

DATED

2020

LAND RESTORATION TRUST (1)
(carrying on business as the Land Trust)

And

DOVER DISTRICT COUNCIL (2)

MANAGEMENT AGREEMENT
relating to land at Fort Burgoyne, Dover

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ADD

SCHEDULE 8 EXISTING STAFF

PARTIES

- (1) **THE LAND RESTORATION TRUST** (company registration number 05077263) of 7 Birchwood One, Dewhurst Road, Birchwood, Warrington WA3 7GB ("**the Trust**") ("**the Trust**"); and
- (2) **DOVER DISTRICT COUNCIL** whose registered office is at White Cliffs Business Park, Dover CT16 3PJ ("**the Managing Agent**").

BACKGROUND

- A The Land Trust is a not for profit charitable organisation that provides a cost-effective management solution for open space and green infrastructure. This land can deliver significant community benefits, improving health, social cohesion, providing an educational resource and uplifting the local economy.
- B The aim of the Trust is to provide long-term sustainable management of open spaces across the country. Open spaces are a crucial part of the social landscape, delivering a range of significant benefits for residents and businesses. Safe and accessible open space allows communities to come together and individuals to develop and relax through physical activity and recreation. Well designed and maintained open spaces are outdoor classrooms, gyms and theatres. They change lifestyles and improve health and well-being, so we take them seriously.
- C The Trust aims to deliver environmentally informed, community-led regeneration through acquiring, owning and managing open and green spaces. Its role is to hold the land and any associated structures or buildings; to secure and hold endowments and other sources of income; to fund and sustain long-term management; and to manage the land through a managing agent where appropriate to manage the land on behalf of the Trust and on behalf of the community.
- D The Trust has acquired ownership of the Site and the Managing Agent intends to take responsibility for the day-to-day management of the Site on the terms set out in this Agreement.
- E White Cliffs Countryside Partnership is a partnership of organisations working together to protect and enhance the countryside around Dover and Folkestone and make it accessible to everyone. It is hosted by Dover District Council

OPERATIVE PROVISIONS

INTERPRETATION

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

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|---|---------------------|---|--|
| F | "Additional Income" | G | any income excluding Grant Income generated by, from or in relation to the Site(s) (or any Specific Site) or its/their use other than money provided by the Trust under the Annual Budget (which |
|---|---------------------|---|--|

includes, for the purposes of example only and without limitation, income derived from the Trust's beneficial interest in the Site(s) such as from grazing licences).

"Annual Budget"	the annual budget to be drawn up by the Managing Agent and approved by the Trust in accordance with clause 5.2.
"Anti-Bribery Laws"	means any bribery, fraud, kickback, or other similar anti-corruption law or regulation, including but not limited to the UK Bribery Act 2010 and section 117 of the Local Government Act 1972.
"Business Day"	a day other than Saturday or Sunday or a bank holiday or public holiday in England.
"Commencement Date"	6 DECEMBER 2020.
"Confidential Information"	shall mean all information of a confidential nature in whatever form (including written, oral, visual or electronic form, or on tape or disk) relating to the business, affairs, developments, employees or trade secrets of either Party which is disclosed to the other Party or any of their representatives.
"Contract Period"	means 10 years commencing on the Commencement Date or such shorter period in the event this Agreement is terminated pursuant to clause 15.
"Effective Date"	The date on which the Services (or any part of the Services transfer from the Managing Agent or any Third Party Employer to the Trust or its subcontractor, and a reference to the Effective date shall be deemed to be the date on which the employees in question transferred or will transfer to the Trust or Sub-Contractor
"Existing Employees"	means those employees (listed in Schedule 8) of the Trust and/or any Incumbent Contractor who are assigned immediately prior to the Commencement Date to the Services (or any part thereof) to be performed by the Managing Agent (or any Sub-Contractor) under this Agreement.1 April to 31 March.
"Financial Year"	

"Five Year Budget"	the five year indicative budget annexed at Schedule 4 and as amended from time to time in accordance with clause 6.2 and which is to be drawn up by the Trust in respect of a fixed 5 year period and agreed with the Managing Agent.
"Good Industry Practice"	means, the exercise of the degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances.
"Grant Income"	money received by way of grant from third parties for purposes relating to the improvement, use, maintenance, management or upkeep of the Site(s) and which money is to be used solely as specified by the awarding body (such funds derived, for the purposes of example only and without limitation, from the National Lottery and or other awarding bodies).
"Incoming Contractor"	the supplier who takes on the performance of the Services (or any part thereof) from the Managing Agent with effect from the Termination Date.
"Incumbent Contractor"	means any supplier providing services identical or similar to the Services that will be provided by the Managing Agent or a Sub-Contractor after the Effective Date, including any of the Incumbent Contractor's sub-contractors.
"Insolvent"	means becomes bankrupt, insolvent, summons a meeting of or enters into any arrangement with its creditors, makes a proposal for or becomes subject to any voluntary arrangement, is unable to pay its debts, has a receiver, manager or administrative receiver appointed over any of its assets, undertakings or income, has passed a resolution for its winding up or has a petition presented for winding up, has a provisional liquidator appointed or has an administrator appointed in respect of it.
"Intellectual Property Rights"	means copyright, moral rights, patents, supplementary protection certificates, trade marks, trade names, service marks, design rights, database rights, rights in goodwill, rights in undisclosed or Confidential Information (such as know-how, trade secrets and inventions (whether patentable or not)), and other similar or related intellectual property rights (whether registered or

not) and applications for such rights anywhere in the world from time to time.

"Management Plan"	the management plans for the Site as attached at Schedule 2 and as amended by agreement between the parties from time to time in accordance with clause 2.3 and clause 6.3.
"Managing Agent Employee"	means those employees of the Managing Agent or a Sub-Contractor who are assigned to the performance of the Services (or any part thereof).
"Materials"	has the meaning given at clause 10.1.
"Net Expenditure"	expenditure in connection with the performance of this Agreement by the Managing Agent in accordance with the Annual Budget less any Additional Income and any Grant Income received by the Managing Agent.
"Quarter"	the period of 3 months commencing on each Quarter Day, or any shorter period commencing on a day immediately following the end of a Quarter and ending on the termination of this Agreement, and "Quarterly" shall be construed accordingly.
"Quarter Day"	means 1 st April, 1 st July, 1 st October and 1 st January in each year of this Agreement.
"Quarterly Report"	the Report produced by the Managing Agent for the Trust on a Quarterly basis, based on the template attached in Schedule 66, to include such information as set out in clause 5.5 of this Agreement.
"Safety Policies"	mean the policies notified to the Managing Agent from time to time
"Services"	means the services to be provided by the Managing Agent as set out at clause 2, 3 and 5 and at Schedule 3, including the provision of any Materials and other deliverables.
"Site"	the area of land at Fort Burgoyne, Dover, CT15 5LP as shown on the plans at Schedule 1
"Sites"	such other sites as may be agreed by the parties from time to time.

"Specific Site Annual Budget"	the element of the Annual Budget which relates to each Specific Site.
"Sub-Contractor"	means a sub-contractor appointed by the Managing Agent for the performance of the Services (or any part thereof).
"Sub-Contractor Employees"	The employees of a Sub-Contractor engaged by the Managing Agent to provide the Services before the Effective Date and who will transfer to the Trust or to the Incoming Contractor on the Effective Date.
"TUPE"	means the Transfer of Undertakings (Protection of Employment Regulations) 2006, as amended.
"Works"	further capital works that the Trust intends to carry out in order to meet its obligations to manage the Site e.g. health and safety, site remediation etc.

