceding financial year, at the rate for the financial year in question set out in the most recently published GDP deflator projections available at 31 March 2018.

4. Subject to paragraph 6, for each of the financial years 2021/22 to 2023/24 inclusive (years 10 to 12 of the Grant Agreement), the Part A Core Grant will be further adjusted, relative to the preceding financial year, at the rate for the financial year in question set out in the most recently published GDP deflator projections available at 31 March 2021.

5. Subject to paragraph 6, for each of the years 2024/25 to 2026/27 inclusive (years 13 to 15 of the Grant Agreement), the Part A Core Grant will be further adjusted relative to the preceding financial year, at the rate for the financial year in question set out in the most recently published GDP deflator projections as at 31 March 2024.

6. The maximum amount of Part A Core Grant payable in any of the financial years 2022/23 to 2026/7 inclusive (years 11 to 15 of the Grant Agreement) shall not exceed the amount of Part A Core Grant calculated in accordance with paragraph 4 for 2021/22, plus £10m.

\(^3\) Medium-term GDP deflator projections are currently published by the Office for Budget Responsibility, a non-departmental public body established under the Budget Responsibility and National Audit Act 2011.
ANNEX 2
Escalation and intervention mechanisms for failure to meet conditions precedent to Part B Conditional Grant

1. There are three required standards upon which Part B Conditional Grant depends, as noted in paragraph 7.3 of the HoT, as follows:
   (a) Safe waterways;
   (b) Towpath condition; and
   (c) Flood management.

2. Subject to the following provisions of this Annex, Part B Conditional Grant shall be paid on Defra’s first pay run of October of the relevant year.

Withholding Payment

3. In relation to (a), (b) and (c) above, there will be two different performance levels indicated in the Grant Agreement, one which acts as an “amber light” indicator (“Warning Threshold”), and one which indicates a clear breach (“Breach Threshold”). These will be as follows:
<table>
<thead>
<tr>
<th>Relevant Standard</th>
<th>Applicable Measurement</th>
<th>Warning Threshold</th>
<th>Breach Threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td>Safe Waterways</td>
<td>Asset management to be in accordance with PAS-55. Percentage of assets in Class D and Class E shall not rise to or above the relevant thresholds.</td>
<td>23% in Classes D &amp; E</td>
<td>25% in Classes D &amp; E</td>
</tr>
<tr>
<td>Towpath condition</td>
<td>Percentage of towpath at condition A, B or C shall not fall to or below the relevant thresholds.</td>
<td>60% in condition A-C</td>
<td>50% in condition A-C</td>
</tr>
<tr>
<td>Flood management</td>
<td>Percentage of principal culverts and embankments in Class D and Class E, breach of which would cause more than £2m in damage, shall not rise to or above the relevant thresholds.</td>
<td>4% in Classes D &amp; E</td>
<td>7% in Classes D &amp; E</td>
</tr>
</tbody>
</table>

5. DEFRA will be permitted to withhold Part B Conditional Grant, in whole or in part, in the financial year in which DEFRA becomes aware that any of the events listed below has occurred. In considering whether to do so, DEFRA will have regard to its strategic objectives over grant which will be detailed in the Grant Agreement. The specified events are:

5.1 a Breach Threshold is triggered;

5.2 the action plan required pursuant to paragraph 6.2 is not provided within the required timescale;

5.3 the action plan required pursuant to paragraph 6.2 is provided within the required timescale but is unacceptable to DEFRA; or

5.4 the action plan required pursuant to paragraph 6.2 or 7.2 is not implemented within the timescale agreed therein.

6. If a Warning Threshold is triggered, CRT will:

6.1 within four weeks of the end of the financial year in which the Warning Threshold is triggered, explain in writing why the relevant performance did not meet the expected targets; and

6.2 within eight weeks of the end of the financial year in which the Warning Threshold is triggered, provide a detailed action plan explaining how the performance will be remedied, including a revised business plan where necessary.

7. If a Warning Threshold is triggered and an action plan is provided within the period required by paragraph 6.2, DEFRA may:

7.1 agree to the action plan, such agreement not to be unreasonably withheld or delayed. In agreeing to an action plan, DEFRA must take into account any representations which CRT may make about any material increase or acceleration in regulatory burdens (whether arising from EU or domestic law) which CRT can demonstrate has had an impact on its capacity to meet the required standards. Should DEFRA agree to the action plan, CRT will provide progress reports against the action plan, at such frequency as is determined in the action plan; or
7.2 not agree to the action plan, in which case the Chair of Trustees of CRT will be required to attend a meeting with the Secretary of State, to agree a revised action plan to remedy the performance within set timescales. CRT will provide progress reports against the revised action plan, at such frequency as is determined in the revised action plan.

8. If a Breach Threshold is triggered, DEFRA may exercise the rights set out in paragraph 5 above. Notwithstanding the foregoing, the parties will convene a meeting of the Chair of Trustees of CRT and the Secretary of State, to review the reasons for the failure and, if an action plan had been supplied in previous years, why the action plan has failed. For the avoidance of doubt, this is notwithstanding any ongoing process that may have commenced as a result of an earlier Warning Threshold having been triggered.
ANNEX 3

Escalation and intervention mechanisms – in relation to breach of contractual terms (including any event of default)

1. Standard escalation and intervention steps will be taken:
   1.1 DEFRA will write to CRT requesting it to remedy the failures identified. CRT will respond in writing within a timeframe required by the DEFRA setting out the steps to be taken;
   1.2 in the event that the failure is not resolved satisfactorily in the required timeframe, the matter will be escalated to the Chair of Trustees of CRT and the Secretary of State. The Secretary of State and the Chair will agree an action plan within a timeframe required by the Secretary of State to remedy the failure, which will be monitored by a combination of trustees of CRT, DEFRA and advisors to DEFRA; and
   1.3 in the event that there is insufficient progress; and/or ongoing concerns after the agreed period required by the Secretary of State; and/or if the Secretary of State is not satisfied that the action plan will remedy the failures identified, the Secretary of State may decide to exercise the remedies described in paragraph 12.2 of the HoT.

2. For the avoidance of doubt, DEFRA may suspend payment of grants while the procedure in this Annex is followed. Suspended payments will be made to CRT in the event that the action plan referred to at paragraph 1.2 of this Annex is implemented to the satisfaction of DEFRA.
ANNEX 4

Examples of permitted expenditure under clause 4.1.1

Major Repairs
Intermediate Repairs
Planned Preventative Maintenance
Mainline Dredging
River Dredging
Spot Dredging
Inspections - Length & Annual
Inspections - Principal
Inspections - M & E
Grass Surfaces - linear
Grass Surfaces - Area
Grass Surfaces - Reservoir
Aquatic Weed Management
Vegetation Clearance - Structures
Vegetation Clearance - Access Pts.
Vegetation Clearance - Feeders
Offside Vegetation Management
Tree Management
Hedge Management
Dry Stone Walling
Litter Management - Skips
Litter Management - Floating
Litter - Special Waste
Pest Control

Water Control
Water resource and other management telemetry (SCADA)
Energy Consumption
Towpath Access Points
Embankment Access Points
Ditch Maintenance
Carcass Removal
Security Fencing
Stock Proof Fencing
Safety Signage
General Information Signage
Towpath Management
Vehicle Removal
Graffiti Removal
Vandalism Damage Repair
Pollution Management
Fly Tipping Removal
Emergency Response
Manned Structures
Moorings Maintenance
Long term Moorings Maintenance
Cleaning Customer Facilities
Cleaning Core Buildings
Technical Support
Geographical Information Systems (GIS)