- 1.2 The index and headings to the clauses and Schedules of this Agreement shall not affect its construction.
- 1.3 Where the context so requires or admits, the masculine shall include the feminine and the neuter and the singular shall include the plural and vice versa.
- 1.4 Any reference to "writing" includes reference to any communication effected by facsimile or any comparable means.
- 1.5 Any reference in this Agreement to a clause or Schedule is a reference to a clause of or a Schedule to this Agreement, and references to paragraphs are to paragraphs in the Schedule in which such paragraph appears.
- 1.6 The expression "person" means any individual, firm, company, incorporated association, partnership, government, state, or agency of state, or joint venture.
- 1.7 Any reference to a statute or statutory provision shall be construed as a reference to the same as from time to time amended, consolidated, modified, extended, re-enacted or replaced provided that in the case of amendments, consolidation, modification, extensions, re-enactments or replacements made after the date of this Agreement they shall not have effected a substantive change to that provision.
- 1.8 Words in the singular include the plural and words in the plural include the singular.
- 1.9 In this Agreement, unless otherwise stated in this Agreement, any reference to "including", "include", "in particular" or any similar expression shall mean "including without prejudice to the generality of the foregoing phrase or term".

2 MANAGEMENT PLAN

- 2.1 Within 6 months of contract commencement the Managing Agent will prepare a Management Plan for adoption. The Managing Agent will provide the Services,

including managing the Site(s), in accordance with the Management Plan during the Contract Period.

- 2.2 The Management Plan will set out details of the intended usage for the Site together with the plans for its/their management. Any material variations to the objectives to be achieved in relation to the Site' management must be approved in writing by the Trust prior to implementation.
- 2.3 The Management Plan will cover an initial 5-year period, commencing on the date of this agreement, and will be reviewed after five years or sooner if reasonably required by the Trust.
- 2.4 The Trust grants the Managing Agent a licence to enter the Site during the term of this Agreement to undertake its obligations under this Agreement and for no other purpose.

3 OBLIGATIONS OF THE MANAGING AGENT

- 3.1 As from the Commencement Date, the Managing Agent will provide the Services, including managing the Site, to the Trust on the terms set out in this Agreement and will perform its obligations, including the provision of the Services, in a timely manner, with all due, care and skill, in accordance with Good Industry Practice and to the best of its ability. The Managing Agent will at all times act -in good faith towards the Trust and will take reasonable care that the Managing Agent Employees and agents act in a way that will not damage the Trust's reputation.
- 3.2 The Managing Agent will observe the Trust's Safety Policies and must ensure that the Site meets all necessary health and safety requirements and that it complies with all relevant laws and regulations for the purposes and usage of the Site, as set out in the Management Plan. For the avoidance of doubt, the Managing Agent will have day to day responsibility for health and safety for defined parts of the Site that are notified to the Managing Agent in writing from time to time (but not so as to be liable for any third party acts or omissions which are beyond its reasonable control or any Works) and will comply with all health and safety legislation and regulations in force, to include the prompt reporting of any reportable accidents at the Site to the relevant regulatory body where appropriate pursuant to the Reporting of Injuries Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR).
- 3.3 The Managing Agent shall report any accidents at the Sites as soon as is practicable to the Trust (for the attention of the Director of Portfolio Management and in any event no later than 5 working days following the occurrence of the accident such report to be in the form annexed to this agreement at Schedule 7 or any subsequent replacement form.
- 3.4 The Trust will provide copies of any insurance and schedule of insurance cover relating to the Site to the Managing Agent (and advise the Managing Agent of any variations thereto). The Managing Agent will comply at all times with all conditions contained in any insurance policies of the Trust relating to the Site. The Managing Agent will not do anything or omit to do anything which would cause such insurance policies to become void or voidable or otherwise jeopardise the terms of insurance.
- 3.5 Whilst the Trust retains as owner of the Site responsibility for the enforcement of all legal matters relating to the Site (including but not limited to the eviction of illegal occupiers, or anyone or anything causing a nuisance and the enforcement of any laws,

regulations or by-laws relating to the Site(s)) ("**Legal Enforcement Matters**"), the Managing Agent will bring any breaches, potential breaches or risk of breaches in relation to Legal Enforcement Matters to the attention of the Trust where it has knowledge of the same and will assist the Trust and co-operate with the Trust in resolving and taking any action necessary or where permitted to do so by the Trust act on behalf of the Trust in Legal Enforcement Matters where it is reasonably able to do so, provided that the Managing Agent shall not be liable for the outcome of such Legal Enforcement Matters.

- 3.6 The Managing Agent will comply with any future directions and instructions of the Trust PROVIDED those directions and instructions are reasonable, are communicated to the Managing Agent and are in accordance with the Management Plan and the Five Year Budget.
- 3.7 The Managing Agent shall ensure that, at all times, it shall carry out its obligations under the Agreement in accordance with all applicable laws, regulations, codes of practice, decisions of regulatory authorities and professional rules and shall ensure that at all time during the term of the Agreement it has and maintains in place all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement.
- 3.8 The Managing Agent acknowledges and agrees that the Managing Agent shall contract in the Managing Agent's own name, as principal at law, (and not on behalf of the Trust) directly with all third party suppliers that are appointed to provide the Services necessary for the performance of the Managing Agent's obligations under this Agreement. In no circumstances shall the Managing Agent hold itself out as being the agent of the Trust and the Managing Agent shall not have any right or authority to act on behalf of the Trust nor to bind the Trust by contract or otherwise unless expressly agreed by the Trust in writing in advance.

4 OBLIGATIONS OF THE TRUST

- 4.1 Subject to the provisions of clause 5, including the Trust's right to withhold payments that are subject to a bona fide dispute, the Trust will pay the Managing Agent on receipt of a proper invoice, the amounts agreed in accordance with the Quarterly Report and as provided for in the Annual Budget.
- 4.2 The role and responsibilities of the Trust are as specified in Schedule 44.

5 FINANCIAL PROVISIONS

- 5.1 The Managing Agent will manage the Site:
- (a) in accordance with the Management Plan (as attached in Schedule 2);
 - (b) within the indicative Five Year Budget (agreed with the Trust and set out in Schedule 5); and
 - (c) within the Annual Budget.
- 5.2 The Managing Agent will submit a draft Annual Budget to the Trust, including detailed staff costs, not less than three months in advance of the commencement of each Financial Year. The final Annual Budget must be approved by the Trust within one

week of the commencement of the Financial Year. Individual staff costs must be agreed at the start of the Financial Year and cannot be increased during the year without the prior consent of the Trust. Any dispute relating to the agreement of the annual budget shall be determined in accordance with clause 14 of this Agreement.

- 5.3 Once the Annual Budget is approved and subject to clause 5.1 and 5.2 and 0, the Managing Agent will have responsibility for managing the Site(s) within this Annual Budget, and for appointing staff, contractors and consultants as appropriate in accordance with it (subject to any amendments thereto as may be agreed by the Trust during the Financial Year).
- 5.4 The parties acknowledge that it may be financially beneficial for the Managing Agent to enter into contracts for the procurement of the Services in relation to the Site which extend beyond the present Financial Year. Where the Managing Agent does propose to enter into such a contract then it must obtain the prior written approval of the Trust (such approval to be at the Trust's absolute discretion) as to the terms of that contract and must also ensure that the contract can be provided for within the indicative Five Year Budget. In the event the Managing Agent fails to obtain the approval from the Trust of any contract which extends beyond the present financial year then the Trust shall not be responsible for any losses incurred by the Managing Agent.
- 5.5 The Managing Agent will submit a completed Quarterly Report to the Trust within 15 calendar days of the Quarter Day in respect of the Quarter preceding each Quarter Day. The Managing Agent will supply supporting information as appropriate and reasonably required by the Trust, including a breakdown of staff costs based on agreed hourly / daily rates, copies of contractors' and other organisation's invoices, and receipts for other costs. The Managing Agent shall not be entitled add any charges to contractor, plant hire, material or other third party costs. Copies of all documentation relating to this Agreement and the Site(s) will be retained by the Managing Agent for a minimum of six years from the end of the Financial Year in which such documentation was created or longer if required by relevant statute. The Trust will review and approve the Quarterly Report with the Managing Agent within 21 days of its submission. Any dispute relating to the approval of the Quarterly Report shall be determined in accordance with clause 14 of this Agreement.
- 5.6 Upon approval of the Quarterly Report in accordance with clause 5.6 the Managing Agent will then submit an invoice to the Trust, in respect of the expenditure included in that Quarterly Report, unless expressly agreed otherwise. If the Managing Agent is registered for VAT then the invoice must be a VAT invoice.
- 5.7 Subject to clauses 5.8 and 5.9, the Trust will, having checked the invoice, pay the Managing Agent all invoiced sums within 30 days of receipt.
- 5.8 Should any invoice be the subject of a bona fide dispute between the parties, the Trust will within 10 Business Days of receipt of such invoice inform the Managing Agent in writing of the nature of the dispute. The Managing Agent will within 15 Business Days of receipt of such writing either:
 - (a) issue a corrected invoice; or
 - (b) respond in writing explaining why the original invoice is correct and enclosing any further information in support of this.

5.9 For the purposes of ascertaining when payment is due, any invoices returned will be deemed to be received on the day that any corrected invoice given under clause 5.8(a) is received by the Trust and not the date that the incorrect invoice was received, provided that payment for any corrected invoice shall be made within 15 Business Days of receipt of corrected invoice. For the avoidance of doubt, where the Managing Agent's original invoice is correct and the Trust agrees this with the Managing Agent, the Trust shall pay the original invoice as soon as possible after receipt of satisfactory information in clause 5.8(b), and in any event within 15 Business Days of receipt of such information.

5.10 The Managing Agent and the Trust will work together in good faith to identify sources of Additional Income and shall agree a strategy for obtaining Grant Income within 6 months of the commencement of this Agreement.

Pursuant to clause 5.10, the Managing Agent shall then use its reasonable endeavours to realise Additional Income and/or Grant Income including (without limitation) in the case of Grant Funding making applications together with all necessary supporting documentation to relevant awarding bodies. The Trust will specify to the Managing Agent at the time of any applications what it wants to do with such income. No funding bids should be submitted relating to the Site without the Trust's written consent.

5.11 The Managing Agent shall compile and submit an annual report to the Trust in the format specified within 15 days of the end of each financial year.

5.12 If the Trust fails to pay any undisputed amount properly due and payable by it under the Agreement, the Managing Agent shall have the right to charge interest on the overdue amount at the rate of 2 per cent per annum above the base rate for the time being of the Bank of England accruing on a daily basis from the date the amount became due up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that are subject to a bona fide dispute.

5.13 The Trust shall have the right to set off against and deduct from any and all amounts otherwise payable to Managing Agent pursuant to any of the provisions of this Agreement. Upon the exercise of such right of setoff, the Trust shall notify the Managing Agent in writing of the extent to which such right has been asserted.

5.14 The obligations contained in this clause will be repeated in relation to the Sites (if any).

6 REVIEW AND RENEWAL

6.1 For the duration of the Agreement, the Managing Agent and the Trust will meet once a year or more often if reasonably required by either party ("the Review Meetings") to discuss and monitor the delivery of the Management Plan and to identify and resolve any management issues.

6.2 In addition to the Review meetings, the parties will hold a meeting not less than six months before each fifth anniversary of the Commencement Date ("the Five Year Review") for the purposes of identifying issues which need to be reviewed and a timescale for agreeing a revised Management Plan and Five Year Budget including a new programme of priorities for Additional Income and Grant Income. Following the initial meeting the parties shall (where the parties agree it will be beneficial or if the Trust is obliged to do so) consult with users of the site, the wider community and/or other partners.

- 6.3 Both parties shall use reasonable endeavours to ensure that the new Management Plan and Five Year Budget are agreed no later than one month before the fifth anniversary of the Commencement Date. In the event that there is a dispute as to the contents of the Management Plan and/or Five Year Budget then any such dispute shall be resolved in accordance with clause 14.
- 6.4 If the Trust wishes to extend its management arrangement with the Managing Agent beyond the current term of this Agreement then it will inform the Managing Agent of its intention and request a meeting no later than 6 months before the end of the Contract Period. The terms and conditions of the new management agreement will be materially the same as the existing terms unless otherwise agreed by the Trust and its Managing Agent. Both parties commit to using all reasonable endeavours to ensure that the new Management Plan and Five Year Budget are agreed no later than one month before the fifth anniversary of the Commencement Date.
- 6.5 Either party may submit a written request to amend the scope nature volume or execution of the Services or to the addition of Sites under this agreement, but no such request will come into effect until it has been agreed by both parties in writing.
- 6.6 If either party submits a written request in accordance with clause 6.5, such request will also contain a proper description of the amendment in order for the other party to confirm in writing if any amendments are needed to the Services or to the Annual Budget.
- 6.7 If the parties agree to the terms of the amendment, they will sign a memorandum of the change which will amend this agreement. If either party does not agree to any term of the memorandum of change then the other party may refer the disagreement to be dealt with in accordance with clause 14 of this Agreement.
- 6.8 Each party will bear its own costs in relation to the procedure set out in clause 6.5 and 6.6.

7 INDEMNITY

- 7.1 Subject to clause clauses 7.3 and 7.4, the Managing Agent will indemnify, keep indemnified and hold harmless the Trust in full and on demand against all liabilities, losses, demands, claims, damages, settlements, fines, costs and expenses (including all legal and other professional fees and expenses) howsoever arising that are incurred by, awarded against or paid by the Trust as a result of: (i) a breach of this Agreement by the Managing Agent, the Managing Agent Employees, its officers, contractors or agents or as a result of negligent acts or omissions; or (ii) wilful misconduct of the Managing Agent, the Managing Agent Employees, its officers, contractors or agents; or (iii) death or personal injury or damage to property caused by the Managing Agent, the Managing Agent Employees, its officers, contractors or agents; or (iv) any claim made by any third party that the Services, including any Materials or other deliverables, infringe the Intellectual Property Rights or any other rights of a third party save to the extent that the same is directly caused by or directly arises from the negligence or breach of contract by the Trust or its agents or its subcontractors.
- 7.2 Where the Managing Agent is liable to indemnify the Trust under clause 7.1, the Trust shall:

- (a) as soon as is reasonably practicable, give notice of any claim under clause 7.1 to the Managing Agent.
- (b) provide to the Managing Agent on request such information and assistance in relation to such claim as the Managing Agent may reasonably require, subject to the Managing Agent indemnifying the Trust against all costs reasonably incurred by it in the provision of such information or assistance; and
- (c) not make any settlement, compromise or prejudicial admission in relation to such claim without the prior consent of the Managing Agent (such consent not to be unreasonably withheld or delayed).

7.3 Nothing in this Agreement limits or excludes the liability of either party or its or their employees, officers, contractors or agents for:

- (a) death or personal injury resulting from its (or its officers, employees, agents) negligence;
- (b) fraud (including fraudulent misrepresentation) or for wilful misconduct or deliberate breach;
- (c) breach of terms implied as to title by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- (d) any liability of the Managing Agent under the indemnities at 7.1(ii) to 7.1(iv) or for breach of the Managing Agent's obligations at clauses 9, 11, 12 or 20; or
- (e) any liability to the extent that such liability cannot be limited or excluded as a matter of law.

7.4 The Managing Agent's total liability to the Trust under the indemnity given at clause 7.1 (i) is limited to the amount the Managing Agent has obtained in insurance cover in respect of certain aspects its own legal liability for individual claims and shall not exceed £5,000,000.00 per claim.

8 INSPECTION

8.1 The Managing Agent agrees to provide to the Trust with all information reasonably requested by the Trust within 28 days and to provide access to the Trust and its duly authorised representatives to the Site(s) and any premises on the Site(s).

8.2 The Trust shall have the right to inspect the Site(s) (at any time) and any premises on the Site(s) (on reasonable notice), and the Managing Agent shall make all necessary arrangements and provide all reasonable facilities and access for such inspection.

9 EMPLOYEES AND TUPE

Entry provisions and Existing Employees

9.1 The parties acknowledge and agree that TUPE applies to the Existing Employees and any Sub-Contractor Employees and that, under TUPE, the contracts of employment of the Existing Employees and any Sub-Contractor Employees shall be transferred to the Trust or any Incoming Contractor with effect from the Effective Date as if originally

made between the Trust and/or the Incoming Contractor and the Existing Employees or the Trust or any Incoming Contractor and any Sub-Contractor Employees.

9.2 The Trust shall indemnify the Managing Agent and any Sub-Contractor against any failure to meet all remuneration, benefits, entitlements and outgoings of the Existing Employees or the Sub-Contractor Employees and any person who is or will be employed or engaged by the Managing Agent or any Sub-Contractor in connection with the provision of the Services including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions, termination costs and otherwise from and including the Effective Date including the reasonable costs, awards, expenses and liabilities (including reasonable legal fees) arising from any claims, demands and proceedings brought against the Managing Agent or a Sub-Contractor in connection with or as a consequence of:

- (a) the employment or termination of employment by the Trust of any of the Existing Employees or any Sub-Contractor Employees prior to the Effective Date; and
- (b) any proposed changes to terms and conditions of employment the Trust or its sub-contractor may consider making on or after the Effective Date; and
- (c) any claim that, in relation to any of the Existing Employees, there has been a failure by the Trust to comply with obligations under TUPE save where the failure is due to any failure by the Managing Agent or any Sub-Contractor to comply with TUPE Regulation 13(4); and
- (d) any claim by a person other than an Existing Employee or any Sub-Contractor Employee relating to those persons employment or termination in either case by the Trust after the Effective Date; and
- (e)

9.3 The Managing Agent shall indemnify the Trust and the Incumbent Contractor against any reasonable costs, awards, expenses and liabilities (including reasonable legal fees) arising from any claims, demands and proceedings brought against the Trust or the Incumbent Contractor in connection with:

- (a) any failure by the Managing Agent (or any Sub-Contractor) to comply with its obligations under TUPE; and
- (b) any claim by any of the Existing Employees arising out of any act or omission of the Managing Agent (or any Sub-Contractor) prior to or following the Commencement Date.

On Commencement

9.4 The Managing Agent shall from the Commencement Date perform and discharge all of the obligations of an employer in relation to the Existing Employees, including all obligations under sections 257 and 258 of the Pensions Act 2004 in relation to pension provision and shall procure that any Sub-Contractor do the same in relation to Sub-Contractor Employees.

- 9.5 The Managing Agent shall indemnify the Trust and the Incumbent Contractor against any reasonable costs, awards, expenses and liabilities (including reasonable legal fees) arising from any claims, demands and proceedings brought against the Trust or the Incumbent Contractor in connection with any failure by the Managing Agent (or any Sub-Contractor) to comply with its obligations under clause 9.4.

Termination and Exit Provisions

- 9.6 The Managing Agent shall, on request and, in any event, at least once per year, provide the Trust or any Incoming Contractor (if so requested by the Trust) with a list ("**List**") setting out full details of the Managing Agent Employees. The List shall be provided to the Trust by the Managing Agent within 7 calendar days of any such request and shall include full details of the Managing Agent Employees, the functions they perform (including details of the proportion of working time each spends in providing the Services (or any part thereof), including the management of the Site, details of their terms and conditions, age, length of service, current remuneration, benefits, notice, actual or threatened industrial disputes or other actual or potential employee claims by any Managing Agent Employee arising before the Termination Date and any other information relevant to their employment, to include all information required in accordance with Regulation 11 of TUPE. The Managing Agent shall notify the Trust and/or Incoming Contractor (as appropriate) as soon as reasonably practicable of any material changes to the information contained in the List.
- 9.7 The Managing Agent shall indemnify the Trust and any Incoming Contractor against any reasonable costs, awards, expenses (including reasonable legal fees) and liabilities which either of them may incur or suffer as a result of the List not being accurate, complete and/or up to date.
- 9.8 The Managing Agent shall not (and shall procure that any Sub-Contractor shall not) without the prior written consent of the Trust (such consent not to be unreasonably withheld or delayed):
- (a) during the six month period prior to the end of this Agreement; or
 - (b) after either party has given notice to terminate this Agreement or transfer (or propose to transfer) any part of the Services to an Incoming Contractor; or
 - (c) after the Trust has made a request pursuant to clause 9.6 above:
 - (i) vary, purport to vary, or promise to vary any term or condition of employment (including any benefit or payment on retirement or termination of employment) of any Managing Agent Employee business;
 - (ii) increase or decrease the number of Managing Agent Employees or increase or decrease the proportion of working time any Managing Agent Employee spends on performance of the Services (including the management of the Site(s));
 - (iii) transfer any Managing Agent Employee to the performance of any other work.

- 9.9 The Managing Agent shall permit, and shall procure that any Sub-Contractor shall permit, the Trust to use, or disclose the information set out in the List to any prospective tenderer or Incoming Contractor, for the sole purpose of seeking and/or securing alternative services provision including any tendering process, subject to the Trust complying with its obligations of confidentiality and not using the information for any purpose other than that for which it is provided, and any such prospective tenderer or Incoming Contractor undertaking to do the same.
- 9.10 The parties acknowledge that, notwithstanding the provisions of clause **Error! Reference source not found.**1 above, TUPE may apply on the Effective Date such that the contracts of employment between the Managing Agent or any Sub-Contractor and Managing Agent Employees shall have effect on and following the Effective Date as if originally made between the Trust or the Incoming Contractor (as the case may be) and the Managing Agent Employee (save to the extent that any such employee exercises their right to opt-out of the transfer pursuant to TUPE). If TUPE applies then the Managing Agent shall co-operate (and shall procure that any Sub-Contractor shall co-operate) in the transfer of those employees to the Trust and/or the Incoming Contractor (as the case may be) and the provisions of clauses 9.11 to 1.1 below shall apply.
- 9.11 The Managing Agent shall indemnify the Trust and/or any Incoming Contractor against any reasonable costs, awards, expenses and liabilities (including reasonable legal fees) arising from any claims, demands and proceedings brought against the Trust and/or any Incoming Contractor in connection with:
- (a) the employment or termination of employment, prior to the Effective Date, of any Managing Agent Employees; and
 - (b) any act or omission which occurred or is alleged to have occurred prior to the Effective Date in relation to any Managing Agent Employee; and
 - (c) any claim that, in relation to any Managing Agent Employee, there has been a failure to comply with obligations under TUPE save where the failure is due to any failure by the Trust or the Incoming Contractor to comply with its obligations under Regulation 13(4) of TUPE; and
 - (d) any benefits under any occupational pension arrangements applicable to the Managing Agent Employees, liability for which will or could transfer to the Trust or any Incoming Contractor as a result of the application of the judgments of the European Court of Justice cases of Beckmann v Dynamco Whichloe MacFarlane (Case C-164/00 [2002] IRLR 578) and Martin v South Bank University (Case C-4/0 [2004] IRLR 74) and/or that would or may fall outside of the exemption for occupational pension schemes under Regulation 10 of TUPE; and
 - (e) any claim by any person other than a Managing Agent Employee relating to that individual's employment or its termination on or before the Effective Date.
- 9.12 The Trust may in its discretion assign the benefit of any indemnities set out in this clause 9 to an Incoming Contractor.

10 INTELLECTUAL PROPERTY RIGHTS

- 10.1 All Intellectual Property Rights in any materials created by the Managing Agent by or on the Managing Agent's behalf for the Trust, including any illustrations, documents, instructions, databases, drawings, information, designs, reports, budgets, models, samples or photographs ("**Materials**") will vest in the Trust on their creation. The Managing Agent assigns to the Trust all such rights (whether presently existing or to be created in the future) to the fullest extent to which the Managing Agent is able (and if moral rights exist, the Managing Agent waives such rights).
- 10.2 The Managing Agent agrees to execute all documents and to do any other things reasonably necessary to further assure the Trust's title to the Intellectual Property Rights in the Materials and to allow the Trust to enforce its rights in the Materials. Where the Managing Agent engages the assistance of third parties in preparing or producing the Materials for the Trust, the Managing Agent will notify the Trust, ensure at the outset that such third parties assign any such Intellectual Property Rights to the Trust (and if moral rights exist, waive such rights) and promptly provide the Trust with documentation evidencing such assignment and waiver.
- 10.3 All Intellectual Property Rights in any materials or other items supplied by the Trust to the Managing Agent or used by the Managing Agent in the supply of the Services shall at all times be and remain the exclusive property of the Trust and shall be held by the Managing Agent in safe custody at its own risk and shall be maintained and kept in good condition until returned to the Trust and shall not be disposed of other than in accordance with the Trust's written instructions, nor shall such items be used otherwise than as authorised by the Trust in writing.
- 10.4 The Managing Agent acknowledges that any rights granted by the Trust to use or exploit any of the Trust's Intellectual Property Rights will terminate immediately upon the termination of this Agreement for any reason. All goodwill in respect of the Trust's Intellectual Property Rights shall remain with the Trust at all times.

11 ANTI-BRIBERY AND CORRUPTION

- 11.1 Each party agrees that it shall comply with all applicable Anti-Bribery Laws.
- 11.2 Each party:
- (a) shall implement and have in place, at all times during the Contract Period, adequate policies and procedures designed to prevent them from engaging in any activity which would constitute an offence under Anti-Bribery Laws.
 - (b) warrants that, in connection with this Agreement, no improper financial or other advantage has been, will be or is agreed to be given to any person by or on behalf of that party.
 - (c) shall report to the other any alleged or suspected violation of this Clause 11 or any Anti-Bribery Laws as soon as reasonably practicable. Breach of this Clause 11 or of any Anti-Bribery Laws by a party is a material breach of this Agreement and, without prejudice to any other right, relief or remedy of the other party under this Agreement or law, entitles that party to terminate this Agreement immediately.

- (d) shall from time to time, at the reasonable request of the other party confirm in writing that it has complied with its obligations under this Clause 11 and shall provide any information reasonably requested by the other party in support of such compliance;
- (e) repay to the other party any loss sustained by the other party in consequence of any breach of this clause, whether or not this Agreement has been terminated.

12 DATA PROTECTION

- 12.1 Each party agrees that it may from time to time process Personal Data (as defined in the Data Protection Act 1998 the "**DPA**") on behalf of the other party and agrees to comply with the provisions of the DPA governing the use, storage or transmission of any such Personal Data and the Data Protection clauses at Schedule 9 and shall not do or permit anything to be done which might cause or otherwise result in breach of the same.

13 FORCE MAJEURE

- 13.1 Neither party will be liable to the other for any failure or delay in performance of this Agreement (other than an obligation to make any payment) if it is due to any event beyond the reasonable control of a party to this Agreement including, without limitation, acts of God, war, protests, fire, flood, storm, tempest and national emergencies and subject to clause 13.2 the party so delayed will be entitled to a reasonable extension of time for performing such obligations.
- 13.2 If the event of force majeure in question continues for more than three months either party may give notice in writing to the other to terminate this Agreement. The notice to terminate must specify the termination date, which must not be less than 15 days after the date on which the notice is given, and once such notice has been validly given, this Agreement will terminate on that termination date, subject to clause 16.
- 13.3 If at any time the Managing Agent claims an event of force majeure in respect of its obligations under this Agreement, the Trust shall be entitled to arrange for any other person to take over the management of the Site(s) for the period during which the Managing Agent is unable to perform its obligations under this Agreement due to the force majeure event, provided that the costs of such temporary management shall be borne by the Trust.

14 DETERMINATION OF DISPUTES

- 14.1 In the event of any dispute arising in relation to the subject matter of this Agreement then the parties shall endeavour to resolve the dispute on a good faith basis by such means as they consider reasonable.
- 14.2 In the event that the parties are unable to agree on the resolution of a dispute as set out in clause 14.1 within 15 Business Days of the dispute arising, then the parties agree to refer the dispute to determination by the respective Chief Executive Officers of the parties.
- 14.3 Should the respective Chief Executive Officers of the parties fail to determine or agree the dispute as set out in clause 14.2 within 15 Business Days of the dispute being

referred to them, then the parties shall refer the dispute to determination by an expert in accordance with this clause 14. The expert shall be agreed on by the parties or, if they fail to agree, to be decided on the application at any time by the party to the President for the time being of the Royal Institution of Chartered Surveyors.

- 14.4 The expert shall be entitled to conduct the matter in such manner as he shall decide and shall be entitled to seek such advice in reaching such determination as he thinks fit and both parties shall provide the expert with all necessary assistance which the expert or arbitrator requires to consider the dispute and shall supply to the expert all documentation and information relevant and material to the dispute.
- 14.5 All decisions of the expert shall be final and binding, save in the case of manifest error.
- 14.6 The expert shall in giving his decision, agreement, statement or opinion be acting as an expert and not an arbitrator and any provisions of law relating to arbitration, including the Arbitration Act 1996, shall not apply.
- 14.7 The fees of the expert (and any fees in respect of the nomination of any expert) shall be borne by the parties in a proportion that shall be determined by the expert having regard (amongst other things) to the conduct of the parties.
- 14.8 If any appointed expert declines at any stage to determine any dispute for any reason, either party shall be at liberty to commence court proceedings in relation to such dispute.

15 TERMINATION

- 15.1 This Agreement shall commence on the Commencement Date and, subject to the following provisions of clause 15, shall continue for the Contract Period. Either party shall be entitled, by giving not less than 6 months' written notices, to terminate this Agreement on any anniversary of the Commencement Date.
- 15.2 Either party may by written notice served on the other terminate this Agreement immediately if the other:
 - (a) is in material breach of any of the terms of this Agreement and, where the breach is capable of remedy, the other party fails to remedy such breach within 30 days' service of a written notice from the party not in breach, specifying the breach and requiring it to be remedied provided any such notice is served within six months of the breach occurring or the party not in breach becoming aware of such breach, whichever occurs later;
 - (b) becomes Insolvent;
 - (c) has any distraint, execution or other process levied or enforced on any of its property;
 - (d) has a change in management and/or control that is unacceptable to the other party (acting reasonably);
 - (e) unreasonably withholds support to changes which may be necessitated in order to complete the requirements of the Agreement to budget or timetable or to accommodate changing Site conditions; or

- (f) has not, or will not, meet any of the technical, organisational or financial requirements within any of the timescales stated in this Agreement.
- 15.3 For the purpose of clause 15.2(a) a breach shall be considered capable of remedy if the party in breach can comply with the provisions in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).
- 15.4 In the event that:
- (a) it is necessary for the Trust or any other party to carry out Works on any part of the Site; or
 - (b) the Trust is required (pursuant to a lease or other instrument the Trust has entered into in respect of the Site(s) and which is legally binding on the Trust) to surrender its interest in any part of the Sites; or
- (such part of the Site being defined as "the Specific Site" for the purpose of this clause
- AND** such occurrence will substantially prevent performance of either party's obligations under this Agreement in relation to the Specific Site (or part of a Specific Site);
- THEN** the Trust may serve 3 months' written notice to either:
- (c) suspend this Agreement (where such an occurrence is of a temporary nature) in relation to the Specific Site for a period specified in such notice over and specifying the part of the site to which it relates; or
 - (d) terminate this Agreement (where the occurrence is of a permanent nature) in relation to the Specific Site, such notice specifying which part of the Site(s) it relates to.
- 15.5 Upon the expiry of any notice served pursuant to clause 15.4(c) then the Managing Agent shall not be obliged to perform its obligations under clauses 2 and 3 of this Agreement in relation to the Specific Site from the date when the suspension becomes effective (and if this Agreement is suspended) until the period of suspension specified in the notice has expired. The Managing Agent acknowledges that any suspension of the Managing Agent's obligation pursuant to this clause 15.5 may be as a result of works being carried out/access by a third party. Therefore it may not be possible for the Trust to accurately specify a period of any suspension and therefore the period of suspension in the notice shall be deemed as being indicative only and not binding. In this circumstance the Trust shall keep the Managing Agent informed as to any changes in the likely period of any suspension and if any suspension is for a lesser period than specified in the notice pursuant to clause 15.4(c) then the Trust shall give as much notice as is possible of the resumption of the terms of this Agreement in relation to the Specific Site.
- 15.6 In the event that one of the occurrences listed in clauses 15.4(b) to 15.4(c) occur in respect of the whole of the Site(s) then the Trust may serve the Managing Agent [six] months' written notice to terminate this Agreement and on the expiry of that notice this Agreement will terminate.

- 15.7 In the event that the Trust serves notice on the Managing Agent to suspend this Agreement or to terminate this Agreement in relation to the Specific Site(s) (or part of the Specific Site(s)) in accordance with clause 15.4, and following service of such notice the Managing Agent reasonably considers it will not be able to fulfil its obligations contained in this Agreement in respect of the whole of the Site(s) in an economic manner, then the Managing Agent can serve six months' written notice to terminate this Agreement on the Trust and upon the expiry of such notice this Agreement will terminate.
- 15.8 The rights to terminate this Agreement given by this clause shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.
- 15.9 Upon the termination of this Agreement for any reason, subject as otherwise provided in this Agreement and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement.

16 CONSEQUENCES OF TERMINATION

- 16.1 In the event of termination for whatever reason, the Managing Agent agrees to cooperate with the Trust as far as it is reasonably able in handing over control of the Site to the Trust or its appointed agent.
- 16.2 Following termination of this Agreement, the Managing Agent shall be entitled to access the Site(s) as may be reasonably required by the Managing Agent for the purpose of removing property belonging to the Managing Agent located on the Site(s).
- 16.3 The termination of this Agreement for any reason will not affect the coming into force or the continuation in force of any of its provisions which expressly or by implication are intended to come into force or continue in force on or after the termination, including clauses 0, 7, 9 to 14, and 16 to 22.

17 NATURE OF AGREEMENT

17.1 Assignment

- (a) Neither party to this Agreement may assign the benefit or delegate the burden of this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld.
- (b) Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture between the parties.

17.2 Entire Agreement

- (a) This Agreement contains all the terms which the parties have agreed in relation to the transactions provided for by this Agreement and neither of the parties have been induced to enter into this Agreement by a statement or promise which it does not contain. This shall not exclude any liability which a party would otherwise have to the other party in respect of any statement made fraudulently by that party prior to the date of this Agreement.

- (b) In the event that there is a conflict between the provisions of the main body of this Agreement and the Schedules to this Agreement, the former shall prevail.

17.3 Invalidity

If any provision of this Agreement is held by any court, tribunal or administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect, then that provision will, to the extent required, be severed from this Agreement and will be ineffective without, as far as is possible, modifying any other clause or part of this Agreement which will remain in full force and effect.

17.4 Waiver

No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of the same or the exercise of any other right, power or remedy.

17.5 Variations

No variation of this Agreement shall be valid unless in writing signed by the parties.

18 NOTICES

- 18.1 Any demand, notice or communication must be in writing and may be given by hand or sent by first class pre-paid post and shall be deemed to have been duly served:

- (a) if delivered by hand, when left at the proper address for service;
- (b) if given or made by prepaid first class post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays)

provided that, where in the case of delivery by hand, such delivery or transmission occurs either after 4.00 p.m. on a Business Day, or on a day other than a Business Day, service shall be deemed to occur at 9.00 a.m. on the next following Business Day (such times being local time at the address of the recipient).

- 18.2 Any demand, notice or communication shall be made in writing to the recipient at its registered office or its address stated in this Agreement (or such other address or facsimile number as may be notified in writing from time to time) and shall be marked

- (a) For the Managing Agent for the attention of the Legal Manager, Dover District Council, Council Offices, White Cliffs Business Park, Whitfield, Dover CT16 3PJ];
- (b) For the Trust for the attention of the Director of Portfolio Management, the Land Trust, 7 Birchwood One, Dewhurst Road, Birchwood, Warrington, WA3 7GB.

19 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

20 DISCLOSURE

20.1 Each party undertakes to the other:

- (a) to keep confidential all Confidential Information;
- (b) not without the other party's prior written consent to disclose the Confidential Information in whole or in part to any other person save those of its directors, employees, agents or professional advisers involved in the implementation of this Agreement and provided in all cases that they have a need to know the same; and
- (c) to use the Confidential Information solely in connection with the exercise or enjoyment of rights and/or the performance of obligations under this Agreement and not otherwise for its own benefit or the benefit of any third party.

20.2 The provisions of clause 20.1 shall not apply to the whole or any part of the Confidential Information that can be shown by the receiving party to be:

- (a) disclosed as a requirement of law including disclosures required in order for the Trust to comply with its regulatory requirements under the Charities Act 2003;
- (b) known to the receiving party prior to the date of this Agreement otherwise than as a result of being obtained directly or indirectly from the party disclosing such Confidential Information;
- (c) obtained from a third party who lawfully possessed such Confidential Information and which has not been obtained in a breach of a duty of confidence owed to the Disclosing Party by any reason; or
- (d) in the public domain in the form in which it is possessed by the disclosing party other than as a result of a breach of a duty of confidence owed to the disclosing party by any person.

20.3 Without prejudice to the generality of this clause 20, each party further undertakes to the other to make all relevant directors, employees, agents and professional advisers aware of the confidentiality of the Confidential Information pursuant to the provisions of this clause 20 and to use its reasonable endeavours to ensure compliance by its directors, employees, agents and professional advisers with the provisions of this clause 20.

20.4 Subject to clause 20.7 each party agrees to keep the terms of this Agreement confidential and no announcement concerning the transactions contemplated by this Agreement or any ancillary matter shall be made by either party without the prior approval of the other party

- 20.5 Neither party shall make use of or make any reference to the name of the other party or the customers of the other party for any advertisement, announcement, marketing or publicity without the prior written consent of that party.
- 20.6 The provisions of this clause 20 shall survive termination of this Agreement for any reason.
- 20.7 The Managing Agent acknowledges that the Trust may from time to time be required to disclose information including the details of this Agreement and of the Services provided under it to the Charity Commission and/or any other regulatory body. Both parties acknowledge that the Charity Commission and the Managing Agent are subject to the Freedom of Information Act 2000 and as such details of this Agreement may become public knowledge.

21 AUDITS

- 21.1 The Managing Agent shall hold all appropriate records and other documents relating to the provision of the Services in accordance with Good Industry Practice for the term of the Agreement and for a period of six years following the term of the Agreement and shall provide the Trust with such copies of them as the Trust reasonably requests from time to time.
- 21.2 The Managing Agent shall provide the Trust with such information as the Trust reasonably requests from time to time in connection with this Agreement and the Services (without prejudice to any other obligations that the Managing Agent may have to provide specific reports and information under this Agreement).
- 21.3 The Managing Agent shall allow the Trust and any auditors of or other advisors to the Trust to access any of the Managing Agent's systems, premises, personnel and relevant records as may be reasonably required in order to verify:
- (a) the accuracy of the Annual Budget, any other charges and cost or to identify suspected fraud; or
 - (b) that the Services are being provided in accordance with this Agreement; or
 - (c) that the Managing Agent's systems protect the integrity, operational availability, confidentiality and security of data including any of the Trust's Confidential Information.
- 21.4 The Trust shall provide at least 5 working days' notice of its intention to conduct an audit unless such audit is conducted in respect of a suspected fraud, in which event no notice shall be required.
- 21.5 The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause 21 except that the Managing Agent shall bear the costs of any audit where fraud has occurred or to which clause 21.6 applies.
- 21.6 If an audit identifies that the Trust has overpaid the Managing Agent, the Managing Agent shall pay to the Trust the amount overpaid within 14 days from the date of receipt of an invoice or notice from the Trust to do so.

22 ENGLISH LAW

The formation, construction, performance, validity and all aspects whatsoever of this Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by English Law and the parties hereby agree to submit to the exclusive jurisdiction of the English Courts in relation to any dispute or difference arising in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**Schedule 1
Site(s) Plan(s)**

**Schedule 2
Management Plan**

Plan to be prepared by Managing Partner within 6 months of signing this agreement

Schedule 3
The Obligations/Undertakings Agreed by the Managing Agent

1 STAFFING

- 1.1 The Managing Agent will use appropriately trained, qualified and experienced staff in order to comply with its obligations under this Agreement and to manage the Site(s).
- 1.2 The Managing Agent will be responsible for ensuring that it can provide sufficient staff time to deliver the agreed Management Plan within the agreed Annual Budget and Five Year Budget.
- 1.3 The parties shall seek to agree how and who are to meet any additional costs incurred by the Managing Agent in the event that the Managing Agent must provide additional staff support to cover absence due to sickness, maternity and paternity leave, annual leave or training and neither party shall be responsible for those costs until and unless agreed by both parties which agreement will be agreed in writing signed by both parties. Any dispute arising from a request for additional funds to cover the costs at paragraph 1.3 above shall be determined in accordance with clause 14 of this agreement.

2 PUBLIC CONSULTATION AND COMMUNITY ENGAGEMENT

- 2.1 The Managing Agent will take responsibility for planning, and delivering an ongoing programme of guided walks, education visits, children's events and Green Angels at Fort Burgoyne to maximise delivery of Trust Charitable Objectives and aid the engagement of community with the Fort.
- 2.2 The Managing Agent will plan and manage volunteer tasks across the Site to support delivery of the site management plan
- 2.3 The Management Plan will set the broad strategy for community engagement. In addition, the Managing Agent will submit to the Trust a community engagement programme on an annual basis no later than 4 weeks in advance of the commencement of each Financial Year. It will report on community engagement activity within the Quarterly Report.
- 2.4 Support the Trust in undertaking of community consultation events relating to the Site(s) through staff and co-ordination of volunteers to aid site access

3 SITE MANAGEMENT

- 3.1 The Managing Agent must undertake all on site management required to maintain the Site(s) in good condition and available for informal public access (temporary restrictions on access only being permitted for Health & Safety and other sound management reasons). This will include any and all requirements that are a condition of any planning or other formal agreement including any insurance policy relating to the Site(s) and of which the Managing Agent has been advised by the Trust. Specifically this must include:

- (a) assuming as manager of the Site(s) general liability and responsibility for the Site(s) and all activities undertaken on it, save that any liability resulting as a

consequence of the Site(s) being a Historic Monument Site(s) is specifically excluded and such liability will remain with the Trust except where such liability arises as a consequence of the acts, omissions or negligence of the Managing Agent and subject always to the provisions of clause 3.4 of this Agreement;

- (b) being liable for any physical hazard on the Site(s) including but not limited to those it has observed or been notified about, and will take remedial action as is considered necessary to make the Site(s) safe and fit for purpose;
- (c) managing any designated conservation or heritage Site(s) in accordance with a plan agreed with the appropriate responsible body;
- (d) managing the entire Site(s) in such a way that there is a presumption in favour of the local historic environment, ecology, ecological processes and timescales, where practical (and alternative approaches are only undertaken where these can be clearly demonstrated as delivering desirable outcomes).
- (e) Comply with all policies of the Trust in relation to the management of its sites

4 WORKING WITH OTHER ORGANISATIONS

4.1 The Managing Agent will identify and work with all appropriate bodies that can add value to the public benefits deliverable by the Site(s). As a rule this should be done in a manner that allows other organisations with specialist skills or knowledge to undertake specific work or actions, with the Managing Agent acting to co-ordinate and facilitate the work of others. Specifically where possible this should include:

- (a) assisting and encouraging individuals and groups within the local community to take a direct interest and involvement in the management of the Site(s). This may be on a voluntary or paid basis;
- (b) using the Site(s) and the activities undertaken on it to provide training and employment opportunities for local people, to benefit public health and to provide an educational resource;
- (c) giving preference to local people and locally-based organisations where possible in terms of involvement with or management of the Site(s).

5 GENERAL APPROACH

5.1 The Managing Agent will undertake all operations and activities in an open and co-operative manner, with both the Trust and other organisations and partners. This specifically includes:

- (a) keeping and making available to all who reasonably ask for it, all financial information on the cost of management and other activities on the Site(s);
- (b) assisting other organisations to gain from the experience of the Managing Agent;
- (c) trying new approaches, either directly or assisting others to do so, where there is the potential to increase the public benefits the Site(s) can offer;

- (d) operating in a manner that tries to achieve consensus between organisations and individuals; and
- (e) operating in accordance with the Freedom of Information Act (if applicable) and the GDPR legislation.

6 COMMUNICATIONS

- 6.1 The Managing Agent and the Trust will jointly promote the Site(s), the activities taking place on the Site(s) and their respective roles, agreeing details as required.
- 6.2 The Managing Agent will comply with the communications and marketing protocol for the Site
- 6.3 The Managing Agent will ensure that all signage (permanent & temporary) reflects the joint nature of management of the site and includes both parties logo's.
- 6.4 All staff which are normally associated with the site will have jointly branded clothing and the vehicles will also be jointly branded.

7 VARIATIONS

Any of the above conditions may be varied on a specific or general basis. Any variation must be agreed in writing by both the Trust and the Managing Agent.

Schedule 4
The Obligations of the Trust

1 BACKGROUND INFORMATION

The Trust will provide the Managing Agent with all relevant background information to enable it to manage the Site(s), including but not limited to details of any insurance policies relating to the Site(s) as amended from time to time, initial Site(s)' assessments, Site(s)' master plans and designs and details of restoration works, planning and other relevant conditions, title matters and budgets.

2 MANAGEMENT PLAN

The Trust will agree with the Managing Agent and any other organisations the timescale and processes for review of the Management Plan.

3 FINANCE

3.1 Once the Management Plan has been agreed the Trust will be required to:

- (a) Agree a format with the Managing Agent for the keeping of records of all income, expenditure and activities.
- (b) Pay all agreed Net Expenditure claimed by the Managing Agent within 30 days of receipt of satisfactory invoices and all requested supporting documents, subject to clause 5.8.
- (c) To assist the Managing Agent with any external examination or audit of records and accounts by any approved body.

3.2 The Trust will not be obliged to reimburse any unauthorised expenditure (being expenditure that has not been agreed to by the Trust in accordance with clause 5.1 to 5.4.

4 PUBLIC CONSULTATION

The Trust will assist and support the Managing Agent with public consultation and the answering of questions about the Trust and the Site(s), in a manner agreed with the Managing Agent.

5 SITE MANAGEMENT

5.1 The Trust will:

- (a) subject to the provisions of clause 3.4 of this Agreement, retain legal liability for the Site(s), save to the extent that any obligations are transferred to the Managing Agent under this Agreement. In particular, the Trust will be liable for all matters arising as a consequence of the Site(s) including (a) reclaimed brownfield site(s) and status as Scheduled Ancient Monument;
- (b) assist the Managing Agent to identify and work with all appropriate bodies that can add value to the public benefits deliverable by the Sites; and

- (c) work with and assist the Managing Agent and any other organisations to identify alternative sources of income to enable Site(s) enhancement, or higher standards of maintenance, or an increased number and range of activities to take place on the Site(s).

6 GENERAL APPROACH

6.1 The Trust will undertake all operations and activities in an open and co-operative manner, with both the Managing Agent and other organisations. This specifically includes:

- (a) assisting the Managing Agent to gain from the experience of the Trust (and other Managing Agents working on other sites within the Trust's portfolio);
- (b) trying new approaches, either directly or assisting others to do so, where there is the potential to increase the public benefits a Site(s) or the Trust can offer; and
- (c) operating in a manner that tries to achieve consensus between organisations and individuals.

7 COMMUNICATIONS

The Managing Agent and the Trust will jointly promote the Site(s), the activities taking place on the Site(s) and their respective roles, agreeing details as required.

8 VARIATIONS

Any of the above conditions may be varied on a specific or general basis. Any such variation must be agreed in writing by both the Trust and the Managing Agent.

Schedule 5
The Indicative Five Year Budget

Year	Annual Indicative Budget
2020/21	£118,792
2021/22	£122,356
2022/23	£126,026
2023/24	£129,807
2024/25	£133,701

**Schedule 6
Quarterly Report Template**

H&S Monitoring Plan

Monitoring Activity	Frequency	Lead by
Contract Performance Meetings (inc. H&S KPIs)	Quarterly	Client (TLT) – Portfolio Manager
H&S/Quality Monitoring Inspections (work in progress)	6 monthly	Client (TLT) – Portfolio Manager
Contract H&S Audit	Annual	Client (TLT) – Portfolio Manager/Caldiston Ltd
H&S Inspections (work in progress)	To agreed schedule for site zones	Managing Agent/Contractor

Suggested KPIs and Performance Reporting Plan

Proactive
Number of site health and safety inspections completed in the period/target.
Summary of health and safety audit/inspection findings and remedial action taken to improve health and safety.
Number of toolbox talks delivered in reporting period /target.
Summary of toolbox talk topics covered in reporting periods.
Overview of H&S and mandatory training compliance for reporting period.
Number of Permits to Work issued in reporting period.
Number of PPE checks completed in reporting period.
Number/type of RAMS and COSHH assessments completed or reviewed in reporting period.

Equipment maintenance/testing/inspections completed in reporting period (e.g. step ladders, cutters, ride on equipment).
Reactive
Number of accident and incidents reported in this period along with a summary report and lessons learned.
Number of near misses/safety interventions reported in this period and lessons learned.
Number of stop for safety events in the reporting period and summary report and lessons learned.
Details of any regulatory or enforcement action in reporting period.

Site inspection frequency with I-audit

Area	Use	Frequency	Covering	By who
Recreation Ground	Public Access	Fortnightly	Footpaths, signs, fencing, goalposts, waste, ASB etc	Grounds Contractor
Fort Burgoyne	Restricted Access	Quarterly	As per inspection form	WCCP
East Wing	Restricted	Monthly	Perimeter fence and signage check	WCCP
		6 Monthly	Interior	TLT & WCCP
West Wing	Under-construction –	Fortnightly	Footpaths, signs,	WCCP

	public access 2020		fencing, waste, ASB etc	
Coombe Hole	Grazing land – public access	Quarterly	Fences, ASB, gates, trees	WCCP

Quarterly reporting

	Actual Budget	1st Quarter Actual
Landscape Maintenance		
Anti Social (litter etc.)		
Community and Publicity		
Periodic Replacement	-	-
Staff Costs		
Other Agreed Costs		
Capital Works	-	-
Building & Facilities Management	-	-
Items funded via grants/income below	-	-
Site Utilities (LT)		
Insurance (LT)		
Expenses (LT)	-	-
LT Direct Costs (LT)	-	-
Total Expenditure	-	-

Fundraising and Grants

Please include any donations, gifts in kind, income from corporate volunteering activities (please show the value of these)

**All
other
Income**

Description
Agricultural tenant

Environment and Biodiversity

Use light grey cells for your own workings (e.g. tally up as you go along, but ju

	March Bas
Habitat Created / Improvement (hectares / no. of)	
Trees planted (no.)	
Amenity Grassland (ha)	
Other grassland (meadows / wildflower meadows (ha)	
Lakes and wetlands (ha)	
Rivers/ streams (metres)	
Scrub (ha)	
Woodland (ha)	
Hedgerows (metres)	
Homes for nature (no.)	
Other, please specify	
SUDS / flood storage created or improved (ha)	
Bioblitz / ecological surveys carried out (no.)	

Health and Wellbeing

Refer to guidance for whether an activity is moderate or vigorous exercise.

Refer to guidance tab for activities to support people with mental health rela

**Use the 'details of projects / activities' box to estimate the proportion of even
individuals**

Use the 'details of projects / activities' box to indicate the proportion of parti

--

Moderate health/physical related activities
Vigorous health/physical related activities
Activities to support people with mental health related issues
No. of health referrals
No. of new or improved health facilities

Education

**Note in the 'details of projects / activities' box any activities which support ch
For 'Adults (aged 16+) engaged at the site' - exclude young offenders and NE
rows**

Children (up to 16) using site - on a school visit
Children (up to 16) on organised activities (not with school)
Young offenders (16-24) engaged in activities

Young people (16-24) Not in Education, Employment or Training (NEETs)
Adults (aged 16+) engaged with site participating in skills/training
No. of new or improved outdoor education spaces

	Annual Target	1st C
No. of people working on the site		
No. of Green Angel participants	-	
No of trainees / apprentices working on-site		
Expenditure on local contractors (within approx 20 miles)		
No. of businesses operating on site		
No. of visitors to the site		
Approx no. of new homes / businesses built in surrounding area (800m)		

	Annual Target		1st
	Events	Individuals	Even
Event - Large scale community	-		
Event – Seasonal			
Regular sessions	-		

Volunteer sessions / no. of individuals	-		23
Off site activities	-		
		Hours	
Volunteers (hrs) - up to 24 years old		-	
Volunteers (hrs) - people aged 25-64		-	
Volunteers (hrs) - people aged 64+		-	
Volunteers (hrs) – corporate		-	
Community payback (hrs)		-	
		Number	
No. of new or improved play areas (e.g. informal / formal)		-	
No. of antisocial behaviour incidents			
No. of antisocial behaviour campaigns			
Number of unique individuals who have volunteered			

Key Performance Indicators

TO BE
AGREED
WITH TLT
PM
ANNUALLY

	Achieved 20
Community Cohesion	
Economy	
Education	
Environment	
Health	
Total KPI	

Communications, PR and Events

	1st Quarter
No. of press releases	
No of Facebook posts	
Awards entered	

**Schedule 7
Accident Report Template**

Schedule 8

Existing Employees

Paul Sampson Fort Burgoyne Ranger 0.6 FTE

Schedule 9
Data Protection

SIGNED by [INSERT NAME])

Duly authorised to sign for and on behalf of)
THE LAND RESTORATION TRUST)

.....
Authorised Signatory

SIGNED for and on behalf of)
DOVER DISTRICT COUNCIL)
)

.....
Authorised Signatory